



Legal Protection for Victims of The Crime of Dissemination of Porn Videos

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ABSTRACT

Cyberpornography is a form of cybercrime that appears a lot in Indonesia. One of the things that happened was the case of the victim from the spread of pornographic videos which were imposed under Article 4 of the Pornography Law. In this case, if the video made is only made for self-interest and not for commercial purposes. Law Number 44 of 2008 is supposed to protect victims of this distribution regarding the production and possession of pornography in the private sphere because this act qualifies as an exception in Article 4 paragraph (1) of Law Number 44 of 2008 concerning Pornography. The formulation of the problem raised is how is the legal protection for victims of the criminal act of spreading pornographic videos? The type of writing in this paper is normative legal writing through library research. As is generally the case with normative legal writing by means of literature research, this research is carried out by examining literature or secondary data relating to the writing being discussed. While the research approach used is a conceptual approach. Based on the theory of will in criminal law, pornographic models can be punished if they know and want the act of recording and also the consequences of spreading the recording. Therefore, when the character in an immoral video does not want the immoral video to be spread, this element is not fulfilled.

Keywords: Pornography, Legal Protection, Porn Videos

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INTRODUCTION

Current technological developments influence human thinking and styles in a modern direction, technology was created to help facilitate human activities to be more effective and efficient (Bailey dkk., 2022). Technological developments make society a means of committing crimes (Imtinan dkk., 2023a). Internet technology puts humans in

a new civilization, where the reality of life shifts from real to virtual activities called cyberspace.

Based on data from the 2022 Annual Records (CATAHU), there were 338,496 cases that occurred based on data from complaints to the National Commission for Women, service institutions and religious courts, this data shows an increase of 50% compared to 2020, namely 226,062 cases. The industrial revolution is currently entering the era 5.0 or Society 5.0 (Windari & Darwin, 2020), the internet is increasingly being used to access and share information (Peitzmeier dkk., 2020). Many crimes use opportunities that exist after modern times with sophisticated equipment and can be carried out instantly (Audhkhasi dkk., 2018).

In mid-2021, Indonesia has been ranked

12th internet user in Asia, which is where the largest number of internet users are on June 30 2021 there were 212,354,070 and the percentage of users throughout Asia in Indonesia is 7.7%.

This causes more and more victims of cyberpornography itself which ends up being bullied and experiencing mental disorders (Chu dkk., 2020).

The Republic of Indonesia is a legal state based on Pancasila and the 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia) by upholding moral values, ethics, noble character and the noble personality of the nation, faith and devotion to God Almighty (Figueiredo & García-Peñalvo, 2018). Esa, respecting diversity in social, national and state life, as well as protecting the honor and dignity of every citizen (Al Maarif dkk., 2023). The legal basis that Indonesia is a state of law can be found in the provisions of Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states that "the State of Indonesia is a state of law". As a logical consequence of the rule of law, it can be said that the law has a strong position (Fitria dkk., 2023), and in the process of resolving conflicts it must be carried out through legal mechanisms, so that human rights are still guaranteed by providing the widest possible control to society, whether political, social, as well as law (Chaffin, 2008).

The regulation of pornography is an emanation of the first principle of Pancasila, namely Belief in One Almighty God and Article 29 of the 1945 Constitution (Christensen, 2021). Therefore, the regulation of pornography in Indonesian law is not only for the purposes of legal order, protecting society, and protecting religion as a forum, but also to protect moral and religious values (Kurniawan dkk., 2023). This is different from western countries, both liberal and socialist, which regulate sexual offenses (pornography) to create public order and protect children considering the secularization of religion and the state (Imtinan dkk., 2023b). Indonesia is a legal state based on Pancasila. Even though Indonesia is not a religious state, it is also not a secular state that separates state and religious affairs (Putra dkk., 2023). The Indonesian state in carrying out its state life is imbued with the core content of the first principle, namely Belief in One Almighty God.

