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## **CRIMINAL ACCOUNTABILITY FOR ACTORS OF THREATENING TO SPREAD ASSUILA VIDEO ON SOCIAL MEDIA**

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### Abstract

The rapid development of information and communication technology has affected human development worldwide. Humans have made technological advances in the digitalization era to facilitate human activities such as accessing information and knowledge so that humans can do many things quickly. Cases of immoral crimes almost always occur in Indonesia and attract public attention. The level of immoral crimes in Indonesia is very high and varied. The perpetrators of immoral crimes also range from children and adults to the elderly, even early childhood. Two components consist of immoral crimes: norms of decency and norms of decency. In order to function as a basis for providing a sense of justice and legal certainty to the people of Indonesia, the norms of decency play a critical role. This research is normative legal research, which places law as a building system of norms. Pornographic crimes that occurred in the Republic of Indonesia are contrary to the principles held by Indonesian society. Pornography crimes often cause concern for the community. The Electronic Information and Transaction Law is a provision that applies to anyone who commits legal acts, whether within the scope of Indonesian jurisdiction or outside Indonesian territory and causes harm to Indonesia's interests.

Keywords: *Criminal Liability, Threateners, Distribution of Asusila Videos, Social Media*

### INTRODUCTION

The rapid development of information and communication technology has affected human development worldwide (Aprianto, 2021; Setiawan, 2018). Humans have made technological advances in the digitalization era to facilitate human activities such as accessing information and knowledge so that humans can do many

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things quickly (Putra, 2017). The internet contributes to this development and provides excellent benefits for humans, including (Widyopramono, 2012):

1. It allows people to communicate with each other without having to meet in person;
2. Enable people to get all the information they need without having to buy books or visit a library;
3. Using the internet to do online business, work online, and so on.

In addition, there are negative impacts provided by the internet, including:

- a. Pornographic content coming from abroad;
- b. Ethnicity, Religion, Ancestry, and group of people content can divide society;
- c. Crime in cyberspace. This crime is known as cybercrime. World crimes are of many kinds, such as hacking, cracking, spamming, and others

According to Soerjono Soekanto, societal changes will go hand in hand with technological advances (Soekanto, 2005). Thus, the internet can also cause more severe social problems. One example is the emergence of internet crime, often called internet crime in the internet world or "internet space." Cases of immoral crimes almost always occur in Indonesia and attract public attention. The level of immoral crimes in Indonesia is very high and varied. The perpetrators of immoral crimes also range from children and adults to the elderly, even in early childhood. Two components consist of immoral crimes: norms of decency and norms of decency. In order to function as a basis for providing a sense of justice and legal certainty to the people of Indonesia, the norms of decency play a critical role (Mulyadi & Agustanti, 2021).

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In Indonesia, arrangements regarding criminal acts related to the cyber/electronic world are strictly regulated in the Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (Hadiyati & Stathany, 2021). Then, regarding immoral crimes through electronic media, we can find the arrangements in the article violating Article 45 Paragraph (1) in conjunction with Article 27 Paragraph (1) of the Law of the Republic of Indonesia Number 19 of 2016 concerning amendments to Law Number 11 of 2008 Concerning Information and Electronic Transactions (Hidayat et al., 2023).

The concept of "liability," also known as "criminal responsibility," is discussed in the philosophy of law. R. Pound, an American legal expert, argues that liability is the obligation to pay for the retaliation that the perpetrator receives from someone who has committed an offense. According to him, accountability is related to law and moral values and decency prevailing in society (Atmasasmita, 2017).

The principle of liability in criminal law is "Criminal action if there is a mistake "*Geen straf zonder schuld Actus non facit reum nisi mens sis rea*" which means that criminal responsibility is assessed on the inner attitude of the perpetrator, not on the value of his actions. Exceptions to the principles of *mens rea* and *actus rea* in offenses that are a strict liability where the crime contains an element of guilt or *mens rea* do not need to be proven (Hasbullah, 2015).

An additional factor contributing to the crime of extortion and threats via electronic media is the ineffective legal system applied to the perpetrators (Hafid, 2015). The crime of extortion and threats through electronic media is contrary to or not following Article 45 paragraph (4) of Law Number 11 of 2008 concerning Information and Electronic Transactions. Every person who intentionally and without rights distributes and/or transmits and/or makes accessible Electronic

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Information and/or Electronic Documents that contain extortion and/or threats as referred to in Article 27 paragraph (4) shall be punished with imprisonment for a maximum of 6 (six) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah). Based on these provisions, the threat of imprisonment for six years was apparently not able to discourage the actions of the perpetrators of these crimes (Moniaga, 2022).

