

## The Pornography Formulation in Legislation; Between Gender Bias and Legal Misleading Tendencies

I Wayan Putu Sucana Aryana<sup>a</sup>, Made Emy Andayani Citra<sup>b</sup>

### ABSTRACT

Provisions regarding the prohibition of pornography in Indonesia are specifically regulated in the Law on Pornography 2008. It provides a very broad scope to ensnare people involved in pornographic videos. It actually tends to place victims of revenge porn as perpetrators in the crime of pornography. In this study, there are three problems examined, namely the pornography debate; between art, private life and lawlessness, the formulation of the prohibition of pornography in Indonesian law and its weaknesses, and the study of gender bias in cases of pornography involving women. This research is a normative juridical study examining the weakness of the legal substance of the prohibition of pornography. The debate about pornography gives birth to several perspectives in which the body is seen as an art and human right. However, presenting body shape is seen as a violation of values and the law. The spread of pornography in cyberspace is regulated in the Criminal Code, the Law on Information and Electronic Transactions and the Law on Pornography. Society has a double standard of sexual activity performed by men and women. As a result, the society shows hatred towards women engaging in pornography.

**Keywords:** gender bias; legal misleading; pornography; women.

### INTRODUCTION

At the end of 2000 to early 2021, cyberspace in Indonesia was shocked by the spread of a 19-second pornographic video that was allegedly carried out by a public figure. The circulation of the video has become a topic of discussion among the public, which has resulted in social judgment and sanctions from the community. A public figure is in the spotlight and expected to be a role model, especially for fans.<sup>1</sup> This is not the first time that public figure porn videos have spread in Indonesia. Cyber/virtual world or the internet and the World Wide Web (www) are currently full of pornographic materials or related to sexual problem.<sup>2</sup> In the view of the general public, the artist is considered guilty of making videos containing pornography and against the norms of decency in society. However, as a practitioner and legal scholar, there are things that must be explored in the distribution and production of these videos, they need to be reviewed. Are the people in the video that made the video or not? It is necessary to know what the purpose of the video recorder is and, more importantly, who and how the video can spread widely in the community. It could be that this is pornography with a motive of revenge, which is a form of coercion and threat to someone, especially women, to

---

<sup>a</sup> Faculty of Law, Ngurah Rai University, Jalan Kampus Universitas Ngurah Rai, Denpasar, Bali, 80238, Indonesia. Email: [sucanaaryana67@gmail.com](mailto:sucanaaryana67@gmail.com).

<sup>b</sup> Faculty of Law, Mahasaraswati University, Jalan Kamboja No. 11A, Dangin Puri Kangin, Denpasar, Bali, 80233, Indonesia.

<sup>1</sup> Baharudin Al Farisi, "Kronologi Tersebaranya Video Syur Gisel dan MYD," *Kompas.com*, December 30, 2020, <https://www.kompas.com/hype/read/2020/12/30/174300666/kronologi-tersebaranya-video-syur-gisel-dan-myd?page=all>.

<sup>2</sup> Badar Nawawi Arief, *Tindak Pidana Mayantara Perkembangan Kajian Cyber Crime di Indonesia*, PT. Raja Grafindo Persada, Jakarta: 2006.

transmit or publish immoral content in the form of photos or videos made by a partner or ex-partner to the public with the aim of isolating, humiliating, and destroying the victim's life.<sup>3</sup>

Efforts to tackle pornography in cyberspace actually occur in many countries. The internet is packed with websites offering different kinds of pornography.<sup>4</sup> Anti-pornography campaigners have frequently claimed that porn studies need to take the economics of pornography seriously, yet often this amounts to little more than the idea that pornography is a capitalist product.<sup>5</sup> Specialized police in the United States, Canada, and Europe have been very busy since the year 2000 catching cyber criminals on the internet who are intent on creating and distributing cyber pornography for a sizable profit. At the other end of the profit motive lies one or thousands of young children who are sexually abused and photographed for others' pleasures—typically males.<sup>6</sup> The issuance of the Law of the Republic of Indonesia Number 44 of 2008 concerning Pornography (hereinafter referred to as the Law on Pornography 2008) is one form of the government's response to the dangers of accessing pornography.<sup>7</sup>

Article 4 paragraph (1) of the Law on Pornography 2008 states that the provisions in Indonesia punish every person prohibited from producing, making, reproducing, duplicating, disseminating, broadcasting, importing, exporting, offering, trading, renting, or providing pornography that explicitly contains: a. sexual intercourse, including sexual relations that are deviant; b. sexual violence; c. masturbation; d. nudity or a display that suggests nudity; e. genitals; or f. child pornography. This provision regulates very broad penalties for people engaging in pornography.

Referring to the provisions of Article 4 paragraph (1) of the Law on Pornography 2008, the state can punish victims of revenge porn. Revenge porn occurs when a person uploads nude / semi-nude photos of someone online, often as revenge after a relationship has ended. Hence, revenge porn is included under the umbrella of nonconsensual pornography, but non-consensual pornography does not always include revenge porn.<sup>8</sup> The threat of imprisonment can also be directed at the victim of rape if the perpetrator records the sexual relationship occurred between the perpetrator and the victim. The legal response in some jurisdictions to the filming and recording of sexual assault and rape shows that the divide between the real world and the virtual world is no longer tenable; both the physical assault and the film causes harm. However, there is often no legal response to the harm caused by threats to (further) distribute the images. It is not just the recording of the sexual assault

---

<sup>3</sup> Dwita Rahmawati, Ifahda Pratama Hapsari, and Hardian Iskandar, "Criminal Acts Revenge Pornography in Terms of Indonesian Criminal Law," *Legal Brief*, Vol. 11, No. 5, 2022, pp. 3194-3202.

