



Legal protection according to the electronic information and transaction of law againsts the revenge porn victims

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Abstract

In the case of revenge porn, Indonesia doesn't have effective law to provide legal protection to victims. The use general offenses in the provision of the Information and Transaction Law has caused perpetrators and victims to criminally charged. The law should provide protection to victim with the formulation of complaint offense, so that victims can report perpetrators of revenge porn. This investigation employs a normative legal methodology with a statutory approach, a conceptual approach, and a case study approach. The results of study that the concept of delict in Article 29 of The Electronic Information and Transaction of Law and the Joint Decree on Guidelines for Implementation of Certain Articles in the Electronic Information and Transaction of Law have not provided legal protection to women as victims of revenge porn, where basically anyone can crimes report. Legal protection through limit the status of victims to become suspects in revenge porn crime can be given to the victim who suffer in physical, mental, and economic form a result of criminal act. So that person is referred to as a victim in criminal law if a person become the object of an act prohibited by the provisions of the criminal law.

Keywords: legal protection, the electronic information and transaction of law, the revenge porn

Introduction

The dissemination of pornography through to internet is forbidden according Law of The Republic of Indonesia Number 11 of 2008 Concerning Electronic Information and Transactions. This is governed by Article 45 paragraphs (1) of Law Electronic Information and Transactions which state "Any person who knowingly and without the right to distribute and/or transmit and/or make accessible Electronic Information and/or Electronic Documents that has a charge that violates decency as referred to in Article 27 paragraph (1) paragraph (2), paragraph (3) or paragraph (4) shall be sentenced to a maximum prison sentence of 6 (six) years and/or a maximum fine of one billion".

The according to the law prohibiting the dissemination of pornography because violation to morality through the internet in various act to create, disseminate, and inform material that morals violates. Revenge porn is an act within the scope of the criminal law as a prohibited act and violates decency which is a cybercrime. ^[1] Revenge porn is term used to refer to cybercrimes committed by disseminating someone's sexual content without the consent of that person with the motive of revenge, hatred of the victim and other motives.

In the case of revenge porn, the legal system in Indonesia don't have effective law to provide legal protection to victims. The construction by article 29 of Electronic Information and Transactions of Law cause multi-interpretation. This is because Joint Decree of the Minister of Communication and Informatics of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, and the Chief of Police of the Republic of Indonesia Number 229 of 2021, Number 154 of 2021, Number KB/2/VI/2021 concerning Guidelines for Implementation of Certain Articles in Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments

to Law Number 11 of 2008 concerning Electronic Transaction Information (ITE). In the manual article 29 of Electronic Information and Transactions of Law which state "Article 29 of the ITE Law is a general offense, and not a complaint. It doesn't have to be the victim himself to report."

The use of public offenses in the application of Article 29 of the ITE Law has the effect of ensnaring the perpetrator as well as the victim of revenge porn. The article should to protection for victims from the act of revenge porn perpetrators by reference a complaint for the victim who feels aggrieved as a result of the actions of the perpetrator of revenge porn, but can actually make the victim to the context criminal offenders. The concept of complaint offense is prosecution of crime that adversely a person and only the victim has the right to complain. The legal interest that protection based on report private interests that are harmed will get protection rather than public interest, despite criminal is public law ^[2]

The some reason of the complaint offense are classified as being filed is that a person's right to complain is more disadvantaged, if the case is processed in criminal justice compared to the public interest. ^[3] The arrangements related to revenge porn are considered very detrimental to the victim, because the position of the victim can fall morally due to the spread, so that the effectiveness of the law electronic information and transactions article for revenge porn cases has not been effective.

Based on this description, the author wants to examine whether the type of offense in Article 29 of Electronic Information and Transactions of Law is accordance with the granting of status as a victim to become a suspect. the author will to explain legal protection for victims based on the electronic information and transaction law in the case of revenge porn.

Research method

This study employs normative-legal research methodology. This study examines the research statute approach, conceptual, and case approach. This study explains the legal protection of victims according to the electronic information and transaction law in the case of revenge porn. Data collection in study literature studies and data analysis was prescript if method on primary, secondary, and tertiary legal materials.

Results and discussion

The concept delict in article 29 information and electronic transactions of the law

In criminal legal system, the general offense which is delict that can prosecuted or without processed the need to complaint. The complaint offense is just processed if there is a complaint from the aggrieved. If the case included in the general offense, can be terminated although the parties have decided to reconciled. The general offense in Article 29 of Information and Electronic Transactions of The Law, women as victims in revenge porn criminal cases can be used as suspects because there is no opportunity given by the offense to report that women are victims in revenge porn criminal.^[4]

The punishment can be imposed to person not only actions against the law, although the act meets the formulation of the offense in the legislation (an objective breach of a penal provision) but is not sufficiently qualified for criminal conviction, because it must be seen the inner attitude (intention or purpose of purpose) of the perpetrator against the law. In some countries, a person's actions and mental attitudes are united and become a condition for a criminal act. Zainal Abidin Farid said the element of *actus reus*, namely the act, must come first after it is known that there is a criminal act according to the formulation of the next law, then it is investigated about the mental attitude of the perpetrator or the element of *mens rea*. So the element of criminal conduct must come first, then if it is proven, then consider the guilt of the accused.^[5]

