

## Legal Protection Of Women Victims of Revenge Porn Based on Pornography and ITE Law

I Putu Ngurah Santi Juni Dwi Adnyana<sup>1</sup>, Titiek Guntari<sup>2</sup>  
<sup>1,2</sup>Sekolah Tinggi Ilmu Hukum IBLAM

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### ABSTRACT

Revenge porn is a form of coercion, threat to someone, generally female, to spread pornographic content in the form of photos or videos. The perpetrator could be his boyfriend, ex-boyfriend who wants to come back, or unidentifiable person. As a result of these actions the victim suffers immaterial losses in the form of psychological pressure and exclusion from society. Law enforcement is important to protect victims. KUHAP as a regulation regarding the judicial process must pay attention to the rights of victims. This research uses normative legal research, by looking at the current norms. Data collection is done by literature study namely by looking for regulations, and theories from books journals and research results. The problem in this study is how the legal arrangements in Indonesia are related to the phenomenon of Revenge Pornography?. And How Legal Protection for Women Victims of Revenge Pornography?. The results of this study indicate that the legal arrangements regarding revenge porn which are regulated in the Pornography Law and the ITE Law are only criminal acts and criminal threats, and catch criminals. However, legal protection for women victims of revenge porn is not regulated in the Pornography Law and the ITE Law. Regarding the protection of women victims of revenge porn so far it has not been regulated in the Pornography Law and the ITE Law and in judicial practice, legal protection of the victim is considered sufficient by imposing a sentence on the perpetrator. Whereas the protection of women victims of revenge porn should protect the dignity of the victims, the honor of the victim and the psychological aspects of the victim or the victim's psychology.

### ABSTRAK

Pornografi balas dendam (*Revenge Porn*) adalah bentuk pemaksaan, ancaman terhadap seseorang, umumnya perempuan, untuk menyebarkan konten porno berupa foto atau video. Pelaku bisa pacarnya, mantan pacar yang ingin kembali, atau orang yang tidak bisa diidentifikasi. Akibat dari perbuatan tersebut korban mengalami kerugian immateriil berupa tekanan psikologis dan pengucilan dari masyarakat. Penegakan hukum menjadi penting untuk melindungi korban. KUHAP sebagai peraturan mengenai proses berjalannya peradilan harus memperhatikan hak-hak korban. Penelitian ini menggunakan penelitian hukum normatif, dengan melihat pada norma yang berlaku saat ini. Pengumpulan data dilakukan dengan studi kepustakaan yaitu dengan mencari peraturan-peraturan, dan teori-teori dari buku, jurnal dan hasil penelitian. Permasalahan dalam penelitian ini adalah Bagaimana pengaturan hukum di Indonesia terkait dengan fenomena Pornografi Balas Dendam? Dan Bagaimana Perlindungan hukum terhadap perempuan korban Pornografi Balas Dendam?. Hasil penelitian ini menunjukkan bahwa pengaturan hukum mengenai pornografi balas dendam yang diatur dalam UU Pornografi dan UU ITE hanya tindak pidana dan ancaman pidananya, serta menjerat pelaku kejahatan saja. Tetapi, perlindungan hukum terhadap perempuan korban pornografi balas dendam tidak diatur dalam UU Pornografi dan UU ITE. Mengenai perlindungan hukum terhadap perempuan korban pornografi balas dendam selama ini belum diatur dalam UU Pornografi dan UU ITE dan dalam praktek peradilan, perlindungan terhadap korban dianggap cukup dengan menjatuhkan pidana terhadap pelaku. Padahal seharusnya perlindungan terhadap perempuan korban pornografi balas dendam harus melindungi martabat korban, kehormatan korban dan aspek kejiwaan korban atau psikologis korban.

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**Corresponding Author:**

I Putu Ngurah Santi Juni Dwi Adnyana,

Sekolah Tinggi Ilmu Hukum IBLAM

Jl. Kramat Raya No.25, RT.3/RW.2, Kramat, Kec. Senen, Kota Jakarta Pusat, Daerah Khusus Ibukota Jakarta 10450, Indonesia

Email: santiadnyana1998@gmail.com

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## I. INTRODUCTION

Through internet networks such as social media, people can access and disseminate information easily, and can find out about the latest developments in the world, be it political news, lifestyle, social, economic, environmental, and so on. In this case, free internet access in virtual society makes some parties abuse the function of using the internet, for example the use of social media which should be used as a medium in building interactions and relationships with other people, is instead used as a place for online-based crime or violence which is often known as cybercrime. (Christian, 2020).