According to Soekarno, Pancasila is the soul of the Indonesian nation. The essence of the soul of the Indonesian nation's philosophy is belief in the Almighty God, humanity, nationality, deliberation/consensus, and social justice or happiness (Chrisnatalia dkk., 2023). Based on the first principle of Pancasila, the life of the Indonesian people is based on belief in the Almighty God. Moral and religious values are an inseparable part of the lives of Indonesian people (Krisnanda dkk., 2023). There is no separation (secularization) between legal norms and moral and religious values within certain limits. The substance of law in Indonesian society is based on moral and religious values, especially with regard to regulating pornography issues.

Indonesia, which consists of various ethnic groups with diverse moral and social values, has also created its own difficulties in regulating pornography in Indonesia (Maija dkk., 2023). This is a problematic thing, of course, considering that pornography basically still causes unrest among the majority of Indonesian people who have a different set of values and norms (Nopiana dkk., 2022), but as something that is collectively opposed, even with different definitions or meanings, regulating pornography is an important thing.

In Indonesia, before the birth of Law Number 44 of 2008 concerning Pornography, other legislation related to pornography was the Criminal Code (KUHP) which regulates moral offenses. However, considering that the basis for pornography regulation is the Criminal Code, the existence of offenses in the Pornography Law actually creates new problems. The unclear concept of pornography and attempts to standardize standards of decency based on one particular group's understanding of the nature of morality tend to limit a person's rights to freedom of expression (Ilham dkk., 2022). The lack of clarity in this concept, which was originally intended as an effort to prevent sexual crimes, actually has the potential to drag many parties into criminal activity. In the end, Law no. 44 of 2008 concerning Pornography, which was originally intended to be a regulation of pornography and pornographic action, could be discriminatory against poor and rural communities (Dianovi dkk., 2022). Those who bathe naked in rivers, mothers who breastfeed their children in public places due to limited access to private space, tourists sunbathing on the beach, artists who perform folk art, or athletes from certain branches are likely to be able to accused of being a sex offender.

The formation of a pornography law that is based on moral and religious values in accordance with the principles of the Almighty God is intended to direct Indonesian society to become a society that is moral and based on religious values, without ignoring the culture, customs and values that have been established. live in certain communities.

Article 14 Law no. 44 of 2008 concerning Pornography mandates the establishment of implementing regulations in the form of Government Regulations regarding the requirements and procedures for licensing the creation, distribution and use of pornographic products for the purposes and interests of education and health services as well as the creation (Hanik Fetriyah dkk., 2022), distribution and use of

pornography which must be carried out in a place and manner. special ones (Rohmalimna dkk., 2022). The provisions of Article 14 are exceptional provisions in the Pornography Law which in principle prohibits the creation, distribution and use of pornographic products (Nadya dkk., 2022). Article 14 excludes the creation, distribution and use of pornographic products for the purposes and interests of education and health services which must be carried out according to certain conditions and procedures as well as the creation, distribution and use of pornography which must be carried out in a special place and in a special manner.

In Indonesia, there are cases that are currently increasing regarding cyberpornography, namely the case between Gisella Anastasia (GA) and Michael Yokinobu Defretes (MYD). In early November there was an immoral video circulating on Twitter and became the focus. Many netizens suspect that the female actor in the scene is GA. However, GA did not deny it and instead admitted that he was lazy to respond to the news of the immoral video which allegedly resembled him. Then on Tuesday, November 17, 2020, GA complied with the police's summons (Abowitz & Toole, 2010). After the examination, GA did not deny that she was said to be the female actor. At that time, GA was still a witness in the immoral video case. On December 29, 2020, GA was named a suspect, with MYD also a suspect. One of the interesting things in this case is the victim of the distribution of pornographic videos which was imposed under Article 4 of the Pornography Law. In this case, if the video you make is only made for your own interests and not for commercial purposes. Law Number 44 of 2008 should protect victims of distribution regarding the creation and possession of pornography in the private sphere because this act qualifies as an exception in Article 4 paragraph (1) of Law Number 44 of 2008 concerning Pornography.

Previous research regarding this study was entitled Cyberpornography criminal law policy on victim protection written by Mahsun Ismail, in this writing the author focused more on criminal protection. The second research is the distribution of pornographic content from the perspective of Law Number 11 of 2008 and Islamic Law written by Imam Hidayat and Alimuddin. In writing this second research the author also only focused on the ITE Law and Islamic Law. This assessment takes the form of a literature study.

