



Legal Protection against the Revenge Porn Victims

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ABSTRACT

People's needs in getting information become easier in the modern era. It is due to Indonesian digital-based information and communication technology every day increasing from the user and technology aspects. Cybercrime can be interpreted as one of the worst parts of technology and communication developments that have a very negative impact on the community. In all areas of modern life today, it can have positive and negative impacts on users. Revenge-motivated pornography is a cybercrime committed by adjusting pornographic material without the victim's consent with the motive of revenge. Thus, the victim suffers or is mentally injured, then full protection starts from the right to treatment, the right to protection, and the right to recovery. This research used a normative type of research combined with library research. The objective of this research is to analyze the legal protection for the victims of revenge porn. It is provided by the government as stated in the relevant legislation which is very necessary for the victim.

Keywords: *Cybercrime, Legal protection, Revenge Porn*

INTRODUCTION

People's needs in obtaining information become easier in the modern era. It is due to the development of digital-based information and communication technology in Indonesia is increasing every day from the aspect of users and technology (Rodliyah and Salim 2017). This can have positive and negative impacts on users. Cybercrime can be interpreted as one of the worst parts of the development of technology and communication which has a very negative impact on all areas of modern life today (Zulfiko 2022). One of the cybercrimes that has received a lot of attention or special attention is about immoral crimes. Women's National Commission noted that in 2020 there were 299,911 cases of violence against women (Setyorini 2017).

Revenge porn or revenge porn is a cybercrime committed by perpetrators in the form of threats to disseminate someone's sexual content without a statement of consent from the victim with the motive of revenge. Based on the law, justice is only limited to the perpetrators being tried and sentenced in court. The objective of this research is to analyze the legal protection for the victims of revenge porn. If we look at the assistance from the government and the women's protection commission in clearing the victim's name and psychological therapy, it is very necessary so that the victim does not experience pressure from the surrounding environment and the perpetrator (Kuswardani 2019).

RESEARCH METHODOLOGY

This research used a normative type of research. Normative research was research that studied document studies, which used various secondary data such as legislation, court decisions, legal theory, and can be in the form of arguments (Christiani 2016). This type of normative research used qualitative analysis, namely by explaining the existing data in words or statements instead of numbers.

The type of research used was normative juridical law research, namely by reviewing or analysing secondary data in the form of legal materials, especially primary legal materials and secondary legal materials. This research was conducted by examining library materials. The data collection technique performed in this paper was the library technique by studying reading literature, newspapers, articles, research journals and applicable laws and regulations related to research problems.

RESULTS AND DISCUSSION

Revenge Porn

Nowadays, sophisticated information and communication technology becomes an intermediary for individuals with other individuals to share information. This means that advances in information and communication

technology make it easy to be able to carry out various activities that do not escape the negative and positive impacts for users.

The most common form of internet abuse is pornography. Pornography is included in things that are prohibited by law and norms that exist in society. Victims of this pornographic crime can include all groups ranging from gender, young and old.

The word pornography comes from the Greek words "porne" which means women and "graphein" means writing. This understanding is interpreted more simply that the main object is women. According to Dadang Hawari, pornography is an erotic depiction of behaviour with actions or efforts made to arouse lust. Meanwhile, according to Ernst and Seagle, pornography are various forms or things that visually present humans or animals who have sexual intercourse, either normally or abnormally. The American Heritage Dictionary defines images, writings or other materials that have the primary purpose of satisfying sexual desires as pornography. According to Soebagijo, there are 3 (three) types of pornography in its development, namely:

1. Softcore is the type that usually comes in the form of nude content or contains scenes that suggest the occurrence of sex.
2. Hardcore is known as triple X in Indonesia, such as close ups on the genitals, sexual activity, and including penetration by adults.
3. Obscenity is sexuality material that defies the limits of social decency and has no artistic, literary, political, and scientific value.

