

Criteria For Limiting Perpetrators and Victims In Pornography Crime

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Abstract

The development of information and communication technology has had a positive impact on people's lives, but over time the forms of criminal acts have become increasingly diverse, from traditional to modern, one of which is the Crime of Pornography. The problem is how the factors influence the crime of pornography and what are the criteria for perpetrators and victims in the crime of pornography. This study uses a normative legal method with a statutory and conceptual approach. The result is that there are criteria for limiting perpetrators and victims in the crime of pornography, which can be said to be a perpetrator if everyone has been proven to produce, make, reproduce, duplicate, distribute, broadcast, import, export, offer, trade, rent and distribute pornography as regulated in the Pornography Law. Furthermore, it can be said to be a victim if someone becomes the object of a crime of Pornography, in addition, the victim is a person who experiences physical, mental, and/or economic suffering caused by a crime. A victim can also be said to be a perpetrator if he gives consent to the occurrence of a crime of pornography related to him. Therefore, there needs to be an update, especially in the Pornography Law which regulates the criteria for limiting perpetrators and victims, such as a victim can become a perpetrator if he/she agrees to commit a pornographic crime in addition to the perpetrator committing the crime as in Article 4 paragraph (1) of the Pornography Law. Thus, there needs to be a change in the Pornography Law to emphasize the role and limitations of perpetrators and victims so that this can provide legal certainty and benefits to perpetrators and victims of pornographic crimes.

Keywords: Criteria, Limitations, Perpetrators, Victims, Pornography.

INTRODUCTION

The development of information and communication technology has provided positive benefits in the social life of society, and has entered various factors of life, both in the government, businesses such as during the Covid-19 pandemic often carry out e-commerce transactions (Agustanti & Setiawan, 2021), banking, education, health, and personal life sectors of citizens. Currently, the development of information technology has become a means to commit criminal acts that often violate norms (Rindiani Kurniawati, Mulyadi, 2021). Therefore,

the forms of crime are increasingly diverse (Rifqi, 2020). Criminal acts are no longer always in the form of physical crimes, because criminal acts can also be committed through the use of information technology (Setiawan, 2018). This type of crime is known as cybercrime. It can be said that information and communication technology also makes a positive contribution to improving human welfare, progress, and civilization, this will be a potential means and an effective means of committing criminal acts (Virginia & Sopyono, 2021).

This encouraged the formation of Law Number 11 of 2008 concerning Information and Electronic Transactions which then underwent changes, the first was Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, and the second amendment was Law Number 1 of 2024 concerning the second Amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions.

Based on Article 28 D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, it is stated that “everyone has the right to recognition, guarantee, protection and certainty of fair law and equal treatment before the law.” Furthermore, based on Article 28 G paragraph (1) of the 1945 Constitution of the Republic of Indonesia, it is also stated that “everyone has the right to protection of themselves, their families, honor, dignity and property under their control, and has the right to a sense of security and protection from the threat of fear to do or not do something that is a basic human right”.

The rise of cybercrime has greatly influenced several criminal acts related to morality and sexual violence, while the criminal acts in question were initially conventional in nature and then developed into criminal acts committed online, for example online gambling, online prostitution and pornography (Hidayat & Ilyas, 2022). Of course, several of these criminal acts under certain conditions can be considered as criminal acts that can disturb the community (Sumarna, 2021).

Furthermore, one example of cybercrime that is closely related to morality is the crime of pornography (Wibisono & Fawaid, 2022). The development of technology has made the spread of pornography crimes increasingly widespread and developed so that this has made the government enact Law Number 44 of 2008 concerning Pornography, which is better known as the Pornography Law. According to data from the National Commission on Violence against Women (KOMNAS Perempuan), there were 19 reported cases of pornography crimes that were received in 2018, increasing by 14% in 2019. However, the actual number of these pornography cases itself is actually greater than the data collected by KOMNAS Perempuan, while there were 863 cases of Online Gender-Based Violence originating from Cyber based on the KOMNAS Perempuan report in 2021, of which there were 71 cases of pornography. However, based on the data above, we can conclude that many victims of pornography do not report the crime because they are afraid that the case will only stop at the criminal process for the perpetrator, without thinking about the psychological aspects and social sanctions felt due to the distribution of immoral content / photos spread by the perpetrator on electronic media, especially through social media platforms, so that this phenomenon results in many couples sending explicit content to each other via social media, so that pornography cases are becoming increasingly common in Indonesia (Hamdan, 2006).

Based on Law Number 44 of 2008 concerning Pornography, it is regulated that pornography is an image, illustration, photo, writing, voice, sound, moving image, animation,

conversation, body movement, or other form of communication through various means of communication and/or public performances, which contain sexual harassment that violates moral norms in society. The crime of pornography is a crime against morality, so this act is included in the category of morality whose provisions are contained in Article 281, Article 282 and Article 533 of the Criminal Code (Law Number 1 of 1946) and Law Number 44 of 2008 concerning Pornography and Law Number 11 of 2008 concerning Information and Electronic Transactions and its amendments. However, in the Pornography Law and the Information and Electronic Transactions Law itself, it often creates uncertainty and overlaps with other regulations. Based on this, Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence provides a breath of fresh air for the problem of sexual violence in Indonesia. One example of a case of a pornography crime that occurred in Indonesia in August 2019, namely JAZ (26) a man who felt hurt because his relationship was not approved by the parents of his girlfriend, namely BCH (24), JAZ, a student from Kudus, dared to spread a video recording with his ex-girlfriend. The victim's parents reported the perpetrator on July 9, 2019. And, the result was that the Sleman District Court found JAZ guilty of spreading immoral content in the form of pornographic photos and videos of BCH on social media. JAZ was only sentenced to 1 (one) year in prison and a fine of IDR 1.500.000 (one million five hundred thousand rupiah), if the fine is not paid it will be replaced with a prison sentence of 2 (two) months based on decision Number 380 / Pid.Sus / 2019 / PN SMN (Jazillah, 2022).