<sup>4</sup> Yaniv Efrati and Yair Amichai-Hamburger, "Are Adolescents Who Consume Pornography Different from Those Who Engaged in Online Sexual Activities?" *Children and Youth Services Review*, Vol. 111, No. 104843, 2020.

<sup>5</sup> Clare McGlynn and Hannah Bows, "Possessing Extreme Pornography: Policing, Prosecutions and The Need for Reform," *The Journal of Criminal Law*, Vol. 83, No. 6, 2019, pp. 473-488.

<sup>6</sup> Bernadette H. Schell et al., "Cyber Child Pornography: A Review Paper of The Social and Legal Issues and Remedies-and A Proposed Technological Solution," *Aggression and Violent Behavior*, Vol. 12, No. 1, 2007, pp. 45-63.

<sup>7</sup> The regulation of pornography in this Law includes (1) prohibition and restrictions on the creation, distribution and use of pornography; (2) protection of children from the influence of pornography; and (3) prevention of the creation, distribution and use of pornography, including community participation in prevention.

See General Explanation of The Law on Pornography 2008.

<sup>8</sup> Samantha Bates, "Revenge Porn and Mental Health: A Qualitative Analysis of The Mental Health Effects of Revenge Porn on Female Survivors," *Feminist Criminology*, Vol. 12, No. 1, 2017, pp. 22-42.

that causes harm, but also the subsequent and continuing coercive use of these images. Often survivors are threatened with the exposure of the video should they report the assault to the police.<sup>9</sup>

Internet pornography' was more deviant and violent, and that exposure to it constituted a more serious and widespread threat to children and society than in past generations. These actors claimed that the internet enabled children to view sexual content that could not be considered mainstream (for adults) and was therefore more dangerous to children's sexual development.<sup>10</sup> When the player in the video does not give consent for the distribution of the video, will he or she become the perpetrator or victim? The spread of pornography has the tendency to make women in porn videos victims of cyberbullying by online media and netizens. Women are looked down when they are involved in pornography cases. The judgment of society shows that there is a gender injustice against women.

This study will discuss three issues, namely the pornography debate between art, personal life and lawlessness; the formulation of the prohibition of pornography in Indonesian law and its weaknesses and the study of gender bias in cases of pornography involving women.

## METHODS

The research method is a method used in collecting research data and comparing it with predetermined standard sizes.<sup>11</sup> Research is a scientific activity that is systematic, directed and aimed so that data or information collected in research must be relevant to the problems at hand. The research method used in this research is juridical normative, which refers to legal norms and principles, applicable laws and regulations, legal theories and doctrines, jurisprudence, and other literature materials that are relevant to the research topic. This research examines the provisions in the pornography law that tend to cause a legal error.

## DISCUSSION

### The Pornography Debate; Between Art, Personal Life and Lawlessness

There are still contradictions about pornography, especially regarding the nakedness of the human body, from various points of view. First; a pornographic point of view from a conservative point of view, in which people with that point of view agree that all images or visuals that show nudity are pornographic, contrary to decency and things that have a bad impact so that they are not appropriate to be shown, Second; The view of pornography is based on a liberalism approach in which in the view of its adherents who are generally artists or art actors, the visualization of nudity does not only contain pornography but also a work of art about someone's nudity that can inspire art in the

---

<sup>9</sup> Clare McGlynn, Erika Rackley, and Ruth Houghton, "Beyond 'Revenge Porn': The Continuum of Image-based Sexual Abuse," *Feminist Legal Studies*, Vol. 25, No. 1, 2017, pp. 25-46.

<sup>10</sup> Joseph N. Goh, Ghislaine L. Lewis, and Pauline PY Leong, "Sexy Media Dissidents: State Regulation, Dissidence, Pornography and Gay Men in Malaysia," *Sexuality & Culture*, Vol. 23, No. 1, 2019, pp. 192-208.

<sup>11</sup> Suharsimi Arikunto, *Prosedur Penelitian Suatu Pendekatan Praktek*, Rineka Cipta, Jakarta: 2018.

visualization of his works, such as in paintings. For example, Balinese girls kept by Le Mayuer or in sculptures, third: the definition from a feminist approach point of view, nudity is seen as something ordinary, something common place, something humane and who have and can do it as a gift.

On the other hand, the values of decency serve as a guideline for Indonesians who uphold eastern customs in local wisdom. This pattern of behavior places pornography as a form of deviation from decency, so that it is not appropriate to be shown and displayed because of the consequences that it can affect the mentality of the audience and erode the moral culture in society. People who display pornography are seen as shameless. In fact, shame is a characteristic of Indonesian society. Muttaqin and Saputra state, "Shame culture is behavior that is regulated by emphasizing shame. The culture of shame is one of the most important legal cultural elements of our Eastern customs, this is because the culture of shame has become part of our society."<sup>12</sup>

From the point of view of the values of politeness that most people in Indonesia adhere to, a photo or video recording of sexual relations is called pornography if the photo or recording violates the norms of decency in society. Related to this, there are three main reasons put forward for rejecting pornography, first is protecting young people or children; Second, preventing the humiliation of women; third, preventing its subversive nature which tends to destroy the order of sexual values of the family and society.<sup>13</sup>

Indonesia as a Pancasila country also has a strong commitment in protecting children from pornography.<sup>14</sup> The circulation of pornographic videos in cyberspace is a concern of many parties, especially parents and observers of children and adolescents. It is not impossible that immoral videos will shift the moral mode of children and adolescents who seem to justify a sexual activity carried out outside the bond of marriage which is then documented and displayed to the public. Pornography is one of the causes of sexual deviance and violence, especially rape. This concern is the right reason why the spread of immoral content that leads to pornography is subject to criminal action.

