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## **The Criminal Responsibility for Pornography Video Maker Through Digital Forensics on Social Media**

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### **ABSTRACT**

*Cybercrime phenomenon is a crime that is not easy to trace its existence. Digital Forensics is an application in the Computer Science and Technology for the purpose of pro-justice, which in this case is to prove scientifically high-tech crimes so that digital evidence is obtained and it can be used to catch pornography suspects, which was transmitted to various media, such as magazines, television programs, and internet. Cyberporn is a crime in transmitting some pornography contents through website. This research used juridical-normative method as its research method. The researcher used the method to find out the criminal responsibility for pornography video maker through digital forensics on social media. In consequence, if there is a punishment for the perpetrator, then it is retaliation for his actions which aims to improve attitudes and behavior so that they are even better in using social media services and are also intended to prevent others from the possibility of committing similar acts.*

**Keywords:** Cybercrime, Cyberporn, Digital Forensics, Pornography

## INTRODUCTION

Humans are social creatures created perfectly by God. Therefore, humans are given sufficient in doing their lives with common sense and the ability to think rationally and logically with the help of technology, one of it is a gadget. Gadget is a technology made to make human life easier and more comfortable. In addition the creation of gadgets, there is also various contents made for society, such as education, entertainment, news, and many more. The content's understanding from social media context is something that can be expressed through several media, such as writing, images, videos and so on. The development of the internet today, makes some people to create and spread negative content in it.

Digital forensics is a process based on principle to collect, analyze and produce legal evidence according to law in a trial in court, it is used to help reveal a crime. Digital forensics is also used for pro-justice purposes using the latest technology such as computer crime so as to obtain digital evidence that can be used to arrest the perpetrators of these crimes.<sup>1</sup>

The negative impact caused internet applications development are called cybercrime. Meanwhile, cyberporn is the result of cybercrime in the form of sexual ambition machine. In this context, cyberporn itself is an activity to create, install, distribute various things that contain pornographic content. Cyberporn is one of the causes of the mental breakdown of the nation's generation. Pornographic content in the form of videos and books can have a serious negative damage on the younger generation.

Recently, there is often the spread of things that are not qualified by the facts that are extensive spreading on the internet. According to KEMENKOMINFO (Ministry of Communication and Informatics) stated that the internet users in Indonesia currently reaching 63 million people, and 95% use the internet to access social networks. KEMENKOMINFO has blocked several mature content sites in recent years. They assess these sites do not have a good contribution in helping the mental development of young people. They also said that the number of access to mature content is increasing every year. The Theory of Planned Behavior (TPB) states that the strongest predictor of behavior is intention. Intentions are formed by a collection of beliefs in an individual's memory through personal factors such as age, gender, education, income, personal character, intelligence, value system, stereotypes, knowledge, and experience; and social factors which include environmental norms, economy, geography, media, and interventions.<sup>2</sup>

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<sup>1</sup> M. N. Al-Azhar, *Digital Forensic: Panduan Praktis Investigasi Komputer* (Jakarta: Salemba Forensik, 2012).

<sup>2</sup> Lubis Rahmi, "INTENSI SEKSUAL REMAJA: APA SAJA FAKTOR PEMBEDANYA?," *Journal Psychology of Science and Profession* 5, no. 3 (2021): 177–191.

## RESEARCH METHODOLOGY

This research used normative laws, which means the solutions of the problems found in this research based on Indonesia Laws and literatures regarding the problems faced. Normative legal research involves the study of the law as an object and removes any non-legal material from the scope of this research.<sup>3</sup> This research analyzed the law regarding the cybercrime, especially cyberporn in society

## LITERATURE REVIEW

### Digital Forensics Theory

According to Budi Raharjo in sociotechnology journal, digital forensics is a part of forensics science which includes the discovery and investigation of data found on digital devices such as computers, handphones, tablets, PDA (Personal Digital Assistants), networking devices, storage and so on<sup>4</sup>. Meanwhile, according to Firrar Utdirartatmo stated that digital forensics or forensics computer is the application of procedures set to test a computer system using software and tools to extract and monitor the criminal activities.<sup>5</sup>

### Porn Theory

Abu Al-Ghifari stated that pornography is a writings, pictures, paintings, audio-visual shows, speeches, and body movements that reveal certain bodies in a vulgar manner to attract the attention<sup>6</sup>. MUI (Indonesian Ulema Council) states that pornography is an expression of visualization and verbalization through communication media about the actions of men and women who are naked, and it can be seen from the front, side, or back of the body. Close-up protrusion of the genitals, breasts or hips, either with or without covering, stimulating kisses that attract attention, movements or sounds or sighs suggesting intercourse, masturbation, lesbian, gay, or oral sex aimed at arousing the sexual attraction.

### Criminal Justice System Theory

According to Mardjono Reksodiputro, criminal justice system theory is a crime control system consisting of the police institutions, prosecutors, courts and

<sup>3</sup> Theresia Anita Christiani, "Normative and Empirical Research Methods: Their Usefulness and Relevance in the Study of Law as an Object," *Procedia - Social and Behavioral Sciences* 219 (May 2016): 201–207, <https://linkinghub.elsevier.com/retrieve/pii/S1877042816300660>.