Furthermore, in the crime of pornography there are criteria regarding the perpetrator and victim. So in determining whether someone is a perpetrator or a victim can be seen from the meaning of the perpetrator or victim itself in the legislation. To be said as a perpetrator, of course there are several stages. First, the term Suspect is known. A suspect is a person who because of his actions or circumstances based on initial evidence is suspected of being the perpetrator of a crime. Second is the Defendant, the Defendant is a suspect who is charged, examined and tried in court. And, third is the Convict, the Convict is a person who is convicted based on a court decision that has obtained permanent legal force. Furthermore, regarding the victim, in the crime of pornography, it is defined as a person who experiences physical, mental, and/or economic suffering caused by a criminal act. This is regulated in Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims.

So in this study, several examples of previous studies will be described that have similarities to the topic of legal problems for the current study. For example, the first is a study entitled Enforcement of Criminal Sanctions Against Perpetrators of the Distribution of Pornography compiled by Ferdicka Nggeboe and Ibrahim, which in the study explains the criminal sanctions for perpetrators of the distribution of pornographic videos and law enforcement against perpetrators of the distribution of pornographic content can be carried out through 2 (two) channels, namely the non-penal route which focuses more on the preventive nature (prevention before a crime occurs) by directing more towards the socialization of laws and regulations, especially the Law governing the crime of distributing pornographic images through electronic media (Nggeboe & Ibrahim, 2022). Furthermore, through the penal path that emphasizes the repressive nature (eradication after the crime has occurred) by conducting an investigation to then be processed through the courts. Second, a study entitled Victim Impact

Statement as an Effort for Legal Protection for Women Victims of Revenge Porn compiled by Herlina Puspitosari, and Anggraini Endah Kusumaningrum, in the study the victim impact statement can be a consideration for judges to sentence perpetrators of revenge pornography crimes (Puspitosari & Kusumaningrum, 2021). Third, a study entitled Legal Protection for Victims of Revenge Porn as a Form of Online Gender-Based Violence Reviewed from Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence compiled by Azza Fitrahul Faizah, and Muhammad Rifqi Hariri in the study discusses in more detail the aspects of legal protection for victims of pornography crimes and the fulfillment of the rights of victims of Pornography Crimes (Faizah & Hariri, 2022).

So Based on the description, the author found several problem objects in the Criminal Act of Pornography in Indonesia, the first is what are the factors that can influence the occurrence of the criminal act of Pornography? and the second is what are the criteria for limiting the perpetrators and victims in the criminal act of Pornography. Ultimately, it is important for victims of crime to have their rights as mandated by act (Agustanti & Waluyo, n.d.). This can be achieved through cooperation between the Criminal Justice System.

RESEARCH METHOD

The research method used is the normative legal research method, which is carried out based on the main legal materials by examining theories, concepts, legal principles and laws and regulations. The approaches used are the statutory approach and the conceptual approach. The conceptual approach is carried out by understanding the mechanism of the concept of victims and perpetrators as understood in the science of victimology through literature obtained from books, research results, and journals as a reference for understanding the right to be forgotten related to victims, victims rights, perpetrators of pornography crimes. In this case, the conceptual approach is intended to understand the concept of the right to limit the criteria for limiting victims and perpetrators. In substance, this refers to why victims can become perpetrators and what factors influence the main factors why victims can become perpetrators or suspects by using criminology theory, victimology, and conducting interviews with related parties. In the results of the legislative approach equipped with a historical approach, it will be compared with the results of the conceptual approach, to obtain conclusions about whether or not there is a conformity of the regulations in answering the formulation of the problem in the Research entitled Criteria for Limiting Perpetrators and Victims in Pornography Crimes. The data collection technique in this study was carried out through library research. The library materials used include primary legal materials in the form of statutory provisions, secondary legal materials in the form of textbooks, literature, and writings of experts. The data obtained through qualitative analysis, which means that the results of this study are described in the form of explanations and descriptions of sentences that are easy to read and understand. The analysis technique used is descriptive analysis, namely by describing the results of the study with detailed data and using examples of decisions related to pornography crimes.

DISCUSS AND ANALYSIS

The elements of a crime can be divided into two elements, namely objective elements and subjective elements, both of which are inherent in the perpetrator and the victim, referring

to the principle of criminal law which states that “there is no punishment if there is no mistake” which means that a mistake is caused by intent or negligence (Syukur, 2015). The subjective elements include two things, namely the first is intent. Intention is interpreted as the will to do or not to do acts that are prohibited or ordered by law, that intent is an act that is desired and can be accounted for in the form of punishment (Mallarangeng & Ali, 2023). Second, the objective element which includes elements related to its relationship to the criminal event (Siregar et al., 2021). Where this refers to the actions of the perpetrator who committed the crime. The objective elements include five things, namely: (1) Acts, which can be in the form of acts, namely active actions and omissions, namely passive actions; (2) Consequences that are dangerous or damaging, even eliminating interests that are maintained by law; (3) Circumstances, in which case the circumstances referred to are circumstances that accompany an act at the time it is committed and circumstances that arise later after the act is committed in a criminal event; (4) every act that is prohibited and threatened with criminal law regulations that are unlawful; and (5) laws that contain prohibitions or orders that create sanctions as a consequence of not complying with such prohibition or order (Tampubolon, 2024).