The decision to make pornographic videos, especially for personal gain, is actually a human right to the body. The debate that occurs is when the rights to the body are collided with the values and norms in people's lives. Understanding of a person's rights to his body cannot be separated from the values that underlie them. Based on the concept of humanity, the right to the body must be seen as a unit of a unified and responsible existence. Therefore, here applies an absolute limit to a person's right to his body, namely human value.<sup>15</sup>

The dissemination of pornographic videos from a legal perspective is a form of cybercrime. Cybercrime is a term that refers to criminal activity in which computers or computer networks become a tool, means or place of crime. According to Andi Hamzah, crime in the computer sector in

---

<sup>12</sup> Faizal Amrul Muttaqin and Wahyu Saputra, "Budaya Hukum Malu Sebagai Nilai Vital Terwujudnya Kesadaran Hukum Masyarakat," *Al-Syakhsyiah: Journal of Law & Family Studies*, Vol. 1, No.2, 2019, pp. 187-207.

<sup>13</sup> Wahyu Agus Dwi Atmoko, "Cyber Pornografi dan Gangguan Perilaku Mental," *FROM CITIZEN TO NETIZEN*, 2015, p. 203.

<sup>14</sup> Ni Luh Gede Yogi Arthani, "Eksplorasi Anak dalam Penyebaran Pornografi di Dunia Maya," *Jurnal Advokasi*, Vol. 8, No. 1, 2018, pp. 101-112.

<sup>15</sup> Hwian Christianto, "Konsep Hak Seseorang atas Tubuh dalam Transplantasi Organ Berdasarkan Nilai Kemanusiaan," *Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada*, Vol. 23, No. 1, 2011, pp. 19-37.

general can be interpreted as the illegal use of computers.<sup>16</sup> This case is one of the negative impacts of technological developments, information and communication technology that has also changed the behavior and lifestyle of people globally, and caused the world to be borderless, as well as causing changes in various fields of life.<sup>17</sup> Pornography consumption may be limited to solitary sexual indulgences, but it may also clarify and forge deeper connections with one's own sexual stirrings, and which consequently becomes a personal value.<sup>18</sup> Pornography addiction is a new trend of public health problems in Indonesia which has a wide impact and in a short time can damage the psychosocial order of society.<sup>19</sup>

### **The Formulation of the Prohibition of Pornography and its Weaknesses**

#### ***Legal Instruments on the Prohibition of Pornography***

Basically, international legal instruments do not completely prohibit pornography. The prohibition is aimed at pornographic activities involving children. The regulations regarding the prohibition of pornography in cyberspace according to the Convention on Cybercrime Budapest, 23.XI.2001 only focus on Offences related to child pornography. In Article 9 the Convention on Cybercrime states the following:

- "1. Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the following conduct:
- a. producing child pornography for the purpose of its distribution through a computer system;
  - b. offering or making available child pornography through a computer system;
  - c. distributing or transmitting child pornography through a computer system;
  - d. procuring child pornography through a computer system for oneself or for another person;
  - e. possessing child pornography in a computer system or on a computer-data storage medium."

Convention on Cybercrime does not concern pornography carried out by adults. This is fairness considering that many countries legalize the pornography industry in their national law, but criminalize child pornography and even consider that children's involvement in pornography is a very

---

<sup>16</sup> Dodo Zaenal Abidin, "Kejahatan dalam Teknologi Informasi dan Komunikasi," *Jurnal Processor*, Vol. 10, No. 2, 2017, pp. 509-516.

<sup>17</sup> Agus Raharjo, *Cyber Crime Pemahaman dan Upaya Pencegahan Kejahatan Berteknologi*, Citra Aditya Bakti, Bandung: 2012.

<sup>18</sup> Joseph N. Goh, Ghislaine L. Lewis, and Pauline PY Leong, "Sexy Media Dissidents: State Regulation, Dissidence, Pornography and Gay Men in Malaysia," *Sexuality & Culture*, Vol. 23, No. 1, 2019, pp. 192-208.

<sup>19</sup> Hotnarida Witasari, "Kerjasama Guru Bimbingan dan Konseling dengan Orangtua dalam Pengentasan Masalah Siswa Menonton Video Porno," *Jurnal Konseling dan Pendidikan*, Vol. 1, No. 3, 2013, pp. 36-42.

serious problem.<sup>20</sup> Provisions regarding the prohibition of pornography are also regulated in Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. Adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263 of 25 May 2000 entered into force on 18 January 2002. The provision Article 2 (c) states "Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes." The provisions in this Optional Protocol prohibit producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes of child pornography.

In Indonesian law, pornography is categorized as a criminal law. Criminal law is part of the overall law in force in a country, which establishes the basics and rules for: 1) Determining which actions should not be carried out, which are prohibited, accompanied by threats or sanctions in the form of certain crimes for whoever violates the prohibition; 2) Determine when and in what cases those who have violated these prohibitions can be imposed or sentenced to the punishment as threatened; 3) Determine in what way the imposition of the crime can be carried out if someone is suspected of having violated the prohibition.<sup>21</sup> According to Roeslan Saleh, in determining moral offenses, it should not be limited to the notion of decency in the sexual field, but also include things that are included in the mastery of the norms of appropriateness to behave in social interactions, for example leaving people who need help, humiliation and unlock secrets.<sup>22</sup> Meanwhile, if observed based on daily reality, people's perceptions of the meaning of decency are more inclined towards right or wrong behavior, especially in sexual relations (behavior as to right or wrong, especially in relation to sexual matter).<sup>23</sup>

Pornography is a criminal act that has long developed in Indonesia, it can be said that pornography is an extreme/vulgar form of erotica. All actions that give legal consequences, especially those that have an impact on crime, must also be accounted for criminally, criminal responsibility is related to the basis for imposing sanctions on the perpetrator of the violation against the crime itself. The basis for the existence of a criminal act is the principle of legality, while the basis for being convicted of a person is based on guilt. There are also people who cannot be held accountable as stipulated in article 44 of the Criminal Code which states "Whoever commits an act that cannot be accounted for to him, because his soul is disabled in growth or is disturbed by illness, is not punished". A person's agreement to become an object or model containing pornographic content does not eliminate the criminal penalty as regulated in Article 8 of Law on Pornography 2008.

