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Criminal Punishment Policy For Perpetrators of Digital Pornographic Content Distribution Through Social Media From A Contemporary Criminal Law Perspective Based On Pornography Law

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Abstract: The development of digital technology has facilitated the distribution of pornographic content through social media, creating new challenges for criminal law enforcement. This phenomenon demands adaptive and proportional criminal policies based on contemporary criminal law principles and the provisions of Law Number 44 of 2008 concerning Pornography. The problem faced is how to regulate criminal policies for perpetrators of the distribution of digital pornographic content through social media in Indonesia and how to construct criminal policies for the distribution of digital pornographic content through social media in Indonesia. The research method used in this study is normative juridical legal research. The results of the study indicate that the regulation of criminal policies for perpetrators of the distribution of digital pornographic content through social media in Indonesia is regulated in Law Number 44 of 2008 concerning Pornography and supported by the Information and Electronic Transactions (ITE) Law, but its implementation still requires harmonization to be more effective and adaptive to developments in digital technology. Meanwhile, the construction of criminal policies for the distribution of digital pornographic content needs to be directed towards a more comprehensive approach, by balancing aspects of law enforcement, protection of public morals, and the right to freedom of expression within the framework of contemporary criminal law.

Keyword: Criminalization, Distribution Of Digital Pornographic Content, Social Media, Contemporary Criminal Law.

INTRODUCTION

The growth of pornography in Indonesia is increasingly alarming as time goes by. Pornography has completely metamorphosed with advances in information technology. Its destructive power is becoming more widespread and uncontrollable. Whether we realize it or not, pornography can be a source of other crimes. Some crimes resulting from pornography

include rape, molestation, murder, sexual harassment, child molestation, adultery, violence, and child neglect.

Pornography has been a hot topic of public discussion since the emergence of the Anti-Pornography and Porno-Action Law discourse in early 2006. The Anti-Pornography Law defines pornography as images, sketches, illustrations, photographs, writings, sounds, voices, moving images, animations, cartoons, conversations, body movements, or other forms of messages through various forms of communication media and/or public performances that contain obscenity or sexual exploitation that violates moral norms in society (Sa'i, 2018).

Pornographic crimes consist of producing, making, reproducing, duplicating, distributing, broadcasting, importing, exporting, offering, selling, renting, providing, lending or downloading, listening to, showing, utilizing, own, harboring, inviting, persuading, involving children, and abusing power. The crime of pornography is a very complex matter, not a stand-alone matter; it is a combination of several factors. The problem of pornography is not only a government and state issue, but also concerns the lives of society.

Pornography is indeed a very complex issue that cannot stand alone, but rather a collection of several issues. The problem of pornography is not only a government and state issue, but also concerns the lives of society. This is due to the many acts of sexual crimes that occur, the majority of which are motivated by the consumption of pornography, whether from social media, video, or audio (Enik, 2021). According to data obtained from the Indonesian Internet Service Providers Association (APJII), according to the spokesperson for the Ministry of Communication and Information, Dedi Permadi, there are 196.71 million internet users in Indonesia, or around 73.7% of the total population. This indicates a surge in internet and social media users in Indonesia as a nation that intensively uses the digital space. People are increasingly using this digital technology, which is a source of information and a tool for easy social interaction, and there are extraordinary challenges currently being faced, one of which is pornographic content (*Cyberporn*).

Based on negative internet content control statistics as of September 21, 2021, the Ministry of Communication and Informatics has handled 2,624,750 pieces of negative content, with 1,096,395 pieces of pornographic content. For handling social media content, *twitter* namely 1,035,245 contents, then *facebook*, *instagram* and *whatsapp* (39,501 contents), social media platforms are at the top. Next, there are also *file sharing Telegram* (1.501), *Google and YouTube* (7.021), *whatsapp* (165), *TikTok* (162), and *line* (22) Recorded from 2018 to September 21, 2021, there were 568,843 content *twitter* that have been blocked by the Ministry of Communication and Information. However, in reality, blocking negative content on the internet and social media gives perpetrators of pornographic content the opportunity to be careful to avoid being blocked again.

