



## Law Enforcement of The Criminal Action of Spreading Pornography Videos Through Social Media (Decision Study Number 2661/Pid.Sus/2020/PN. Mdn)

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### Abstract

Pornography has such a negative impact on human life that there needs to be a concerted effort against pornography across society so that it does not lead to a denial of what it means to be human. In preparing this paper, secondary sources were examined using library search methods by analyzing Case No. 2661/Pid.Sus/2020/PN. The conclusion of the oral debate was that the legal regulation against the offense of distributing pornographic videos uploaded via social media was incorporated into the Criminal Code, then Law No. 11 of 2008 on Information and Electronic Transactions and Law No. 44 of 2008. is to be incorporated into Pornography is regulated. The implementation of prosecution for the offense of distributing pornographic videos uploaded via social media is based on the provisions of the Criminal Code, Article 27(1) of the Information and Electronic Transactions Law No. 19 of 2016. Distribution of pornographic videos uploaded via social media under Decision No. 2661/Pid.Sus/2020/PN. Mdn meets all elements of Section 29 of RI Act No. 44 of 2008 regarding Pornography.

**Keywords :** Law Enforcement Pornography, Dissemination Of Pornography, Social Media

### INTRODUCTION

Advances in information and communication technology (ICT) and its use in various areas of life indicate that human civilization is transforming towards an information society. The Internet is an ICT product that enables anyone to easily obtain and disseminate information quickly and inexpensively, and to deliver information to an extremely wide range. (Raharjo:2013).

One of several forms of cybercrime is of great concern and has drawn attention from various groups due to its rapid development and widespread and dangerous ramifications. Cyberporn is a computer-related porn offense and can generally be interpreted as the unlawful use of a computer.

According to the law. Section 44 of 2008 on pornography, paragraph 1, number 1, pornography means images, sketches, illustrations, photographs, texts, sounds, noises, moving images, animations, cartoons, dialogues, gestures or any form of communication medium Any other form of message via and/or performances that contain profanity or sexual exploitation that violates norms of social decency. (UU Nomor 44 Tahun 2008).

Pornography is commonly associated with writing and performing as it is most commonly seen in exposing issues of sexuality. Pornography undermines the normative order of society, destroys the harmony of life, families and society in general, destroys the noble

values of human life such as love, loyalty, love, justice and honesty. These values are needed by society to build and ensure healthy relationships in society. (Tia Rahmania: 2017)

Pornography has such a negative effect on human life that it leads to the denial of what it means to be human, the physical and mental condition of people for generations. There needs to be a concerted effort against pornography across society to prevent health, mind and body. Pornography is indeed destroying human life in general, now and in the future, and we need to work together against pornography.

Pornography crime is the use of computers to create, display, disseminate, distribute, or publish pornographic or obscene material on a worldwide computer network (the Internet). To prevent and eliminate the distribution of pornography through computers and the Internet, Indonesia already has non-criminal laws and regulations, including a ban on the distribution of pornography in the form of electronic information. (UU ITE) Article 27, Section 1.

Any person who commits an act under section 27 paragraph 1 shall be subject to criminal penalties i.e., he shall be subject to imprisonment not exceeding six years or fine not exceeding Rp.1,000,000,000.00 (one billion rupiah) Improper use of this article is imposed on the party that originally disseminated it (first person) or publicly uploaded via the internet or social media.

The act of duplicating obscene material into a video, uploading it to the Internet or other recording media or social media, and then lending or selling it is an act that violates Article 29 and Article 4, Paragraph 1 of the Act. 44 of 2008 In connection with pornography, offenders shall be subject to minimum 6 months, maximum 12 years imprisonment and/or minimum Rp. 250,000,000.00 (two hundred and fifty million rupiah) and maximum Rp.6,000,000,000.00 (six billion rupiah).

Decision No. 2661/Pid.Sus/2020/PN specifies the offense of distributing pornographic videos uploaded on social media. Furthermore, the defendant is legally guilty of committing an offense to which he has no right and illegally and knowingly making, reproducing and distributing pornography as provided for in Article 29 of Law No. 44 of 2008 concerning pornography. It turns out that he was found guilty and convincingly convicted. As a result of these acts, the accused Arisman Harefa (Ama Endru) is sentenced to 12 years imprisonment and a fine of her Rp800,000,000 (eight hundred million rupiah). He was sentenced to six months in prison.

## **METHODOLOGY**

### **Research Type**

The type of research used in this study is normative legal research, i.e. research on legal principles. Normative law research is also called education law research, and it is possible to understand laws as written in laws (laws in books) and to conduct research on legal systems using specific laws and statutory laws. This study is of an analytical descriptive nature. That is, a study that describes only the state of an object or event without the intention of drawing general conclusions.

