



Revenge Porn in Criminal Law: A New Form of Cyber Bullying, Qanun Jinayah, and Other Legal Consequences

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ARTICLE INFO

Article history:

Received Nov 16, 2022

Revised Dec 2, 2022

Accepted Dec 19, 2022

Keywords:

Accountability;
Law;
Revenge Porn;
Punishment.

ABSTRACT

The trend of technological development coupled with the Covid-19 pandemic has made an increase in online-based forms of sexual violence crimes, especially regarding Revenge Porn. The purpose of writing this paper is to provide academic contributions and further references to the problem of revenge porn that is rampant in Indonesia. Discussion 1 and discussion 2 are studied juridically normatively with descriptive-analytical specifications. The results showed that so far the Criminal Code, Regulation on Pornography, Regulation on ITE, Regulation on Sexual Violence Crimes and Qanun Aceh can be used as a legal umbrella for revenge porn in Indonesia. Then, which various regulations regarding Revenge Porn are a form of legal liability that can be imposed on revenge porn perpetrators as part of the criminal law itself, namely providing imprisonment for confinement and also fines as a form of providing certainty, justice, and legal expediency for revenge porn in Indonesia.

ABSTRAK

Adanya trend perkembangan teknologi ditambah dengan terjadinya pandemic Covid-19 menjadikan peningkatan bentuk kejahatan kekerasan seksual berbasis online khususnya mengenai Revenge Porn. Tujuan penulisan paper ini ialah guna memberikan sumbangsih akademis serta referensi lanjutan guna persoalan revenge porn yang marak terjadi di Indonesia. Pembahasan 1 serta pembahasan 2 dikaji secara yuridis normative dengan spesifikasi deskriptif-analitis. Hasil penelitian menunjukkan bahwa sejauh ini KUHP, Regulasi tentang Pornografi, Regulasi tentang ITE, Regulasi tentang Tindak Pidana Kekerasan Seksual dan Qanun Aceh dapat dijadikan payung hukum revenge porn di Indonesia. Kemudian, yang mana berbagai regulasi tentang Revenge Porn tersebut sebagai bentuk pertanggungjawaban hukum yang dapat dijatuhkan kepada pelaku revenge porn sebagai bagian dari hukum pidana aitu sendiri yakni memberikan sanksi penjara kurungan dan juga denda sebagai salah satu bentuk memberikan kepastian, keadilan, dan kemanfaatan hukum atas revenge porn di Indonesia.

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I. INTRODUCTION

Various forms of cyber intimidation have caused dramatic and serious repercussions for victims even to the point of suicide. One of the newest and dangerous forms of cyber bullying that appears in the infinite virtual world is known as revenge porn or in other words posting the victim's intimate life without the victim's permission for the purpose of humiliating her. In cases like this, generally, the victims are mostly women. (Ashilly Achidsti., 2022) Revenge porn as a tool used by the perpetrator as a

means of forcing his victim (female) to be able to follow the will of the perpetrator himself, for example asking for a certain amount of money, threatening, and can continue to acts of sexual violence.

People's social reactions to the issue of revenge porn will generally be more mentally damaging than the victim, otherwise known as victim blaming and slut shaming. Not infrequently, it is not only the victim who experiences a negative reaction which as a result is able to attack the victim's psychology but also attacks the mentality on the part of the victim's family. Victims and their families often receive abuse, exclusion, and even to the extent of being expelled from their own villages because they are considered a disgrace to the village. Not only that, law enforcement officials, especially the police, often see this issue as a legalistic-positivistic view, meaning that law enforcement officials, especially the police, only make the elements of criminal acts fulfilled rather than realizing the values that live in society. To make matters worse, law enforcement officials participated in the decriminalization, causing the victim to experience a psychic state that was destroyed a second time. The conditions mentioned describe a state that is contradictory to divine values, and far from what is contained in the 1st Pancasila precept "Almighty Godhead".

Then if the analysis is more comprehensive, then revenge porn is not only a matter of intersection of norms of Law No. 19 of 2016 Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions (Hereinafter referred to as ITE Regulation, but also the issue of dealing with online gender-based violence (hereinafter referred to as OGBV). OGBV is understood as a form of gender-based violence facilitated by technology, where in this violence the main objective is to harass victims based on their gender or sexual identity. (Puteri Hikmawati., 2021)

From previous studies that have been carried out on revenge porn, it will generally result in a common point, namely the current positive legal inability to protect and provide legal certainty guarantees to victims. This is not without reason, the difficulty of the law officers is caused by the inability to perceive various provisions of legal norms governing revenge porn. Then in addition, legal policies rather than OGBV arrangements in ITE Regulations often make it difficult for law enforcement by officials because there are multi-interpretation norm provisions (violating decency). (Azza Fitrahul Faizah & Muhammad Rifqi Hariri., 2022).