<sup>4</sup> Budi Raharjo, "SEKILAS MENGENAI FORENSIK DIGITAL," *Jurnal Sositelknologi* 12, no. 29 (August 2013): 384–387, <http://journals.itb.ac.id/index.php/sostek/article/view/1116/722>.

<sup>5</sup> Utdirartmo Firrar, *Cara Mudah Menguasai Komputer Forensik Dan Aplikasinya* (Yogyakarta: Graha Ilmu, 2005).

<sup>6</sup> A Al-Ghifari, *Gelombang Kejahatan Seks Remaja* (Bandung: Mujahid, 2002).

penitentiaries for convicts.<sup>7</sup> Meanwhile, according to Muladi stated that criminal justice system is a judicial network that uses criminal law as its main keys, both material criminal law, formal criminal law and criminal law enforcement.<sup>8</sup>

### **Accountability Theory**

Roeslan Saleh statements about accountability is an action which is breaking the rules and norms in the society and it must be accounted by the maker. The existence of criminal liability, someone is be able to decide who the person could be accounted to. It means that it should be there is a harmful action as a criminal act.<sup>9</sup> While the meaning of criminal liability based on Moeljatno statement is someone who used to commit a criminal act and cannot be held responsible for his actions if that person does not commit a crime.<sup>10</sup>

### **Argumentation Theory**

According to R. Subekti, argumentation is convince the judge about the truth of the arguments put forward in a dispute.<sup>11</sup> Meanwhile, based on Sudikno statement about argumentation in juridical meaning is The basic guidelines used by judges to examine the case in question and provide certainty about the truth and wrongness of the parties to the litigation.<sup>12</sup>

## **RESULTS AND DISCUSSION**

Digital Forensics is a science of computer technology that can be used for the purpose of proving the law, uncovering high-tech crimes and arresting the perpetrators of those crimes. The person who carries out the task of searching for evidence of digital crimes is called a Digital Forensic Analyst. They have to investigate those the crime cases based on the procedures that regulated in both national and international law. The digital forensics also has a significant position in carrying out an investigation related to criminal cases using computer crime which aims to find evidence for legal evidence purposes.<sup>13</sup> The development of cybercrime is influenced by the development of sophisticated technology and it

<sup>7</sup> Mardjono Reksodiputro, *Sistem Peradilan Pidana Indonesia : Melihat Kepada Kejahatan Dan Penegak Hukum Dalam Batas-Batas Toleransi* (Jakarta: Universitas Indonesia Fakultas Hukum, 1993).

<sup>8</sup> Muladi, *Kapita Selekta Sistem Peradilan Pidana* (Semarang: Badan Penerbit Universitas Diponegoro, 1995).

<sup>9</sup> R. Saleh, *Perbuatan Pidana Dan Pertanggungjawaban Pidana* (Jakarta: Aksara Baru, 1990).

<sup>10</sup> C. Huda, *Dari Tiada Pidana Tanpa Kesalahan Menuju Kepada Tiada Pertanggung-Jawaban Pidana Tanpa Kesalahan* (Jakarta: Kencana Prenada Media Group, 2008).

<sup>11</sup> R. Subekti, *Hukum Pembuktian* (Jakarta: Pradnya Paramita, 2001).

<sup>12</sup> Mertokusumo, *Hukum Acara Perdata Indonesia* (Yogyakarta: Liberty, 2006).

<sup>13</sup> Friedmann, *The Legal System: A Social Science Perspective*, Russel Sage Foundation (New York, 1969).



produces two different impacts depending on its use, that is positive use and negative use.

Cyberporn is a crime in deploying the pornographic contents through the internet, such as website. The fast deployment of pornographic content in Indonesia and it is also supported in searching the contents easier, it has a negative impact on society, especially young people. These problems are serious problematics that must be handled by digital forensic analysts. They must identify and analyze the digital evidence found in order to become concrete evidence in court.<sup>14</sup>

There are criminal provisions which have been regulated in Article 29 of Law No. 44/2008 concerning prohibited acts related to pornography, every person who produces, makes, reproduces, duplicates, disseminates, broadcasts, imports, exports, offers, trades, rents, or provides pornography as referred to in Article 4 paragraph (1) shall be subject to criminal sanctions and get imprisonment for a minimum of 6 months and a maximum of 12 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).<sup>15</sup> However, in the Information and Electronic Transactions Law which was amendments, but the term pornography does not explain in it, there is the word "content that violates decency" which according to some people is still ambiguous in its meaning. This regulation is regulated in Article 27 paragraph (1) of the Electronic Information and Transaction Law.<sup>16</sup>

Van Hamel stated that criminal responsibility is a normal condition and psychological maturity that brings three kinds of abilities<sup>17</sup> these are:

- a) Understand the meaning and consequences of one's own actions,
- b) Realize that his actions are not justified or prohibited by society, and
- c) Determine the ability to act.