#### Research data sources

The data source for this study was obtained from secondary data, i.e. data obtained by:

1. The main legal material, i.e., the binding legal material, i.e., the Laws and Regulations, Law No. 19 Year 2016 on Criminal Law, Information and Electronic Transactions (UU ITE) and Law-Law No. 2008 on Pornography; No. 44.
2. Secondary Legal Materials. for example, Draft bills, research results, legal works, etc. [https://www.paraphraser.io/assets/frontend/images/copy\\_resized.png](https://www.paraphraser.io/assets/frontend/images/copy_resized.png).
3. Tertiary or supplementary legal material such as encyclopedias, material from the Internet, and bibliographic references.

## Data Acquisition Technology

The data collection tools used in research are run in two ways to obtain an overview or information about similar studies and relate them to the question under study. It was created to collect secondary data necessary for research. Literary research (library research) is done in his two ways:

1. Offline, that is, by visiting bookstores and libraries and collecting secondary data necessary for research, we collect research data directly from the library.
2. Online, library research that search online or Internet media to collect secondary materials necessary for research.

## RESULT AND DISCUSSION

### Legal restrictions on distribution of obscene videos uploaded on social media

The problem of obscene content distribution is increasing, but that doesn't mean it isn't regulated to prevent it from spreading further. However, several laws have been drafted and enforced to ensure that the now criminal act of pornography no longer occurs. Although not a literal porn crime, the crime of pornography is declared in the Penal Code. This offense is regulated in Chapter 14 of Book 2 of the Criminal Code, in which there are three articles directly and indirectly related to the offense of pornography, such as Articles 281, 282 and 283. On the other hand, Book 3 of the Criminal Code also includes porn offenses. Namely, the Chapter on Violation of Public Order (Chapter 14), i.e., Articles 532, 533, 534 and 535 of the Penal Code. Pornography is one of the most difficult crimes to formulate because the perspectives on what constitutes pornography, obscenity and immorality are highly subjective and relative. However, due to the widespread ill effects of pornography, this must be resolved through careful and rigorous tort.

The basis for regulation of broadcasters broadcasting programs containing pornographic content is Law No. 32 of 2002 on Broadcasting. Required by section 36(5) in conjunction with section 57(d).

As the production, distribution and use of pornography has a growing impact on society that threatens the lives and social order of Indonesian citizens, the government enacted Law No. 44 of 2008 on pornography. The existence of anti-pornography laws may imply different interpretations of pornography so that the problem of pornography can be overcome, so that, like the problem of pornography, the concept of pornography in Law No. 44 of 2008 on pornography It can be the basis for references. In Indonesia, there are still unresolved problems due to the weakness of the community's own response to pornography, and there are individual differences in understanding and definition of pornography, and there are other problems in response. (Dewi Bunga: 2011)

Penalties of the Pornography Act are set out in Chapter 7, Sections 29 to 38. In general, some of the punitive provisions of this law can be used to lure porn offenders, especially when the media broadcasts, displays, performs, or models pornography. Articles 29, 30, 34, 36, etc.

The substantive criminal law in cases of porn offenses via social media is regulated specifically in Law No. 19/2016 amending Law No. 11/2008 on Information and Electronic Transactions. This is stated in Article 27(1): "*Anyone who intentionally and without permission disseminates and/or transmits and/or makes available electronic information and/or electronic documents in a manner contrary to good faith*".

Implementation of Law Enforcement Against the Crime of Spreading Pornographic Videos Uploaded Through Social Media.

The surge in porn videos uploaded via social media is driven by a variety of factors, including:

1. Many new videos continue to spread because the creators haven't touched them.
2. Easy access to the internet, including porn
3. Distribution of erotic videos to increase followers (followers).
4. Get rewarded
4. Blackmail.
5. Heartbreak. (Okamaisya Sugiyanto: 2021)

Obstacles faced by law enforcement agencies against criminals distributing pornographic videos through social media include:

1. Video maker hasn't been caught yet.
2. The difficulty in finding and prosecuting the perpetrators of the crime of distributing pornographic videos through social media is that the perpetrators of this crime can be anyone, anywhere.
3. Difficulties in accessing, for example finding sites containing pornographic content on social media.
4. Restrictions on specialized cybercrime tools owned by law enforcement officers to support investigator infrastructure to detect criminal activity in the distribution of pornographic videos via social media.
5. The imbalance between the number of cases handled by law enforcement officers and the number of law enforcement officers handling criminal cases involving the distribution of pornographic videos via social media.
6. Law enforcement officers face difficulties in handling cyber-pornography cases as few law enforcement officers understand the ins and outs of information technology (Internet).
7. In terms of expenses used by investigators in the investigative process, it is quite large, for example in the category of serious criminal cases.
8. The police are more passive, waiting more to rely on complaints from the public who incidentally are victims or people who feel aggrieved, so they will not act if there is no report from the police. Whereas there is not only a report, then an investigation is immediately carried out, it must be filtered first whether the report must be handled or not. (Ririn Hardianti: 2016).