Factors That Can Influence the Occurrence of Pornography Crimes

The crime of pornography is very well known as one of the crimes related to genitals and violates moral norms, so that the crime of pornography is included in Online Gender-Based Violence. Online Gender-Based Violence occurs in the realm of internet media and utilizes technological facilities with the aim of harassing victims and taking revenge on victims based on their sexual actions (Faizah & Hariri, 2022).

In a more detailed sense, the crime of pornography has two component instruments that are very inherent and cannot be categorized as Online Gender-Based Violence, namely the element of harassment against victims based on sexual orientation and the element of media used in the distribution of pornographic content, namely online media, when referring to the types of crimes consisting of Child pornography is any form of pornography involving children or involving adults who act or behave like children; Revenge Porn is a cybercrime committed by distributing pornographic content without the consent of the person with the motive of revenge; Deep Fake Pornography is pornography using artificial intelligence technology to replace an individual's face with the face of another person; and Visual Pornography is pornography in the form of images, videos, and writings that contain pornographic content (Matsui, 2015).

This refers to the case of pornography, the victim experiences physical violence or non-physical violence. In physical violence, the victim receives threats from the perpetrator who aims to control and dominate so that the victim must comply with all the perpetrator's wishes to commit immoral acts. Thus, the victim can suffer losses that can affect aspects of life, especially psychologically. Furthermore, non-physical violence can take the form of unstable psychological pressure, emotional, economic losses, and result in social alienation experienced by the victim. Regarding the regulation of pornography crimes in Australia, it has been compiled completely and in detail with the Enhancing Online Safety Act of 2015 and the Criminal Code Amendment (Private Sexual Material) and the Summary Offenses Film and Sexting Amendment Act of 2016. Meanwhile, in England, regulations related to pornography

crimes have been regulated in the Criminal Justice and Courts Act 2015 and the Protection from Harassment Act 1997 which provides confirmation that it prohibits non-consensual and consensual sexual violence and the right for victims to receive compensation and impose criminal penalties on perpetrators who commit pornography crimes (Christianto, 2017).

In Indonesia, regulations related to the crime of pornography have been regulated in Law Number 44 of 2008 concerning Pornography and Law Number 11 of 2008 concerning Information and Electronic Transactions and its amendments. The occurrence of the crime of pornography is certainly driven by several factors. First, internal factors that come from within the individual in terms of encouraging someone to commit a crime. Among them are the problem of puberty in a person where a person's age enters 12 to 16 years which usually many people try to do new things, especially those with nuances of pornography (Nggeboe & Ibrahim, 2022). Next is the psychological problem which is on the grounds that pornography brings him to peace. In addition, there is a person's inability to manage lust, and boredom in a person, the factor of sexual deviation is the individual's desire to get sexual pleasure in an unnatural way, the factor of curiosity or the individual's desire to try new things related to sexuality, the fourth strong sexual drive and the need to feel sexual satisfaction so that a person can seek pornography as a means of fulfilling sexual desires to satisfy themselves, as well as low moral values. Second, there are external factors which are factors from outside the individual, including environmental and social factors, emotional stress factors, lifestyle factors, alcohol and drug use factors, and the last factor is economic factors (Natasya & Andriasari, 2023).

Of the perpetrator is associated with the criminology approach, we will know the factors that influence someone to become a perpetrator in a pornography crime. Referring to the theory of criminology, there are three perspectives that explain the occurrence of a perpetrator committing a crime, including (Cusack, 2017):

1. Macro theories, are theories that explain a crime event viewed from the perspective of social structure and the impacts caused by the crime, this is included in the anomie theory and conflict theory.
2. Micro theories, are theories that explain the reasons for committing crimes from a psychological, sociological or biological perspective, this is included in the theory of social control theory and social learning theory.
3. Bridging theories are theories that explain social structures and explain how a person or group of people become criminals or perpetrators of crimes, this theory is a subculture theory, which explains the factors that cause perpetrators to commit crimes in a cultural context or subcultural differences, and differential opportunity theory.

There are several factors that make someone become a perpetrator of the crime of pornography, consisting of several things, including:

1. Lack of family role, In this case, the role of the family, especially parents, should be to protect and understand the child, poor communication patterns in the family are one of the main factors in the occurrence of pornography crimes. if the family does not have an open and supportive communication pattern for children or adolescents that makes them comfortable talking about sexuality. and lack of supervision and direction from parents or family that can lead to addiction and unhealthy behavior,

so that children/adolescents will seek escape or seek entertainment to vent their sexual desires (Trisna, 2020).

2. Weak supervision and control in the social environment, Weak supervision and control in the social environment is one of the factors that influences the occurrence of pornography crimes. In this case, to minimize the occurrence of pornography crimes, the community, both at the RT/RW level and the local community, must cooperate with the community and local community organizations. This aims to increase active community participation to dare to take risks and work together to reduce criminal acts in this way, it must be carried out with positive community activities (Diab, 2014).
3. The role of the criminal justice system, In the criminal justice system there is an institutional subsystem in handling criminal acts, the criminal justice system is a system used to enforce the law in cases involving criminal acts consisting of the police, prosecutors and judiciary. in this case to reduce criminal acts the role of the police, prosecutors and judiciary must provide education in the form of counseling on the negative impacts of pornography to minimize criminal acts of pornography (Prasetyo & Herawati, 2022).

The negative side of the crime of pornography is often seen as a crime against humanity and a form of violence committed against women, both physically and visually. Although in practice it is not only women who are the objects of the crime of pornography. In fact, the perpetrators of the pornography industry exploit women's bodies, and exploit sexuality for their business interests on the other hand the pornography industry carries out its interests with threats, coercion, fraud, even by abusing power, this does not only apply in the pornography industry but also the perpetrators who commit the crime of pornography (Wibisono & Fawaid, 2022).

