

THE URGENCY OF LEGAL PROTECTION FOR VICTIMS OF PORNOGRAPHY (REVENGE PORN)

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ABSTRAK

Undang-undang yang mengatur secara khusus tentang kesusilaan tersebut adalah Undang-Undang Nomor 44 Tahun 2008 Tentang Pornografi dan juga Undang-Undang Nomor 11 Tahun 2011 Tentang Informasi dan Transaksi Elektronik. Pornografi bukan hanya mengenai pelanggaran yang dilakukan oleh pelaku penyebar tindak asusila tersebut saja tetapi ada korban dari tindak pidana pornografi yang harus menjadi perhatian aparat penegak hukum. Kasus korban pornografi yang harus menjadi perhatian adalah pornografi balas dendam (revenge porn). Tujuan penelitian adalah untuk mengetahui pengertian revenge porn, mengetahui status revenge porn di dalam paradigma hukum indonesia, mengetahui urgensi perlindungan hukum bagi korban pornografi balas dendam (revenge porn). Metode penelitian adalah metode normatif eksplisit. Hasil penelitian *Revenge porn* adalah kegiatan menyebarkan konten seksual baik dalam bentuk foto maupun video tanpa seizin orang yang muncul di dalam foto dan video tersebut. Tujuannya bisa untuk balas dendam (*revenge*) atau menjelekkan orang tersebut. Pornografi sebagai balas dendam berdasarkan pendekatan Sobural merupakan kejahatan seksual karena berkaitan dengan aktivitas seksual dan mengumbar hawa nafsu seksual dengan menyebarkan materi pornografi.

Kata Kunci : Perlindungan hukum, Revenge Porn, Pornografi.

ABSTRACT

The laws that specifically regulate decency are Law Number 44 of 2008 concerning Pornography and also Law Number 11 of 2011 concerning Information and Electronic Transactions. Pornography is not only about violations committed by perpetrators of immoral acts, but there are victims of pornographic crimes that must be the attention of law enforcement officials. The case of victims of pornography that must be considered is revenge porn. The purpose of this research is to know the meaning of revenge porn, to know the status of revenge porn in the Indonesian legal paradigm, to know the urgency of legal protection for victims of revenge porn. The research method is an explicit normative method. The results of Revenge porn research are activities to spread sexual content in the form of photos and videos without the permission of the people who appear in the photos and videos. The goal can be for revenge or badmouthing the person. Pornography as revenge based on the Sobural approach is a sexual crime because it is related to sexual activity and the indulgence of sexual desire by distributing pornographic material.

Keywords: Legal Protection, Revenge Porn, Pornography.

INTRODUCTION

Background Of The Problem

The number of online crimes or cybercrime has become a new trend in many countries, including Indonesia. Almost uncontrolled use of the internet makes anyone vulnerable to becoming victims of various crimes in cyberspace. Sexual crimes, pornography, trafficking, bullying and other forms of crime committed online are becoming increasingly large threats lurking for the nation's next generation. One of the misuses of the internet is pornography. Pornography is prohibited because it violates the rules of decency. Everyone can become a victim of pornography, children, women, men, even transvestites (men and women).

Constitutionally, the 1945 Constitution guarantees its citizens to receive protection. Article 28 D paragraph (1) of the 1945 Constitution states, "Everyone has the right to recognition, guarantees, protection and fair legal certainty as well as equal treatment before the law."

Regulations regarding morality offenses are regulated in the Criminal Code. However, these decency offenses have developed over time. The law that specifically regulates morality is Law Number 44 of 2008 concerning Pornography. And also Law Number 11 of 2011 concerning Information and Electronic Transactions. Pornography is not only about violations committed by perpetrators who spread immoral acts. But there are victims of criminal pornography crimes who must be of concern to law enforcement officials. The case of pornography victims that should be of concern is revenge porn.

Revenge porn is a serious problem in several countries. America and Japan are countries where possessing pornographic files for personal use is legal. However, this backfired on the citizens of the country when files containing pornography that were previously only intended for personal use were misused by the perpetrators.

Formulation Of The Problem

Based on what has been described previously, there are several problem formulations, namely:

1. What is the meaning of Revenge Porn?
2. Is Revenge Porn a crime?
3. What is the urgency of legal protection for victims of revenge porn?

RESEARCH METHODS

The research method used is an explicit normative method, namely a research method that emphasizes secondary data, namely by studying and reviewing legal principles and

positive legal rules originating from library materials contained in statutory regulations and provisions. other legal provisions. Research is carried out by examining library materials or secondary data in the form of legislation and books written by legal experts, articles, journals related to the research title.