Generally, in previous studies, it was only discussed from one perspective. For example, it is viewed from the point of view of positive criminal law only, such as the Criminal Law Books, ITE Regulations, and Pornography regulations. (Ni Putu Winny Arisanti & I Ketut Rai Setiabudhi., 2021). Furthermore, the research conducted only discusses the regulation of positive criminal viewpoints, namely the ITE Regulation, as well as the Pornography regulation, and the Witness and Victim Protection regulation. (Nabila Chandra Ayuningtyas., 2021). Then, not far from the two previous studies conducted, this study uses the basis of Criminal law, ITE Regulation, and Pornography regulation as the legal construction. (Anneke Putri Willihardi & Eko Wahyudi., 2020)

For previous research, this research will bring an update on research, authorship, and involve various legal perspectives. The legal update in this study will use Law Number 12 of 2022 concerning the Crime of Sexual Violence (Hereinafter referred to as the TPKS Regulation 2022). The use of the 2022 TPKS Regulation is closely related to the passage of the regulation. Then, in this study, it will also be discussed how Islamic law, especially jinayah, views the issue of revenge porn. In addition, revenge porn, which people generally know and understand, is an issue about revenge on their former lovers, it turns out that it is just a little bit of the purpose of revenge porn. Moreover, the purpose of revenge porn in some countries has recently developed, namely that some people have commercial goals and are driven by popularity or in other words viralism. (M. A. Franks., 2015).

As explained in the background above, two formulations of the problem will be solved in this study, namely how are the juridical rules regarding revenge porn in the scope of cyber bullying based on the perspective of Indonesian national law? and what is the form of legal liability for revenge porn in the study of qanun jinayah and Indonesian national law?.

Making this research an academic study and a further reference to solve the problem of revenge porn in Indonesia is the main goal and main benefit that the author wants to achieve. In addition, knowing and understanding the problem solving of revenge porn issues in accordance with positive law through various legal perspectives.

II. RESEARCH METHOD

Legal research or commonly known as normative juridical research is a type of research used in this research. In this study, a study library research method was used from various legal materials, both primary and secondary used. (Abdulkadir Muhammad., 2004) Primary legal materials are obtained from legal rules, legal products, and judicial rules that have been inckrah, as well as other sources of material in the form of legal journals related to revenge porn, law books, and so on that can add literature on revenge porn. The research approach used is the statute approach, conceptual approach, and case approach. (Amiruddin & Zainal Asikin., 2012) All relevant data and legal materials are collected to be taken into account the essence of the data and legal materials, and then further analyzed before being outlined in this study.

III. RESULTS AND DISCUSSIONS

Juridical Concept of Revenge Porn in the Scope of Cyber Bullying Based on the Perspective of Indonesian National Law

The development of technology in this century encourages humans to continue to follow the existing dynamics. Currently, it is known as cyber law as a form of responsiveness following the convergence that exists in the use of technology, information, and communication. (Anrivanti Budhijanto., 2019). The development of technology has also resulted in the development of crimes committed by humans. The crimes of today's era are committed using the internet as an intermediary. One of the many crimes committed with the internet is cyber bullying. Cyber bullying can be interpreted as a bullying activity carried out by someone or several people who use the internet as a medium. This kind of bullying activity is a deviation from internet use and there is generally a relationship marked by relationship inequality. (Hellsten L. M., 2017).

Another definition of Cyber Bullying is an activity for intimidation by internet means (through messages, images, or videos), carried out by a person or several people, repeatedly, carried out consciously, and causing harm to other people or victims. (M Hidajat et al., 2015). Among the various kinds of bullying are insulting, discriminating, persecution, hate speech, threats and harassment. There is a pattern of connection between threats and harassment in the context of bullying, namely on the issue of revenge porn. Revenge porn is a sexual photo or video of a person that is deliberately disseminated on social media without the consent of the owner of the photo or video. A form of revenge porn is so diverse, such as two people deliberately and also consciously taking a koten (picture) with the original purpose being to be consumed privately / stored on a personal cellphone. Instead, the content becomes a tool of shock when the two sides are in a feud, then spreads it as part of revenge. Another form is the capture of content secretly and unlicensed, for example by storing a hidden camera in the bathroom or bedroom of the inn. (Abdul Munir, M. Krim, & Wulan Junaini)

