

Criminal Acts Revenge Pornography In Terms Of Indonesian Criminal Law

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ABSTRACT

Crimes in the form of content containing immorality or sex are increasingly occurring in online networks, one of which is revenge pornography, commonly known as "Revenge Porn." This is a new phenomenon that has emerged alongside the rapid development of technology at this time. Pornography for the purpose of retaliation is a form of coercion and threat to someone, particularly women, to transmit or publish immoral content in the form of photos or videos taken in public by a partner or former partner with the goal of isolating, embarrassing, and destroying the victim's life. This case has been categorized as "online-based emotional violence." The purpose of this study is to find out that revenge porn is a criminal act, to find out and analyze the accountability of the perpetrators of revenge porn according to Indonesian criminal law. This study uses a normative legal research method using a statutory and regulatory approach related to the legal issues being addressed. Based on the results of the study, the perpetrators of the crime of revenge porn can then be held criminally responsible according to the provisions of Articles 281 and Article 282 of the Criminal Code, the Law on Information and Electronic Transactions, and the Law on Pornography.

ABSTRAK

Tindak kejahatan berupa konten yang memuat asusila atau seks makin banyak terjadi dalam jaringan online, salah satunya adalah Pornografi balas dendam atau biasa dikenal dengan Revenge Porn, hal ini merupakan fenomena baru yang muncul beriringan dengan pesatnya perkembangan teknologi pada saat ini. Pornografi dengan motif balas dendam merupakan bentuk pemaksaan serta ancaman kepada seseorang namun utamanya pada perempuan untuk mentransmisikan atau mempublikasikan konten asusila berwujud foto maupun video yang dilakukan oleh pasangan atau mantan pasangan pada khalayak ramai dengan tujuan untuk mengucilkan, mempermalukan, serta menghancurkan hidup korban. Kasus tersebut sudah dikategorikan sebagai kekerasan emosional berbasis online. Tujuan dari studi ini adalah untuk mengetahui bahwa revenge porn sebagai perbuatan tindak pidana serta untuk mengetahui dan menganalisis tentang pertanggungjawaban terhadap pelaku perbuatan revenge porn menurut hukum pidana Indonesia. Studi ini menggunakan metode penelitian hukum normatif dengan menggunakan pendekatan perundang-undangan serta regulasi yang berkaitan pada isu hukum yang dijalani. Berdasarkan hasil studi, bahwasanya terhadap pelaku tindak pidana revenge porn, selanjutnya dapat diminta pertanggungjawaban pidana sesuai ketentuan Pasal 281 dan Pasal 282 Kitab Undang-Undang Hukum Pidana, Undang-Undang tentang Informasi dan Transaksi Elektronik, dan Undang-Undang tentang Pornografi.

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I. INTRODUCTION

The development of advances in information technology in the current era of globalization has brought changes in dynamics, the benefits of technological advances and information that continue to grow and become more sophisticated making it easier to establish relationships between individuals via the internet, various social media applications have been developed for example Instagram, Line, Twitter, Facebook, etc., have almost been used by various levels of society to add friends to choosing a partner can also be done through social media. The development of information technology in Indonesia, one of which is marked by the increasing number of users of interconnected networking services or better known as the internet.

Crime is becoming increasingly common in online networks, also known as the internet, one of which is a crime with immoral content. This has an impact on the threats that women are more likely to experience than men. Women are vulnerable to significant impacts and, at the same time, bear greater losses than men. In the current era of globalization, where everything is digital, forms of online-based crime are increasingly prevalent and, of course, have various modes. Certain cases, such as pornographic revenge crimes (*Revenge Porn*), should receive special attention and are not considered ordinary cases because they have a tremendous impact on the victim and may cause damage in the future.