DISCUSSION

Understanding Revenge Porn

Revenge porn or pornography as revenge is an act of pornography that takes advantage of ownership of pornographic material that is obtained 'legally' but is distributed with the aim of 'revenge' after breaking up a relationship. Acts of revenge porn or pornography as revenge are often referred to by other terms 'Non consensual pornography' or 'involuntary pornography' because the dissemination of immoral material does not have the consent of the victim. Citron & Franks emphasize the meaning of revenge porn as “the distribution of sexually graphic images of individuals without their consent.” or Kirchengast's opinion as "the sharing of intimate images without the consent of the person depicted”.

A different definition was put forward by Matsui who described it as "the practice of posting and distributing sexually explicit images of an ex-partner on the Internet after a breakup.” Similar but not the same, these two definitions have different emphases. The first definition emphasizes the importance of 'their consent to publish sexually graphic' or consent to disseminate pornographic material so that if the second both parties (maker and model) do not agree, this is considered a crime. This first understanding is related to Indonesian criminal law, specifically not pornography can be applied.

Dissemination of pornographic material even with the consent of both parties is still a criminal act. The Pornography Law only provides for making pornography for one's own interests (Explanation of Article 4 paragraph (1) of the Pornography Law does not include distribution. Furthermore, in the second definition, acts of pornography as revenge are prohibited for distributing pornographic material from an ex-lover (ex-partner).) so that the emphasis is on pornographic substances that violate legal provisions. This second definition is acceptable in the Pornography Law because pornography is revenge revenge is a form of pornography just don't note it characteristic of his actions.

Revenge Porn Is a Crime

The criminological approach has a very close relationship with criminal law. The study of criminal law focuses on determining criminal acts and responsibility if there is a violation

of criminal law provisions. Criminology provides assistance in understanding the causes or causes of a crime. The contribution of criminology to criminal law is very large in efforts to understand an act so that it can be assessed or referred to as a crime which, if later determined by law, becomes a prohibited act. Various criminological approaches have been introduced as an effort to understand crime, however there are still few criminological approaches that are based on the situation and conditions of Indonesian society.

Cyber libertarian groups assert that "Accordingly, the 'Law of Cyberspace' would largely be determined by a free market in regulation in which network users would be choose those sets they found most congenial." The social value system that is emphasized prioritizes freedom in the development of the use of information technology. This does not mean that cyberlibertarian groups reject legal provisions. Legal provisions are formed based on freedoms that are naturally established by internet users as generally accepted. The context of institutionalizing the value of freedom continues to be carried out in every electronic transaction carried out by internet service providers or internet providers. Layers of power in internet use are not formed from the start but are formed right away in the process of electronic transactions.

Someone who has the ability to operate information technology more proficiently than other users will gain a 'stronger position' in terms of access to data acquisition and exchange.

So, cyberlibertarians in mapping the power that exists in internet society place internet service providers as 'moderators of information traffic' while internet users are in the arena of information competition. The condition of a cyberpaternalist society is actually the opposite of a cyberlibertarian society. The value system of cyberpaternalist society has been formed from the start by internet service providers or websites available on the internet. Generally, internet service providers or websites adopt the national legal concept of the country of origin of the internet service provider or website creator. Implementation of national law

usually marked by the use of the final domain name address, in the form (.id for Indonesia, .au for Australia, .cn for Canada).

The societal value system that is implemented is exactly the same as the concept of the society of the country of origin. What is interesting about the process of institutionalizing values is that cyberpaternalists not only emphasize the applicable legal rules of the country concerned but also condition internet users to follow the legal stages in force. Internet users who want to use website facilities inevitably learn about the conditions and stages that apply.

Structural factors clearly appear to be held by internet service providers who from the start have established procedures in accordance with the laws of their country.

The condition of internet society when related to revenge porn turns out to be more inclined towards the condition of cyberlibertarian society. Even though the Convention on Cybercrime was created in 2000, this does not mean that every country applies the provisions of the convention with the same size and regulatory model, including regarding pornography.

The exchange of information still continues without time or area limits, even at the same size. What is considered a violation of decency in one country is interpreted differently from one country to another. The boundaries for displaying pornography between Indonesian society and Dutch society are not the same, considering the different cultural backgrounds and appreciation of humanity. As a result, information containing violations of decency continues to circulate freely while restrictions are left to the context of real society by each country.

This condition causes pornography via the internet to have different characteristics from pornography in general.

Lim38 explains these differences in several ways, including:

- 1) It can be infinitely copied and distributed at minimal cost.
2. The quality of images does not degrade on copying.
3. It is difficult for law enforcement to detect due to the size and structure of the Internet and the availability of encryption.
4. It cannot be seized, in the normal sense of them, once it has been deemed illegal because it is very easy to restock after a conflict.