The dissemination of pornographic content via the internet is not specifically regulated in the Criminal Code. In the Criminal Code, there is also no known term / crime of pornography, but what is regulated is crimes concerning decency as regulated in articles 281 and 282 of the Criminal Code. The

---

<sup>20</sup> Dewi Bunga, "Legal Response to Cybercrime in Global and National Dimensions," *Padjadjaran Journal of Law*, Vol. 6, No. 1, 2019, pp. 69-89.

<sup>21</sup> Moeljatno, *Asas-Asas Hukum Pidana*, Bina Aksara, Jakarta: 2018.

<sup>22</sup> Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana*, PT Citra Aditya Bakti, Bandung: 2016.

<sup>23</sup> Leden Marpaung, *Kejahatan Terhadap Kesusilaan dan Masalah Prevensinya*, Sinar Grafika, Jakarta: 2018.

provisions of Article of the Criminal Code which regulates morality are Article 281 of the Criminal Code concerning (1) an act of deliberately and openly violating decency; (2) Whoever deliberately and in front of others who is there violates his will, violates decency. Article 282 of the Criminal Code regulates the act of broadcasting, showing or pasting in public the writing, image or object whose contents have been known to violate decency, or whoever with the intention of broadcasting, showing or posting it in public, makes the writing, image or object put it in the country, forward it, take it out of the country, or have supplies, or whoever openly circulates a letter without being asked, offers or shows it. The punishment for the perpetrator is getting heavier when the act is done as work. This provision ensnares pornography industry players.

Seeing from the provisions of the articles in the Criminal Code regarding decency have not been able to accommodate the criminal case of the spread of pornography using information technology media with the internet network, in 2008 a law that regulates information and transactions based on electronic using the internet was enacted in a law. The Law of the Republic of Indonesia Number 11 of 2008 concerning Electronic Information and Transactions (hereinafter referred to as Law on Electronic Information and Transactions 2008) is currently being updated by The Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to Law of the Republic of Indonesia Number 11 of 2008 concerning Electronic Information and Transactions (hereinafter referred to as the Law on Electronic Information and Transactions 2016) and also The Law of the Republic of Indonesia Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions (hereinafter referred to as the Law on Electronic Information and Transactions 2024). Accommodation to broader and basic elements of decency is also promulgated by a special law which adopts the provisions of the Criminal Code, namely the Law on Pornography 2008.

Pornographic videos circulating through social media are electronic information and documents that become the media for the distribution of these videos. Article 1 point 1 of the Law on Electronic Information and Transactions 2016 states:

"Electronic information is one or a set of electronic data, including but not limited to writing, sound, images, maps, designs, photos, electronic data interchange (EDI), electronic mail, telegram, telex, telecopy or the like, letters, signs, numbers, access codes, symbols, or processed perforations that have meaning or can be understood by those who are able to understand them".

Electronic documents are: "any electronic information created, forwarded, sent, received, or stored in analog, digital, electromagnetic, optical, or the like, which can be seen, displayed, and/or heard via a computer or electronic system, including but not limited to writing, sound, pictures, maps, designs, photographs or the like, letters, signs, numbers, access codes, symbols or perforations which have meaning or can be understood by someone who is able to understand them".

Electronic information and/or electronic documents and/or the printout is the valid legal evidence. The electronic information and/or electronic documents and/or printouts thereof are an extension of valid evidence in accordance with the applicable procedural law in Indonesia.

The provisions of the Law on Information and Electronic Transactions do not describe the term pornography, but in the Law on Electronic Information and Transactions 2024, there are articles that can ensnare cyber pornography crimes, which in the law contain rules regarding delinquency through information and electronic transactions regulated in article 27 paragraph (1) which reads " Any person who intentionally and without the right broadcasts, displays, distributes, transmits and/or makes accessible Electronic Information and/or Electronic Documents that contain content that violates morality for public knowledge".

The Law on Electronic Information and Transactions can cover criminal acts of pornography committed in cyberspace (cyberporn), the elements that must be fulfilled so that the crime can be prosecuted using the provisions of this law are First Distributing, Second Transmitting, Third Making accessible electronic information that has content violating decency. In the general explanation of article 27 paragraph (1) of the Law on Information and Electronic Transactions 2024, it states that what is meant by deviant content is committing acts that show nudity, genitals, and sexual activities that are contrary to the values that live in society at the time and place where the act is committed. The interpretation of the concept of morality is adjusted to the standards that apply to society at a certain time and place (contemporary community standard). The phrase for public knowledge refers to being able to or so that it can be accessed by a large group of people who mostly do not know each other. In general understanding of law, there is a tendency to include pornography as part of the environment of decency and moral norms.<sup>24</sup> The criminal responsibility system of the Electronic Information and Transactions Law based on Article 27 paragraph (1) of the Law on Electronic Information and Transactions formulates the task regarding the element of error, namely by stating "intentionally".<sup>25</sup> The study of cyber law in Indonesia is included in the study of telematics law. The focus of the prohibited acts in this article is on the act of transmitting, distributing and/or making accessible Electronic Information and/or Electronic Documents containing immoral content, and not on the immoral act itself. The focus of the prohibited immoral acts is within the scope of the The Law on Pornography 2008.