### **Analysis of the Criminal Verdict for Spreading Pornographic Videos Uploaded thru Social Media in Decision Number 2661/Pid.Sus/2020/PN Mdn**

The defendant in this situation become Arisman Harefa (Ama Endru) on an unspecified day and date and month in 2013 and on Saturday 22 July 2017 or as a minimum any other day in July 2017, placed at Jalan Penitentiary Gang Rambutan No. 15 Kel. Sunggal Kec. Helvetia Prop. North Sumatra or as a minimum in any other area which continues to be blanketed withinside the jurisdiction of the Medan District Court, deliberately and without rights to produce, make, reproduce, duplicate, distribute, broadcast, import, export, offer, trade, lease or offer pornography.

The act become finished through the Defendant withinside the manner the Defendant first have become familiar with the sufferer Lestari Gulo on the BNKP SION Church Jalan Binjai Km 10.8 which become among the Defendant Arisman Harefa (Ama Endru) and the sufferer have been each Congregations on the BNKP Church then the Defendant Arisman Harefa (Ama Endru) and the sufferer Lestari Gulo exchanged cellular phone numbers and regularly communicated thru WhatsApp till the following courtship, the sufferer Lestari Gulo

become persuaded so as to have conjugal members of the family in order that the sufferer Lestari Gulo desired to be invited to have sexual intercourse.

During sexual intercourse, the perpetrator took a photo of the scene and the photo was used as a threat against the victim Lestari Gulo. If the victim did not want to serve his lust, the defendant Arisman Harefa (Ama Endru) would distribute the photos so that the victim Lestari Gulo felt scared so that in the end the parents and the extended family of the victim Lestari Gulo knew about this incident and the victim Lestari Gulo could not have contact with other male friends besides the Defendant Arisman Harefa (Ama Endru).

The defendant was indicted by the public prosecutor based on the alternative indictment as follows:

1. First indictment: The actions of the Defendant Arisman Harefa (Ama Endru) als Arisman Harefa (Ama Endru) als Ama Ndru as stipulated and subject to criminal penalties in Article 29 of the Law of the Republic of Indonesia No. 44 of 2008 concerning Pornography.
2. The actions of the Defendant Arisman Harefa (Ama Endru) als Arisman Harefa (Ama Endru) als Ama Ndru as stipulated and subject to criminal penalties in Article 27 paragraph (1) yo article 45 paragraph (1) of Republic of Indonesia Law No. 11 of 2008 concerning Information and Electronic Transactions.

The demands of the Public Prosecutor which in essence demand that the Panel of Judges who examined and tried this case decide:

1. Declare the defendant Arisman Harefa (Ama Endru) has been proven legally and convincingly guilty of committing a crime "Everyone who produces, makes, reproduces, reproduces, distributes, broadcasts, imports, exports, offers, trades, rents or provides pornography" as regulated and subject to criminal penalties in Article 29 of the Republic of Indonesia Law No. 44 of 2008 concerning Pornography.
2. Declare the defendant Arisman Harefa (Ama Endru) was sentenced to imprisonment for 11 (eleven) years minus the time the Defendant was in custody and a fine of Rp. 800,000,000. - (eight hundred million rupiah) Subsidiary 6 (six) months in prison.

The Panel of Judges at the Medan District Court rendered a decision which stated as follows:

1. Declare the defendant Arisman Harefa (Ama Endru) has been legally and convincingly proven guilty of committing the Crime "Without rights and against the law intentionally making, reproducing and distributing pornography" in the First Alternative Indictment.
2. Sentenced a crime against the defendant Arisman Harefa (Ama Endru) therefore with imprisonment for 12 (twelve) years and a fine of Rp. 800,000,000. - (eight hundred million rupiah), provided that if the fine is not paid, it is replaced by imprisonment for 6 (six) months.
3. Determine the period of arrest and detention that has been served by the Defendant to be reduced in its entirety from the sentence imposed.
4. Burdening the Defendant to pay court fees of Rp. 5,000, - (five thousand rupiah).

Based on Decision Number 2661/Pid.Sus/2020/PN Mdn, the perpetrators Arisman Harefa (Ama Endru) carried out the activity of uploading pictures showing the sexual intercourse and spreading them using the perpetrator's social media accounts. The actions of perpetrators who use media images with the intention of harassing other people or not are also included in Article 29 of Law Number 44 of 2008 concerning Pornography, namely by making or uploading pictures that show parts of the body that are having intimate relations or not even having sex. having sex but the props are parts that show the human genitals that are also

included in the element of pornography which is not legalized in Indonesian law, this is what is happening in social media that is currently developing.