In the current era of globalization, relationships between the opposite sex and technological sophistication have a closeness in connecting one individual to another individual, therefore in this industrial era 4.0 the benefits of technological and information advances continue to develop and add sophistication to us in establishing social relations through internet.<sup>2</sup> With current technological advances, making the use of the internet almost limitless for access by the public, so that it can lead to a crime against other parties. Either in the form of pornography or other crimes.

Pornography is included in things that are prohibited because it violates the rules of decency in society. Everyone can become a victim of pornography, victims of pornography can be children, women and men (Zham-Zham at al., 2022). And perpetrators of pornography victims can be carried out by people who have family relations, for example parents, siblings, and so on, and it is undeniable that lovers or former lovers commit pornographic acts as a motive for revenge (Revenge Porn) by spreading the victim's personal content. such as personal photos and videos that are pornographic in nature via social media, such as line, twitter, instagram, facebook, telegram and others.

Regarding Revenge Porn or revenge pornography which is an act by utilizing the possession of pornographic material that is 'legally' obtained, then disseminated with the aim of 'revenge' after breaking up from a relationship (Adawiyah, 2018). Revenge Porn cases usually begin with "taming" which is accompanied by threats to spread their private content to social media if the perpetrator's wishes are not complied with. This action shows gender-based violence in which patriarchal values view women as subordinate to men where male actors feel entitled to regulate and control women, be it controlling women's sexuality or gender identity (Wijaya & Ananta, 2016).

Even though constitutionally, every citizen has the right to protection, this is in accordance with article 28 D paragraph (1) of the 1945 Constitution which states, "Every person has the right to recognition, guarantees, protection and legal certainty that is just and equal treatment. equal before the law".

Every citizen also has the right to resolve their problems through legal channels. This is stated in Article 28 G paragraph (1) of the 1945 Constitution, which reads "Everyone has the right to protection of self, family, honor, dignity and property under his control, and has the right to feel safe and protected from threats of fear to do or not do something that is a human right (Runtu, 2022)." In the Criminal Code, it has been regulated regarding Moral Offenses. However, in detail, the offense of decency is specifically explained in Law Number 44 of 2008 concerning Pornography. And also Law Number 11 of 2008 concerning Information and Electronic Transactions.

Pornography is not only about the violations committed by the perpetrators of immoral acts. However, there are victims of pornographic crimes that must be brought to the attention of law

enforcement officials (Chazawi, 2022). The case of pornography victims that should be of concern is revenge pornography (Tiara Robiatul Adawiyah, 2018).

Victims of revenge pornography also need legal protection and certainty so as not to cause victim blaming for the victim, because the Criminal Procedure Code only regulates the course of a criminal act's trial. Although, in fact the Criminal Procedure Code regulates victims, namely Articles 108, 133, 134 and 160. However, these articles do not clearly discuss the protection and fulfillment of victims' rights. It is often difficult for victims of pornography to get justice, but pornography victims can be subject to articles in the Pornography Law for producing content that violates immorality.

So far, justice in criminal law has been considered upheld if perpetrators of criminal acts/violators of criminal law, after going through the judicial process crime, is subject to sanctions in accordance with the rules of criminal law. In a word otherwise, the loss or suffering of the victim is deemed to have been compensated, paid for or otherwise recovered by the perpetrator by undergoing and accepting the sentencing process. But if observed carefully, the substance and settlement procedure criminal acts through criminal law channels, which as long as they are carried out, are almost non-existent bring any benefits to the recovery of victims' suffering (Widiartana Dr. G, 200).

As a result of the revenge taken by the perpetrator against the victim through the spread of pornographic photo and video content, it creates psychological pressure on the victim, moreover Indonesia is a country that upholds moral values, so victims often get bad ratings because they have violated moral values. Moreover, these photos and videos are difficult to delete because in the digital world they will continue to be disseminated by other internet users.

Until now there are no regulations governing revenge pornography. So there is no attempt to prevent this revenge pornography. Both the Law, the Criminal Procedure Code, the ITE Law and the Pornography Law which regulate the judicial process should also pay attention to the impact experienced by victims of this revenge pornography. Because the victim suffered an immaterial loss in the form of psychological pressure.

