



Criminal Liability Of Disseminator's Pornographic Content On Social Media

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Abstract

Social media platforms have facilitated unprecedented access to and dissemination of various content, including material that violates societal norms, such as cyberporn, which falls under the realm of cybercrime. The objective of this research is two-fold: (1) to analyze the role of criminal law in addressing cases involving the distribution of pornographic content in terms of both substance and procedure and (2) to determine whether the individuals responsible for spreading such content can be held accountable for their actions. The author employs a normative legal research methodology, primarily relying on library research to explore relevant data, literature, and legal provisions pertaining to the raised legal issues. The results of this study indicate that criminal law plays a crucial role in assessing the dissemination of pornographic content as an offense, aligning with the provisions outlined in Law Number 44 of 2008 concerning Pornography. Additionally, the act of distributing pornographic content via platforms like WhatsApp and Line is deemed a violation of Law Number 11 of 2008 concerning Electronic Information and Transactions, which entails corresponding legal sanctions. Formally, this entails an expansion in the scope and types of admissible evidence beyond what is stipulated in Article 184 of the Code of Criminal Procedure, as well as modifications in the examination process. Regarding the perpetrator involved in the case of JA, who spread pornographic content on social media, they can indeed be held accountable. The perpetrator exhibited an intent to seek revenge against the victim through the dissemination of the pornographic video, thereby meeting the necessary criteria for legal responsibility.

Keywords: *Pornography, Social Media, Criminal Liability.*

INTRODUCTION

The rapid advancement of technology in this era made mankind able to obtain information easily and quickly. One of the information media that is often used by people, in general, is social media. The development and advancement of information and communication technology in Indonesia have caused many changes in various aspects of human life that have directly affected the birth of various new legal acts or acts. Information technology includes systems that collect, store, process, produce and transmit information from and to industry or society effectively and quickly.¹

The development and advancement of information and communication technology in Indonesia can also not only have a positive impact but can also have a negative impact because it is used for things that are detrimental to people's social life, namely providing opportunities to be used as a means of committing various kinds of crimes. J.E Sahetapy argued in his writings that crime is closely related to the development of society. The more advanced people's lives, the more advanced crime is, the more evil is also part of the cultural output itself.²

The advancement of internet technology is actually something that is neutral, which means that technology is free of value. Where technology cannot be attached to the nature of good and evil. However, in its development, the presence of technology tempts those who intend evil to abuse.³ According to Soerjono Soekanto, the changes that occurred in the society were caused by factors located outside the community.⁴ Crimes that are born as a negative impact of the development of internet applications are often referred to as cyber crime.⁵ Cyber crime not only uses the sophistication of computer technology, but also involves telecommunications technology in its operations.⁶ Of the various forms of crime that use internet telecommunication networks and / or electronic communication systems, one form of crime that has grown rapidly lately is the loading of pornographic elements on internet media or better known as cyberporn. The criminal act of pornography attacks moral values and moral public decency. It means attacking legal interests over a sense of peace in the field of general decency.⁷

Pornography is images, sketches, illustrations, photographs, writings, sounds, sounds, moving images, animations, cartoons, conversations, gestures, or other forms of messages through various forms of

¹ Danrivanto Budhijanto, *Hukum Telekomunikasi, Penyiaran & Teknologi Informasi: Regulasi Dan Konvergensi* (Bandung: PT Refika Aditama, 2013),

https://balitbangsdn.kominfo.go.id/perpustakaan/index.php?p=show_detail&id=1532&keywords=.

² Mohammad Labib Abdul Wahid, *Kejahatan Mayantara (Cyber Crime)* (Bandung: Refika Aditama, 2010).

³ Sigid Suseno, *Yurisdiksi Tindak Pidana Siber* (Bandung: Refika Aditama, 2013).

⁴ Soerjono Soekanto, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum* (Jakarta: PT Rajawali Pers, 2015).

⁵ Abdul Wahid, *Kejahatan Mayantara (Cyber Crime)*.

⁶ Regner Sabillon et al., "Cybercriminals, Cyberattacks and Cybercrime," in *2016 IEEE International Conference on Cybercrime and Computer Forensic, ICCCF 2016*, 2016, <https://doi.org/10.1109/ICCCF.2016.7740434>.

⁷ Russel Smith, "Cybercrime and Society," *Australian & New Zealand Journal of Criminology* 40, no. 3 (2007): 360–70, <https://doi.org/10.1375/acri.40.3.360>.

communication media and/or public performances, which contain obscenity or sexual exploitation that violates the norms of decency in society.⁸ Therefore, pornography is prohibited because it violates decency methods.

