Criminal Provisions on Pornographic Content on Social Media on Transaction and Electronic Information

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Abstract

This paper discusses the criminal provisions against pornographic content on social media for transaction and electronic information. The research method used is normative legal research. Based on the research results, it is known that Law Number 44 of 2008 concerning Pornography, as explained in Article 4 Paragraph (1) and Paragraph (2). Threats to this article are regulated in Article 29, namely being punished with imprisonment for a minimum of 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) and a maximum of Rp. Rp 6,000,000,000 (six billion). In addition, criminal provisions against pornographic content are also regulated in Law Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE), namely Article 27 Paragraph (1) with a maximum imprisonment of 6 (six) years and/or a maximum fine of 6 (six) years. 1,000,000,000.00 (one billion rupiah) and Article 34 Paragraph (1) shall be sentenced to a maximum imprisonment of 10 (ten) years and/or a maximum fine of Rp. 10,000,000,000 (ten billion rupiah)”. Thus, it can be ascertained that any activity of creating content containing pornography will be threatened with criminal threats.

Key words: criminal provisions, pornographic content, social media

Introduction

Technological advances have changed the structure of society from a local one towards a global structured society. This change is caused by the presence of information technology. The development of information technology combined with media and computers, which later gave birth to a new tool called the internet (Abdul Wahid and Mohammad Labib, 2005). The presence of the internet has given rise to a new paradigm in human life. Life changes from being only real (real) to a new reality that is virtual (virtual). This second reality is usually associated with the internet and cyber space (Abdul Wahid and Mohammad Labib, 2005).

The development of the use of Information Technology (IT) in Indonesia has established a regime in which all life activities can be carried out digitally. The activeness of the community in taking a role or taking advantage of technological advances in social media is by creating creative content so that it can be seen or watched by the public. In addition to being famous, creative content creators on social media also benefit, so it can be used as a source of income for them.
Basically, technological advances make various conveniences available, however, various problems will also emerge, behind these advances, have also given birth to new unrest. In its development, it turns out that the use of the internet brings a negative side by opening up opportunities for the emergence of social actions that are not in accordance with the culture in Indonesia which is based on Pancasila by upholding moral values, ethics, noble character, and noble personality of the nation, having faith and piety to God Almighty, respecting diversity in the life of society, nation and state, and protecting the dignity of every citizen.

Anxieties that have sprung up in using negative social media are the large number of content created by content creators that contain pornographic elements. In order to produce content that is quickly consumed by the public and followers in order to get profits in a fast and easy way, sometimes content creators justify any means. Not only about content creators, sometimes the use of advanced technology is also used to perpetuate sexual relationships. As is known, this case has become public attention after the previous exciting video concerning celebrities Indonesia is circulating on social media. Currently in the world of social media it is also known as selebgram. The term celebrity according to the Big Indonesian Dictionary (KBBI) is a famous person or mahsyur (usually about an artist) (kbbi.web.id, 2022). Meanwhile, the term celebgram itself or an acronym for celebrities and Instagram are those who are famous through Instagram social media.

This pornographic content is very rampant in cyberspace. All circles of society can easily access it. Even children can also get pornographic content from their devices. That pornography shows affect the development of children. The reason is that the condition of the child’s brain has not yet developed, especially in terms of reasoning and sharpness of thinking (frontal lobes), and children tend to act without thinking. The Ministry of Communication and Informatics (Kominfo) revealed that there were 1,573,282 negative content spread on internet sites from January to October 2021. From that total, Kominfo found that pornographic content was the most dominating (www.kemenkopmk.go.id, 2022).

Whereas based on the 1945 Constitution (UUD 1945), the State has guaranteed their rights and freedoms and guaranteed every child has the right to survival, growth and development as stated as follows:

Article 28B Paragraph (2):

"Every child has the right to survive, grow and develop and has the right to protection from violence and discrimination".

Article 28J Paragraph (2):

"In exercising his rights and freedoms, everyone is obliged to comply with the restrictions established by law for the sole purpose of guaranteeing the recognition and respect for the rights and freedoms of others and to fulfill fair demands in accordance with considerations of morals, religious values, etc., security and public order in a democratic society".

Method

The type of research conducted is normative research. According to Johnny Ibrahim, normative legal research is a scientific research procedure to express the truth based on scientific logic from the normative side (Johnny Ibrahim, 2013). The data obtained is then processed by emphasizing the process of deductive and inductive inference as an effort to answer research through formal and argumentative ways of thinking through legal reasoning activities. The approach that the author uses in this study is a library research data approach using library sources to discuss problems that have been formulated using qualitative research methods.