Pornography based on vengeance, also known as *revenge porn*, is the act of publishing sexually charged content by someone with a partner or ex-partner without the person's knowledge. According to Carmen M. Cusack, in her book *"Pornography and the Criminal Justice System,"* revenge pornography is *"pornography that is produced or distributed by an intimate partner with the intent to humiliate or harass the victim."*

In the case of revenge porn, most of the cases are carried out by ex-partners or third parties who want to humiliate and bring down the self-esteem of female victims through their actions, namely by transmitting content containing immoral videos and photos from their ex-partners. It should be emphasized that the sexually charged video was made only for his personal collection, not for commercial purposes or for public consumption. Even if the video or photo containing immoral content is widespread, if it is due to the act of an irresponsible person with a motive to take revenge and was carried out without the consent of someone involved in the recording, then it is clear that this is a criminal act. for violating a person's personal rights. The perpetrators of disseminating immoral content must be held accountable for their actions.

For example, in the case of revenge porn, the decision of the Gresik District Court No. 202/Pid.Sus/2021/PN Gsk dated September 7, 2021, regarding the dissemination of nude videos and photos by an ex-spouse While having sex as husband and wife with the Witness victim of FEP, the defendant MK recorded a video of an intimate relationship scene using the defendant's Iphone 5 S Gold brand mobile phone with the intention of being for the defendant's personal collection. After the defendant recorded a video during intercourse with the victim's witness, the video recorded by the defendant was saved on the defendant's personal Twitter account. Because the victim's witness refused to have sex again, making the defendant MK angry and resentful, the defendant MK sent an immoral video of the defendant with the victim's witness and naked photos of the victim to friends of the witness and the victim via Instagram Direct Message (Putusan Pengadilan Negeri Gresik No. 202/Pid.Sus/2021/PN Gsk, 2021).

Unfortunately, in the occurrence of various cases of revenge porn, it is women who are in the spotlight as the guilty party. Women are seen as parties who deserve to be oppressed, cornered, or exploited in the misogyny culture, which is rooted in our society and has made women's bodies sexual objects. In addition to being required to carry out various legal examination processes for female victims of revenge porn, victims also have to deal with cybercriminals, who consider them the guilty party and do not take sides at all. With the existence of cyberspace, especially the number of social media that are scattered, it should be able to act as a friendly public space for all genders without any barriers between genders, but in fact social media have become a place for

cyber crime containing sexism that is really not friendly, especially for women. Because one of the many victims of revenge porn is that women suffer more losses than men.

In addition to threatening the perpetrator's wishes to be realized by the victim and damaging the good name of female victims, bullying against female victims, especially women, certainly has an impact, both physical and psychological impacts as well as social impacts, which must be borne by female victims. When the revenge porn boom boomed in the victim's environment, the victim's community immediately blasphemed her for her body and needs. The construction of the ideal female body is always built from the point of view of men, so it is not surprising that there are many rude comments that make fun of the intimate parts of the female victim's body. Women's bodies are made into criminals because their sensuality is considered to be able to arouse lust. In fact, in the content of the recording, the female victim is not the only player, there are male players as well. Even the perpetrators who transmit the content are involved in the content, and their existence is ignored and only focuses on female victims.

So far, there are no specific rules regarding *revenge porn*, so there is no preventive effort to prevent this revenge porn act. Not only that, but additional rules that are more specific are needed based on revenge in order to provide a deterrent and commensurate effect for the perpetrators, and the perpetrators are given the harshest possible punishment. Despite the existence of legal instruments that are expected to be "protectors" for victims of revenge porn, there are still empty norms in the Criminal Code regulations that are specifically mentioned. So it is not impossible anymore with the development of the times and the rapid development of information technology and various kinds of social networks, which will result in these acts of revenge becoming more widespread and common. With legislation that regulates the problem of revenge porn on victims, especially women, it is hoped that victims will be protected so that similar cases will be reduced and will not happen again in the future, as well as with harsher penalties on perpetrators so that people are more cautious and do not intend to do revenge porn because they understand the risks and punishments that will be obtained if they do it.