In Indonesia itself, there are many cases of the distribution of pornographic content (*Cyberporn*) which has been played by *public figure* and ordinary people. The act of distributing sex videos is spread on various applications, including *facebook* and *twitter* application that is enough famous among children, teenagers and adults, not a few know about this application, so that these applications are misused by unscrupulous individuals, responsible to distribute sex videos or indecent photos. Pornography itself involves the exploitation and commercialization of sex, including depictions of partial or complete nudity, and the display of sexual activity by women, adolescents, and children in communication media, mass media, and/or performances (Moody, 2021).

This will of course have a bad impact on each user, namely the attitude and mentality of the consumers who may commit immoral acts or violations as stated in Article 1 paragraph (1) of Law No. 44 of 2008 concerning Pornography (Pornography Law), which reads:

"Pornography is a picture, sketch, illustration, animation, photo, writing, voice, sound, body movement image, or other form of message through various forms of

communication media and/or public performances, which contain obscenity or sexual exploitation that violates moral norms in society."

As for Sanctions for the dissemination of pornographic content in Article 4 paragraph (1) letter a of the Pornography Law prohibit everyone from producing, making, reproducing, duplicating, disseminating, broadcasting, importing, exporting, offering, selling, renting or providing pornography that explicitly contains: (Mangareng, 2019)

1. Sexual intercourse, including deviant sexual intercourse.
2. Sexual violence.
3. Masturbation or onani.
4. Nudity or the appearance of nudity.
5. Genitals.
6. Child pornography.

Based on Article 4 paragraph (1) of Law Number 44 of 2008 concerning Pornography, sanctions are imposed based on Article 29 of Law Number 44 of 2008 concerning Pornography, with the threat of imprisonment of at least 6 (six) months and a maximum of 12 (twelve) years and/or a fine of at least Rp. 250,000,000,- (two hundred and fifty million rupiah) and a maximum of Rp. 6,000,000,000,- (six billion rupiah). In addition to potentially violating the pornography law, the immoral content in the application *facebook* and *twitter* also violates Law Number 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law). Article 45 states that:

"Any person who intentionally and without authority distributes and/or transmits and/or makes accessible electronic information and/or electronic documents that contain content that violates morality." Those who violate the above article can be convicted with a maximum sentence of 6 years and/or a maximum fine of IDR 1,000,000,000 (one billion rupiah).

Pornography crimes with the internet making the distribution of pornography easier so that perpetrators do not need to meet directly with pornography enthusiasts, *facebook* and *twitter*. Pornographic content is very easy to obtain and spreads very quickly through *link* or *research* so that it is easy for the public to watch this immoral content.

There has been much controversy surrounding the continued development of social media, which continues to evolve in line with the evolving needs of society. This, of course, has both positive and negative impacts. The increasing proliferation of social media, which facilitates communication, has led to the emergence of various criminal modus operandi. This has become a dark side of technological development, with various crimes committed, for example, out of resentment due to the woman's parents' disapproval, leading to the spread of pornographic content on social media. Individuals intentionally disseminate videos and photos with motives of sexual exploitation, without consent, or even...*revenge porn* or the distribution of private content based on revenge, or the deliberate distribution of pornographic content that is currently trending on social media, solely to profit from the social media used by the perpetrator. The modus operandi for the distribution of pornographic content on applications *facebook* and *twitter*. Of course, they have the authority to enforce the law by taking action, such as law enforcement officers carrying out law enforcement to achieve certain goals. This is especially true in understanding the modus operandi and punishments for perpetrators. dissemination pornographic content in the application *facebook* and *twitter* (Simamora, 2017).