Criteria for Limiting Perpetrators and Victims in Pornography Crimes

There are several stages of proof in criminal procedure law which are efforts to find and discover material truth in a case to clarify what crime occurred and who the perpetrator was (Mallarangeng & Ali, 2023). Proof means that it is true that a criminal act has occurred and the defendant is guilty of committing the crime (Faizin, n.d.). Proof in criminal procedure law can be interpreted as an effort to obtain information through evidence in order to obtain a conviction on the truth or falsity of the criminal act charged and to be able to find out if there is an element of guilt on the part of the defendant (Savitri, 2020). Things that need to be considered include:

1. A judge may not sentence a person to a crime unless with at least two valid pieces of evidence he or she is convinced that a crime actually occurred and that the defendant is guilty of committing it, as regulated in Article 183 of the Criminal Procedure Code. So basically Indonesia adopts a negative evidentiary system or in other words, *Negatief Wettelijk*, in which the evidence refers to the judge's conviction.
2. Regarding evidence, Article 184 paragraph (1) of the Criminal Procedure Code stipulates that valid evidence is witness testimony; expert testimony; letters; instructions; and defendant's testimony. For more details, the Criminal Procedure

Code explains each of these pieces of evidence. First, according to Article 1 number 27 of the Criminal Procedure Code, witness testimony is one of the pieces of evidence in a criminal case in the form of a statement from a witness regarding a criminal event that he/she heard, saw, and experienced by himself/herself, stating the reasons for his/her knowledge. Second, according to Article 1 number 28 of the Criminal Procedure Code, expert testimony is information provided by a person who has special expertise regarding matters required to clarify a criminal case for the purposes of examination. Third, according to Article 187 of the Criminal Procedure Code, a letter is a report and other letters in official form made by an authorized public official or made before him/her, containing information about an event or situation that he/she heard, saw, or experienced by him/herself, accompanied by clear and firm reasons for his/her statement; a letter made according to the provisions of laws and regulations or a letter made by an official regarding matters included in the procedures that are his responsibility and which are intended for proving something or a situation; a statement from an expert containing an opinion based on his expertise regarding something or a situation that is officially requested from him; another letter which can only be valid if it is related to the contents of other evidence. Fourth, according to Article 188 paragraph (1) of the Criminal Procedure Code, an indication is an act, event or situation, which due to its adjustment, either between one and the other, or with the crime itself, indicates that a crime has occurred and who the perpetrator is. Article 188 paragraph (2) stipulates that the indications referred to in paragraph (1) can only be obtained from; a. witness statements; b. letters; c. statements from the accused.

3. Fifth, according to Article 189 paragraph (1) of the Criminal Procedure Code, the defendant's statement is what the defendant states in court about the acts he committed or which he himself knew about or experienced himself.
4. The testimony of one witness alone is not enough to prove that the defendant is guilty of the act he is accused of. In this case, as referred to in Article 185 paragraph (2) of the Criminal Procedure Code, one witness is not enough to prove that the defendant is guilty. This refers to the adage, namely *Unus Testis Nullus Testis*, which states that if the witness's testimony stands alone without the support of other evidence, it does not have the power of proof (Putra et al., 2023).
5. In relation to this, evidence has been explained in Article 39 of the Criminal Procedure Code, where in this article, evidence that can be subject to confiscation is: a. objects or bills of the suspect or defendant that are wholly or partly suspected of being obtained from criminal acts or as a result of criminal acts; b. objects that have been used directly to commit criminal acts or to prepare for them; c. objects used to obstruct the investigation of criminal acts; d. objects that are specifically made or intended to commit criminal acts; e. other objects that have a direct relationship with the criminal act committed. Referring to Article 191 paragraph (1) of the Criminal Procedure Code, this condition is a consequence of the application of the negative evidentiary theory (*negatief wettelijk bewijs theorie*) adopted in the Criminal Procedure Code. Evidence is always in the form of concrete material

objects that are related to a criminal act. For example, gadgets, TVs, and cash that are the result of the crime of theft; knives, guns, and ropes used to take lives; duplicate keys, fake letters, and fake uniforms that are specifically made to deceive; and fingerprints, semen, bullet casings and anything related to a crime. The form of evidence is not determined in a limited manner in the law as long as it is relevant to a criminal case (Sari et al., 2023). Evidence is not at all an object that can declare a defendant guilty of committing a crime. This means that it has no evidentiary power. In theory, a judge can find someone guilty without any evidence presented by the public prosecutor, for example in a minor criminal offense in the form of a minor insult. The condition is of course as long as the minimum *bewijs* has been met in the form of two pieces of evidence that give rise to the judge's belief.