II. RESEARCH METHODS

Research uses normative legal research methods, commonly called "library law research." Because this study is aimed at written regulations, it will necessitate secondary data from the library, in this case focusing on Indonesian criminal law for perpetrators of revenge porn. There are two approaches used in writing this journal, namely the statutory approach (staapproach), which is to examine and analyze the rules that exist within and outside the Criminal Law Code related to revenge porn. The second method used is a conceptual approach, namely legal materials consisting of primary, secondary, and tertiary legal materials, which are then collected using document study techniques. All legal materials that have been successfully collected are then discussed qualitatively, meaning that related legal materials are processed by looking at the quality of use.

III. RESULTS AND DISCUSSION

1. Criminal acts of pornographic revenge are categorized as criminal acts

The development of technology and the ease of accessing the virtual world, especially social media, certainly have several impacts. Not only does it make the world connected, but on the other hand, the internet also provides a way and creates new ways for someone to commit criminal acts. Crimes committed in modern times are now more complex and difficult to detect because they are committed from a distance. The crime of revenge porn is one type of crime that makes use of and benefits from the ease of access to technology and information (Iftah Putri Nurdiani, 2020).

An act will be categorized as a criminal act if it fulfills the elements of a criminal act. Experts express their opinions regarding the definition of criminal acts. Wirjono Prodjodikoro, an expert who adheres to the monistic school (a view that unites elements of criminal acts and elements of

criminal responsibility), expresses his opinion that a criminal act is an act committed by the subject or person of a crime or the perpetrator of a crime, and the perpetrator can be subject to punishment or sanctions in accordance with the criminal act that has been committed (Adati, Medika, and Andarika, 2018).

Another expert who has a dualistic view (separation between actions and criminal responsibility) is Moeljatno. He defines a criminal act as an act that is prohibited by the rule of law, and this prohibition is accompanied by sanctions in the form of a certain crime that will be imposed on anyone who violates the law that has been determined.

To determine whether the act of vengeance meets the qualification of a criminal act, the author uses the Criminal Code as a basis for determining the elements of the act of a crime, based on the theories related to the elements in the crime that have been described above. The following are some of the elements that are filled with revenge porn when viewed from the perspective of the law:

a. Actions (Behavior)

The act or behavior is an absolute element of a criminal act. In the case of revenge porn, based on the opinion of Citron & Frank, revenge porn is described as *"the distribution of sexually graphic images of individuals without their consent."* Another opinion was also expressed by Kirchengast, who revealed that revenge porn involves *"the sharing of intimate images without the consent of the person depicted"* (Kirchengast, Tyrone, 2017). The two opinions basically say that revenge porn is an act of pornography without the consent or permission of the parties involved, or what people call non-consensual. Both opinions can also be understood if the act that was carried out with the mutual consent of the parties involved means that the act committed cannot be called an act of revenge porn but rather cyberporn, because generally there is no purpose of revenge in it, which leads to losses. which will be borne by a person, especially a woman, because there is no agreement on the spread of immoral content that has pornographic content in it. Based on the related explanation of the revenge porn act, there is an element of concrete action, namely, actions that can exist and how they can be imagined before the act is carried out. An act of spreading, distributing, or transmitting what the perpetrator does is included in a concrete act, an active act, namely, an act that requires movement from a certain body, and the act makes the completion of a criminal act conditional. The explanation related to the act of revenge is that there are elements of concrete actions, namely, actions that can exist and how they can be imagined before the act is carried out. An act of spreading, distributing, or transmitting what the perpetrator does is included in a concrete act, an active act, namely, an act that requires movement from a certain body, and the act makes the completion of a criminal act conditional.