Regulations regarding decency offenses have been regulated in the Criminal Code (KUHP). Indonesia has regulations regarding the prohibition of data ownership that violates immorality. Article 281, Article 282, Article 283, Article 532, and Article 533 of the Criminal Code have prohibited pornography as well as pornoaction and have determined the punishment.⁹ Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law) also regulates immoral crimes in the electronic sphere. And more specifically the Law of the Republic of Indonesia Number 44 of 2008 concerning Pornography which regulates materially the criminal act of pornography itself.

After the elaboration of laws governing acts of decency and the dissemination of pornographic content until now it is still circulating in cyberspace and social media platforms, this is because advances in technology and communication are used by individuals who are not aware of the norms and laws that apply in society. In this study, the author examines the role of criminal law in material and formal aspects related to cases of spreading pornographic content through social media and analyzes the responsibility for perpetrators of distributing pornographic content and the process of solving cases in the realm of criminal law.

Based on the background of this problem, the author conducted research related to the application of criminal law and how the criminal law is accountable to perpetrators who have spread pornographic content on social media. Therefore, the author analyzes and discusses these problems in a scientific study.

The formulation of the problem in this study is as follows:

- 1) What is the role of criminal law in cases of distribution of pornographic content?
- 2) Can perpetrators of spreading pornographic content be held accountable under criminal law?

RESEARCH METHOD

The type of research that the author uses is *normative* legal research (library research), this research is also called document studies carried out by examining library materials and secondary aimed only at written regulations or other legal materials. This research also focuses on positive legal norms governing criminal liability for perpetrators of spreading pornographic content on social media.

In order to obtain the results of the research, the author also uses primary legal materials such as (1) Criminal Code (KUHP)¹⁰ (2) Law on Information and Electronic Transactions Number 11 of 2008¹¹ as updated by Law Number 19 of 2016 (3) Law Number 44 of 2008 concerning Pornography. Secondary legal materials that provide explanations of primary legal materials, such as draft laws, textbooks, research results in journals and

⁸ DPR RI, "Undang-Undang Nomor 44 Tahun 2008 Tentang Pornografi," Pub. L. No. 44/2008 (2008), https://www.dpr.go.id/dokjdih/document/uu/UU_2008_44.pdf.

⁹ Neng Djubaidah, *Undang-Undang Nomor 44 Tahun 2008 Tentang Pornografi: Perspektif Negara Hukum Berdasarkan Pancasila* (Jakarta: Sinar Grafika, 2011).

¹⁰ Republik Indonesia, "Kitab Undang-Undang Hukum Pidana" (2021), <https://jdih.mahkamahagung.go.id/legal-product/kitab-undang-undang-hukum-pidana/detail>.

¹¹ Republik Indonesia, "UU Informasi Dan Transaksi Elektronik," Pub. L. No. Undang-Undang Nomor 19 Tahun 2016 perubahan atas Undang-Undang Nomor 11 Tahun 2008 (2016).

magazines, or opinions of experts in the field of law. Tertiary legal materials are legal materials that provide explanations to primary and secondary legal materials (draft laws, legal dictionaries and encyclopedias).¹²

FINDINGS

This study analyzes and discusses the urgency of Criminal Law related to the spread of pornographic content. Before analyzing and discussing the application of criminal law, it is necessary to first describe the case. Reporting from [Republika.co.id](https://republika.co.id)¹³ Yogyakarta Regional Police named a state university student in the region, 26-year-old Jibril Abdul Aziz, as a suspect in a case of spreading pornographic content. Previously, Jibril was reported by the victim's family on July 9, 2019, for distributing pornographic photos and videos. The pornographic content was Jibril's bodily relationship with a woman. The victim, BCH (24), was the suspect's former lover. Jibril allegedly spread the video because he was hurt that his plan to marry BCH was not approved by the victim's family. Head of Sub-Directorate V Cyber Ditreskrissus Polda DIY AKBP Yulianto said that the suspect and the victim dated for two years since 2017. Allegedly because of the heartache not given the blessing of the victim's family, the suspect spread intimate photos and videos during dating through *Line* and *WhatsApp*, the distribution of pornographic content was carried out in early July 2019. In fact, the contents that have been spread by the suspect are more than one. Based on the description of the case above, it is necessary to review the norms and criminal provisions that have been violated in the case mentioned above. The first basic question that needs to be answered first in this paper is How is the Application of Criminal Law in Handling Cases of Distribution of Pornographic Content?