The criminal acts of decency as promulgated in the Law on Pornography 2008, the criminal provisions in the pornography law are regulated in chapter VII Article 29 to Article 38. Provisions regarding the prohibition of pornography in Indonesia are regulated if specified, the Law on Pornography 2008 is a *lex specialist* and the Law on Information and Electronic Transactions 2024 and the Criminal Code became *Lex generalis*. The Criminal Code and the Law on Information and Electronic Transactions, both of which do not provide a definition of what is meant by pornography, so that in order to provide an answer as what is meant by pornography, the reference in the Law on

---

<sup>24</sup> Budi Suhariyanto, *Tindak Pidana Teknologi Informasi (Cybercrime) Urgensi Pengaturan dan Celah Hukumnya*, PT Grafindo Persada, Jakarta: 2017.

<sup>25</sup> *Ibid.*

Pornography 2008 can be used which clearly states the definition of pornography. Where the three laws complement each other, there is no contradiction between the three laws, instead they complement the vacuum of norms between one law and another.

In this law only clearly states the definition of pornography itself. Pornography itself is regulated in the Law on Pornography 2008 which states that pornography is images, sketches, illustrations, photos, writings, sounds, moving pictures, animations, cartoons, conversations, gestures, or other forms of messages through various forms of communication media and/or public performances, which contain obscenity or sexual exploitation that violate the norms of decency in society. By withdrawing the elements of the pornography crime regulated in the provisions of the pornography law, the provisions therein can be used to ensnare the perpetrators of the spread of pornographic videos through cyberspace because it clearly states that the word broadcast, display, show or become a model of pornography which is carried out through social media based live streaming video.

The provisions in Article 29 of the Law on Pornography 2008 stipulate the criminalization of any person who produces, creates, reproduces, distributes, broadcasts, imports, exports, offers, trades, rents, or provides pornography. Article 30 of the Law on Pornography 2008 criminalizes anyone providing pornographic services. Article 34 states the criminalization of any person who intentionally or with their consent becomes an object or model containing pornographic content. Article 36 mentions showing oneself or others in performances or in public that depict nudity, sexual exploitation, intercourse, or which have pornographic content.

The perpetrator who can be responsible for the spread of a pornographic video is that the creator can be the person who made the video. The actor in the video himself or other people who are not actors in the video who deliberately record the act of the actor engaging in sexual activities, the actor himself is the person who is in the video engaging in sexual activities that are consciously or not, intentionally or unintentionally recorded into a video. The spreader is the possibility of a creator and/or actor, not even from the cast and creator but a third party who without the right to distribute the immoral video. So that in the discussion below, the criminal law analysis will be described separately based on the position of the parties and the legal consequences.

The criminal provisions in the pornography law in its formulation use the cumulative-alternative criminal formulation which is also seen by the formulation of the word "... and/or..." with 2 types of criminal sanctions, namely imprisonment and fines, whether committed by individuals or corporations. The same as the law on information and electronic transactions, in the pornography law also states that when this law comes into force, all laws and regulations that regulate or relate to the crime of pornography are declared to remain valid as long as they do not conflict with the law of pornography itself.

### ***The Weaknesses in the Legal Provisions on the Prohibition of Pornography***

Weaknesses in a rule of law are something that might be found, given the ever-dynamic development of society. On this subject, McGlynn & Bows say the following:

“At the same time, there remains considerable scope for the reform of obscenity and extreme pornography laws. Indeed, when reflecting on regulation overall, and the changing landscape of pornography, there is an urgent need for a wholesale review of the legal regulation of pornography. The starting point of any such review should be the removal of obscenity as the underpinning conceptual framing of the law.”<sup>26</sup>

The weaknesses of the pornography law itself can be seen from the absence of a detailed explanation of how to broadcast, display, or abuse the internet for the spread of pornography, but based on the definition of pornography which states through various forms of communication media and/or public performances; therefore, it can be assumed that this includes broadcasting or disseminating immoral videos via the internet which is also a means of disseminating information. As a result, sentences can be imposed on the victim. First, "revenge" suggests that perpetrators are primarily motivated by personal vengeance. In fact, perpetrators may be motivated by a desire for profit, notoriety, or entertainment, or for no particular reason at all.<sup>27</sup>

When men and women are dating, they may record their sexual activities for personal gain. When the relationship ends, either party who did not accept the termination can use the tape as a tool to threaten and blackmail the ex-girlfriend. In this case, of course, the party being threatened is the victim, but from the perspective of the Law on Pornography 2008, everyone in the video recording is a victim. According to Danielle Keats Citron, and Mary Anne Franks “Revenge porn victims have only recently come forward to describe the grave harms they have suffered, including stalking, loss of professional and educational opportunities, and psychological damage.”<sup>28</sup> With the presence of online media and gossip accounts, this social punishment does not only affect the person in the video recording, but also his family.

Revenge porn raises important questions about how individuals negotiate responsibility, vulnerability and trust in intimate relations, and how to respond when the betrayal of this trust is amplified to international effect by new media technology. In the absence of an adequate criminal justice or law enforcement response, revenge porn has operated in a zone of legal impunity that has generated a set of countervailing forces active online.<sup>29</sup> So far, there is no protection for victims of revenge porn. Criminal provisions in Indonesia beat everyone in a pornographic video without qualifying the perpetrator and the victim. Kalo & Ekaputra, when examining the East Jakarta District Court Decision No.21 /Pid. Sus/2018/Pn. Jkt, the team stated that if a woman had previously stated firmly that she agreed to make pornography but did not allow a man to disclose or distribute pornography, then the woman would have a stronger position not to be blamed for participating in

---

<sup>26</sup> Clare McGlynn and Hannah Bows, "Possessing Extreme Pornography: Policing, Prosecutions and The Need for Reform," *The Journal of Criminal Law*, Vol. 83, No. 6, 2019, pp. 473-488.

<sup>27</sup> Mary Anne Franks, "Revenge Porn Reform: A View from the Front Lines," *Fla. L. Rev.*, Vol. 69, 2017, p. 1251.