Revenge porn perpetrators, like internet users, basically understand these four things and the conditions of internet society. Freedom and ease of obtaining and uploading information is understood as a person's right to privacy which is supported by the 'mirage of unlimited freedom of information' offered by cyberlibertarian groups.

The act of uploading naked photos which is an act of degrading the dignity of other people is seen as freedom to share information with others. This can be seen from the use of social media in the form of Facebook and WhatsApp reflects unlimited freedom of self-worth, a habit that is considered a subjectively good thing, for example updating one's status as the owner of information that is 'useful' for oneself. Perpetrators of pornography as revenge experience 'reinternalization of values' again when their actions are declared guilty by community law enforcement agencies.

The Urgency of Legal Protection for Revenge Porn Victims

Article 30 of Law Number 39 of 2009 concerning Human Rights which reads:

"Everyone has the right to a sense of security and tranquility as well as protection against the threat of fear of doing or not doing something."

And Article 35 of the Human Rights Law:

"Everyone has the right to live in a peaceful, safe and secure social and state order that respects, protects and fully implements human rights and basic human obligations as regulated in this law."

These two articles guarantee that every citizen is free from fear and threats. Lack of attention to the victim, which today is referred to as "an essential part of criminal law policy decisions", can reduce community participation in crime prevention, give rise to feelings of insecurity and worse still can encourage personal initiative to carry out retaliation, whether carried out individually.

or in the form of "vigilante groups". In this case, it is often asked that criminal politics should not be too oriented towards the perpetrators of criminal acts (less offender oriented). 2

The issue of justice and human rights in relation to criminal law enforcement is not a simple task to realize. Many events in people's lives show that these two things do not receive serious attention from the government. Even though it is very clear in Pancasila, as the philosophy of life of the Indonesian people, issues of humanity and justice have a very important place as the embodiment of just and civilized Humanitarian Principles and the Principles of Social Justice for all Indonesian people. One example of the lack of attention to issues of justice and human rights in criminal law enforcement is related to legal protection for victims.

So far, both material law and formal law have not fully provided protection for victims. The focus of attention in a criminal justice process is the person who broke the law, namely the suspect or defendant. Suspects or defendants as perpetrators of criminal acts must face state officials for the sake of upholding law and justice. Even though it is constitutionally regulated that everyone has the right to be protected, in practice the applicable legal regulations still do not answer this issue. Treatment of victims during the criminal justice process is an illustration of protection for victims.

Concrete proof of this view is that there are only a few articles in it

The Criminal Procedure Code reflects protection for victims. the article

among others :

1. Article 80 of the Criminal Procedure Code

A request to examine whether or not a termination of an investigation or prosecution is valid can be submitted by an investigator or public prosecutor, or an interested third party to the chairman of the district court, stating the reasons.

1. Article 108 paragraph (1) KUHAP

Every person who experiences, sees, witnesses and/or becomes a victim of an incident that could be avoided, investigators are obliged to notify the victim's family first.

2. Article 133 paragraph (1) KUHAP

In the event that an investigator, in the interests of justice, handles a victim who is injured, poisoned or dead, who is suspected to have caused an incident which constitutes a criminal act, he has the authority

submit a request for expert information to a judicial medical expert or doctor or other expert.

3. Article 134 paragraph (1) KUHAP

In the event that it is absolutely necessary where it is no longer possible to avoid a post-mortem, the investigator is obliged to notify the victim's family first.

4. Article 160 paragraph (1b) KUHAP

The first person to hear the statement is the victim who is the witness.

5. Article 98 paragraph (1) KUHAP

If an act that is the basis for an indictment in a criminal case examined by a district court causes harm to another person, then the presiding judge at the trial may decide, at the person's request, to combine the claim for compensation with the criminal case.

6. Article 99 paragraph (1) KUHAP

If the aggrieved party requests to combine the lawsuit case with the criminal case as intended in article 98, then the district court shall consider its authority to try the lawsuit, regarding the basic truth and regarding the law for compensation for the costs of the injured person.

7. Article 99 paragraph (2) KUHAP

Except in the case where the district court declares that it has no authority to hear the lawsuit as intended in paragraph (1) or the lawsuit is declared inadmissible, the judge's decision only contains a determination of compensation for costs incurred by the injured party.

8. Article 99 paragraph (3) KUHAP

Decisions regarding compensation automatically have permanent legal force if the criminal decision also has permanent legal force.