From the above background, the author is interested in researching how legal protection is for victims of criminal acts of distributing pornographic videos?

RESEARCH METHODOLOGY

This research uses a type of normative legal research. Legal research is usually called doctrinal research or library research. This research refers to written regulations so this research is closely related to library studies because it requires secondary data in libraries. The sources used in this research are primary law in the form of statutory documents and regulations, secondary legal materials, and tertiary legal materials. The data collection technique in this research is literature study.

RESULT AND DISCUSSION

Legal Protection Theory

According to Philipus M. Hadjon, it is always related to power. There are two powers: government and economic power. In relation to government power, the issue of legal protection for the people (who are governed) and the government (who governs). In relation to economic power, the problem of legal protection is protection for the weak (economic) against the strong (economic), for example protection for workers against entrepreneurs. According to The origin of the theory of legal protection originates from natural law theory or the school of natural law (Karina dkk., 2023). This school was pioneered by Plato, Aristotle (Plato's student), and Zeno (founder of the Stoic school). According to the school of natural law, it is stated that law originates from God who is universal and eternal, and that law and morals cannot be separated. Adherents of this school view that law and morals are internal and external reflections and rules of human life which are realized through law and morals.

Legal Protection for Victims of the Crime of Disseminating Porn Videos

Technological developments have brought new forms of pornography, which Burhan Bungin identifies as pornoaction, pornomedia, pornotext and pornovoice. Pornoaction is a depiction of bodily movements, the protrusion of dominant body parts to provide sexual stimulation, to the act of exposing breasts and vital organs unintentionally or deliberately, to arouse sexual desire in those who see it. Pornomedia is the actions of sexual subjects and objects that are shown directly from someone to another person, thereby causing stimulation for someone. Pornomedia is a pornographic reality created by the media, such as pornographic images and texts published in print media, pornographic films (either in the form of VCDs, DVDs, films that can be downloaded on mobile phones), pornographic stories through the media, telephone providers or via the internet.

The term criminal act or crime is an Indonesian term translated from Dutch, namely *strafbaar fiet.*" According to What is meant by *strafbaarfeit* of a delict (criminal act) is: 1. Violation or rape of legal interests (*schending of krenking van een rechtsbelang*); 2. Something that endangers legal interests (*het gevaar brengen van een rechtsbelang*). Society in general views pornography as a form of deviation/crime, because it is contrary to the laws and norms that exist in society. Words, writing, images and behavior as well as products or media containing pornography are seen as contrary to the moral values and sense of decency of society. The nature of pornography, which only displays sensuality, sex and exploitation of the human body, is still considered very taboo by society which still upholds moral and religious values.

In this case, law becomes a tool for renewing a society that upholds moral values, ethics, noble character and the noble personality of the nation, has faith and devotion to God Almighty, respects diversity in social, national and state life, and protects the

dignity and the dignity of every citizen. This approach to law is a path towards social goals and as a tool in social development.

Sexual matters are a very private space and are not to be shown or shared with everyone. Society has the right to protect itself and its existence from anything it considers immoral, whether it is simply contrary to existing standards of morality (such as pornography), or that which is feared could have fundamental consequences for the values and social relations that are still recognized (for example demands legalize homosexuality, same-sex marriage). The realization of this right is the use of legal institutions that exist in society. This is the moral basis for prohibiting pornography and the threat of legal sanctions.

Regulation of the distribution of pornographic videos in positive law in Indonesia

Various rejections made by the public regarding Law no. 44 of 2008 concerning Pornography, which can be seen from Parisada Hindu Dharma Indonesia which is of the opinion that by carrying out socialization about the Pornography Law by the Special Committee and Panja at the Office of the Minister of State for PP on September 17 2008, the attitude of the Central Indonesian Hindu Dharma Parisada as the Highest Institution of Hindus in Indonesia continues to reject the Pornography Law.