In Book II of the Criminal Code, immoral crimes are associated with sexual crimes (Fatura, 2019). The sexual crimes in Book II of the Criminal Code are Sexual Harassment, Rape, and Sexual Torture. Articles 281-283 of the Criminal Code in article 282 regulate the delict of decency, and regarding the delict of decency is also contained in Law Number 44 of 2008 concerning Pornography. Then it is broadly regulated in the Law of the Republic of Indonesia Number 19 of 2016 Number 251, concerning Amendments to Law Number 11 of 2008 TLN Number 5952 concerning Information and Electronic Transactions. Given the widespread use of social media in terms of committing criminal acts, especially in terms of means of spreading it. This criminal provision functions to protect legal interests and obtain legal certainty for society and the state

### **RESEARCH METHOD**

Research is a series of activities to find answers to curiosity about a problem to be studied, so a scientific method is needed to answer the problems in the research in question (Efendi & Ibrahim, 2018). This research is normative legal research, namely legal research that places law as a building system of norms (Mukti Fajar & Achmad, 2010). According to Soerjono Sekanto and Sri Madmuji in the book Salim HS, normative research is a type of library law research, which means legal research by examining library materials or documents (Salim, 2013). The nature of normative legal research is believed to be able to find answers to the problems studied, in



normative legal research discussing doctrines (expert opinions) or principles (fundamental principles) in the science of law (Ali, 2021). As for what is meant by law as a building system of norms in criminal responsibility for perpetrators threatening the spread of immoral videos on social media (Salter & Crofts, 2015).

## **RESULTS, DISCUSSION AND ANALYSIS**

### **A. Criminal Law Arrangements Against Actors Threatening the Dissemination of Immoral Videos on Social Media**

Pornographic crimes that occurred in the Republic of Indonesia are contrary to the principles held by Indonesian society. Pornography crimes often cause concern for the community. Pornographic media is increasingly accessible through print and electronic media. Advances in information and communication technology have increased the production, distribution, and use of pornography to the detriment of society.

Pornography is contrary to the rules and customs of society. Society, in general, sees pornography as a deviation or crime. Writing, words, pictures, and behavior containing pornography, as well as products or media containing pornography, are considered to violate the ethics and ethics of society. A society that maintains religious and moral standards still considers pornography, which only displays sensuality, sex, and exploitation of the human body, to be very taboo.

Arrangements regarding punishment for the perpetrators of distributing pornographic content are also regulated in Article 27, paragraph (1) of Law Number 11 of 2008 Concerning Electronic Information and Transactions:

"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."

Content that is prohibited from being distributed/distributed or transmitted is content that contains:

- 1) Decency/pornography (Article 27 paragraph (1) Electronic Information and Transactions Law jo. Article 45 paragraph (1) UU 19/2016);
- 2) Gambling (Article 27 paragraph (2) Electronic Information and Transactions Law jo. Article 45 paragraph (2) UU 19/2016);
- 3) Insult and/or defamation (Article 27 paragraph (3) of the Electronic Information and Transactions Law in conjunction with Article 45 paragraph (3) of Law 19/2016);
- 4) Extortion and/or threats (Article 27 paragraph (4) of the Electronic Information and Transactions Law in conjunction with Article 45 paragraph (4) of Law 19/2016);
- 5) Fake and misleading news (Article 28 paragraph (1) Electronic Information and Transactions Law jo. Article 45A paragraph (1) UU 19/2016).

Criminal threats against violators are regulated in Article 45 paragraph (1) of the Electronic Information and Transactions Law, namely imprisonment for a maximum of 6 (six) years and/or a fine of up to 1 (one) billion rupiah: Article 4: Everyone is prohibited from producing, making, reproducing, duplicating, distributing, broadcasting, importing, exporting, offering, trading, renting, or providing pornography that explicitly contains: genitalia;

Article 29 of the Pornography Law reads: Everyone who produces, makes

reproduces, reproduces, distributes, broadcasts, imports, exports, offers, trades, rents, or provides pornography as referred to in Article 4 paragraph (1) shall be punished with minimum imprisonment 6 (six) months and a maximum of 12 (twelve) years and/or a minimum fine of IDR 250,000,000.00 (two hundred and fifty million rupiah) and a maximum of IDR 6,000,000,000.00 (six billion rupiah).