As explained above, that evidence is very important to be done in determining who the perpetrator is and who the victim is in a crime. To be able to find out who the perpetrator is, especially in the crime of Pornography, of course, refers to the Pornography Law as follows:

Table 1. Regulations on Criminal Acts of Pornography

Article	Act	Contents	Explanation
4	(1)	<p>Everyone is prohibited from producing, making, reproducing, duplicating, distributing, broadcasting, importing, exporting, offering, selling, renting, or providing pornography that explicitly contains:</p> <ul style="list-style-type: none"> a. sexual intercourse, including deviant sexual intercourse; b. sexual violence; c. masturbation; d. nudity or displays that suggest nudity; e. genitals; or f. child pornography. 	<p>What is meant by “making” does not include for oneself and one's own interests.</p> <p>What is meant by “deviant intercourse” includes intercourse or other sexual activities with corpses, animals, oral sex, anal sex, lesbians, and homosexuals.</p> <p>What is meant by “sexual violence” includes intercourse preceded by acts of violence (abuse) or molestation by force or rape.</p> <p>What is meant by “impressing nudity” is a condition where someone uses a body covering, but still shows their genitals explicitly.</p> <p>Child pornography is any form of pornography involving children or involving adults who act or behave like children.</p> <p>Several elements are stated as “quite clear” in the Pornography Law. So that several elements refer to the Black Law Dictionary, as follows:</p>

			<p>Producing comes from the word “production” which aims to make an object or property.</p> <p>Making comes from the word “make” which is to create something in order to gain profit in the form of money.</p> <p>Multiplying comes from the word “many” which is for the amount of an object.</p> <p>Duplicate comes from the word “double” which means having two aspects of an object.</p> <p>Distribute comes from the word “spread” which means to flatten.</p> <p>Broadcast comes from the word “show” which means to show widely an object.</p> <p>Import comes from the word “Import” which means to bring goods into a country.</p> <p>Export comes from the word “export” which means to send, take, or bring merchandise or trade abroad.</p> <p>Offer comes from the word to negotiate a contract where one party agrees to do or not do something in exchange for consideration.</p> <p>Trade comes from the words “sell and buy” which is an agreement to exchange goods for money</p> <p>Provide comes from the word “available” to prepare for existing objects.</p>
	(2)	<p>Everyone is prohibited from providing pornographic services that:</p> <ul style="list-style-type: none"> a. explicitly present nudity or displays that suggest nudity; b. explicitly present genitals; 	<p>Clear.</p>

		<p>c. exploit or display sexual activity; or</p> <p>d. offer or advertise, either directly or indirectly, sexual services..</p>	
5		Everyone is prohibited from lending or downloading pornography as referred to in Article 4 paragraph (1).	What is meant by “downloading” is taking files from the internet or other communication networks.
6		Every person is prohibited from listening to, watching, using, possessing or storing pornographic products as referred to in Article 4 paragraph (1), except those authorized by statutory regulations.	<p>In terms of “having or storing” does not include for oneself and one’s own interests.</p> <p>What is meant by “authorized by law” for example is an institution authorized to censor films, an institution that supervises broadcasting, law enforcement agencies, health service institutions or sexual health therapy, and educational institutions. These educational institutions also include libraries, laboratories, and other educational facilities. The activities of listening to, showing, utilizing, possessing, or storing pornographic goods in this provision may only be used in places or locations provided for the purposes of the institution in question.</p>
7		Every person is prohibited from funding or facilitating acts as referred to in Article 4.	Quite clear
8		Every person is prohibited from intentionally or with their own consent becoming an object or model containing pornographic content.	This means that if the perpetrator is forced by a threat or is threatened or under the power or pressure of another person, is persuaded or deceived, or is lied to by another person, the perpetrator will not be punished.
9		Everyone is prohibited from using other people as objects or models that contain pornographic content.	Quite clear.
10		Everyone is prohibited from exposing themselves or others in performances or in public that	Other types of pornography include sexual violence, masturbation.

		depict nudity, sexual exploitation, intercourse, or other pornographic content	
11		Every person is prohibited from involving children in activities and/or as objects as referred to in Article 4, Article 5, Article 6, Article 8, Article 9, or Article 10.	Quite clear
12		Everyone is prohibited from inviting, persuading, exploiting, allowing, abusing power or forcing children to use pornographic products or services.	Quite clear
13	(1)	The creation, distribution and use of pornography containing content other than that referred to in Article 4 paragraph (1) must be based on statutory regulations.	<p>The term “making” includes producing, making, reproducing, or duplicating.</p> <p>The term “distribution” includes disseminating, broadcasting, downloading, importing, exporting, offering, trading, renting, lending, or providing.</p> <p>The term “use” includes listening to, showing, utilizing, owning, or storing.</p> <p>The phrase “other than as referred to in Article 4 paragraph (1)” in this provision, for example, includes magazines containing models wearing bikinis, swimsuits, and beach sportswear, which are used according to the context.</p>
	(2)	The creation, distribution and use of pornography as referred to in paragraph (1) must be carried out in a special place and in a special manner.	What is meant by "in a special place and in a special way" for example is placement that is inaccessible to children or packaging that does not display or depict pornography.
14		Provisions regarding the requirements and procedures for licensing the production, distribution and use of pornographic products for the purposes and interests of education and health services and the implementation of the	Quite clear

	provisions of Article 13 are regulated by Government Regulation.	
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In this case, if referring to the definition of a perpetrator of a crime (dader) according to doctrine, it is anyone who carries out all the elements of a crime as formulated in Article 55 of the Criminal Code (Hartanti et al., 2021). Article 55 paragraph (1) of the Criminal Code stipulates that a person can be punished as a perpetrator of a crime if (Lahabu et al., 2023):

1. those who do, who order to do, and who participate in doing Those who by giving or promising something by abusing the act;
2. power or dignity, with violence, threats or misdirection, or by providing opportunities, means or information, intentionally encourage others to do the act.