Revenge porn as revenge pornography (and colloquially as 'sextortion'), involves the distribution of sexually explicit images or videos, without the consent of the individual in question. Revenge porn is performed by ex-lovers or third parties who try to bring down the image of the actor in the porn. The case revenge porn, the type of delict that can realize to women interests as victims of revenge porn crime is a complaint of defamation through social media. Defamation is the act of a person intentionally and without the right to circulate and/or submit and/or make things accessible to obtain electronic information and/or electronic document facilities that have the content or content of defamation. Content creation can happen because the victim is under threat that the perpetrator has nude photos of the victim and forces the victim to do it again with the threat that the previous photo will be disseminated.^[6] The act of revenge porn described by Marsuri as "the practice of posting and distributing sexually explicit images of an ex-partner on the Internet after a breakup". This understanding emphasizes the characteristics of actions on obtaining

information without the consent of the relevant person and has the content of violating decency and the purpose of committing acts to take revenge.^[7]

The author is of the view that these two views can be combined as an understanding of revenge porn with 3 characteristics. The first act of disseminating pornographic information. Second the acquisition of pornographic information from the romantic relationship between the perpetrator and the victim and thirdly, the purpose of the act is to avenge the perpetrator's heartache or resentment due to the victim's actions to himself.

There are problematic in law enforcement regarding the criminal act of spreading revenge content in the form of revenge porn crimes that which regulated in Article 29 jo Article 45B of Information and Electronic Transactions of The Law is multi-interpretation does not provide legal certainty for law enforcement in the case of revenge porn crimes. In the case, women as objects of the revenge porn crime can be made suspects in videos and photos by perpetrators diffused of revenge porn.

In the some cases, which proves that necessary to reform in substance of Article 29 jo Article 45B of the information and electronic transactions of the law which currently based on the Joint Decree of the Minister of Communication and Informatics of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, and the Chief of Police of the Republic of Indonesia Number 229 of 2021, Number 154 of 2021, Number KB/2/VI/2021 concerning Guidelines for Implementation of Certain Articles in Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 on Electronic Transaction Information. In manual implementation Article 29 Electronic Information and Transaction of Law which state "Article 29 of the ITE Law is a general offense and not complaint offense, so doesn't have to be the victim himself who reports".

The Joint Decree there is 1 (one) explanation of the implementation guidelines for Article 29 of the Information and Electronic Transactions of The Law which cannot be used as a guideline for the implementation of Article 29 of the ITE Law, namely Article 29 of the ITE Law, which is a general offense, and is not a complaint. It doesn't have to be the victim himself who reports. The legal consequences of the general deliberations arising from the Joint Decree on Guidelines for Implementation of Certain Articles of the ITE Law for women as victims of revenge porn crimes, where women are still unprotected in terms of determining the status of victims in these crimes. The granting of general delik status in Article 29 of the ITE Law related to revenge porn criminal cases makes the woman in the case able to be in a reported state, while according to the results of revenge porn crimes where women are victims of revenge porn crimes with the model of distributing pornographic photos/videos.

In the Joint Decree, there is 1 (one) explanation of the guidelines At the practical level, at least there is a reason why the general deliberations in Article 29 of the ITE Law in the case of revenge porn are considered inappropriate that the general deliberation not give respect to human rights, because in the case of complaints are given the opportunity

to a person who has the right to complain in the event that certain offenses are to be prosecuted or not prosecuted by the public prosecutor. In the case of revenge porn must be ascertained that the elements of *actus reus* (*physical element*) and the element of *mens rea* (*mental element*) in making pornographic videos and/or photos where the woman has no intention as contained in Article 27 paragraph (1) juncto Article 45 paragraph (1) of the ITE Law and Article 4 paragraph (1) juncto Article 29 paragraph (1) of the Pornography Law.

In the case of revenge porn, the type of delict that can realize the interests of women as victims of revenge porn crimes is a complaint in the form of defamation through social media. Defamation is the act of a person intentionally and without the right to circulate and/or send and/or make things accessible to obtain electronic information and/or electronic document facilities that have the content or content of defamation. The concept protection of victim status in the criminal act of revenge porn through defamation regulated in the criminal code is based on important reason. The basic rules in the criminal code can be used basic guidelines for the formation of new regulations specifically outside the criminal code to realize unity and harmonization in the criminal legal system.