Based on what has been described in the Literature Review, criminal law is a set of regulations that regulate prohibited acts, as well as sanctions for those who violate them. Meanwhile, what is meant by *verror* can be interpreted as the stage of determining sanctions and also providing sanctions in criminal law.^{14 15} The word "criminal" is generally interpreted as law, while "punishment" is interpreted as punishment. According to Prof. Sudarto, punishment is defined as, "setting punishment" or "deciding about the punishment". Thus, in assessing the act of Spreading Pornographic Content as a criminal act or not, the measure used is to explain each legislation related to the dissemination of pornographic content and the settlement process in the realm of Criminal Law related to this case, therefore it will be described as below:

Law Number 44 of 2008 concerning Pornography: From this case, sanctions will be described that will be given to perpetrators as stipulated in the law for perpetrators, makers, and disseminators of videos containing pornographic content. Provisions regarding pornography are specifically regulated in Law Number 44 of 2008

¹² Ashleigh Watson, "Methods Braiding: A Technique for Arts-Based and Mixed-Methods Research," *Sociological Research Online* 25, no. 1 (2020), <https://doi.org/10.1177/1360780419849437>.

¹³ [Republika.co.id](https://republika.co.id), "Mahasiswa PTN Di Yogyakarta Terjerat Kasus Pornografi," 19 August, 2019, <https://news.republika.co.id/berita/pwh3ki428/mahasiswa-ptn-di-yogyakarta-terjerat-kasus-pornografi>.

¹⁴ Carly Nyst and Tomaso Falchetta, "The Right to Privacy in the Digital Age," *Journal of Human Rights Practice* (Oxford University Press, February 1, 2017), <https://doi.org/10.1093/jhuman/huw026>.

¹⁵ Ni Putu, Suci Meinarni, and Emmy Febriani Thalib, "Privacy Related to Cyber Space Activities," in *Proceedings of the International Conference on Innovation in Research (ICIIR 2018) – Section: Economics and Management Science*, vol. 88 (Atlantis Press, 2019), 176–79, <https://doi.org/https://doi.org/10.2991/iciir-18.2019.32>.

concerning Pornography In the explanation of Article 4 paragraph (1) that what is meant by producing with the intention of personal interest or consumption does not meet the elements of acts prohibited in the article above, but if correlated with the cases listed above where Perpetrators and Victims produce and make videos containing pornographic content for personal gain, However, the perpetrator deliberately disseminated the video. So the elements of Article 4 paragraph (1) are fulfilled to the perpetrator, so the sanctions given to the perpetrator as stipulated in Article 29 of Law no. 44 of 2008 concerning Pornography. Law Number 44 of 2008 concerning pornography regulates materially the Pornography

Crime itself and does not explain or explicitly detail the media or container that is a suggestion for the dissemination of pornographic content, if we review the object or place of this crime, namely social media which is part of the *cyber world*.

Based on the review of laws and regulations governing the dissemination of pornographic content on social media, the sanctions received by perpetrators as stipulated in Article 27 paragraph (1) jo Article 45 paragraph (1) of Law Number 11 of 2008 concerning Information and Electronic Transactions. Considering that the aforesaid act satisfies the elements of offense materially is described as follows:

Jibril Azis (perpetrator) disseminated pornographic videos through *Line and Whatsapp* with the intention of disseminating them to be known to the public, which at first the videos containing the results of the perpetrator's and the victim's intercourse were only for personal consumption. However, after some time the video was spread due to internal factors from the perpetrator himself (having a personal grudge against the victim) that prompted him to spread the video, then based on the actions committed by the perpetrator classified as an act that attacks the moral values and morals of general decency and damages the use value of the essence of the advancement of internet technology.

As with handling acts that constitute criminal acts, criminal procedural law regulates the process of handling *cybercrime*, starting from investigation to court decision. However, there are some differences in the procedural law. Therefore, it will be described by the author of the process of handling *cybercrime cases*, along with the author describing in general in criminal events.

Specifically the authority of PPNS in criminal acts as regulated in the Law-ITE, in conducting *cybercrime investigations*, is regulated in Article 43 paragraph (5) of the Law-ITE, that the Civil Servant Investigator as referred to will carry out the investigation process as below:¹⁶¹⁷

- 1) Receive a report or complaint from someone about a criminal act based on the provisions of the Law, if viewed from the above case the victim's family (BCH) reported Jibril Azis to the authorities regarding the distribution of pornographic video content.
- 2) Summoning any person or other party to be heard and/or examined as a suspect or witness in connection with the existence of an alleged criminal act in a field related to the provisions of the Law.