Morality offenses in the Criminal Code are divided into 2 (two) groups, namely in Book II Chapter Morality crimes regulated in Articles 281-303 of the Criminal Code include the following acts: 1) Violating decency in public (Article 281); 2) Broadcasting, showing, creating, offering and so on writings, pictures, objects that violate decency/are pornographic in nature (Articles 282-283); 3) Committing adultery, rape and other things related to committing or connecting/facilitating obscene acts and sexual relations (Articles 284-296); 4) Trafficking in women and underage boys (Article 297); 5) Relating to treatment to abort pregnancy (Article 299); 6) Having contact with intoxicating drinks (Article 300); 7) Handing over children to beggars and so on (Article 301); 8) Animal abuse (Article 302); 9) Gambling (Articles 303 and 303 bis).

From the explanation above, it can be understood that pornography is included in a crime/decency crime. According to Hasan Basri, pornography comes from Greek, from the words *porne* which means bitch, and *graphien* which means writing. In a simple sense, it can be seen that pornography is painting, drawing or writing material as well as body movements that reveal the private parts that are deliberately and solely intended to arouse lust. The government also regulates the prohibition of pornography with the issuance of Law no. 44 of 2008, which contains:

1. Prohibition and restriction, creation, distribution, and use of pornography.
2. Protection of children from the influence of pornography.
3. Prevention of the creation, distribution and use of pornography, including community participation in prevention.

Law No. 44 of 2008 also explicitly stipulates forms of punishment for violations of making, disseminating and using pornography which are adjusted to the level of the offense committed, namely serious, medium and light, as well as providing weighting

for criminal acts involving children. In addition, weighting is also given to perpetrators of criminal acts committed by corporations by doubling the basic sanctions and providing additional penalties (Maija dkk., 2023). In chapter I article 1 of Republic of Indonesia Law Number 44 of 2008 concerning Pornography it is explained that:

1. Pornography is pictures, sketches, illustrations, photos, writing, sounds, sounds, moving images, animations, cartoons, conversations, gestures and other forms of messages through various forms of communication media and/or public performances, which contain obscenity or sexual exploitation that violates the norms of decency in society (Azlan dkk., 2020).
2. Pornographic services are all types of pornographic services provided by individuals or corporations through live performances, cable television, terrestrial television, radio, telephone, internet and other electronic communications as well as newspapers, magazines and other printed materials. Viewed from a sociological perspective, crime/criminality is caused by the lack of harmonious integration between social institutions so that each individual experiences difficulty in adapting to various kinds of social relations. Symptoms of social problems result in disrupted social relationships and cause instability in group life.

The problem of pornography, apart from destroying a person's morals, is also a form of immorality. The act of pornography is very clearly an act prohibited by both religion and the state because it is an act that does not maintain the honor of the perpetrator, his family or society and is an act that defames, tarnishes himself or others. In this case, pornography has a very real and worrying negative impact, including the frequent occurrence of free sexual behavior, sexual harassment, deviant sexual behavior which has been experienced by many people.

The regulation of pornography issues in Law No. Year concerning pornography has given rise to the subject of criminal law regarding criminal acts of pornography, which is also related to the criminal system. Criminal law is part of the overall law that applies in a country, which establishes the basics and rules for actions which may not be carried out, are prohibited, and is accompanied by the threat of sanctions in the form of certain penalties for anyone who violates these prohibitions. Determine when and in what cases those who have violated these prohibitions can be subject to or be punished as threatened. Determine how the imposition of the same crime can be carried out if someone is suspected of having carried out the prohibition.

As is known, the Criminal Code came into force in Indonesia in January 1917, of course at that time the reason for determining the criminal penalties for perpetrators of pornography and pornographic actions was because of the reason that pornography and pornographic actions were acts that damaged the morals and morals of the nation. The articles that determine the prohibition of pornography and pornographic actions and their punishments are included in the chapter on crimes against morality. Pornography and pornographic actions also have an impact on other immoral acts or other criminal acts, for example adultery, rape, prostitution, abortion, murder, etc. According to Law of the Republic of Indonesia Number 44 of 2008 concerning Pornography in Chapter I

General Provisions Article 1 paragraph 1, what is said to be pornography is images, sketches, illustrations, photos, writing, sounds, moving images, animations, cartoons, conversations, body movements. , or other forms of messages through various forms of communication media and public performances, which contain obscenity or sexual exploitation that violates the norms of decency in society (Hartini dkk., 2022). The Pornography Law (UUP) does not provide limitations on the definition of criminal acts of pornography, but the UUP only limits pornography and formulates forms of non-criminal pornography.