b. Error

The element of error is an element that relates from the perpetrator's mind to the form of the act to be performed, as well as everything or something about the object's actions, the realization of how the act is performed, the disgraceful nature of the act, the impact of the act, and many other things. There is a connection in that it will form and burden criminal responsibility for the perpetrator or maker, ensuring that the criminal act is punished. In the case of revenge porn, there is an element of error or intentionality if viewed from the form of the act, namely distributing objects that contain pornography, which of course is contrary to immoral norms in society. Not only that, the error in this case can be seen from the existence of an intention. Deliberation is a will or desire to carry out the desired action and also aims to provide a result of what was done, the consequences that occur are, of course, aimed at the intended victim of revenge porn. In the case of revenge porn, the behavior or act itself is carried out by distributing immoral videos or pornography in cyberspace, consciously and intentionally, with the intention of taking revenge on the victims in the immoral videos and photos.

c. **Objek of a crime**

The object of a crime is closely related to the legal interest to be protected and the formation of the criminal act in question. Object placement behind the behavioral element is always related to the object of a criminal act (Chazawi, Adami, 2017). In the case of revenge porn, the object of the crime is immoral content transmitted via the internet in the form of immoral photos and videos, which, of course, clearly contain pornographic elements. And if the photos and images are disseminated or distributed, it will have a big impact on the victim, especially the female victim. In addition to experiencing losses, it will of course have an impact on the psychological and social lives of the victim; the victim's image will be damaged, and the victim may end his life due to shame in the surrounding environment. The victim will find out later.

d. **The nature of the action in relation to the law of action**

An act is said to contain reproach if it originates from two things, the first of which is called "against the formal law" or "formelle wederrechtelijk" if the act committed is denounced by law. The second is against the material law of materiele wederrechtelijk if the act is condemned by community law (Syahputra, Edy Arianto, 2019). From a normative point of view, based on Supreme Court Decision No. 30 K/Kr./1969 dated June 6, 1970, "every act prohibited by law has an unlawful nature, although in the formulation of the offense it is not always stated." This is because elements of breaking the law may be attached to elements of certain prohibited actions or consequences. When looking at the elements of the act and the object being carried out in the case of revenge porn, it is clear that the element of being against the law is fulfilled. According to the prohibitions and discussions contained in the Pornography Law and the ITE Law, any person or person who disseminates, distributes, or transmits videos or photos containing immoral or pornographic content is prohibited.

e. **The accompanying circumstances**

Accompanying circumstances are conditions where the act committed itself has been included in the formulation of a crime. This situation can be attributed to a variety of factors, including the manner in which the act was carried out. Due to restrictions on how to perform the act itself, the element that was initially abstract or invisible becomes visible and more concrete. In the case of *revenge porn*, the elements of the act are fulfilled by disseminating or distributing content containing immoral or pornographic content, in this case by spreading the immoral content through social media and the internet.

2. **Revenge Pornography In Terms Of Indonesian Criminal Law**

The principle of culpability, or the absence of a crime without guilt, is one of the important principles in criminal law and implies that a person will be punished if a criminal act is committed and can be blamed on him. Criminal liability contains both subjective and objective criticism. Subjective censure implies that the maker is obligated or reprehensible for committing a criminal act. Meanwhile, objective censure means that if the maker commits an act that is against the law, the maker, in this case the perpetrator of a criminal act, commits an unlawful act, and the maker must be subject to criminal punishment according to the applicable positive law.

The act of revenge porn is growing rapidly, accompanied by the development of the internet in this modern era, which is quite significant. This is one of the causes of violations of human rights, especially for women. On December 15, 1985, "The Universal Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power" provides an appeal to members of the United Nations to pay attention to victims of crime by providing fair services during the judicial process, not only to provide compensation and material assistance but also medical and psychological assistance to the government, and it can be done through government agencies and non-government institutions.