In some countries such as Germany, the United States, Lebanon and the United Kingdom regarding the form of legal liability for revenge porn can be tried based on existing legal rules. However, in some countries as well, liability for actions that violate the privacy rights and ownership of a piece of content cannot be held liable, or in other words the rule of law in that country does not accommodate it. In a social structure, where the perpetrator of revenge porn cannot be held legally accountable is a condition in which society actively encourages rape. It is this type of society that falls under the Pyramid of Rape Culture model. At each level, defining a culture of interrelated harassment, it

becomes necessary to remove the crime of sexual harassment from the bottom level and then move on towards the top. (Abid Fatem-Zahra. (2019).

In an effort to provide legal certainty, the State of Indonesia is present through various regulations governing revenge porn crimes, namely as follows:

Tabel 1. List of Indonesian Positive Law Regulations regarding Revenge Porn

No	Regulation	Explanation
1	Regulation on Pornography	Explained in Article 4 paragraph (1), where the construction of the Article provides that there is no permissible act that produces, makes, duplicates, disseminates, exports, offers, trades, rents, or otherwise makes available pornography expressly or overtly. In the phrase "make", as explained in the Explanation of this Article it does not enter for itself and personal consumption. In addition, Article 9 jo. Article 35 states that acts that make another person an object containing pronographic substance are prohibited.
2	Regulation on ITE	There are 3 (three) Article Provisions governing revenge porn in this Regulation on ITE, namely: First, Article 27 paragraph (1) is about any person who intentionally disseminates pornographic content. There is the phrase "distribute" in Article 27 paragraph (1). This means that there is an activity of sending or disseminating or both electronic information or electronic documents or both to the general public by passing through electronic devices. Second, Article 27 subsection (4) jo. Article 45 paragraph (4) provides a criminal threat with a maximum of 6 years and/or a maximum fine of IDR 1 billion. The criminal sanction is given to any person who without the right to discriminate which can later be opened of content that has the substance of the sedition. Thirdly, if the above Article provides for the crime of stoning, then Article 29 jo. Article 45B regulates threats of violence or some kind of scare aimed at individuals, then subject to a maximum penalty of 4 years and/or a maximum fine of 750 million rupiah. Fourth, provide a maximum sanction of 8 years and/or a maximum fine of IDR 2 billion for each person who manipulates content so that it resembles other people with electronic devices.
3	The Criminal Code Books	Are regulated in Article 282 paragraph (1), providing for a maximum prison sentence of 1 year and a maximum fine of 45 thousand rupiah. The sanction is intended for any person who commits an offense in a feeling of decency.
4	Regulations on the Crime of Sexual Violence	are explained as in Article 14 paragraphs (1) and (2) which provide a maximum prison sentence of 6 years and/or a maximum fine of 300 million. The sanction is intended for any person who records without consent which will be disseminated accompanied by extortion/harassment of content related to decency or pornography.
5	Qanun Aceh	In qanun Aceh, there is a verse that specifically regulates sexual harassment, namely verse 27.

In the beginning, the rules of revenge porn were regulated in the Criminal Code, regulations on pornography, and regulations on ITE. However, these three rules are felt to lack legal discretion and instead create confusion in the implementation of the provisions of the Article. In the Criminal Code, to be able to be entangled with the Sexual Violence Article requires first the fulfillment of the element

of copulation. This makes the Criminal Code unable to accommodate the development of gender-based crimes online (OGBV). (Elika Angie Runtu, Jolly Ken Pongoh, & Boby Pinasang., 2021). Then, in the provisions of Article 27 of the ITE Regulation, where there is confusion. Namely, the content object agrees to take content but not to be disseminated (for personal consumption). Usually, in issues like this, content is disseminated through misuse by third parties who commit theft of content charged with decency. So that such a condition gives rise to possibility, namely the object of pornographic content is also entangled in the law because there are no restrictions related to the element of "making accessible" in Article 27 of the ITE Regulation. In this regard, it is also supported by the Explanation of Article 4 paragraph (1) and Article 6 of the Regulation on Pornography which uses the exception phrase "excluding itself and one's own interests". This exception is felt to have created ambiguity in the absence of legal certainty regarding actions that include exceptions to "self-interest", so that in law enforcement it is often attached to the subjectivity of judges in judging.