Extortion and threats through electronic media are the same as conventional blackmail and threats; the only difference is the method used, namely through the Internet, where personal photos and videos are inserted into electronic documents and electronic information. The new mode of extortion in today's digital era is the threat of uploading private videos, including private photos, to the public.

## **B. Criminal Liability Against Actors Threatening the Dissemination of Immoral Videos on Social Media**

John Austin defines *positive law* as an order a king or sovereign body gives as politically superior, either directly or indirectly. Positive law is the command of the sovereign. Why use "positive law" instead of just "law"? Austin stressed that the law he meant here was a law made by state authorities so that it was a law that state authorities could implement (Maramis & Rumokey, 2014). The Electronic Information and Transaction Law (Electronic Information and Transactions Law) is a provision that applies to anyone who carries out legal actions, whether within the scope of Indonesian jurisdiction and/or outside the territory of Indonesia, and results in losses for the interests of Indonesia (Octarina, 2018).

Information is one of the most important things for humans, and the information obtained can be helpful in the life of society and the state. Information can also be accessed through a computer system. Law Number 19 of 2016 Amendment

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to Law No.11 of 2008 Concerning Information and Electronic Transactions itself has also explained in terms of precise information in Article 1 paragraph (1) described as follows:

"Electronic Information is one or a set of electronic data, including but not limited to writing, voice, images, maps, designs, photographs, electronic data interchange (EDI), electronic mail, telegrams, Teletext, telecopy or the like, letters, signs, numbers, Access Codes, symbols, or processed perforations that have meaning or can be understood by people who can understand them."

Known three elements of the meaning of Electronic Information, namely: (Chazawi & Ferdian, 2015)

1. Electronic Information is one or a set of electronic data;
2. Electronic information has forms including writing, sound, images;
3. Electronic Information has meaning or can be understood.

The right to information is also regulated in the 1945 Constitution which is a part of human rights as written in Article 28 F of the 1945 Constitution: "Everyone has the right to communicate and obtain information to develop his personality and social environment, and has the right to seek, obtain, possess, store, process, and convey information using all available channels."

Regarding prohibited acts, namely "spreading videos with immoral content" which has been regulated in Article 27 paragraph (1) of Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Information and Electronic Transactions which is a *Lex Specialis* of Article 282 Criminal Code because it regulates new legal rules, namely regulating the spread of immoral content by utilizing internet media or existing computer technology.

In terms of combating cases of spreading videos with immoral content, preventing the emergence of negative things in society, and prosecuting the

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perpetrators of spreading these immoral videos, the government already has an adequate legal umbrella. Article 27 paragraph (1) of Law No.19 of 2016 Amendments to Law No.11 of 2008, Article 282 paragraph (1), and paragraph (2) of the Criminal Code are several legal products that can be used to fight and ensnare perpetrators of spreading immoral videos.

## **CONCLUSION**

Arrangements regarding punishment for the perpetrators of distributing pornographic content are also regulated in Article 27 paragraph (1) of Law Number 11 of 2008 Concerning Information and Electronic Transactions. Criminal threats against violators are regulated in Article 45 paragraph (1) of the Information and Electronic Transactions Law, namely imprisonment for a maximum of 6 (six) years and/or a fine of up to 1 (one) billion rupiah. Article 29 of the Pornography Law which reads: Everyone who produces, makes, reproduces, reproduces, distributes, broadcasts, imports, exports, offers, trades, rents, or provides pornography as referred to in Article 4 paragraph (1) shall be punished with a minimum imprisonment 6 (six) months and a maximum of 12 (twelve) years and/or a minimum fine of IDR 250,000,000.00 (two hundred and fifty million rupiah) and a maximum of IDR 6,000,000,000.00 (six billion rupiah). The right to information is also regulated in the 1945 Constitution which is a part of human rights as written in Article 28 F of the 1945 Constitution: "Everyone has the right to communicate and obtain information to develop his personality and social environment, and has the right to seek, obtain, possess, store, process, and convey information using all available channels.

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