As for the case with Decision Number 2661/Pid.Sus/2020/PN Mdn for the actions of the perpetrator who uploaded the post in the form of not only decency content in the form or sentence, but also through pictures and/or footage on his social media services. Regarding the act of posting in the form of content or snippets which are and are part of and are included as an electronic document based on the provisions of Article 1 of Law Number 19 of 2016 concerning Electronic Information and Transactions, therefore as an electronic document it should be in accordance with regulations governing matters. In the provisions of Article 27 Paragraph (1) of Law Number 19 of 2016 concerning Information and Electronic Transactions it is stated that every electronic document may not conflict with the norms of decency. If it is examined the content of images/snippets uploaded via posts on social media services, the actor is in the form of a sexual intercourse.

Actions with the intention of bringing down or harassing other people by using image media are also very serious actions, the media image itself is something that is intended to show or show a part that is not suitable for consumption by the public because it is very sensitive because it is taken from the organs. the body is very vital for humans and when it is shown to other people it becomes an insult because the image is not worth seeing. (Agus Raharjo: 2013)

Based on the description above, it can be concluded that if a content or media in the form of an image is shown or even the image is shown to another person with an element of intent and with the intention of causing harassment to another person, it is an act that is against the law, because without rights, distribute content that is indicated as pornographic and then use it to harass other people.

Then by using social media in uploading videos that contain elements of decency with the intention of sharing/dissemination without rights to other people/the public, whether intentionally or not, also includes violating Article 4 of Law Number 44 of 2008 concerning Pornography as referred to is also one of the acts that are against the law because the video shows or even demonstrates scenes of having sex or showing vital parts of human organs.

Uploading videos that contain elements of decency in social media services is a behavior that violates the norms of decency and is contrary to Article 27 of Law Number 19 of 2016 concerning Information and Electronic Transactions. Referring to this article, the activity of uploading pornographic videos on social media services can have legal consequences for the perpetrators or users of social media services in Indonesia.

Humiliation in terms of pornography can also be categorized in this article because sentences of harassment in the form of written media, pictures and videos also often occur or even frequently and this is a form of violation as referred to in Law Number 44 of 2008 concerning pornography and also sending pornographic content or videos to other people is also a form of violation because it has the intention of harassing other people.

The action taken by the perpetrator was based on the case with decision Number 2661/Pid.Sus/2020/PN Mdn on behalf of the defendant Arisman Harefa (Ama Endru) in the form of uploading content containing pornographic elements. This action is clearly contrary to the provisions of article 27 paragraph (1) of Law Number 19 of 2016 concerning information and electronic transactions. In this act, criminals upload content containing the phrase decency so as to meet the provisions of the Article 27(1) element. However, the sufficiency of the decency element in the use of decency phrases must also be considered in the use of Act 44 of 2008 on pornography in relation to the sufficiency of the immoral element in the use of these decency phrases. not.

**The author's response is based on the decision number 2661/Pid.Sus/2020/PN Mdn**

Based on Law Number 19 of 2016 concerning ITE as stipulated in article 45 paragraph 1 concerning prohibited acts, the imposition of criminal sanctions on the spread of pornographic content regarding sentences containing elements of the phrase decency. Everyone who intentionally and without rights distributes and/or transmits and/or makes it accessible can be punished according to Article 45 paragraph 1, namely six years imprisonment and or a maximum fine of 1,000,000,000.

According to the author, the judge who decided the case included things that were aggravating to the defendant, namely admitting his actions and not regretting his actions. The author also analyzes that the judge's consideration in imposing criminal sanctions on the perpetrators of criminal acts in this case is to look at the facts revealed in the trial. the judge uses juridical considerations such as the defendant fulfilling the elements of article 29 of the ITE Law. Lestari Gulo as a victim was not sentenced by a judge according to the author, it was appropriate because Lestari Gulo was a victim, not as a perpetrator of making pornographic videos because Lestari Gulo was under threats if he did not follow the wishes of the perpetrator, the name Arisman Harefa als Ama Endru.

## RESULT AND DISCUSSION

Legal restrictions on the criminal act of distributing obscene videos uploaded on social media are regulated by the Pornography Law No. 44 of 2008, which is a special law regulating obscene crimes (special law). Criminal sentence for distribution of pornographic videos uploaded via social media under Decision No. 2661/Pid.Sus/2020/PN. Mdn is satisfied on the facts of law by both witness testimony and defendant's testimony and evidence in all sections of RI Act No. 44 of 2008 Section 29 regarding pornography. The Chamber also neither justified nor condoned the reasons for holding the defendant accountable for his actions, and did not find any reasons for withdrawing the judgment.

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