This type of pornography service is provided by individuals or corporations through live shows, television, radio, telephone, internet, newspapers, magazines and others. According to Armando, the types of various media that contain pornographic elements are:

1. Audio media (listening) for example radio broadcasts, cassettes, CDs, telephones, various means of information and communication that can be accessed via the internet.
2. Audio-visual media (listening and viewing) for example films, videos, TV, DVD, VCD, games, computers, and various other types of audio-visual.
3. Visual media (seeing) for example newspapers, magazines, literary books, novels, non-fiction books, comics, billboard advertisements, paintings, photographs, and various means of information and communication of the like.

The type of pornography through information and communication media is not an event that is foreign to the public. This problem has been regulated in the Information and Electronic Transactions Law (UU ITE) and the Pornography Law.

Revenge porn often involves ex-partners uploading nude photos obtained via private messages or screenshots from video calls, which usually include sending naked or semi-nude images or videos to another person via electronic means, such as text messages with possession revenge motive (Islami 2022). Revenge itself has the meaning of overflowing emotions that are not thrown away or not directed so that it becomes a bad nature and wants to always avenge someone's actions, which causes a person to suffer. Here are the characteristics of revenge:

1. Feeling hurt by the actions of others.
2. Feeling displeased with the behaviour of others.
3. Likes to talk badly about other people.
4. Dislike it when other people are happy.
5. Feeling happy when others are hurt or suffering.

Revenge porn is a cybercrime committed by someone who feels hurt by distributing pornographic material without the victim's consent, so that the victim suffers or gets hurt. In the case of revenge porn, the emphasis is more on the element of disseminating pornographic content, not on the production of pornographic material. There are two types of revenge porn: undercover pornography and teen pornography:

1. Undercover porn

Types of pornographic content created by users and taken from users. User-generated, which means content that contains sexual photos and videos. They are self-generated by users with the consent to store them. It is taken from the user means content that contains photos or videos obtained from the victim in an illegal way or without the victim's consent. The content is taken through social media and edited so that it turns into vulgar content.

2. Teen porn

Teen pornography content is usually found on adult websites. Today's site admins usually state that this site provides loopholes for donors or contributors of vulgar photos and videos obtained from victims by all means.

The perpetrator extorts the victim materially and sexually activities accompanied by threats from the perpetrators. Most victims of revenge porn often occur to women, the perpetrator threatens to spread immoral photos or videos belonging to the victim as material to force the victim to grant the perpetrator's request, such as asking for money, wanting to stay together and asking for sexual intercourse. Not only the reason for feeling hurt towards the victim, but there are also other cases of revenge porn with the intention of defaming the victim's reputation or disfiguring the reputation of the victim.

There are two types of complaint offenses in the Criminal Code, namely absolute complaint offenses and relative complaint offenses. An absolute complaint offense is an offense that only demands a criminal act, while a relative

complaint offense is a complaint not to prosecute the incident but the person who committed the crime.

Based on the Law on Information and Electronic Transactions and the Law on Pornography, this is an absolute complaint offense. The victim who feels aggrieved by the perpetrator's actions can be reported to the authorities. There are threats and physical violence given by the perpetrator. This can be one of the provisions so that a prosecution can be carried out, in fact in a prosecution it is very necessary to have a complaint report. Several criminal acts that fall into absolute complaint offenses are regulated in the Criminal Code, namely as follows:

1. Criminal Acts of Humiliation (Arts. 310 to 319 of the Criminal Code), if the insult is committed by a civil servant who works in the government, which action is carried out while still in official service bonds. The insulter can be prosecuted by the prosecutor without waiting for a complaint from the insulted person.
2. Criminal acts of immorality (Art. 284, Article 287, Article 293 and articles in the Criminal Code).
3. Extortion and threats that benefit oneself or others with the threat of revealing secrets (Art. 369 of the Criminal Code).
4. The act of deliberately revealing secrets (Art. 322 of the Criminal Code).

Since it is about the phenomenon, then all those who perpetrate, persuade and assist in the implementation of the event can be prosecuted. For example, a man threatens and distributes immoral photos or videos of the victim. The victim can file a complaint against the competent authority, but if he wants to withdraw the complaint, it can only be done if during the examination before the court trial has not started.