With the passage of the Regulation on the Crime of Sexual Violence dated April 12, 2022, it emphasizes that the protection and guarantee of legal certainty for acts of sexual violence in Indonesia is increasingly showing in the direction of kindness. The existence of regulations on the crime of sexual violence is like a breath of fresh air in the midst of legal uncertainty about the crime of sexual violence. The regulation on the Crime of Sexual Violence can be said to provide more legal certainty through the rules for the rights of victims of sexual violence than the previous legal construction. (Hasanuddin Muhammad., 2022). Of the 9 (nine) types of sexual violence contained in Article 4 of the Regulation on the Crime of Sexual Violence, one of them is regulated which is related to internet-based sexual violence. Which is the continuation of Article 4 regulated in Article 14 paragraph (1) and paragraph (2). With the construction of this article, law enforcement officials have legal certainty in dealing with any issues related to sexual violence, especially revenge porn in Indonesia.

In islamic criminal studies, revenge porn enters into an act of heinous deeds (fahisyah), that is, an act that has come out of the ways of Islam as Allah Ta'ala has ordained. Revenge porn as a reason for criminal acts of decency is a heinous act and is very detrimental to the victim, the victim's family and the perpetrator's family. Aceh, through autonomy in particular is able to enforce the rules of Islamic law, referring to and applying the law to the Qur'an and al-hadith. It is explained in paragraph 27 that qanun aceh prohibits acts of sexual harassment. Although, qanun Aceh has not accommodated online-based sexual harassment regulations, this is not a problem. This is because Aceh's qanun only applies to the Aceh Province and its legal umbrella only applies to Muslims in the Aceh region.

Forms of Legal Liability for Revenge Porn in the Study of Qanun Jinayah and Indonesian National Law

One of the studies in criminal law is about criminal liability. The criminal law will try to find out who the perpetrators are that can be held legally liable. (Hatarto Pakpahan & Crisjiatmoko mindika Dwimaylando., 2021). Criminal liability falls into the essential category rather than the law itself and is part of the criminal offenses committed or have occurred. Looking at the occurrence of actions that are not allowed, a person will be held accountable for his actions, if his actions are against the law and there is no element of justification or omission of the nature of the unlawful nature in the criminal act he committed. Meanwhile, judging from the ability to be accountable, only a person who is considered capable can be held accountable. (Fitri Wahyuni., 2017).

In addition to the issue of liability, criminal law will also closely related to sanctions. In Islamic criminal law, it is known as a sentence imposed by a judge on jinayah offenders or called uqubah. Uqubah is defined as a retribution for ugliness or retribution for evil or intoxication. Then, as a big fuqaha explains the meaning of uqubah is the retribution imposed on the offender who commits a crime for the sin committed as a sanction for himself. (Zulkarnain Lubis & Bakti Ritonga., 2016) Meanwhile, sanctions according to Paul Bohannan are rules regarding how law officers can participate in a problem in order to create a situation as it was in society. (Achmad Ali., 2017).

Provided for in Article 10 of the Criminal Code, the criminal law divides legal sanctions into basic penalties and additional penalties. The main punishments are death, imprisonment, confinement, and fines. Then, additional penalties consist of the disenfranchisement of certain rights in a person/corporation, the repayment of certain goods, and the decisions of other judges. (Moeljatno., 2016).

Legal sanctions in Islamic criminal law are divided into basic punishments, substitute punishments, additional punishments, and complementary punishments, where each punishment has its own rules. (Zakaria Syafe'i., 2012) Such as the application of the law of qishas in the event of murder or the law of ta'zir paying a sum of diyat or compensation in the event of physical abuse of sexual abuse. The existence of these sanctions is proof that Islam protects women from acts of sexual harassment.