Furthermore, Article 55 paragraph (2) of the Criminal Code stipulates that for the advocate, only the act that is intentionally encouraged is taken into account, along with its consequences. Regarding the perpetrators of the crime of pornography, it has been regulated in Articles 4 to 13 of the Pornography Law. And of course, a person is declared as a perpetrator of a crime of pornography when he fulfills all the elements of the article as explained in the table above. The criminal provisions that can be imposed on each article are:

1. Article 29; “Anyone who produces, makes, reproduces, duplicates, distributes, broadcasts, imports, exports, offers, sells, rents, or provides pornography as referred to in Article 4 paragraph (1) shall be punished with 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)”.
2. Article 30; “Anyone who provides pornographic services as referred to in Article 4 paragraph (2) shall be punished with imprisonment of at least 6 (six) months and a maximum of 6 (six) years and/or a fine of at least Rp 250.000.000 (two hundred and fifty million rupiah) and a maximum of Rp 3.000.000.000 (three billion rupiah)”.
3. Article 31; Any person who lends or downloads pornography as referred to in Article 5 shall be punished with imprisonment of at most 4 (four) years and/or a fine of at most Rp 2.000.000.000 (two billion rupiah).
4. Article 32; Any person who listens to, displays, uses, owns, or stores pornographic products as referred to in Article 6 shall be punished with imprisonment of at most 4 (four) years and/or a fine of at most Rp 2.000.000.000 (two billion rupiah).
5. Article 33; Any person who funds or facilitates acts as referred to in Article 7 shall be punished with imprisonment of at least 2 (two) years and a maximum of 15 (fifteen) years and/or a fine of at least Rp 1.000.000.000 (one billion rupiah) and a maximum of Rp 7.500.000.000 (seven billion five hundred million rupiah).
6. Article 34; Any person who intentionally or with his/her consent becomes an object or model containing pornographic content as referred to in Article 8 shall be punished with imprisonment of at most 10 (ten) years and/or a fine of at most Rp 5.000.000.000 (five billion rupiah).

7. Article 35; Any person who makes another person an object or model containing pornographic content as referred to in Article 9 shall be punished with imprisonment of at least 1 (one) year and a maximum of 12 (twelve) years and/or a fine of at least Rp 500.000.000 (five hundred million rupiah) and a maximum of Rp 6.000.000.000 (six billion rupiah).
8. Article 36; Any person who displays themselves or others in a show or in public that depicts nudity, sexual exploitation, intercourse, or other pornographic content as referred to in Article 10 shall be punished with imprisonment of at most 10 (ten) years and/or a fine of at most Rp5.000.000.000 (five billion rupiah).
9. Article 37; Any person who involves a child in activities and/or as an object as referred to in Article 11 shall be punished with the same punishment as the punishment as referred to in Article 29, Article 30, Article 31, Article 32, Article 34, Article 35, and Article 36, plus 1/3 (one third) of the maximum criminal threat.
10. Article 38; Any person who invites, persuades, utilizes, allows, abuses power, or forces a child to use pornographic products or services as referred to in Article 12 shall be punished with imprisonment of at least 6 (six) months and a maximum of 6 (six) years and/or a fine of at least Rp 250.000.000 (two hundred and fifty million rupiah) and a maximum of Rp 3.000.000.000 (three billion rupiah).
11. Article 39; Criminal acts as referred to in Article 29, Article 30, Article 31, Article 32, Article 33, Article 34, Article 35, Article 36, Article 37, and Article 38 are crimes.
12. Article 40 paragraph (1); In the case of a criminal act of pornography committed by or on behalf of a corporation, the prosecution and imposition of criminal penalties may be carried out against the corporation and/or its management.
13. Article 40 paragraph (2); Criminal acts of pornography are committed by a corporation if the crime is committed by people, either based on employment relationships or other relationships, acting within the environment of the corporation, either alone or together.
14. Article 40 paragraph (3); In the case of criminal charges being made against a corporation, the corporation is represented by the management.
15. Article 40 paragraph (4); The management representing the corporation as referred to in paragraph (3) may be represented by another person.
16. Article 40 paragraph (5); The judge may order the corporate administrators to appear in person in court and may also order the corporate administrators to be brought to court.
17. Article 40 paragraph (6); In the event that a criminal charge is brought against a corporation, the summons to appear and the delivery of the summons shall be delivered to the administrator at the administrator's residence or at the administrator's office.
18. Article 40 paragraph (7); In the event of a pornography crime committed by a corporation, in addition to imprisonment and fines against the administrators, a fine shall also be imposed on the corporation with the provision that the maximum

penalty is multiplied by 3 (three) of the fines determined in each article in this Chapter.

Article 41; In addition to the principal penalty as referred to in Article 40 paragraph (7), the corporation may be subject to additional penalties in the form of: a. freezing of business license; b. revocation of business license; c. confiscation of assets resulting from criminal acts; and d. revocation of legal entity status.

In this case, the researcher has conducted an analysis of 5 (five) decisions related to the crime of pornography, as follows:

First, the Decision of the Semarang District Court Number 47/Pid.B/2021/PN.Srp. The Panel of Judges considered that the Defendant had been charged by the Public Prosecutor with an alternative charge, so based on the legal facts above, the Panel of Judges directly chose the second alternative charge as regulated in Article 29 of Law of the Republic of Indonesia Number 44 of 2008 concerning Pornography. Thus, in its decision, the Panel of Judges stated that the Defendant "DEFENDANT", was legally proven "the element of committing, ordering or participating in committing and the element of cooperation between the defendant and the invitation of witnesses to broadcast pornography" as in the alternative charge. For this reason, the Panel of Judges sentenced the Defendant therefore to 4 (four) months in prison.

Second, the Decision of the Pelaihari City District Court Number 21/Pid.B/2024/PN.Pli. The Panel of Judges considered that the Defendant had been charged by the Public Prosecutor with an alternative charge, so based on the legal facts above, the Panel of Judges directly chose the second alternative charge as regulated in Article 29 Jo. Article 4 paragraph (1) of the Republic of Indonesia Law Number 44 of 2008 concerning Pornography. Therefore, in its decision, the Panel of Judges stated that the Defendant "DEFENDANT" was proven legally and convincingly guilty of committing a crime "producing, making, reproducing, distributing, broadcasting, importing, exporting, offering, selling, renting, or providing pornography" as in the second alternative charge. For that reason, the Panel of Judges sentenced the defendant to imprisonment for 1 (one) year.