Results & Discussion

Based on the We Are Social report, the number of active users of social media in Indonesia in 2014–2022 was 191 million people in January 2022. This number has increased by 12.35% compared to the previous year which was 170 million people. Seeing the trend, the number of social media users in Indonesia continues to increase every year (M. Ivan Mahdi, 2022).

However, its growth has fluctuated since 2014–2022. The highest increase in the number of social media users reached 34.2% in 2017. However, the increase slowed to 6.3% last year. The number has only increased again this year. Meanwhile, WhatsApp is the most widely used social media in Indonesia. The percentage was recorded at 88.7%. After that, there are Instagram and Facebook with percentages of 84.8% and 81.3%, respectively. Meanwhile, the proportion of TikTok and Telegram users is 63.1% and 62.8%, respectively (M. Ivan Mahdi, 2022).

With the increasing number of social media users in Indonesia, related to the large number of content containing pornographic elements or content, of course this is a concern for all of us and the role of the Government, both Central and Regional Governments, which are required to prevent the manufacture, distribution, and use of pornography.

Etymologically, pornography means a writing related to prostitution problems and the writing is mostly in the form of fiction (fictional stories) whose material is taken from sexual fantasy, pornography usually does not have a
plot and character, but has a detailed description of sexual activity, often in a way that prolonged and sometimes very challenging (Asrini Hanifah, 2009).

In the big Indonesian dictionary, Pornography means:

a. Erotic depiction of behavior by painting or writing to arouse lust.
b. Reading material that is intentionally and solely designed to arouse lust in sex. Many pornography actors take refuge in the name of art.

According to Cak Kandar, art is an act or process of creation that is intentionally made to increase the creativity of human intelligence that meets aesthetic, artistic, philosophical and moral elements. While pornography is an act that aims to create lust (Asrini Hanifah, 2009).

Cyberporn, is a term formed from the words "cyberspace" and "pornography". In the Merriam Webster Online Dictionary the definition of cyberporn is stated: "Pornography accessible online especially via the Internet", namely pornography that can be accessed online, especially via the internet. So it is clear that cyberporn is taken from the word cyberspace as the place where it is spread, and pornography is the content or content. So it can be concluded that cyberporn is the loading of pornographic elements in a space on the internet network called cyberspace or cyberspace. Cyberporn itself, which in terms of content or pornographic elements is the same as the definition of pornography that has been described, but what distinguishes it is in terms of the distribution media and there are some uniqueness of the cyberporn (Asrini Hanifah, 2009).

Pornography on the internet is related to possessing, creating, importing, displaying, publishing and/or distributing pornography. Pornography on the internet is also related to the content of the site that is presented to its accessors, so the Convention on Cybercrime from the European Union categorizes this pornography in the category of Content-related offenses contained in Title 3, article 9. An interactive global communication network through internet relay chat facilities (chattiny) can be used to disseminate information about pornographic stories or images (both for the dark side and the bright side of pornography) or also called cybersex. There are two forms of cybersex in chat rooms, namely Computer mediated interactive masturbation in real time and Computer mediated telling of interactive sexual stories (in real time) with the intent of arousal.

In Indonesia, the prohibitions and restrictions on pornography are regulated by the Law of the Republic of Indonesia Number 44 of 2008 concerning Pornography, the Pornography Law. As explained in Article 4 Paragraph (1) of the Pornography Law, that everyone is prohibited from producing, making, reproducing, duplicating, distributing, broadcasting, importing, exporting, offering, trading, renting, or providing pornography which explicitly contains:

a. intercourse, including deviant intercourse;
b. sexual violence
c. masturbation or masturbation;
d. nudity or an impressive display of nudity;
e. genitals; or
f. child pornography

It is further explained in Paragraph (2), namely:

Everyone is prohibited from providing pornographic services that provide explicit nudity or the appearance of nudity, explicitly display genitalia, exploit or exhibit sexual activity, or offer or advertise, either directly or indirectly, sexual services.

The threat to this article is regulated in Article 29 of the Pornography Law which states that anyone who produces, makes, reproduces, duplicates, disseminates, broadcasts, imports, exports, offers, trades, rents, or provides pornography as referred to in Article 4 Paragraph (1) shall be sentenced to a minimum of 6 (six) months in prison and a maximum of 12 (twelve) years and/or a minimum fine of Rp. 250,000,000 (two hundred and fifty million) and a maximum of Rp. 6,000,000,000 (six billion).

The Indonesian government itself has established a law that regulates Electronic Information and Transactions (UU ITE), namely Law Number 11 of 2008 concerning Electronic Information and Transactions. In addition to the ITE Law, it is also regulated in the Criminal Code (KUHP), especially Article 282 paragraphs (1) and (2), Law Number 8 of 1992 concerning Film, Law Number 36 of 1999 concerning Telecommunications, Law No. Number 40 of 1999 concerning the Press, Law Number 32 of 2002 concerning Broadcasting. However, law enforcement carried out by law enforcers in ensnaring perpetrators of pornography on the internet (cyberporn) as a cybercrime has not been effective in Indonesia.