In writing this thesis, the researcher raised the case of the Tanah Grogot District Court Decision Number 215/Pid.B/2021/PN.Tgt. The case, registered with Number 215/Pid.B/2021/PN.Tgt., began with the actions of the defendant, a 22-year-old man,

Indonesian citizen, Muslim, and domiciled in Paser Regency, East Kalimantan, who intentionally distributed digital pornographic content through social media. Based on the trial facts, the defendant obtained a video containing a scene of intercourse between a man and a woman without clothes in a *Zoom Meeting*. The defendant initially found the video in the comments section of a TikTok account, although he no longer remembers the account in question.

After obtaining the video, the defendant opened and watched it using the UC Browser app. He then copied the video link and distributed it through his YouTube account, intending to make it accessible to the general public. Furthermore, the defendant also posted a guide or tutorial on Twitter on how to access the video, thus expanding its reach in the digital public sphere.

The defendant's actions were subsequently detected by law enforcement officers, who subsequently arrested him based on Arrest Warrant Number Sp.Kap/12/VIII/RES.2.5/2021. The defendant was detained in accordance with applicable criminal procedure law for the purposes of investigation and the judicial process.

The Public Prosecutor assessed the defendant's actions as a violation of the provisions of Article 45 paragraph (1) *juncto* Article 27 paragraph (1) of Law Number 11 of 2008 concerning Electronic Information and Transactions as amended by Law Number 19 of 2016, and Article 4 paragraph (1) *juncto* Article 29 of Law Number 44 of 2008 concerning Pornography. The essence of the charge is that the defendant knowingly and without authorization distributed and made accessible electronic content containing pornographic content, which is a criminal offense under Indonesian law.

This case illustrates the typical characteristics of information technology-based crimes which are *borderless*, *anonymous*, and has a high rate of spread. This poses a unique challenge for criminal policy, as the resulting social impacts transcend the geographic boundaries of national jurisdictions and require a criminal law approach that is adaptive and responsive to technological developments.

Based on the explanation above, the legal treatment carried out by perpetrators of the distribution of pornographic content can be emphasized more by efforts through actions that need to be known, such as the *modus operandi* in the distribution of pornographic content (Supartiningsih, 2014). The phenomenon mentioned above emphasizes how law enforcement in Indonesia is carried out by law enforcement to ensnare perpetrators of the distribution of pornographic content in *facebook* and *twitter* as a crime that has not been effectively addressed in Indonesia. Therefore, a study of this issue can be academically explained in relation to the controversy surrounding punishment for those who distribute pornographic content.

On the other hand, the Tanah Grogot District Court's decision No. 215/Pid.B/2021/PN.Tgt. is relevant to examine because it reflects how criminal penalties are applied to perpetrators of the distribution of digital pornography through social media at the first level of court. Analysis of this decision is important to assess the extent to which the judge's considerations have accommodated the objectives of punishment in modern criminal law, which prioritizes not only retribution (*retributive justice*), but also prioritizes prevention (*deterrence*) and recovery (*restorative justice*) (Kurniawan, 2021).

The primary rationale for using the ITE Law and the Pornography Law in this study is based on the characteristics of the crimes being studied. First, the distribution of pornographic content through social media is an act that occurs in the digital realm. Therefore, its provisions are relevant for analysis based on the ITE Law, which is specifically designed to regulate legal activities in cyberspace, including the distribution and transmission of electronic information containing moral content. Second, the content being disseminated is pornographic, so its substance must be examined based on the Pornography Law, which provides legal boundaries

regarding what is meant by pornography and stipulates prohibitions and sanctions for those who produce or distribute it.

Thus, the two laws are closely related and complement each other: the ITE Law functions to prosecute criminal acts from the perspective of the medium and means of dissemination, Meanwhile, the Pornography Law plays a role in legitimizing the substance of content deemed unlawful. The integration of these norms is important for further analysis within the framework of contemporary criminal law sentencing policies., considering that the challenges facing criminal law today do not only concern conventional types of crimes, but also new phenomena arising from developments in information technology.