Because recovery for victims is also the most important thing, such as restoring the victim's good name and psychology (Anggara, G., & Subawa, M, 2018). Based on the description of the background above, the problem in this study is How is the legal regulation in Indonesia related to the phenomenon of Revenge Porn? And also, How is the legal protection for women who are victims of Revenge Porn?

## II. RESEARCH METHOD

The approach method used in this study is a normative juridical approach, because the researcher conducted a good literature study on primary legal materials in the form of laws and regulations, jurisprudence, and others (Asikin, 2016). And also secondary legal material, namely the results of research, and the work of legal experts. As well as tertiary legal materials, namely legal dictionaries and encyclopedias. This type of research is normative research, namely legal research conducted by examining literature or secondary data as a basis for research by conducting a search of regulations and literature related to the problem under study (Soekanto, 2007). The data collection method was carried out by conducting library research (Marzuki, 2005). Data processing was carried out and analyzed qualitatively, that is, after the data from the research results were collected, the data was processed and presented in the form of descriptions and analyzed both based on legal theories, legal principles, and statutory regulations. This study aims to determine the legal arrangements in Indonesia related to the phenomenon of revenge pornography (Revenge Porn) and to find out how the legal protection in Indonesia is for women victims of revenge pornography (Revenge Porn).

### III. RESULTS AND DISCUSSION

#### 1. Legal Regulations in Indonesia Related to the Phenomenon of Revenge Pornography

Regulations regarding Revenge Porn are regulated in the Pornography Law and the ITE Law, in the following the authors describe the regulations contained in the Pornography Law and the ITE Law:

a. Law Number 44 of 2008 Concerning Pornography

In Article 1 of Law Number 44 of 2008 concerning Pornography, it is explained that pornography is pictures, sketch illustrations, photographs, writing, sounds, sounds, moving pictures, animations, conversation cartoons, gestures, or other forms of messages, through forms of communication media and / or performances in public, which contain obscenity or sexual exploitation that violates the norms of decency in society.

The Pornography Law has normatively provided arrangements for criminal procedural law that applies only to pornographic crimes. However, in Article 23 of the Pornography Law it is explained that "prosecution and examination in court of pornographic violations are carried out based on the Law on Criminal Procedure, unless otherwise provided for in this Law." This arrangement shows that arrangements related to the procedural law on pornography still refer to the Criminal Procedure Code.

Various legal terms that are indirectly related to the interests of victims of crime are found in various provisions in Indonesian positive law, namely: victims of crime as 'Witnesses' are regulated in Articles 1 to 27 of the Criminal Procedure Code, 'Complainants' (Article 72 of the Criminal Code), third parties interested parties (Articles 80 and 81 of the Criminal Procedure Code), parties who are aggrieved (Articles 98 and 99 of the Criminal Procedure Code). "Reporter" (Article 108 of the Criminal Procedure Code) or "Witness" or "Witness of the Victim" (Article 160 of the Criminal Procedure Code) (Tiara Robiatul Adawiyah, 2018).

The terms contained in Indonesian positive law do not regulate the existence and position of victims of crime in the criminal justice system. These terms can also be said to not provide justice to victims of crimes in the criminal justice system. obtain justice in the criminal justice system (Tiara Robiatul Adawiyah, 2018). Victims of crime are said to be victims of the criminal justice system, because they have reported the victimization they experienced to the police, as a door to report the victimization they experienced to the police, as the gateway for cases to go to court, the criminal justice system is not the gateway for cases to go to court, the criminal justice system is not again paying attention to victims of crime again paying attention to victims of crime as reporting parties or those who are aggrieved. Furthermore, victims of crime are only witnesses to violations of criminal law for the victimization they experience. violation of criminal law for the victimization they experienced (Adawiyah, 2018).

b. Law Number 19 of 2016 Concerning Information and Electronic Transactions (ITE)

Article 27 paragraph (1) states that "Every person intentionally and without rights distributes and/or transmits and/or makes accessible electronic information and/or electronic documents that have content that violates decency." What is meant by distributing is sending and/or spreading Electronic Information and/or Electronic Data to many people or various parties through electronic systems. It can be concluded that spreading, spreading or distributing has the same meaning, namely sending.