Legal protection according to the electronic information and transactions of law against the revenge porn victims

There are two penal policies that can be used to tackle revenge porn crimes that are part of gender-based violence on social media with implementation to gender-equitable criminal justice system through the active role of victims during the case process. Victims are involved in handling cases through coordination between various institutions and services for victims in the judicial process called the Integrated Criminal Justice System for Handling Cases of Violence Against Women, so that the victim will not be positioned as an object to be asked for information, but will also be positioned as a subject. In addition to the right to be heard, the victim has right to obtain information about legal process, the right to obtain consideration for justice, and the right of the victim to obtain a state of remedies for the violation of rights has experienced.^[8]

In the case of revenge porn, attempt to complain to law enforcement officials are quite difficult because the offenses regulated in this crime are general offenses not complaint. The victim experiences fear and shame so that he can only remain silent and save his suffering because the crime he experienced is disgrace. Legal certainty for victims does't understand to problem of sexual violence. In the case of revenge porn, the victim's good name can be blackened for life because difficult to digital traces circulating on social media and impact is very detrimental to the victim for a long time.^[9]

In the case of revenge porn against the female victim, the perpetrator purpose broadcasts the victim's private video because the purpose of revenge and also allow the public to access the victim's video and abuse. This causes damage to the reputation of the victim and the victim's family in the social environment. The development of cyber pornography, especially the criminal act of complex revenge porn, where the content is increasingly explicit (vulgar) and disgusting, so that not a few of the internet users can access these contents. The application of the concept of right to be

forgotten in Indonesia is different from other countries. Removal of content in the European Union or Russia or any other country only on search engines. In Indonesia, the removal of content that is considered irrelevant based on a court determination is directly carried out by the operator of an electronic system that holds direct control over a content. The right to be forgotten is a person's right so that data (videos, images, documents, etc.) circulating in cyberspace can be forgotten or deleted if in court the victim of revenge porn is not found guilty. In line with this, the government and the House of Representatives included the principle of right to be forgotten in Law Number 19 of 2016 amending Law 11 of 2008 concerning Information and Electronic Transactions.

The provisions of Article 26 paragraph (3) of the ITE Law essentially regulate the use of information as a person's personal data as a right to sue for losses incurred to delete irrelevant information based on court determinations, therefore the public still expects more concrete rules on revenge porn actions that the government must take to overcome this social dilemma. Regulations related to the principle of right to be forgotten need to be emphasized through a Government Regulation so that it can be implemented and clarify what criminal acts can use the right to be forgotten, especially against cyber pornography crimes. The principle of right to be forgotten for victims of revenge porn needs to be applied because revenge porn is an act of disseminating content or material with the motive of revenge in the form of images, porn videos that are not in accordance with the moral of decency. The dissemination of such content causes everyone to be able to access because social media doesn't know the territorial border of a state. Aloysius said technology-based crimes, especially revenge porn do not know the borders of the State's territory, so it is a problem that needs to be regulated in the state legal system. The right to be forgotten for victims of revenge porn in a news story is only considered that the fact that is reported is a societal reality that occurs appropriately to be forgotten from news that is no longer considered relevant at a time, and is used as a learning material for other communities to have an attitude of vigilance and not to become victims of revenge porn or behavior that can have legal repercussions and unable to get an injunction from the court.

The victim position in revenge porn can be studied based on the victim typology of Ezzat A. Fattah and Stephen Scafer. The victim basically has knowledge of himself being a pornographic model on the basis of a love relationship with the perpetrator.^[10] This situation causes the victim to be forced photographed or recorded as a pornographic model. The easement that victim gives based on consent given without rejection or resistance to making pornography. Revenge porn victims are the form of latent or predisposed victims or provocative victims. Victims actually become victims of participating victims.

The victims contribute to crime of revenge porn, however, the role of victims in the form of predisposed victims and participating victims has not been in accordance with the explanation of Article 4 paragraph (1) of the Pornography Law that ignore the position and participation of the victim in revenge porn and focuses only on the perpetrator who

makes pornography. The right to forget can be interpreted as an obligation to be conveyed in the news implicitly emphasizing that a person can be forgiven for past mistakes and has served a sentence and must be given the opportunity to develop himself through public trust.^[11]

Conclusion

The type of offense in Article 29 of the Electronic Information And Transactions Of Law as in the Joint Decree on Guidelines for Implementation of Certain Articles has't provider legal protection for women as victims of revenge porn, where basically anyone can report the crime. The investigation process in this case must be ascertained the elements of actus reus (physical element) and the element of mens rea (mental element) in making these pornographic videos and/or photos where the woman has't intention. The formulation of Article 29 of the ITE Law on revenge porn against the status of a suspect in the perspective of criminal law policy, namely that a person can be convicted is not enough just because that person has committed an act that is contrary to the law or is unlawful. Although his conduct complies with the formulation of the statute and is not justified (an objective breach of a penal provision) it does not yet qualify for criminal conviction in accordance with the principle of Geen straf zonder schuld, actus non facit reum nisi mens sir rea. Restrictions on the status of victims to become suspect in revenge porn crime are limited who are suffering in a physical, mental, and economic condition a result of criminal act. Person can be called a victim with the scope of criminal law depending on a person being the object of act prohibited by the provisions of criminal law. The purpose of retaliating against the perpetrator of revenge porn for the victim action is the purpose of disseminating information that contain violation of decency.

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