The impact of the threat given by the perpetrator causes the victim of revenge porn to suffer physically and psychologically. Hence, the victim becomes stressed, afraid of the surrounding environment, traumatized by this incident, and so on. Commonly, the form of mental and physical impact experienced by victims of violence and threats from the dissemination of immoral content carried out by perpetrators include:

1. Mental impact, such as being very afraid of being alone, afraid of others, nervous, often surprised, worried, having difficulty trusting men anymore, feeling that other people are isolating him, emotional, isolating oneself from the outside world or not interacting with neighbours, friends, family, frequent delusions, and nightmares.
2. Personal and social life impact, namely being ostracized by neighbours, no support from friends and family, deteriorating relationships with husbands, difficult relationships with men due to trauma.

3. Physical impact, namely in the event of violence there are injuries to the genitals and other body parts, suffering from migrants, difficulty sleeping, and others.

Based on the Law on Information and Electronic Transactions and the Law on Pornography, this is an absolute complaint offense. the victim who feels aggrieved by the perpetrator's actions, which can be reported to the authorities that there are threats and physical violence given by the perpetrator. This can be one of the provisions so that a prosecution can be carried out, in fact in a prosecution it is very necessary to have a complaint report.

Revenge Porn According to ITE Law

Article 27 Paragraph 1 concerning the Electronic Information and Transaction Law states that every person intentionally and does not have the right to distribute, transmit, make accessible electronic information and electronic documents containing immoral content. The criminal provisions are contained in Article 45 Paragraph (1) of the Law on ITE which reads "Everyone who fulfils the elements as referred to in Article 27 Paragraph (1) shall be sentenced to a maximum imprisonment of 6 (six) years and a maximum fine of IDR 1,000,000.00 (one billion rupiah).

The article above is for electronic scope only. Although the written sanctions are quite severe, they cannot be processed arbitrarily by law because the nature of this crime is a complaint offense. The definition of a complaint offense itself is that an offense or criminal act committed by a person will not be processed or investigated by law enforcement without a complaint, request or report from the party who has been harmed.

Those who can carry out investigations in cases in the field of Information Technology and Electronic are Police, Civil Servants who are in an environment whose scope of duties and responsibilities is in the field of technology. Investigators can cooperate with investigators from other countries to share information and evidence, in which searches and confiscations must be carried out with the permission of the head of the local court.

Revenge Porn According to the Law on Pornography

Article 29 defines that any person who produces, makes, reproduces, duplicates, distributes, broadcasts, imports, exports, offers, trades, rents, or provides pornography. This law emphasizes that the penalties for violating the manufacture, distribution, and use of pornography have been adjusted to the level of the offense committed, namely serious, moderate, or minor offenses.

In order to provide protection to victims of pornography, this Law requires all parties, such as from the state, social institutions, educational institutions, religious institutions, families, and the community to provide, mentoring, social recovery, physical and mental conditions for each victim or victim. perpetrator.

Legal Protection Efforts Against Victims of Revenge Pornography

Legal protection is defined as the protection provided by the government through laws and regulations. Citizens have the right to feel safe and free from pornographic criminal acts, because pornography crimes are increasing and developing in this modern era, but the legal system in the State of Indonesia has not completely prevented, protected, and recovered victims and aroused public thinking to eliminate violence. sexual, both physically and non-physically.

The victim of the crime of revenge pornography is included in the element of sexual violence, which causes a person to be unable to give consent in a state of freedom and against one's will. The definition of sexual violence is any change in humiliating, insulting, attacking, and other actions against the body, forcing someone sexually, against someone's will, which causes a person to be unable to give consent in a free state because there are still gender inequalities and the idea that women always considered the weakest.

Hence, victims of criminal acts of revenge pornography are entitled to medical assistance, rehabilitation and psychological assistance. The application for protection can be made by the victim or the victim's representative by making a report to the authorized institution. Regarding the form of assistance and protection provided by Law Number 31 of 2014 concerning the protection of witnesses and victims, Article 5 states that Witnesses and Victims are entitled to:

1. Obtain protection for the safety of his personal, family, and property, and be free from threats related to the testimony he will, is currently, or has given.
2. Right to treatment: To receive legal assistance and assistance, psychological strengthening, as well as services and facilities according to the special needs of victims.
3. Right to protection: includes the attitude and behaviour of law enforcement officers who demean and strengthen the stigma against the victim, the right to identity confidentiality, self-protection from job loss, job transfer, education, or political access, and protection from threats or violence by perpetrators and other people. other.
4. Right to recovery, including recovery from physical, psychological, economic, social and cultural as well as compensation. The recovery obtained by the victim here must be fulfilled in full, in the sense that from before the court process until after the judicial process is complete, the granting of rights to the victim must not be half-hearted.