Pornographic objects contain three characteristics, namely the content contains obscenity, sexual exploitation, and violates moral norms. Meanwhile, the Criminal Code calls it a violation of morality. Between pornographic objects and obscenity and violating the norms of decency are an inseparable unity. Because it contains obscenity, it violates the norms of decency, obscenity is the content of pornography. Pornography containing obscene content must be formed in some form, for example in the form of images, sketch illustrations, photos, writing, sounds, moving images, animations, cartoons, poetry, conversations. In this form there is obscene content, for example, in a picture there is obscenity if the picture contains explicit sexual intercourse, including deviant sexual intercourse; sexual violence; masturbation or masturbation; nudity or displays that suggest nakedness of the genitals; or child pornography. The manifestation of obscenity attached to an object is called pornographic objects. For example, newspapers, magazines, tabloids, and similar print media, films, and/or what is equivalent to films, videos, video compact discs, digital video discs, compact discs, cassettes, and cellphone recordings and/or other communication tools (Article 4 paragraph 1 UUP).

To prevent and eradicate the spread of pornography via computers and the internet, Indonesia has laws and regulations which prohibit the distribution of pornography in the form of electronic information, namely Law Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE). Article 27 paragraph 1 of Law Number 11 of 2008 reads: "Every person intentionally and without right distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents which have content that violates decency." Criminal sanctions will be imposed on every person who commits an act as stated in article 27 paragraph 1, namely imprisonment for a maximum of 6 (six) years and/or a fine of a maximum of IDR 1,000,000,000.00 (one billion rupiah) Article 27 paragraph 1 of the Law -Law Number 11 of 2008 uses the word 'accessible', which means that every person who intentionally and without authority makes accessible electronic information containing pornography or violations of decency will be subject to criminal sanctions. For example, someone has a website, if on that website there is a link (connection) to another website that contains pornographic images then that person can be accused of participating in distributing pornography or directing other people to access pornographic sites. Another example is the act of someone sending a message via email to another person and informing them of the existence of a pornographic site that can be

accessed. This person's actions also include the act of distributing pornography which is prohibited in Law Number 11 of 2008.

In Law Number 11 of 2008, it is also regulated that there is a prohibition on changing or manipulating electronic information so that it appears to be genuine. We often hear and see news about criminal acts by perpetrators of photo editing, such as photos of artists, officials or other people being changed from non-nude to nude (as if they were real photos). The activity of manipulating photos is an act that is prohibited in Law Number 11 of 2008 relating to Article 35, namely: "Every person intentionally and without right or against the law manipulates, creates, changes, removes, destroys electronic information and/or electronic documents with the aim of so that the Electronic Information and/or Electronic Documents are considered as if they are authentic data. The perpetrator is subject to criminal sanctions with a maximum imprisonment of 12 (twelve) years and/or a maximum fine of twelve billion rupiah. This is in accordance with the words of Article 51 paragraph (1) of Law Number 11 of 2008: "Every person who meets the elements as referred to in article 35 shall be punished with imprisonment for a maximum of 12 (twelve) years and/or a fine of a maximum of Rp. 12,000,000,000.00 (twelve billion rupiah)". Apart from that, Law Number 11 of 2008 also regulates the prohibition of any person who intentionally and without right or against the law procures or provides computer hardware or software that is used to facilitate the act of disseminating pornography, because this is a prohibited act. in Article 34 paragraph (1) of Law Number 11 of 2008. Sanctions for people who violate Article 34 paragraph (1) of Law Number 11 of 2008 are contained in the words of Article 50 of Law Number 11 of 2008: "Every person "who fulfill the elements as intended in article 34 paragraph (1) shall be punished with imprisonment for a maximum of 10 (ten) years and/or a fine of a maximum of IDR 10,000,000,000 (ten billion rupiah)." This act includes the involvement of someone providing facilities in the form of computer hardware to duplicate or reproduce pornographic files on CDs or other storage media so that they can be distributed widely.