<sup>28</sup> Danielle K. Citron, and Mary Anne Franks, "Criminalizing Revenge Porn," *Wake Forest L. Rev.*, Vol. 49, 2014, p. 345.

<sup>29</sup> Michael Salter and Thomas Crofts. "Responding to Revenge Porn: Challenges to Online Legal Impunity," *New Views on Pornography: Sexuality, Politics, and The Law*, 2015, pp. 233-256.

the spread of pornography. Even so, the statement not allowing this is certainly difficult to prove, even at times, the woman did not know that the perpetrator was going to distribute their pornographic videos.

Indonesian law does not prohibit a person from having sexual relations, because sexual activity is a basic need of every individual. It's just that deviations from sexual activity which should be for personal consumption are then spread either by the actors in the video or by other people, so it is necessary to be careful and thorough in studying the problem of immoral videos as outlined above, the legal relationship between the actor, creator or rapper and spreader. In the case of a man and woman, as well as of the same sex, giving permission or consent to record their immoral video in the form of a photo or video is intended only for their own interests.

Likewise, if the actors in the video were initially unaware of the production of the video and then it was spread, in this case the actor was the victim of the spread of the pornographic content itself. In principle, the maker and recorder of pornographic videos as long as they do not distribute the video cannot be criminalized. Pornography on the internet is concerned with possessing, creating, importing, displaying, publishing and/or distributing pornography. The perpetrator of a criminal offense is only him, whose action or negligence fulfills the elements of the offense as contained in the formulation of the offense concerned, whether declared explicitly or not explicitly. The perpetrator in a criminal act is not the perpetrator in the sense of playing an immoral video but the perpetrator is the one who spreads, transmits the video.

Elucidation of Article 4 paragraph (1) of the Law on Pornography 2008 states that what is meant by "making" is not included for himself and his own interests. The explanation in Article 6 Revenge porn then states "Prohibition" of owning or keeping "does not include for himself and his own interests." However, the 2008 Law on Pornography does not explicitly regulate if there are other parties distributing pornographic videos made by a partner for personal gain. This has become a legal error. Saskia in her research concluded that Decision No.1401/Pid.B/2010/PN. Bdg Jo Decision No. 67/Pid/2011/PT. Bdg Jo Decision No.1320K/Pid.Sus/2011 in the case of pornography, Nazril Ilham as known as Ariel Peterpan was a legal error. The judge in deciding this case has reversed the 2008 Law on Pornography, which is a violation of the legality principle in the criminal law. Then there was also an error in the application of Article 56 of the Criminal Code which caused Ariel to be finally found guilty of assisting, namely providing opportunities for other people to spread pornography even though this was not correct. In that case, Ariel became a victim, in which he himself did not want his porn videos to be distributed, but when he repaired his laptop, the technician took the opportunity to distribute the pornographic video.

Erasmus A.T Napuitulu, Executive Director of the Institute For Criminal Justice Reform (ICJR) stated that if the making of the video was intended for personal gain and it was absolutely undesirable

for its dissemination to the public domain, then the actor could not be charged under criminal law.<sup>30</sup> In the case of pornographic videos that are meant by the distribution or distribution of a video that contains immoral elements, for example if a man and woman agree to make a video of their sexual activity, then one party clearly states that he has not given permission or prohibits to distribute or disclose the video then If later the video is spread, the party who strictly prohibits the distribution of the video will have a stronger position not to be classified as participating in spreading pornography.

### **Community participation**

Society has a role to play in inhibiting the spread of pornography. Criminal sanctions that can ensnare people who distribute videos containing pornographical elements using the provisions of Article 27 paragraph (1) of the Law on Information and Electronic Transactions 2024 in conjunction with Article 29 of the Law on Pornography 2008. Both provisions of the article emphasize the criminal responsibility of perpetrators for distributing pornographic videos using electronic media with internet networks. This thing needs to be known by the public at large so they do not easily spread pornographic videos or content related to pornography widely. It is rarely understood by the general public because some people think that there is no criminal element. This lack of education has made immoral content or videos spread widely and quickly in society.

Several attempts have been made to limit the spread of pornography, both through filter services and block systems. The service filters negative content in the form of pornographic content, violence or internet crimes. Blocking acts of pornographic content or videos is very important to do in law enforcement efforts, in which this blocking action can be interpreted as an act of confiscation of evidence of crime, which means that if the blocking action is not carried out then the perpetrator may change or eliminate the evidence of his crime. For people who find pornographic videos or pornographic videos in cyberspace, it can help the government in eradicating the circulation of immoral videos, as regulated in the Regulation of the Minister of Communication and Information Technology Number 19 of 2014 concerning Handling Internet Sites with Negative Contents, in Chapter IV Role of Society and Government, Articles 10 and 11. Receipts of reports are in the form of reports on internet sites with negative contents; or site blocking normalization requests. Reporting from the public can be categorized as urgent reporting when it comes to privacy; child pornography; violence; ethnicity, religion, race and between groups (SARA); and / or other contents that have a negative impact which cause widespread concern for the community.

The incoming report must be assessed in advance by the relevant ministry or agency with regard to the content of the site address, types of negative content, types of violations and information. Back again to the form of socialization that has been carried out by the Ministry of Information to the virtual world user community that the institution exists and functions to control the spread of pornographic videos. By blocking the site does not mean that the disseminator can be

---

<sup>30</sup> Abdul Rahman, "ICJR: Video Syur untuk Kepentingan Pribadi Tidak Bisa Dipidana," *JawaPost.com*, November 11, 2020, <https://www.jawapos.com/nasional/hukum-kriminal/11/11/2020/icjr-video-syur-untuk-kepentingan-pribadi-tidak-bisa-dipidana/>.

held accountable for the crime, it is necessary to first submit a complaint by a legal subject, either an individual or a business entity, where the presence or distribution of immoral videos has an impact in the form of harm to the reporter. Reporting is done by making community complaints to the local police so that they can be followed up later.