In Indonesian positive law, the rules regarding revenge porn are not specifically regulated, but perpetrators can be subject to criminal liability based on several related rules as follows: a. Criminal Code (KUHP). So far, the Criminal Code only regulates the issue of decency. It means not being familiar with the term sexual harassment generally. This is not without reason, considering that the Indonesian Criminal Code is a colonial heritage and is now still in the form of a design. The Second Book of Chapter XIV and the Third Book of Chapter V of the Criminal Code are the locations where the decency is placed. (Firgie Lumingkewas., 2016) At least, there are 3 provisions of the Article that emphasize that the size of the Limitations of revenge porn itself in the Criminal Code. First, namely the provisions of Article 281 which regulates the intentionality of violating morality with a maximum penalty of 2 years and 8 months in prison and/or a fine of 4,500. Second, Article 282 which regulates the prohibition of performing things that are charged with decency, with a maximum threat of 1 year and 6 months in prison and/or a fine of 4,500. Third, Article 533 paragraphs (3) and (4) regulate the act of blatantly providing something that is able to increase the passion of lust in a person who is not yet 18 years old, with a maximum threat of imprisonment of 2 months or a fine of 3K rupiah; b. Regulation on ITE, the regulation on ITE was last changed in 2019, its application in society is not without a harvest of pros and cons, (Raditia Setiawan., 2013). Nor without drawbacks. Likewise in terms of revenge porn arrangements in this Regulation on ITE. There is no Statutory Norm of Article that directly regulates revenge porn in the Regulation. Related to the issue of revenge porn which is an activity of disseminating the explicit content of a person who in such cases is usually an ex-partner or even his partner to the internet media with the aim of humiliating his victim or commercial purposes or even other purposes, the Regulation on ITE regulates it in Article 27 paragraph (1). The regulation on ITE regulates the first prohibited act in Article 27 (1), namely a person who intentionally and does not have the right to make accessible electronic information or electronic documents that contain violations of decency. The regulation on ITE, namely Article 45 paragraph (1) norms, provides a maximum prison sentence of 6 years and a fine of 1 million for people who are involved in violation of Article 27 paragraph (1); c. Regulation on Pornography, regulations on pornography relating to the issue of revenge porn can be found in the provisions as per Article 4 paragraph (1). The article is aimed at persons who disseminate or generally provide a moral charge (pornography). The threat of the violation is a minimum of 6 months in prison and a maximum of 12 months in prison with a minimum fine of 250 million and a maximum fine of 6 billion rupiah. Sanctions in the Regulation on Pornography if seen as a form of regulation outside the Criminal Code, where sanctions follow the classical tradition of focusing on actions; (Titik Suharti., 2011) d. Regulation on The Crime of Sexual, violence The passage of the Regulation on the Crime of Sexual Violence seems to bring a breath of fresh hope for everyone who needs justice and protection of the issue of revenge porn in Indonesia. Even though there is no direct revenge porn clause in the Regulation on the Crime of Sexual Violence, but in Article 14 (1) and (2) regulates sexual violence committed electronically (otherwise known as Online Gender-Based Sexual Violence /OGBV). In the provisions of Article 14 (2) there are criminal sanctions in the form of imprisonment for a maximum of 6 years and a maximum fine of 600 million

for perpetrators who threaten, extort, coerce, or even commit misdirection and deception to record or take sexually charged pictures.

IV. CONCLUSION

Revenge porn as a criminal act is a crime that attacks decency, ha katas privacy, and results in the impact of losses in various aspects of the victim's life. The purpose of revenge porn is revenge on the victim. But in addition to this, other purposes of revenge porn crimes can also have commercial or other purposes. Revenge porn generally attacks Women, who in some cases will attack Women whose status is the ex-lover of the perpetrator. As a country of law, the Indonesian state has several juridical concepts regarding revenge porn in Indonesia, in addition to providing legal certainty, the juridical concept of revenge porn in Indonesia is also a form of protection and fulfillment of a sense of justice for victims of revenge porn in Indonesia.

So far, the Indonesian state has a juridical concept related to revenge porn, namely in the Criminal Code, Regulation on Pornography, Regulation on ITE, Regulation on Sexual Violence Crimes and Qanun Aceh. Revenge porn is a crime that will be solved by criminal law, which concerns decency. As the nature of the criminal law itself, the criminal law will try to find who wants to be held accountable as well as the accountability itself. Liability in criminal law aims as a form of protection and provides certainty and justice for revenge porn cases. In the Criminal Code, Regulations on Pornography, Regulations on ITE, Regulations on Sexual Violence Crimes, regulated regarding penalties for both imprisonment and also fines or both that can be imposed on revenge porn perpetrators in order to provide certainty and fulfillment of revenge porn in Indonesia. With the passage of the Regulation on the Crime of Sexual Violence, not considering the role of the government is considered sufficient. The government needs to socialize to the public and vigorously discuss the issue of revenge porn in the community. In addition, law officers need to know and know how the legal process in each case involving revenge porn in order to provide a sense of legal certainty, legal justice, and also the benefit of the law itself based on a partiality approach to the victim's side.

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