¹⁶ Miftakhur Rokhman Habibi and Isnatul Liviani, "Kejahatan Teknologi Informasi (Cyber Crime) Dan Penanggulangannya Dalam Sistem Hukum Indonesia," *Al-Qanun: Jurnal Pemikiran Dan Pembaharuan Hukum Islam* 23, no. 2 (2020).

¹⁷ Paul Hunton, "The Stages of Cybercrime Investigations: Bridging the Gap between Technology Examination and Law Enforcement Investigation," *Computer Law and Security Review* 27, no. 1 (2011): 61–67, <https://doi.org/10.1016/j.clsr.2010.11.001>.

- 3) Checking the correctness of reports or information related to criminal acts based on the provisions of the law
- 4) Conduct an examination of persons and/or business entities that should be suspected of committing a criminal act, in this case the perpetrator/suspect is arrested by the police for questioning for his actions.
- 5) Conduct an examination of tools and / or facilities related to information technology activities that are suspected of committing criminal acts based on the law, in connection with this case investigators confiscate items that are a means of disseminating pornographic content such as mobile phones (*Mobile*), computers, etc.
- 6) Conduct a search of a certain place that is suspected of being used as a place to commit a criminal offense based on the provisions of the law
- 7) Sealing and confiscating equipment or facilities of information technology activities that are allegedly used in deviation from the provisions of laws and regulations; during this investigation, officers will confiscate a set of tools used by JA (perpetrator) to spread pornographic content, such as mobile phones, computers, etc.

Next, an examination will be carried out with the following description: Based on the discussion as above, the author correlates with the above case the following observations:

- 1) *The process of Acquiring and Imaging* plays a role in the course of the case mentioned above, because when the investigator and / or investigator gets a report and follows up on this case, the investigator and / or investigator will confiscate a set of electronic belonging to JA (*mobile phone, memory card*) that allows pornographic videos.
- 2) Furthermore, analysis of the data is carried out to track the hidden or duplicated files or videos for storage and avoid redistribution by the perpetrators or beneficial individuals.
- 3) The final stage is tracking the digital traces of the distribution of pornographic videos, as it is known that the distribution of pornographic videos through *Line* and *Whatsapp* social media platforms, so that there is no wider spread, this method is implemented to reduce the risk of harming victims or prolonged losses.

Furthermore, Prosecution is carried out, namely, the transfer of criminal cases to the court carried out by the public prosecutor in and in the manner provided for in this law with a request to be examined and decided by a Judge in court. Examination at the trial and court decision if an examination of evidence that is considered valid in court has been carried out, the judge decides on criminal sanctions as stipulated in the law (Law Number 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions). If the verdict has the right legal force (*inratch van gewijde*)¹⁸ then the prosecutor will execute the court decision. The procedure for implementing court decisions in the form of punishment is regulated in Articles 271 and 276 of the Code of Criminal Procedure.

Departing from the previous description of the act of spreading pornographic content on social media carried out by JA, a fundamental question arises that must be answered in this paper is whether the perpetrators of spreading pornographic content can be held accountable in criminal law. Study of subjective elements, namely aspects of guilt and criminal responsibility of a perpetrator, and objective study where the actions committed are prohibited and contrary to the law.

¹⁸ Hardianto Djanggih, "KEBIJAKAN HUKUM PIDANA DALAM PENANGGULANGAN TINDAK PIDANA CYBER CRIME DI BIDANG KESUSILAN" I, no. 2 (2013).

Thus, in terms of criminal acts, the act of spreading pornographic content on social media, deserves blame and must be held criminally accountable. This aspect of guilt largely determines whether an act is punishable or not. This principle refers to one of the principles of accountability in criminal law, that "no one shall be punished if there is no wrongdoing. Then it can be reviewed to what extent objective and subjective reproaches of criminal liability apply to perpetrators.

The element of action is one of the main elements of criminal responsibility because a person cannot be convicted if he does not commit an act where the act committed is an act prohibited by law in accordance with the principle of legality that we profess. If described as an act or reproach committed by the perpetrator, namely the distribution and distribution of pornographic videos, it is classified as a criminal act, which is prohibited in law. In Indonesian criminal law requires concrete actions or visible acts, meaning that the law requires actions that appear to come out because in law a person cannot be convicted on the basis of one's mental state, it will be different from the crossing of pornographic videos is just the intention of a person and is not realized, this is the principle of *cogitationis poenam nemo patitur*, no one is convicted of what is in his mind only.¹⁹ Regarding this element of intentional wrongdoing, it is not necessary to prove that the perpetrator knew that his actions were threatened by law, so it is not necessary to prove that the actions committed by the perpetrator were "evil".