Third, Decision of the Kotamobagu District Court Number 26/Pid.B/2023/PN.Ktg. The Panel of Judges considered that the Defendant had been charged by the Public Prosecutor with an alternative charge, so based on the legal facts above, the Panel of Judges directly chose the second alternative charge as regulated in Article 29 Jo. Article 4 paragraph (1) of the Republic of Indonesia Law Number 44 of 2008 concerning Pornography. Thus, in its decision, the Panel of Judges stated that the Defendant "DEFENDANT", was proven legally and convincingly guilty of committing the crime of "making pornography that explicitly contains nudity" as in the second alternative charge. For this reason, the Panel of Judges sentenced the Defendant to imprisonment for 1 (one) year and 4 (four) months.

Fourth, Decision of the Jambi District Court Number 200/Pid.B/2023/PN.Jmb. The Panel of Judges considered that the Defendant had been charged by the Public Prosecutor with an alternative charge, so based on the legal facts above, the Panel of Judges directly chose the second alternative charge as regulated in Article 29 Jo. Article 4 paragraph (1) of the Republic of Indonesia Law Number 44 of 2008 concerning Pornography. Thus, in its decision, the Panel of Judges stated that the Defendant "DEFENDANT", was legally and convincingly proven guilty of committing the crime of "prohibited from producing, making, reproducing,

duplicating, distributing, broadcasting, importing, exporting, offering, trading, renting or providing pornography, which explicitly contains nudity or displays that give the impression of nudity" as in the alternative charge. For this reason, the Panel of Judges sentenced the Defendant therefore to 2 (two) years and 6 (six) months and a fine of IDR 250.000.000 (Two Hundred and Fifty Million Rupiah) with the provision that if the fine is not paid it will be replaced with imprisonment for 6 months.

Fifth, Decision of the West Kutai District Court Number 50/Pid.B/2021/PN.Sdw. The Panel of Judges considered that the Defendant had been charged by the public prosecutor with an alternative charge, so that based on the legal facts above, the Panel of Judges directly chose the second alternative charge as regulated in Article 35 of Law of the Republic of Indonesia Number 44 of 2008 concerning Pornography. Thus, in its decision, the Panel of Judges stated that the defendant "DEFENDANT", was legally and convincingly proven guilty of committing the crime of "prohibited from producing, making, reproducing, duplicating, distributing, broadcasting, importing, exporting, offering, trading, renting or providing pornography, which explicitly contains nudity or displays that give the impression of nudity" as in accordance with the first alternative charge. For this reason, the Panel of Judges sentenced the defendant to imprisonment for 2 (two) years.

Based on the analysis of the 5 (five) court decisions above, there is one decision that imposes a Criminal Act under Article 29 of Law Number 44 of 2008 concerning Pornography, namely decision Number 47/Pid.B/2021/PN.Srp, three decisions that impose a Criminal Act under Article 29 of Law Number 44 of 2008 in conjunction with Article 4 paragraph 1 of Law Number 44 of 2008 concerning Pornography, namely decisions Number 200/Pid.B/2023/Pn.Jmb, Number 26/Pid.B/2023/2023/PN.Ktg and Number 21/Pid.B/2024.PN.Srp and one decision that imposes a Criminal Act under Article 35 of Law Number 44 of 2008 concerning Pornography Number 50/Pid.B/2021/PN.Sdw.

As mentioned above, Article 29 of the Pornography Law stipulates that anyone who produces, makes, reproduces, duplicates, distributes, broadcasts, imports, exports, offers, sells, rents, or provides pornography as referred to in Article 4 paragraph (1) shall be punished with imprisonment of at least 6 (six) months and a maximum of 12 (twelve) years and/or a fine of at least IDR 250.000.000 (two hundred and fifty million rupiah) and a maximum of IDR 6.000.000.000 (six billion rupiah). Furthermore, Article 4 paragraph (1) of the Pornography Law stipulates that anyone is prohibited from producing, making, reproducing, duplicating, distributing, broadcasting, importing, exporting, offering, selling, renting, or providing pornography that explicitly contains: a. sexual intercourse, including deviant sexual intercourse; b. sexual violence; c. masturbation; d. nudity or displays that give the impression of nudity; e. genitals; or f. child pornography.

As stated above, the maximum sentence that can be imposed by a Judge on a perpetrator of a Pornography crime in accordance with Article 29 is a minimum of 6 (six) months and a maximum of 12 (twelve) years in prison and/or a fine of at least IDR 250.000.000 (two hundred and fifty million rupiah) and a maximum of IDR 6.000.000.000 (six billion rupiah). However, it is very unfortunate that several decisions that have been analyzed show that the imposition of criminal penalties is very far from the maximum criminal threat, especially in Article 29 of the Pornography Law. For more details, as follows, first, Decision Number

47/Pid.B/2021/PN.Srp sentenced the defendant to 4 months in prison. Moreover, in his considerations, the Judge gave several mitigating reasons for the defendant on the grounds that during the trial the defendant behaved well. Second, Decision Number 21/Pid.B/2024/Pn.Srp sentenced the defendant to 1 Year in Prison. In his considerations, the Judge gave several mitigating reasons for the defendant on the grounds that the defendant had promised not to repeat his actions. Third, Decision Number 26/Pid.B/2024/Pn.Ktg sentenced the defendant to 1 Year and 4 Months in Prison. In his considerations, the judge gave reasons that aggravated the defendant on the grounds that it caused the victim to experience trauma, and the defendant had been proven to have made pornography that caused trauma to the victim.