The absence of special attention given to the victim, which in this case is called "an essential part of criminal law policy decisions" or "an important part of a criminal law policy decision," so as to make the public less involved in overcoming a crime and of course to cause feelings of insecurity for the victim, and even worse, it can encourage the initiative of someone to take revenge, either

individually or in groups. The emergence of a vacuum of unregulated circumstances and things can lead to societal uncertainty about the law itself. Of course it will cause legal chaos in the future because, after all, the development of society itself is faster than the development of a statutory regulation itself. In Indonesia's positive law, the rules regarding revenge porn are not specifically regulated, but the perpetrators will be subject to criminal responsibility based on several related regulations, as follows:

a. The Criminal Law Code (KUHP)

In Undang-undang pornography is actually not so strict in eliminating pornography from the Criminal Code, but it still uses the Criminal Code. However, it is only given the condition that it does not conflict with the pornography law, which is of course difficult to implement. Article 281 states that a person can be sentenced to a maximum of 2 years in prison or a maximum fine of Rp. 4500 if he has intentionally violated decency and deliberately demonstrated in front of other people that it was against his will to violate decency. Apart from that, Article 282 essentially explains the prohibition against broadcasting, showing, or displaying... pictures or objects whose contents are known to violate immorality. If the prohibition in these provisions is violated, they will be subject to a maximum sentence of 1 year and 6 months' imprisonment or a maximum fine of Rp. 4500. Article 533 Paragraph (3) and (4) state that if a person is openly or not asked to provide writing, pictures, or items that can stimulate lust in teenagers or someone under the age of 18, they will face imprisonment for up to 2 months or a fine of up to Rp. 3000. The explanation of the several Article of the KUHP above basically emphasizes that the measure of the evaluation of acts of revenge porn is placed on the norms of decency. Measures related to the extent to which the intended decency norm is followed naturally raise many expert opinions. According to Kanter and Sianturi, the standard of decency can be seen in the sign of humanity, which shows that a person has dignity as a fellow creature of God. When viewed in a narrow context, decency norms can be linked to sexuality, specifically feelings of shame in relation to sex.

b. Law Number 19 of 2016 Concerning Amendments to Law no. 11 of 2008 concerning Information and Electronic Transactions (ITE)

In the ITE Law Article 27 Paragraph (1) which basically explains that every person who intentionally and does not have the right to transmit or distribute and make electronic information accessible and electronic documents which contain content that violates decency. In addition, in the provisions of Article 45 Paragraph (1), it can be concluded that anyone can be threatened with imprisonment for 6 years and/or a fine of Rp. 1,000,000 at distribute most if the person concerned produces or makes accessible, transmits, and documents with immoral content intentionally and without rights. An understanding of what is meant by "distributing" can be interpreted as the act of sending and/or spreading information or electronic documents to many people through electronic systems or what we call the internet. Based on this explanation, someone who commits revenge porn by spreading immoral or pornographic content of someone with whom his or her spouse or ex-partner is in cyberspace is clearly committing a criminal act that violates the norms of decency and violates the law in accordance with the provisions of Article 27 Paragraph (1) and can be held criminally responsible.

c. Law Number 44 of 2008 concerning Pornography

Article 4 Paragraph (1) Pornography Law states that it regulates prohibitions on the act of making, producing, duplicating, reproducing, broadcasting, distributing, importing, offering, trading, providing, and renting out pornography which contains intercourse, including deviant intercourse, masturbation, nudity or display of nudity, genitalia and child pornography. From the explanation of the article above, it is stated that what is meant by "to make" is not included for himself and for his own interests. In addition to Article 4, Article 29 also explains in essence that a person can be punished with a minimum imprisonment of 6 months and a