In general, the subject of a crime is whoever according to the Criminal Code commits a criminal act, from the above case the subject in question is a student with the initials JA who disseminates pornographic content through social media platforms. Van Bemmelen argued about the theory of intentionality in committing a criminal act (*opzettelijk*) that there is an intention to commit a criminal act whose consequences have been desired by the perpetrator. In the formulation of the offense of spreading pornographic content, there is an element of intentionality from the perpetrator and the intention to commit a criminal act. In the dissemination of pornographic content carried out by JA, the perpetrator deliberately spread pornographic videos through social media *platforms*, namely *Line* and *Whatsapp*, it is known that the video is an indecent video of the perpetrator JA and the victim with the initials BCH is the suspect's former lover, the above act was done because he was hurt not to get the blessing of the victim's family, it can be concluded that the perpetrator wants and knows the consequences From his speech, the element of intentionality, in this case, is fulfilled.

Andi Zainal Abidin said that most laws formulate negative guilt requirements. The Criminal Code does not regulate the ability to be responsible, but what is regulated in the Criminal Code itself is exactly the opposite of the ability to be responsible.²⁰ The article that regulates the opposite of the ability to be responsible is article 44 of the Criminal Code which reads:

- 1) Whoever commits an act that cannot be accounted for, because his soul is disabled in growth (*gebrekkige ontwikkeling*) or disturbed by disease, shall not be punished

¹⁹ M. Nanda Setiawan, "Mengkritisi Undang-Undang ITE Pasal 27 Ayat (3) Dilihat Dari Sosio-Politik Hukum Pidana Indonesia," *DATIN Law Jurnal*, no. 3 (2021): 1–21, <https://ojs.umb-bungo.ac.id/index.php/DATIN/article/view/561/554>.

²⁰ Safitri Wikan Nawang Sari, *HUKUM PIDANA DASAR* (Klaten, Jawa Tengah: Lakeisha, 2020), https://www.google.co.id/books/edition/HUKUM_PIDANA_DASAR/nl4CEAAAQBAJ?hl=en&gbpv=0.

- 2) If it is found that the act cannot be accounted for to him because his soul is disabled in growth or impaired by illness, then the judge may order that the person be admitted to a mental hospital, for a maximum of one year as probation.

The theory put forward by Andi Zainal is contrary when related to the case of JA (perpetrator of spreading pornographic content on social media), the perpetrator is a student who is healthy in his mind, and also the media committed this crime on social media platforms (*whatsapp* and *line*). The perpetrator spread the video with a state of awareness of his actions, namely wanting revenge on the victim (BCH). So it can be concluded that JA is able to account for the criminal acts he committed.

CONCLUSION

Based on the descriptions that the author describes in the discussion, it can be concluded in accordance with the problem formulation and research results:

- 1) The role of criminal law regarding assessing the act of disseminating pornographic content as an act that meets the formulation of the offense and is an act prohibited in Law Number 44 of 2008 concerning pornography and related to the media of disseminating pornographic content through *whatsapp* and *Line*, then the act violates what is violated in Law Number 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, and received sanctions as stipulated in the Law. The Criminal Procedure Law in handling *cybercrime* in Indonesia is basically the same as the general provisions stipulated in the Criminal Procedure Code and its implementing regulations. However, there are some fundamental differences, especially regarding the expansion of the scope and type of evidence (i.e. not just as stipulated in Article 184 of the Code of Criminal Procedure), and the examination process. This happens because digital evidence requires special treatment by law enforcement. Therefore, in handling digital evidence, many experts (professionals) are needed, both from experts and from PPNS.
- 2) The perpetrator in the case of the dissemination of pornographic content on social media carried out by JA can be held accountable because the perpetrator has the intention to take revenge against the victim by spreading pornographic videos, and there is no excuse for forgiveness related to the crime, and also meets the objective elements and subjective reproaches of the criminal act of spreading pornographic content on social media.

Based on the results of this study, the author proposed several suggestions, namely:

- 3) To law enforcement officials in Indonesia, to focus more on law enforcement related to the spread of pornographic content as well as systematics of handling more responsive to victims and focus on handling cases without giving a negative perspective to victims.
- 4) To the Ministry of Communication and Information Technology, create a policy regarding the development of national defense in order to eradicate and limit the spread of pornographic content on social media. Finally, from the author's response, suggestions are aimed at public legal awareness, to be more aware of norms and laws and regulations in the community, and high public legal awareness as a preventive measure.

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