Although several parties have attempted to provide a definition of the term pornography, a particular formula has not yet been found that can meet the criteria desired by all parties. The articles in the laws and regulations that regulate the issue of pornography only generally explain the issue of pornography in the words "violates decency". This violation of decency is interpreted differently by many groups. These interpretations range from extreme rejection of all forms of pornography, to very permissive interpretations of forms of pornography. Restrictions on actions that are categorized as violating decency (*aanstotelijk van de eerbaarheid*) are important, considering that criminal law must be implemented objectively. The objectivity of criminal law enforcement means that the articles included in criminal law regulations do not give rise to various interpretations (Gerber dkk., 2018). Meanwhile, the term "violating decency" (*aanstotelijk van de eerbaarheid*) used by the Criminal Code turns out to be very relative, depending on space and time it can objectively give rise to various interpretations (<http://pdf-search-engine.com>). One of the differences in

interpretation that often arises is whether an image or broadcast is a form of pornography or a form of work of art and constitutes freedom of expression. This difference in interpretation is often used as a reason for law enforcement officials to hesitate in taking action against pornography cases.

In cyberspace, information traffic moves very quickly (information superhighway), images, writing and dirty stories fly in all directions looking for users who want to see or read the information. In this case, the dirty images or writing or stories are actually all around us in waves of bits that are invisible to the eye, seeming far away but are actually close (Rahmah dkk., 2022). In fact, what is seen or displayed on the monitor screen fulfills the elements contained in the offense of pornography, but our criminal law regulations cannot reach there because the existing interpretation of this article is still confined to the old meaning of pornography.

This problem is a problem that arises at the theoretical stage which has implications at the practical stage where law enforcement officials have not or cannot act if there is no legitimacy from academics in addition to technical capabilities from information technology.

It turns out that Indonesia's positive legal regulations are still inadequate or inappropriate when related to the current development of pornography on the internet (cyberporn), including: Provision of unclear pornography limits, authorized parties to take certain actions to overcome pornography problems, threats of punishments that are too light, unclear party who is deemed appropriate to be responsible for material categorized as pornographic, inconsistent law enforcement.

The current development of information technology presents the Internet which is able to connect every individual freely wherever they are without having to meet face to face.⁷ However, this rapid development ipso facto increases the high threat of criminal acts on the Internet, one of which is criminal acts of pornography.⁸ Pornography itself is an image, sketch, illustration, photo, writing, voice, sound, moving image, animation, cartoon, conversation, gesture, or other form of message through various forms of communication media and/or public performances, which contains obscenity or exploitation sexual relations that violate the norms of decency in society.⁹ It can be summarized that pornography is anything related to sexual matters that is not appropriate to be expressed openly to the public.¹⁰ With the rapid development of technology today, pornography has also become a threat to cyberspace, which is known as cyberpornography¹¹ Unfortunately, enforcement The regulations regarding cyber pornography in Indonesia actually invite various kinds of controversy from various parties.

Legal Protection for Victims of the Crime of Disseminating Porn Videos

One of the cases that is currently provoking many questions comes from the case of Gisella Anastasia in report number TBL/6608/XI/Yan.2.5/2020/SPKT PMJ. Currently, Gisel has been officially named a suspect by Polda Metro Jaya in the case of spreading a video of her sexual intercourse on the Internet. Another article that Gisel

and MYD are accused of is Article 8 of Law no. 44 of 2008 concerning Pornography which prohibits every person, whether intentionally or with their own consent, from becoming an object or model of pornography. Referring to the opinion of Nefa Claudia, a Criminal Science Expert at Parahyangan University, Article 8 of the Pornography Law is limited to only protecting those who are forced by threats or threatened to be under the power or pressure of another person, persuaded or deceived, or lied to by another person to become an object. or pornographic models. Therefore, this provision must be read in the context of the model of not being coerced by threats or being threatened or being under the power or pressure of another person, being persuaded or deceived, or being lied to by another person. Based on the theory of will in criminal law, pornography models can be punished if they know and want the act of recording and also the consequences of the distribution of the recording. Therefore, because Gisel and MYD did not want the immoral video to spread, this element was not fulfilled.