Fourth, Decision Number 200/Pid.B/2023/Pn.Jmb imposed a sentence of 2 Years 6 Months with a Fine of IDR 250.000.000 (two hundred and fifty million rupiah so that if the defendant cannot pay the replacement money, it will be replaced with a sentence of 6 months in prison). Moreover, in his considerations, the Judge gave several reasons that burdened the defendant on the grounds that the defendant's actions harmed the victim witness because he was embarrassed and traumatized. Fifth, Decision 50/Pid.B/2021/Pn.Sdw imposed a sentence of 2 Years in Prison. Moreover, in his considerations, the judge gave several reasons that burdened the Defendant, that the defendant's actions disturbed the community, the defendant's actions were contrary to moral values and decency in society and the defendant's actions had harmed the witness. For this reason, the issues discussed relate to the judge's considerations in passing a verdict on the defendant (Agustanti, 2020).

As explained above, in addition to the perpetrator, it is also important to know the criteria for victims in pornography crimes. Referring to the definition of a victim based on Law Number 13 of 2006 concerning Protection of Witnesses and Victims, in Article 1 number 2 that a victim is someone who experiences physical, mental, and/or economic suffering caused by a crime. In the science of victimology, referring to the definition of a victim, the victim has a complementary role or a refinement that influences the occurrence of a crime, this is in accordance with theories of criminal etiology that explain the process of various crimes and the emergence of victims of crime, so that in this case it aims to provide a basis for thinking to reduce and prevent the occurrence of criminal acts that can cause victims of crime or victimization (Sunarso, 2015), and involvement in the occurrence of a crime for the sake of justice and the welfare of the person concerned. In relation to this, there are several types of victims in the theory of victimology, including (Bambang Waluyo, 2012):

1. Unrelated Victims, namely those who have no relationship at all with the perpetrator and become victims because of potential, the victim only has a relationship with the perpetrator when the perpetrator has committed a crime against the victim;
2. Proactive Victims, namely those who do something to the perpetrator and the consequence is that they become victims who in this case are responsible to both parties;
3. Participating Victims, namely the behavior of the victim who unknowingly encourages the perpetrator to do evil which in this case is fully responsible to the perpetrator;
4. Biologically Weak Victims, namely those who have a certain physical and mental form that encourages someone to commit a crime against them.

It is said that the victim of Pornography is if one party does not agree to engage in sexual activity. Referring to one of the Criminal Acts of Revenge Porn, revenge porn is often carried out by someone who is usually an ex-lover who tries to destroy the image of women through the distribution of pornographic photos/videos (Myler, 2017). In the crime of revenge porn, it is said that the perpetrator is if anyone is proven to have distributed pornographic photos/videos which in this case fulfills the elements as a crime in the Pornography Law. In addition, the perpetrator is also anyone who is proven to have distributed pornographic photos/videos uploaded on social media, produced, made, reproduced, duplicated, distributed, broadcast, imported, exported, offered, traded, rented, and provided pornography (Puspitosari & Kusumaningrum, 2021). Interestingly, the victim can also be said to be a perpetrator of the crime of pornography if the victim gives consent to the making of pornographic photos/videos, this is in accordance with Article 4 Paragraph 1 of Law Number 44 of 2008 concerning Pornography. The type of pornography that is not punished is if making pornography is only used for personal gain.

CLOSURE

Conclusion

Criminal acts do not always take the form of physical crimes, because criminal acts can also be committed through the use of information technology. This type of crime is known as cybercrime. The rise of cybercrime greatly affects several criminal acts related to morality and sexual violence, the criminal acts in question were initially conventional in nature and then developed into criminal acts committed online, for example online gambling, online prostitution and pornography. There are several factors that influence someone to commit a crime, including the lack of family role, weak supervision and control in the social environment and the role of the criminal justice system.

Regarding the limitations in knowing the extent to which the perpetrator and victim play a very important role for the judge in deciding a case, especially in the evidence stage. It can be said that a victim is if one party does not agree to the occurrence of a sexual activity. Furthermore, it can be said that a perpetrator is if each person has been proven to fulfill the elements as a crime in the Pornography Law. In addition, a victim can be made a suspected perpetrator if the victim gives consent and there is involvement in producing, making, reproducing, duplicating, distributing, broadcasting, importing, exporting, offering, or providing pornography as regulated in Article 4 paragraph (1) of the Pornography Law. In addition, what is meant by making does not include for himself and his own interests. So in this case a person cannot be sentenced because he makes it for himself and his own interests.

Suggestion

The suggestions of the research findings that have been conducted are that the first is that there needs to be a legal update in the Pornography Law. This update includes strengthening the criteria and limitations of perpetrators and victims of pornography crimes, especially in cases of revenge porn which still have minimal types of perpetrators and victims of pornography crimes. The criteria for the right perpetrator in pornography crimes according to this study are someone who distributes pornographic photos or videos uploaded to social media, produces, makes, reproduces, duplicates, distributes, broadcasts, imports, offers, sells, rents, and provides

pornography. The context of providing pornography should also be expanded to include the provision of pornography on social media, so that the criteria for the perpetrator can be broad. Then, the perpetrator also comes from the victim if he or she participates in distributing the photos or videos. The second context, namely the perpetrator and victim, can be asked for a criminal act which needs to be further regulated in the Pornography Law in addition to also providing legal certainty and benefits to the perpetrators and victims of pornography crimes.

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