9. Article 100 paragraph (1) KUHAP

If there is a merger between a civil case and a criminal case, the merger will automatically take place at the appellate level examination.

The existence of these provisions cannot fully guarantee victims' access to justice in the criminal justice system. Crime victims are said to be victims of the criminal justice system, because they have reported their victimization to the police, as the gateway for cases to go to court, the criminal justice system no longer pays attention to crime victims as reporting parties or those who have been harmed.

Next, the victim crime only as a witness to a violation of criminal law due to the victimization he experienced as stated in Article 160 paragraph (1b) of the Criminal Procedure Code.³ The importance of regulating illegal content is based on at least two things. First, there is a need for legal protection such as the protection provided in the real or physical world. The cyber world is a virtual world created through the development of information and communication technology. The virtuality of this world does not eliminate the fact that at least until now the people in the cyber world are a collection of people from the physical world and the impact of various types of electronic transactions carried out in the cyber world can be felt directly and concretely in the physical world.

Second, with the internet, information can be spread and forwarded to various corners of the world instantly and can be accessed from various countries. Moreover, everyone can use a name other than their actual name in cyberspace either anonymously or with an alias.

This information that is sent or duplicated can be stored for a very long period of time. Search engine technology makes it easier for many people to search for and get the information they need. With the internet, prohibited content can be distributed widely without their true identity being known. Even within certain limits, this search engine can provide personal information, such as a person's personal identity.

Thus, the internet can be a means of disseminating information that has a broad and unlimited impact. This can of course cause losses for the victim, both materially and immaterially. In this case of revenge pornography, the victim experiences more psychological suffering such as shame. If the amount of compensation is only determined based on material

losses, this will be detrimental to the victim. Not all victims' suffering can be calculated materially, but also immaterially.

The impact of pornography as revenge where the victim will experience severe psychological pressure due to the spread of immoral photos or immoral videos because they continue to be the subject of public discussion all the time. For the public, the widespread distribution of immoral photos or immoral videos causes unrest due to violations of societal norms of decency. Not to mention that photos or videos are difficult to delete because they are duplicated continuously by other internet users.

Revenge Porn occurs when an ex-lover dumps his love and then refuses to accept it. Then the perpetrator spreads sexual content in the form of naked pictures, sex videos and so on as a threat to get the victim to come back to him. If the victim refuses, the content is distributed to social media and the wider internet. One of the victims with an undisclosed identity told his ordeal to a news portal. His ex-girlfriend shared her private photos on social media.

The perpetrator distributed photos of the victim after breaking up the relationship so that the victim would reconnect with the perpetrator. It's not just the victim who suffers, but also his family. Due to this incident, the victim experienced trauma.

According to Muladi, in the framework of the regulatory concept for the protection of victims of criminal acts, the first thing that must be considered is the essence of the losses suffered by the victim. The essence of the loss is not only material or physical suffering but also psychological. This is in the form of "the trauma of losing trust in society and public order". Symptoms of this syndrome can include anxiety, suspiciousness, cynicism, depression, loneliness and other avoidance behavior.

Meanwhile, to accommodate protection, there are several forms of protection for victims, namely:

1. Compensation

Judging from the interests of the victim, the concept of compensation contains two benefits, namely first, to cover material losses and all costs that have been incurred. And second, it is the emotional satisfaction of the victim. Meanwhile, seen from the perspective of the perpetrator's interests, the obligation to compensate for losses is seen as something concrete and directly related to the mistake committed by the perpetrator.

The core aim of providing compensation is none other than to develop justice and welfare of victims as members of society, and the benchmark for its implementation is to

provide victims with the opportunity to develop their rights and obligations as human beings. On this basis, the program for providing compensation to victims should be a combination of efforts from various approaches, both approaches in the field of social welfare, humanitarian approaches and criminal justice system approaches.

2. Restitution

Restitution in accordance with the Principle of Restoration in Its Original Condition (*restitutio in integrum*) is an effort that victims of crime must be returned to their original state.

the original condition before the crime occurred even though it is based on the fact that it is impossible for the victim to return to the original condition. This principle emphasizes that the form of recovery for victims must be as complete as possible and cover various aspects resulting from the consequences of the crime. With restitution, victims can have their freedom, legal rights, social status, family life and citizenship restored, returned to their place of residence, their job restored, and their assets restored. In practice, in almost all countries, the concept of restitution has been developed and given to crime victims for their suffering as victims of criminal acts.

In this concept, the victim and his family must receive fair and appropriate compensation from the guilty person or the third party responsible. This compensation will include the return of property or payment for damage or loss suffered, compensation for costs incurred as a result of casualties, provision of services and rights of recovery.