Thus, this research is expected to provide academic and practical contributions in the development of criminal policies against perpetrators of digital crimes, especially the distribution of pornographic content through social media, in accordance with the challenges of law enforcement in the information technology era.

METHOD

The type of research used in this study is normative juridical legal research, namely research conducted by examining library materials or secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. (Marzuki, 2005) Normative legal research focuses on research based on literature reviews and secondary data in the form of legal materials. The data used in this research is collected through library research techniques. The tool used to collect legal materials is document studies from various sources that are appropriate and relevant to the research topic.

The approaches used are the legislative approach and the conceptual approach. This research employs qualitative descriptive analysis, meaning the legal materials obtained are analyzed qualitatively and presented descriptively. The qualitative method is a research procedure that produces descriptive-analytical legal materials.

RESULTS AND DISCUSSION

What are the Criminal Policy Regulations for Perpetrators of the Distribution of Digital Pornographic Content Through Social Media in Indonesia?

In the context of national criminal law, the regulation of criminal policies for perpetrators of the distribution of digital pornographic content via social media in Indonesia is rooted in the legal framework regulated in Law Number 44 of 2008 concerning Pornography. And Law Number 11 of 2008 concerning Electronic Information and Transactions as amended by Law Number 19 of 2016. These two laws are the main legal basis for regulating, prosecuting, and imposing sanctions on the distribution of pornographic content in the digital space, including social media which is the main platform for the circulation of information in the current information technology era.

In the Pornography Law, the prohibition on the distribution of pornographic material is expressly regulated in Article 4 paragraph (1) which states that everyone is prohibited from producing, making, duplicating, distributing, broadcasting, importing, exporting, offering, selling, renting, or providing pornography. Meanwhile, in the digital context, Article 27 paragraph (1) of the ITE Law expands the scope of this prohibition to cyberspace by stating that everyone is prohibited from distributing, transmitting, and/or making accessible electronic information that contains content that violates morality. This means that the distribution of pornographic content via social media is not only considered a moral violation, but also a form of cybercrime (*cybercrime*) which has criminal legal consequences.

The criminal policy against perpetrators of the distribution of digital pornographic content must be viewed from two main aspects: the normative aspect and the criminal law policy aspect (*criminal policy*). From a normative perspective, the provisions of the

Pornography Law and the Electronic Information and Transactions Law provide a clear and firm legal basis, with repressive criminal penalties intended to curb the spread of content that violates morality. However, from a criminal law policy perspective, implementation challenges remain, particularly related to law enforcement in the digital space, which is cross-border, rapidly changing, and difficult to control conventionally.

In the perspective of contemporary criminal law policy, criminalization of perpetrators of the distribution of digital pornographic content should not only be oriented towards a deterrent effect (*deterrent effect*), but also on protecting moral values, privacy rights, and the security of other internet users (Mulyadi, 2018).

Therefore, a comprehensive and multidimensional approach to criminal justice policy is needed, involving cooperation between law enforcement officials, digital platform providers, and the public as active users of social media (Atmasasmita, 2017). This is important so that criminal justice policy not only prosecutes perpetrators, but also functions as a means of prevention (*preventive criminal policy*) through digital education and increasing public legal literacy.

From a criminal justice perspective, the Pornography Law carries a fairly severe penalty, namely a maximum of 12 years' imprisonment and/or a fine of up to Rp6,000,000,000 (six billion rupiah). However, this regulation needs to be reviewed in terms of effectiveness and proportionality, considering that the development of digital technology has given rise to new forms of content distribution that are difficult to address through conventional legal mechanisms. For example, distribution via features *stories*, *private message*, or *encrypted chat* oftene scape legal scrutiny despite containing pornographic content. Therefore, future criminalization policies need to be geared toward adapting to society's increasingly complex digital behavior patterns.