Furthermore, the form of threats has been regulated in Article 27 paragraph (4) jo. Article 45 paragraph (4) of Law Number 19 of 2016 concerning Information and Electronics, which reads "Any person who without rights distributes, transmits or makes accessible Information or Electronic Documents that contain extortion and/or threats." This crime is punishable by imprisonment for a maximum of 6 years and/or revenge for a maximum of 1 billion.

Not only the article above that can impose sanctions on perpetrators, but there is still article 29 jo, article 45B of the ITE Law, which reads "Any person who without rights sends information or electronic documents that contain threats of violence or intimidation directed personally." Those

threatened with imprisonment for a maximum of 4 (four) years and/or a maximum fine of 750 million rupiah.

## **2. Protection for Women Victims of Revenge Pornography (Revenge Porn)**

Article 30 of Law Number 39 of 1999 concerning Human Rights which reads: "Every person has the right to feel safe and secure and protection against threats of fear to do or not do something." And Article 35 of the Human Rights Law: "Every person has the right to live in a peaceful, safe and secure society and state order that respects, protects and fully implements human rights and basic human obligations as stipulated in this law." Articles 30 and 35 of Law Number 39 of 1999 concerning Human Rights guarantee that every citizen is free from fear and threats.

Law Number 13 of 2006 concerning the Witness and Victim Protection Agency is an interesting legal breakthrough in accommodating the rights of witnesses and victims which are not fully regulated in the Criminal Procedure Code, but as an initial legal product that provides protection for these rights. victims (Susetyo, 2004).

In this case of revenge porn, the victim experiences psychological suffering and shame about what happened to her. Because the losses arising from revenge pornography (Revenge Porn) are not only material losses, but also immaterial losses.

Victims will experience severe psychological pressure due to the spread of immoral photos or immoral videos which continue to be the subject of public discussion all the time. For the community, the existence of the widespread distribution of immoral photos or immoral videos creates anxiety due to the violation of social norms of decency. Not to mention that the photo or video is difficult to delete because it is being reproduced continuously by other internet users.

Article 71 of Law Number 39 of 1999 concerning Human Rights emphasizes that the state is responsible for guaranteeing the human rights of its citizens. Attention to and protection of the interests of victims of sexual violence both through the judicial process and through certain social care facilities is an absolute part that needs to be considered in criminal law policies and social policies, both state power institutions and existing social institutions (Surayda, 2017).

Laws in Indonesia have regulated decency offenses through the Electronic Information and Transaction Law and the Pornography Law. Article 27 paragraph 1 of the ITE Law states, "Every person intentionally and without rights distributes and/or transmits and/or makes electronic information and/or electronic documents accessible that have content that violates decency." The article emphasizes that spreading or making accessible content that violates decency is an illegal act.

The criminal act of pornography is formulated in Article 29 in conjunction with article 4 paragraph (1) as follows: "Everyone who produces, makes, reproduces, reproduces, distributes, broadcasts, imports, exports, offers, trades, rents, or provides pornography as referred to in Article 4 paragraph (1) shall be punished with imprisonment for a minimum of 6 months and a maximum of 12 years and/or a fine of a minimum of IDR 250,000,000 and a maximum of IDR 6,000,000,000".

According to I.B Wyasa Putra and Lili Rasjidi stated that "Laws can function not only to create certainty, but also guaranteed protection and balance which are only flexible and adaptive, but also predictive and anticipatory. Which in particular is the distribution of resources, both at structural and individual levels" (Prakoso, 2016).

## **IV. CONCLUSION**

Based on the results it can be concluded that the phenomenon of revenge pornography in Indonesia has been regulated in Law Number 44 of 2008 concerning Pornography and Law Number 19 of 2016 concerning Information and Electronic Transactions. In article 23 of the Law on Pornography it is explained that the stages of prosecution and examination at court hearings are based on the Criminal Procedure Code. Furthermore, in the ITE Law it is explained that the activity of disseminating or distributing pornographic content carried out by perpetrators is regulated in article 27 paragraph (1). Protection for women victims of revenge pornography (Revenge Porn) so far has not been regulated in the Pornography Law and the ITE Law and in judicial practice, protection for victims is considered

sufficient by imposing a criminal sentence on the perpetrator. Even though the protection of women victims of revenge pornography (Revenge Porn) should protect the dignity of the victim, the honor of the victim and the psychological aspects of the victim or the psychology of the victim.

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