Gisel's immoral video case is often compared to the immoral video case of Nazril Irham alias Ariel Peterpan which spread in 2010. The Bandung District Court in decision Number 1401/Pid.B/2010 gave a sentence of criminal sanctions Article 29 jo. Article 4 paragraph (1) Law Number 44 of 2008 jo. Article 56 2 of the Criminal Code states that Ariel has committed acts of making pornographic videos and carried out acts of assistance by providing opportunities for other people to commit crimes. Based on the ratio decidendi in the decision, the Panel of Judges considered that Ariel "made" a pornographic video where the video was made around 2005-2006. In that year, Law Number 44 of 2008 concerning Pornography had not yet been passed, so this was contrary to the principle of legality.

According to Sudarto, there are two things that depend on the principle of legality. First, a criminal act must be formulated in statutory regulations. Second, these statutory regulations must exist before a criminal act occurs, that from the first meaning there are two consequences, namely that a person's action which is not threatened by law as a criminal act cannot be punished and there is a prohibition on the use of analogies to make an act into a crime. criminal acts as formulated in the law. Meanwhile, the consequence of the second meaning is that criminal law does not apply retroactively. Wirjono Prodjodikoro also said that criminal sanctions can only be determined by law and criminal provisions must not apply retroactively.

Moreover, based on the Ratio decidendi, it appears that the person who duplicated or copied the pornographic video files was Reza Rizaldy (Joy) as the editor of the band Peterpan, where Ariel came to Capung Studio to meet Reza Rizaldy (Joy) at Reza Rizaldy's (Joy) request. itself for the purposes of borrowing sound files and editing Peterpan songs, so the purpose of borrowing sound files is only for checking Ariel's vocal sound and editing Peterpan songs. So, in this case what Ariel knows and wants is not the distribution of his immoral videos. In Moeljatno's book entitled Principles of Criminal Law, it is explained that intention consists of will and knowledge. Therefore, Ariel's actions do not fulfill the theory of intention.

Cyberpornography is a form of cyber crime that often appears in Indonesia. One of the cases that occurred was the case of a victim of the distribution of pornographic videos which was imposed under Article 4 of the Pornography Law. In this case, if the video you make is only made for your own interests and not for commercial purposes. Law Number 44 of 2008 should protect victims of distribution regarding the creation and possession of pornography in the private sphere because this act qualifies as an exception in Article 4 paragraph (1) of Law Number 44 of 2008 concerning Pornography.

Based on the theory of will in criminal law, pornography models can be punished if they know and want the act of recording and also the consequences of the distribution of the recording. Therefore, when the character in the immoral video does not want the immoral video to be spread then this element is not fulfilled. In this case, the public figure in the analysis above reveals that his motive for recording the video was for personal documentation and had no intention of disseminating it to the public. The video was immediately produced using his personal device. However, due to his negligence, the video was spread on social media and became public consumption. This negligence, according to Polda Metro Jaya, is what made him a suspect.

CONCLUSSION

Indonesia's positive legal regulations regulate the crime of pornography on the internet (cyberporn) as a virtual crime, including in Articles 281-283 of the Criminal Code (KUHP), Law Number 8 of 1992 concerning Film, Law Number 36 of 1999 concerning Telecommunications, Article 5 paragraph 1 and Article 13 paragraph (1) letter a Law Number 40 of 1999 concerning the Press, Article 36 paragraph (5) Law Number 32 of 2002 concerning Broadcasting, Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE) as well as Law Number 44 of 2008 concerning Pornography. This regulation is considered inadequate if it is related to the current development of pornography on the internet (cyberporn), including the provision of unclear limits on pornography, the authorities who have the authority to take certain actions to overcome pornography problems, threats of punishments that are too light, unclear parties who are deemed appropriate to do so. accountability for crimes categorized as pornography, and inconsistent law enforcement.

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