However, the rights and services provided by the government are adjusted to the needs by means of repeated monitoring and monitoring of the condition of the victims. In this case, the victim can take the initiative alone or at the request of the authorized law enforcement officer to submit a written application to LPSK.

In addition, victims of revenge pornography can also apply for restitution before or after a court decision is handed down through the LPSK, in the form of compensation for suffering due to criminal acts as well as compensation for medical and psychological treatment costs. Rights and protections are given to witnesses or victims from the time the investigation begins until it ends in accordance with the provisions. In this case, the guarantee of protection for victims has been stated in the Law which has an important part in the process of running a judiciary, so that witnesses can provide information without fear of revealing a criminal act for the common good (Mahendra 2021).

The judge's legal considerations in making a decision on the crime of revenge pornography Number: XXX/Pid.Sus2020/PN Pwt. Purwokerto Panel of Judges in the trial, had heard and understood the statements of the witnesses regarding the case and were harmonized with the statements of the Defendant and the evidence presented in the trial, so they were mutually compatible with one another. From this suitability, legal facts can be obtained which will then be used by the Panel of Judges at the Purwokerto Court of Central Java as considerations relating to the sentencing of the Defendant.

In the consideration of the Panel of Judges in Purwokerto, Central Java, stating that the Defendant has been proven guilty of committing a criminal act of spreading pornographic content with the mode of revenge or revenge porn based on what has been indicted by the Public Prosecutor, the Panel of Judges in Purwokerto Central Java may choose which article is deemed more appropriate. consistent with the actions of the Defendant. Article 29 RI Law No. 44/2008 concerning Pornography became the choice of the Purwokerto Panel of Judges in making decisions on criminal cases, including:

1. Citizens

The element in which every person or legal subject commits a criminal act, where the act can be punished and the act can be accounted for, as stipulated in the applicable legislation. Each person or individual must be in good physical and mental health and be able to answer any questions that are put to him. In this case, the perpetrator of the criminal act of distributing pornographic content with a motive of revenge was charged by the Purwokerto Public Prosecutor with the initials I. During the examination of the case, the Defendant provided information that he was in good physical and mental health, and could be held accountable for his actions. Based on the information above, it can be concluded that the elements of each person have been fulfilled by Defendant I.

2. The second element is to reproduce, duplicate, disseminate, pornography.

What is meant by “duplicating” is to reproduce something that can be multiplied several times, “to disseminate” is to spread something that has been made to other people.

The definition of the word "pornography" is according to RI Law No. 44 of 2008 concerning pornography, in Article 1 number 1 it states that pornography contains images, sketches, illustrations, photos, writings, sounds, images, moves, animations, cartoons, conversations, gestures or other forms of messages through various forms of communication media and/or public performances that create obscenity or sexual exploitation that violates the norms of decency in society (Republik Indonesia 2008).

Sourced from these facts were uncovered in the trial obtained from the statements of the witnesses and also the evidence that has been submitted by the Public Prosecutor. The Defendant reproduced and disseminated pornographic content containing photos of Witness A naked during January to February 2020 which is located in the village of Kab. Banyumas, Central Java, in front of Witness T's house.

In early April 2019, the Defendant had contacted Witness A via social media WhatsApp to ask how he was doing, at which time Witness A was going to take a bath in the bathroom of his house. The Defendant asked Witness A to make a video call while taking a shower, Witness A complied with the Defendant's request with the phone that Witness A had placed on the stairs in the bathroom. The videocall lasted for approximately ten minutes, the Defendant secretly without the consent of Witness A took a screenshot of Witness A's picture while taking a shower with a white Samsung J2 type cell phone.