3. Compensation

Compensation is a form of compensation that can be seen from humanitarian and human rights aspects. The idea of realizing social welfare in society based on the commitment of a social contract and social solidarity makes society and the state morally responsible and obliged to protect its citizens, especially those who experience disaster as victims of crime. Compensation is a form of compensation that is completely independent of how the judicial process goes and the decisions that are handed down, even the source of funds for this is obtained from the government or general funds.

4. Counseling

In general, this protection is given to victims as a result of the negative psychological impacts of a criminal act. Providing assistance in the form of counseling is very suitable for crime victims who experience prolonged trauma, such as in cases involving morality.

5. Medical Services or Assistance

Given to victims who suffer medically as a result of a crime. The medical services in question can take the form of a medical examination and a written medical report (visum or medical certificate which has the same legal force as evidence). This medical information is needed especially if the victim wants to report the crime that happened to him to the police for further action.

6. Legal Assistance

The provision of legal assistance to victims of crime must be provided whether requested or not requested by the victim. This is important, considering it is still low the level of legal awareness of the majority of victims who suffer from this crime. The attitude of allowing crime victims not to receive proper legal assistance can result in the condition of crime victims getting worse.

7. Providing Information

Providing information to victims or their families related to the process of investigating and examining criminal acts experienced by victims. Providing this information plays a very important role in efforts to make the community partners with the police because it is through this information that it is hoped that the community's control function over police performance will work effectively.

CLOSING

Revenge porn is the activity of distributing sexual content in the form of photos or videos without the permission of the person appearing in the photos and videos. The aim could be revenge or to discredit the person. The definition of pornography as revenge can previously be understood to mean that the assessment of revenge porn is placed on whether or not there is harm experienced by a person (an egregious privacy violation) as a result of not giving consent to disseminate pornographic material.

Revenge Porn usually occurs when an ex-lover dumps his love and then doesn't accept it. Then the perpetrator spreads sexual content in the form of naked pictures, sex videos and so on as a threat to get the victim to come back to him. If the victim refuses, the content is distributed to social media and the wider internet.

In that case it is not only the victim who suffers, but also his family. Due to this incident, the victim experienced trauma. In the end, the victim did not report what happened to the police because he was afraid of having to repeat the traumatic incident. Victims also experience more psychological suffering such as shame. If the amount of compensation is only determined based

on material losses, this will be detrimental to the victim. Not all victims' suffering can be calculated materially, but also immaterially.

Such as the heavy psychological pressure caused by the spread of immoral photos or immoral videos because they continue to be the subject of public discussion all the time. For the public, the widespread distribution of immoral photos or immoral videos causes unrest due to the violation of societal norms of decency. Not to mention photos or videos It is difficult to delete it because it is continuously reproduced by other internet users.

In cases of distribution of pornography, pornography as revenge is considered as a special condition that aggravates the defendant's actions. Contextual considerations regarding pornography as revenge actually emerged in the judge's consideration that the defendant's actions made the victim and his family feel embarrassed. This condition is clearly not a prohibited consequence of the distribution of pornography in general.

Victims feel embarrassed, which is what pornographic perpetrators aim for as revenge, who initially felt safe when the information was not shared or was for personal consumption. Research on internet pornography cases shows that pornography as revenge is a form of pornographic crime with a new modus operandi.

Therefore, the importance of regulating illegal content is based on at least two things. First, the need for legal protection such as the protection provided in the real or physical world. The cyber world is a virtual world created through the development of information and communication technology. The virtuality of this world does not eliminate the fact that at least until now the people in the cyber world are a collection of people from the physical world and the impact of various types of electronic transactions carried out in the cyber world can be felt directly and concretely in the physical world.

Second, with the internet, information can be spread and forwarded to various corners of the world instantly and can be accessed from various countries. Moreover, everyone can use a name other than their actual name in cyberspace either anonymously or with an alias.

Pornography as revenge based on Sobural's approach is a sexual crime because it is related to sexual activity and indulgence in sexual desires by disseminating pornographic material. The process of internalizing values is one way of upholding the value system that applies within the perpetrator so that he is able to understand the essence of prohibiting pornography as revenge.

The results of research on the judge's decision considerations in cases of pornography as revenge show that the motivation for pornography as revenge is considered by the judge as a reason to make the crime more serious. The judge further assessed this act as part of pornography by emphasizing condemnation of violations of moral norms enforced in criminal law provisions. Sobural provides a 'bridge solution' for the implementation of moral norms adhered to by criminal law provisions. This approach has important benefits in revitalizing social values, cultural aspects and structural factors of Indonesian society.

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