According to Moeljatno, basically a crime is a basic understanding in criminal law. Crime is a juridical understanding as well as to provide a definition or understanding of legal terms, so it is not an easy thing to provide a definition or understanding of the term criminal act. The discussion of criminal law is intended to understand the meaning of crime as a sanction for offenses, while sentencing is related to the basics of justification for the imposition of crimes and theories about the purpose of punishment. It should be stated here that criminal is a juridical term which
Nursyamsiyah

has a special meaning as a translation of the Dutch language "straf" which can be interpreted as "punishment" (Moeljatno, 1987).

Crime is a juridical definition, unlike the term "evil act" or "crime" (crime or Verbrechen or misdad) which is defined criminologically and psychologically. Regarding the content of the definition of a crime, there is no unity of opinion among scholars. As a general description of the definition of crime or criminal act put forward by Djoko Prakoso that juridically the definition of crime or criminal act is "an act that is prohibited by law and the violation is subject to sanctions", further Djoko Prakoso stated that criminologically a crime or criminal act is "an act that violates the norms that apply in society and gets a negative reaction from the community, and psychologically a crime or crime is "an abnormal human act that is against the law, caused by factors such as: psychological factors of the perpetrator of the act (Djoko Prakoso & Agus Imunarso, 1987)."

Every criminal act committed by a person is basically obliged to take responsibility for his actions. Criminal liability is intended to determine whether a defendant is responsible for a crime that has occurred or not, if it turns out that his actions are against the law and the defendant is able to take responsibility, then that person can be punished. According to Roeslan Saleh, whether or not a person is convicted of an act depends on whether at the time of committing the act there was an error or not, whether the person who committed the criminal act did have an error then of course he can be subject to criminal sanctions, but if he has committed a prohibited criminal act and reprehensible but has no fault he is certainly not punished.

According to Moeljatno, the elements of a crime are (Sudarto, 1990):

a. Deeds;
b. What is prohibited (by law);
c. Criminal threats (for those who violate the prohibition) Only human actions may be prohibited, what prohibits is the rule of law.

To prevent and eradicate the spread of pornography via computers and the internet, Indonesia already has laws and regulations that prohibit the distribution of pornography in the form of electronic information, namely Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE). Article 27 paragraph 1 of Law Number 11 of 2008 reads: "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".

Criminal sanctions will be imposed for anyone who commits an act as stated in Article 27 paragraph 1, namely a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah). Article 27 paragraph 1 of Law Number 11 of 2008 uses the word accessible, which means that anyone who intentionally and without rights makes accessible electronic information containing pornography or a violation of decency will be subject to criminal sanctions. In addition, Law Number 11 of 2008 also regulates the prohibition for anyone who intentionally and without rights or against the law procures or provides computer hardware or software used to facilitate the spread of pornography, because this is a prohibited act. in Article 34 paragraph (1) of Law Number 11 of 2008.

Sanctions from people who violate Article 34 paragraph (1) of Law Number 11 of 2008 are contained in Article 50 of Law Number 11 of 2008: "Everyone who fulfills the elements as referred to in Article 34 paragraph (1) shall be punished with imprisonment for a maximum of 10 (ten) years and/or a fine of a maximum of Rp. 10,000,000,000 (ten billion rupiah)". The act includes the involvement of a person providing facilities in the form of computer hardware to duplicate or reproduce pornographic files on CDs or other storage media so that they can be distributed.

According to Moeljatno, it describes based on the understanding of the term criminal law which says that law enforcement is part of the overall law that applies in a country that holds elements and rules, namely (Moeljatno, 1993):

a. Determine actions that should not be carried out accompanied by threats or sanctions in the form of certain crimes for anyone who violates the prohibition.
b. Determine and in what cases those who violate the prohibitions can be imposed or sentenced to criminal as has been threatened.
c. Determining how the imposition of the punishment can be carried out if the person suspected of having violated the prohibition.

Conclusion

Legal arrangements relating to pornography according to the laws and regulations in Indonesia are regulated in Article 27 Paragraph (1) Paragraph (2) Paragraph (3) Law on Information and Electronic Transactions No. 11 of 2008 as amended by Law No. 19 of 2016 and Article 45 Paragraph (1) of Law Number 44 of 2008 concerning Pornography. Law enforcement itself is part of the whole law by determining actions that should not be carried out accompanied by
threats or sanctions in the form of certain crimes for anyone who in this case is anyone (no exception) who violates the prohibition.

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