In addition, in the context of the principles of legality and protection of human rights, Criminal policies against perpetrators of the distribution of digital pornography must also take into account the balance between the right to freedom of expression and public moral interests as guaranteed in Article 28J paragraph (2) of the 1945 Constitution., which states that in exercising their rights and freedoms, everyone is obliged to comply with restrictions established by law for the sake of respecting moral values and public order. Therefore, law enforcement against the distribution of digital pornography must not be arbitrary, but must be proportionate, measured, and in accordance with the principles of substantive justice.

Furthermore, in judicial practice, there is still disparity in the application of criminal sanctions to perpetrators of the distribution of digital pornography. Some judges assess the crime from a social morality perspective, while others emphasize the technical aspects of electronic evidence. This disparity indicates the need for a reconstruction of criminal law policy to achieve a unified interpretation in enforcing the law in the digital realm. This is where the importance of establishing criminal guidelines or *sentencing guideline* by the Supreme Court to provide standards for judges in sentencing perpetrators of cybercrimes, including the distribution of digital pornography.

Thus, it can be concluded that the criminalization policy for perpetrators of the distribution of digital pornographic content via social media in Indonesia has a fairly strong legal basis, but still requires adjustments to the policy and renewal criminal law that is adaptive to developments in information technology. Formulation This policy must be directed at protecting public interests, strengthening digital legal literacy, and applying the principle of proportionality in criminal punishment so that law enforcement is not only repressive, but also educational and preventive in building a healthy and moral digital culture.

Construction of a Criminal Policy on the Distribution of Digital Pornographic Content Through Social Media in Indonesia

The construction of a policy on criminal acts for the distribution of digital pornographic content through social media in Indonesia is part of the renewal of national criminal law which is oriented towards combating cybercrime (*cybercrime*) comprehensively. The distribution of pornographic content in the digital space is not only a violation of moral norms, but also a threat to public order, national morals, and the protection of minors as a vulnerable group. Therefore, criminal law policy in this context must be built on a balance between repressive aspects, preventive, and rehabilitative in accordance with contemporary criminal law principles. (Muladi, 1995)

Normatively, regulations regarding the criminal act of distributing digital pornographic content are regulated in Law Number 44 of 2008 concerning Pornography in particular, Article 4 paragraph (1) prohibits anyone from producing, distributing, broadcasting, selling, importing, exporting, and providing pornography. Meanwhile, aspects of digital media are regulated in Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE) as amended by Law Number 19 of 2016., Article 27 paragraph (1) states that every person is prohibited from intentionally distributing or transmitting electronic information that contains content that violates morality. Thus, the legal construction of this crime is complementary, where the Pornography Law functions as *special law* in terms of the substance of the crime, while the ITE Law functions as *general law* which regulates the technological aspects and media for its distribution.

Criminal law policy in this context must also take into account the views of Barda Nawawi Arief, which states that criminal policy is not only oriented towards the formation of laws (formulative), but also includes the implementation (applicative) and consistent implementation of laws (executive). Therefore, the construction of a digital pornography crime policy needs to be directed towards improving legal norms, strengthening law enforcement agencies, and monitoring of information technology in order to be able to deal with new crime modes in cyberspace.

In addition to the penal approach, policy construction must also contain non-penal elements, such as improving digital literacy, moral education, and monitoring content by social media platforms. This approach aligns with Muladi's ideas, which emphasizes the importance of *integrated criminal policy* in addressing modern crime, criminal law policies integrate social, technological, and cultural aspects. This approach is necessary because digital pornography crimes occur not only due to the perpetrator's intent, but also due to weak social control and a lack of legal awareness among online communities.

From an institutional perspective, the construction of a policy on criminal acts against the distribution of digital pornography also requires synergy between law enforcement agencies, such as the Ministry of Communication and Information (Kominfo), Republic of Indonesia National Police, Prosecutor's Office and the National Cyber and Crypto Agency (BSSN). Effective coordination between these institutions is necessary to ensure swift, accurate, and efficient law enforcement against cybercrimes. Digital content monitoring also needs to be implemented through a preventative approach with a system *content moderation* transparent and accountable.