### Gender Bias in Pornography Cases

In modern society, the boundaries of gender bias in crime are getting closer. The reasons for psychological, social, and physical factors in fact indicate an imbalance between men and women in seeking opportunities to commit criminal acts.<sup>31</sup> Gender bias is a stereotypically different assessment of sex (women and men), one sex being higher over the other. Gender as the difference between women and men based on social construction is reflected in social life that starts with the family. Women are cared for differently from men. From an early age, girls are socialized to act softly, not aggressively, dependent, passive, and not as a decision maker. On the other hand, men are aggressive, active, independent, decision maker, and dominant.<sup>32</sup>

Eti Nurhayati reveals that society has begun to construct "fit / proper" traits for girls and boys according to the culture prevailing in that place. This condition causes the dominant relationship between men and women where the legitimacy of superiority rests in the hands of men. Girls who are deemed inappropriate in uploading sentences, photos and videos that display eroticism. The conditions are different when the conversation on social media is uploaded or owned by men. This can be related to the views of society regarding sexual activity of women and men. Roy F. Baumeister and Jean M. Twenge<sup>33</sup> state the double standard of sexual morality has condemned certain sexual activities by women while allowing the same action for men. This has a consequence in the form of two phrases namely "good women" and "bad women." Men who engage in sexual activity are still considered normal.

Gender bias between men and women in porn videos places women as guilty and immoral people so that they deserve to be judged by society. The judgment took place in online media. The online media contributes to gender injustice, that is:

"First, online media with its characteristics participate in preserving an ideology that is not sensitive to women. Mainly in constructing women's sexuality systemically, the media portrays women as helpless in facing male domination (masculine).

Second, the media simultaneously provides a depiction of female sexuality as an object that is valid for men. The three stories that have been analyzed clearly illustrate how women's sexuality is understood as part of what is controlled by men.

---

<sup>31</sup> Prima Angkupi, "Cultural Approaches in Cyberporn Crime Prevention," *Jurnal Dinamika Hukum*, Vol. 17, No. 2, 2017, pp. 225-231.

<sup>32</sup> Maudy Fitri Hutami and Nuryah Asri Sjafrah, "Framing Media Online Tribunnews. Com Terhadap Sosok Perempuan Dalam Berita Video Pornografi Depok," *Jurnal Kajian Jurnalisme*, Vol. 2, No. 1, 2018, pp. 25-43.

<sup>33</sup> Roy F. Baumeister dan Jean M. Twenge, "Cultural Suppression of Female Sexuality," *Review of General Psychology*, Vol. 6, No. 2, 2002, pp. 166-203.

Third, online media with its characteristics that require uploading news quickly, causing journalists to ignore empathy for women. The reportage is inaccurate, so it tends to put forward the fantasies and imagination of the reporter or editor."<sup>34</sup>

Women are the object of bullying on social media when videos that contain their sexual activities spread online. Even though in the context of revenge porn, women are victims. This condition is in line with Jane Caputi's statement that pornography is a material development that revolves around exploitation, objectification and 'defamation of women and fear and hatred of women's bodies'.<sup>35</sup> Women who engage in porn videos are seen as bad women. Pornography carried out by women arouses public hatred of the women in the porn video. Public opinion that places women as perpetrators will influence law enforcers to determine suspect status for women.

## CLOSING

The debate over pornography has led to the view that the human body is an art, a private right and a violation of the law. Nudity can be seen in various paintings and religious symbols. Eroticism that is presented in photos and images can be seen as a human right over him, but on the other hand this is considered a violation of values and the law. The legal formulation in Indonesia places pornography as a crime. The scope of the criminalization of pornography is also very broad, including adult pornography and child pornography. Criminalization is also carried out against people who make it for personal gain if the pornographic content is spread. As a result, victims of revenge porn can be placed as perpetrators. Gender bias has placed women who should be victims as objects of bullying, which results in community judgment and encouragement for law enforcement to assign suspect status to victims. In reforming the criminal law, legislators should establish clear boundaries regarding acts which are punishable by the crime of pornography.

## REFERENCES

### Book

- Agus Raharjo, *Cyber Crime Pemahaman dan Upaya Pencegahan Kejahatan Berteknologi*, Citra Aditya Bakti, Bandung: 2012.
- Badar Nawawi Arief, *Tindak Pidana Mayantara Perkembangan Kajian Cyber Crime di Indonesia*, PT. Raja Grafindo Persada, Jakarta: 2006.
- Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana*, PT Citra Aditya Bakti, Bandung: 2016.
- Budi Suhariyanto, *Tindak Pidana Teknolohi Informasi (Cybercrime) Urgensi Pengaturan dan Celah Hukumnya*, PT Grafindo Persada, Jakarta: 2017.
- Leden Marpaung, *Kejahatan Terhadap Kesusilaan dan Masalah Prevensinya*, Sinar Grafika, Jakarta: 2018.

---

<sup>34</sup> Daniel Susilo and Eben Haezer, "Konstruksi Seksualitas Perempuan dalam Berita Pemerkosaan di Teks Media Daring," *Jurnal Kawistara*, Vol. 7, No. 1, 2017, pp. 41-55.

<sup>35</sup> Andrine Prima Afnetta, "Komodifikasi Kebertubuhan Perempuan dalam Wacana Erotika dan Pornografi pada Tayangan Televisi," *Jurnal Komunikasi Indonesia*, Vol. 4, No. 2, 2018, pp. 127-139.

Moeljatno, *Asas-Asas Hukum Pidana*, Bina Aksara, Jakarta: 2018.

Suharsimi Arikunto, *Prosedur Penelitian Suatu Pendekatan Praktek*, Rineka Cipta, Jakarta: 2018.