maximum of 12 years or a fine of at least Rp. 250,000,000, maximum Rp. 6,000,000,000 if someone has transmitted, reproduced, produced, made available and broadcast pornography clearly or without censorship containing genitalia, masturbation or masturbation, intercourse including deviant intercourse, and so on in accordance with the provisions of Article 4 Paragraph (1). In the formulation of Article 29 Pornography Law, there is more than one act, which results in the overlapping of one act with another. This results in the application of more than one action in one case. As in the example of revenge porn cases that are widely circulated, apart from the party transmitting immoral or pornographic content, the victim who is involved in the content can be subject to criminal sanctions because they are deemed to have created or produced the content without coercion. In the provisions of Article 4 Paragraph (1) of the Pornography Law, it has actually been explained that the meaning of making does not include making for oneself and for one's own interests. However, due to the development of a stigma in society that women should be well-behaved, the existence of pornographic content actually makes the victim boomerang. Society generally tends to corner women because they have behaved inconsistently with the norms of decency in society, so those victims will of course be discriminated against and criminalized as well. This, of course, has a negative impact on the victims, who are mostly women; there is fear in the victims' social lives about sexuality, and their psychology is disturbed as a result of gossip from the surrounding community.

d. Law Number 13 of 2006 Protection of Witnesses and Victims

Article 1 Paragraph (2) clearly states that a victim is someone who suffers mental, physical, and/or economic loss as a result of the crime that befalls him. This article explains that the victim has little to say about what he is experiencing as a result of a crime being committed against him other than to simply submit all his needs to be represented by the state through legal counsel. Moreover, with regard to the victim's position as a result of cyberpornography, the victim is also vulnerable to experiencing material and immaterial losses and is also psychologically disturbed; not only that, but his good name will also be tarnished, and of course he will get a negative stigma from the surrounding community. Article 5 also explains that the victim has the right that, during the process of the case from start to finish in court, the victim will get protection through the LPSK, namely the Victim Witness Protection Agency, according to the rules in the Act. The Victim Witness Protection Agency will assist in fighting for the rights of victims and the legal assistance that victims should receive (Santoso, Benedicta Alodia, and Michael Bezaleel, 2018).

e. Law Number 39 of 2009 concerning Human Rights

In Article 30 and Article 35, guarantees have been given that every citizen is free from threats and fear in his life. On issues related to justice and human rights and their relationship with the upholding of criminal law, it is certainly not an easy thing to realize. There are many incidents that occur in the life of the community that show that problems related to human rights do not receive attention from positive criminal law and also cannot be proven to provide maximum protection for victims. However the immoral content is produced, whether it is with the consent of the parties directly involved in the content or taken secretly by someone who is also involved in it, the distribution of immoral content should still be a violation of privacy rights and should not be carried out. Women have the right to their own bodies and can do anything with them without being judged or humiliated by anyone. The actions of the perpetrators who try to humiliate and degrade the dignity of the victim show how society directly judges and harasses female victims because, as a woman, she should have standards of behavior according to the rules or norms in society. In order to prevent the persistence of a culture that undermines the mindset of the Indonesian people regarding women as victims, it is necessary to provide a legal place for victims of revenge porn so that the legal interests of victims can be protected. The legal rules for perpetrators of acts of revenge porn should be

clarified so that perpetrators are not only accountable for their crimes for spreading immoral content but also for committing sexual harassment because their actions resulted in emotional torture for the victim.

IV. CONCLUSION

The conclusions obtained from the results and discussion above are that, first, an act can be called a criminal act if several elements are met; the elements of a crime in the case of acts of revenge pornography include. The mistake lies in the realization of revenge porn done intentionally and without the permission of the parties involved in the content with the aim of avenging them. The object of the crime is the content itself, which contains immoral or pornographic pictures, photos, or videos, elements against the law.

If viewed under Indonesian Criminal Law, perpetrators of acts of revenge porn are subject to criminal liability in accordance with the provisions of Article 281 and Article 282 of the Criminal Code, the Law on Information and Electronic Transactions, and the Law on Pornography. Legal protection for victims of revenge porn is contained in Law Number 13 of 2006 concerning Protection of Victims and Witnesses. Even so, as discussed above, there are still vague articles so that victims still suffer losses, as in Article 29 of the Pornography Law, which regulates criminal provisions for everyone and is not only aimed at the perpetrators of dissemination but also those who create the immoral content. The ambiguity in this article results in the victim being viewed badly and considered someone who is guilty and should be punished.

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