In the context of contemporary criminal law, the construction of policies regarding the distribution of digital pornographic content must pay attention to the principle *last resort*. That is, criminal law is used as a last resort after non-penal measures have been ineffective. However, for crimes involving digital pornography, which have widespread impacts, the strict use of criminal law remains necessary to protect public morals and the younger generation (Marpaung, 2013).

The construction of a criminal policy for the distribution of digital pornographic content through social media in Indonesia basically has an adequate legal basis through Law Number 44 of 2008 concerning Pornography. and Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE). These two regulations substantially prohibit any act related to the creation, storage, and distribution of content that violates morality. However, in their implementation, there are still inconsistencies and gaps in interpretation among law enforcement officials, particularly regarding the proof of "dissemination" and "content that violates morality."

This can be seen in the Tanah Grogot District Court Decision Number 215/Pid.B/2021/PN.Tgt., Where the defendant was sentenced for distributing pornographic content via social media that can be accessed by the public. In its deliberations, the panel of judges emphasized that the defendant's actions fulfilled the elements of Article 27 paragraph (1) of the ITE Law., because the content contains content that violates morality and has been distributed via electronic means that can reach a wide audience.

This decision shows that the construction of criminal law policy regarding the distribution of digital pornographic content has been implemented concretely through synergy between the ITE Law and the Pornography Law, However, on the other hand, this case also reveals a systemic weakness, namely the absence of uniform technical guidelines regarding the assessment of moral elements., digital publication coverage and the limits of responsibility of social media platform users and providers. Consequently, the application of these articles remains case-by-case and has the potential to create legal uncertainty.

From a criminal law policy perspective (*criminal policy*), this ruling demonstrates that the state has used criminal law as a repressive instrument to protect society from the negative impacts of digital pornography. However, for law enforcement to be more effective, an integrative legal policy approach is needed. This includes a more detailed reformulation of legal norms regarding types of content, the scope of social media, and the criminal liability of individuals and corporations. Furthermore, penal policies must be balanced with non-penal approaches, such as increasing digital literacy, platform monitoring, and empowering communities to create a safe and moral digital space.

Thus, the Tanah Grogot District Court Decision No. 215/Pid.B/2021/PN.Tgt. is a clear reflection of the implementation of criminal law policy regarding the distribution of digital pornography. This decision emphasizes the need for a more adaptive and equitable policy reconstruction so that it is not only oriented towards enforcement, but also towards prevention and protection of human rights in the digital space.

Thus, the construction of criminal policy for the distribution of digital pornographic content via social media in Indonesia must be directed at three main aspects: (1) reformulation of criminal law that is adaptive to technological developments, (2) strengthening institutions and coordination of law enforcement, and (3) integration between the penal and criminal justice approaches.non-penalwithin the framework of national criminal law policy. This approach is expected to create a legal system that is responsive, just, and in accordance with the values of Pancasila and the objectives of national law.

CONCLUSION

The criminal policy regulations for perpetrators of the distribution of digital pornographic content via social media in Indonesia have a strong legal basis through the Law. Pornography And UU ITE.Both laws serve to protect public morality and uphold ethical values in the digital space. However, in practice, the implementation of these policies still faces challenges in the form of gaps between legal norms and the dynamics of technological development. Therefore, an adaptive reconstruction of criminal law policy is needed, balancing repressive and preventive approaches, strengthening coordination between law enforcement agencies, and

prioritizing the protection of human rights and digital literacy. With these updates, it is hoped that criminal law policy will be more effective, fair, and relevant to the contemporary criminal law context.

The criminal law enforcement policy for the distribution of digital pornography in Indonesia has a legal basis through the Pornography Law and the Electronic Information and Transactions (ITE) Law, but still faces obstacles in implementation and technological development. Adaptive and integrative criminal law policies are needed, with strengthened regulations, coordination between law enforcement agencies, and a balance between law enforcement and human rights protection.

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