### Journal

Andrine Prima Afnetta, "Komodifikasi Kebertubuhan Perempuan dalam Wacana Erotika dan Pornografi pada Tayangan Televisi," *Jurnal Komunikasi Indonesia*, Vol. 4, No. 2, 2018.

Bernadette H. Schell et al., "Cyber Child Pornography: A Review Paper of The Social and Legal Issues and Remedies—and A Proposed Technological Solution," *Aggression and Violent Behavior*, Vol. 12, No. 1, 2007.

Clare McGlynn and Hannah Bows, "Possessing Extreme Pornography: Policing, Prosecutions and The Need for Reform," *The Journal of Criminal Law*, Vol. 83, No. 6, 2019.

Clare McGlynn, Erika Rackley, and Ruth Houghton, "Beyond 'Revenge Porn': The Continuum of Image-based Sexual Abuse," *Feminist Legal Studies*, Vol. 25, No. 1, 2017.

Daniel Susilo and Eben Haezer, "Konstruksi Seksualitas Perempuan dalam Berita Pemerkosaan di Teks Media Daring," *Jurnal Kawistara*, Vol. 7, No. 1, 2017.

Danielle K. Citron, and Mary Anne Franks, "Criminalizing Revenge Porn," *Wake Forest L. Rev.*, Vol. 49, 2014.

Dewi Bunga, "Legal Response to Cybercrime in Global and National Dimensions," *Padjadjaran Journal of Law*, Vol. 6, No. 1, 2019.

Dodo Zaenal Abidin, "Kejahatan dalam Teknologi Informasi dan Komunikasi," *Jurnal Processor*, Vol. 10, No. 2, 2017.

Dwita Rahmawati, Ifahda Pratama Hapsari, and Hardian Iskandar, "Criminal Acts Revenge Pornography in Terms of Indonesian Criminal Law," *Legal Brief*, Vol. 11, No. 5, 2022.

Faizal Amrul Muttaqin and Wahyu Saputra, "Budaya Hukum Malu Sebagai Nilai Vital Terwujudnya Kesadaran Hukum Masyarakat," *Al-Syakhsyiyah: Journal of Law & Family Studies*, Vol. 1, No.2, 2019.

Hotnarida Witasari, "Kerjasama Guru Bimbingan dan Konseling dengan Orangtua dalam Pengentasan Masalah Siswa Menonton Video Porno," *Jurnal Konseling dan Pendidikan*, Vol. 1, No. 3, 2013.

Hwian Christianto, "Konsep Hak Seseorang atas Tubuh dalam Transplantasi Organ Berdasarkan Nilai Kemanusiaan," *Mimbar Hukum-Fakultas Hukum Universitas Gadjah Mada*, Vol. 23, No. 1, 2011.

Joseph N. Goh, Ghislaine L. Lewis, and Pauline PY Leong, "Sexy Media Dissidents: State Regulation, Dissidence, Pornography and Gay Men in Malaysia," *Sexuality & Culture*, Vol. 23, No. 1, 2019.

Mary Anne Franks, "Revenge Porn Reform: A View from the Front Lines," *Fla. L. Rev.*, Vol. 69, 2017.

Maudy Fitri Hutami and Nuryah Asri Sjafirah, "Framing Media Online Tribunnews. Com Terhadap Sosok Perempuan Dalam Berita Video Pornografi Depok," *Jurnal Kajian Jurnalisme*, Vol. 2, No. 1, 2018.

- Michael Salter and Thomas Crofts. "Responding to Revenge Porn: Challenges to Online Legal Impunity," *New Views on Pornography: Sexuality, Politics, and The Law*, 2015.
- Ni Luh Gede Yogi Arthani, "Eksplorasi Anak dalam Penyebaran Pornografi di Dunia Maya," *Jurnal Advokasi*, Vol. 8, No. 1, 2018.
- Prima Angkupi, "Cultural Approaches in Cyberporn Crime Prevention," *Jurnal Dinamika Hukum*, Vol. 17, No. 2, 2017.
- Roy F. Baumeister dan Jean M. Twenge, "Cultural Suppression of Female Sexuality," *Review of General Psychology*, Vol. 6, No. 2, 2002.
- Samantha Bates, "Revenge Porn and Mental Health: A Qualitative Analysis of The Mental Health Effects of Revenge Porn on Female Survivors," *Feminist Criminology*, Vol. 12, No. 1, 2017.
- Wahyu Agus Dwi Atmoko, "Cyber Pornografi dan Gangguan Perilaku Mental," *FROM CITIZEN TO NETIZEN*, 2015.
- Yaniv Efrati and Yair Amichai-Hamburger, "Are Adolescents Who Consume Pornography Different from Those Who Engaged in Online Sexual Activities?" *Children and Youth Services Review*, Vol. 111, No. 104843, 2020.

### **Legislation**

- The Law of the Republic of Indonesia Number 44 of 2008 concerning Pornography.
- The Regulation of the Minister of Communication and Information Technology Number 19 of 2014 concerning Handling Internet Sites with Negative Contents.
- The Law of the Republic of Indonesia Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions.
- The Criminal Code.
- General Assembly resolution A/RES/54/263 of 25 May 2000.

### **Other Sources**

- Abdul Rahman, "ICJR: Video Syur Untuk Kepentingan Pribadi Tidak Bisa Dipidana," *JawaPost.com*, November 11, 2020, <https://www.jawapos.com/nasional/hukum-kriminal/11/11/2020/icjr-video-syur-untuk-kepentingan-pribadi-tidak-bisa-dipidana/>
- Baharudin Al Farisi, "Kronologi Tersebaranya Video Syur Gisel dan MYD," *Kompas.com*, December 30, 2020, <https://www.kompas.com/hype/read/2020/12/30/174300666/kronologi-tersebaranya-video-syur-gisel-dan-myd?page=all>.
- .