January 30, 2020 at the Defendant's house located in Ajibarang Village RT 05 RW 07 Kec. Ajibarang Kab. Banyumas, Central Java, the Defendant sent a photo of Witness A naked through social media whatsapp.

After that, the Defendant printed an image from the screenshot on the computer rental "Lopa-loma" then in January 2020 in front of Witness T's house, the Defendant gave a picture of Witness A naked which had been put in a white envelope to Witness T.

The impact carried out by the Defendant caused Witness A to feel ashamed and shut himself away from the outside world and had an impact on Witness A's family. According to the information above, it can be concluded that the actions committed by the Defendant had fulfilled the elements of pornography, such as the elements of reproducing, duplicating, disseminating, pornography.

The above facts that have been revealed in court and all the elements accused by the Public Prosecutor have also been fulfilled, true and undeniable by the Purwokerto Judges, Central Java also did not find for the abolition of the Defendant's sentence, either as a justification or excuse. Hence, the Defendant must be sentenced. Then, the Purwokerto Panel of Judges concluded that the Defendant was legally proven and guilty of duplicating and distributing pornographic content such as the 1st indictment by the Public Prosecutor and must be held accountable for his actions.

In the judge's decision, it is necessary to consider various aspects beforehand by the Purwokerto Judges, namely the existence of aggravating or mitigating circumstances, namely as follows:

1. Aggravating circumstances:
 - a. The actions of Defendant I have caused public anxiety.
 - b. The actions of Defendant I caused Witness A's family to feel ashamed.
2. Mitigating circumstances:
 - a. Every time the trial took place, the Defendant behaved politely.
 - b. Defendant I felt guilty, and deeply regretted what he had done and promised not to repeat the act.

According to the crime committed by the Defendant, his actions have a direct impact on the victim, namely emotional instability or psychological disturbance of the victim. Hence, the prison sentence handed down to the Defendant with the initials I for the crime of spreading pornographic content with a revenge motive, namely as a deterrent effect for the perpetrator or other people who have the intention to take such action, with the intention that the perpetrator himself is afraid to repeat his actions in the future, and aims to maintain order and a sense of justice in society.

This case was decided on Tuesday, October 6, 2020 in a deliberation session of the Panel of Judges at the Purwokerto District Court with Nanang Zulkarnain Faisal, S.H., as Chief Judge, Rahma Sari Nilam, S.H., M.Hum and Ivonne Tiurma Rismauli, S.H., M.H., both as judges. Member.

This decision was pronounced in a trial open to the public Thursday, October 8, 2020 with the Chief Judge and accompanied by two Member Judges, assisted by Jamilah S.H., M.H. as Substitute Registrar, and attended by Ernawati, S.H. as the Public Prosecutor, the Defendant and his Legal Advisor.

CONCLUSION AND SUGGESTION

Conclusion

The revenge pornography is a cybercrime committed by distributing pornographic material without the victim's consent with a revenge motive. Thus, the victim suffers or is hurt mentally. The impact given by the perpetrator causes the victim of revenge porn to suffer physically and psychologically, so that the victim becomes stressed, afraid of the surrounding environment, traumatized by this incident and so on. The full protection from the right to treatment, the right to protection, and the right to recovery provided by the government as stated in the relevant legislation is very much needed for victims. However, the rights and services provided by the government are adjusted to the needs by means of repeated monitoring and monitoring of the condition of the victims. In this case,

the victim can take the initiative alone or at the request of the authorized law enforcement officer to submit a written application to LPSK.

Suggestion

The government needs to pay attention to the victims of revenge porn by giving them their rights such as legal aid, physical and psychological recovery assistance, and as victims of revenge porn, they really hope for information on the development of the judicial process completely so that the perpetrators can get a decision in the form of legal sanctions that are as fair as possible.

The author expects law enforcers (Judges, Prosecutors, Police) to pay special attention to victims of revenge porn, considering that victims of revenge porn suffer a lot from the psychological type of Post-Traumatic Stress Disorder (PTSD) or Post-Traumatic Stress Disorder because their nude photos are spread widely. widely via social media, law enforcement and women's protection institutions should not underestimate or ignore cases that occur to citizens because their job is to handle every report received, so that there are no more victims of revenge porn cases against others.

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