Furthermore, the basis for the existence of a criminal act is the principle of legality, while the basis for punishing the maker is the principle of error. This implies that the maker or perpetrator of a criminal act can only be convicted if he has made a mistake in committing the crime. When someone is said to have made a mistake is a matter of criminal liability.

*Dolus* (intentionality) and *culpa* (omission) in criminal law is included in the discussion of the principle of error (*culpability*), a fundamental principle in criminal law which has the principle that a person cannot be convicted without a fault in himself. This principle is also known as the principle of no crime without error.<sup>18</sup>

There are several pieces of legal evidence regulated in Article 184 of KUHP (Book of Criminal Law) as follows::

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<sup>14</sup> M. Lawrence Friedmann, "On Legal Development. Rutgers Law Review," *scopus* 24 (1969): 27.

<sup>15</sup> R. A. Djamali, *Pengantar Hukum Indonesia Edisi Revisi* (Jakarta: Rajawali Pers, 2010).

<sup>16</sup> Lamintang, *Dasar-Dasar Hukum Pidana Indonesia* (Bandung: Sinar Baru, 2001).

<sup>17</sup> Dwidja Priyatno, *Kebijakan Legislasi Tentang Sistem Pertanggung Jawaban Pidana Korporasi Di Indonesia*, 1st ed. (Bandung Utomo, 2009).

<sup>18</sup> Saleh, *Perbuatan Pidana Dan Pertanggungjawaban Pidana*.

- a. Witness Evidence,
- b. Expert Information,
- c. The Letters,
- d. The References,
- e. Defendant's Statement.

The five things of evidence are accurate and legally valid evidence. All law enforcers from judges, public prosecutors, defendants and legal advisors must follow all procedures and assessments of evidence that have been determined by law. Based on Law, there are additional types of evidence at court, that is electronic documentation.

In general terms of UUIE (Constitution of Electronic Information and Transaction) can be discovered that the types of electronic data such as writing, photos, sounds, images are electronic information, while the types of electronic information such as writing, photos, sounds are electronic document. The types of electronics evidence can be explained in Article 5 of UUIE, such as:

1. Electronic information, electronic documents and their printouts are legal evidence.
2. Electronic information, electronic documents and their printouts as explained in paragraph (1) are extensions of valid evidence in accordance with the applicable procedural law in Indonesia..

The UUIE No. 11/2008 is still too general to describe the types of electronics evidence. Then in its amendments in Law No. 19/2016 will be explained in more detail about the various types of electronic evidence in the form of electronic information and electronic documents,<sup>19</sup> including the following below:

#### **Article 1**

The explanation of this Law, these are:

1. Electronic information is one or a set of electronic data, including writing, sound, pictures, maps, designs, photographs, EDI (Electronic Data Interchange), electronic mail, telegram, telex, telecopy or the like, letters, signs, numbers, access codes, symbols , or treated perforations that have meaning or can be understood by people who are able to understand them.
2. Electronic transactions are legal acts carried out using computers, computer networks, and other electronic media.
3. Information Technology is a technique for collecting, preparing, storing, processing, publishing, analyzing and disseminating information.
4. Electronic document is any electronic information created, forwarded, sent, received, or stored in analog, digital, electromagnetic, optical, or similar forms that can be seen, displayed, and heard through a computer or electronic system, including in writing, sound, images, maps, designs,

<sup>19</sup> A. Sofyan, *Hukum Acara Pidana Suatu Pengantar* (Yogyakarta: Rangkang Education, 2013).

photographs or the like, letters, signs, numbers, access codes, symbols or perforations that have meanings that can be understood by people who are able to understand them.

In this regard, social media is a means for perpetrators to create pornographic content. According to Article 53 of the UUIITE, it is stated that all previously existing laws and regulations are declared to remain valid, as long as they are still valid. does not conflict with UUIITE. *Lex specialis derogat legi generali* (the special law derogates from the general law) as referred to in Article 63 paragraph (2) of the Criminal Code is the principle of legal interpretation which states that special laws (*lex specialis*) override general laws (*lex generalis*). Whereas UUIITE is a *Lex Specialis* (Special Law) of the Pornography Law and the Criminal Code which is a *lex generalis* (general law). In this case, the video uploaded by the perpetrator is part of a form of pornographic content. Focusing on information media and electronic transactions used by actors on social media networks.

## CONCLUSION

Social media users must be able to filter all forms of information presented through social media. They must be wise and responsible in using social media so that unwanted things do not happen, they are not only detrimental to themselves but can harm many people, both active and passive social media users. The efforts to achieve justice cannot be ignored. The principle of criminal responsibility is regulated in Article 2 of the Criminal Code (Book of Criminal Law) that "criminal provisions in Indonesian laws and regulations apply to everyone who commits a crime in Indonesia." Therefore, criminal law acts are all legal regulations relating to acts that can be punished and what crimes have been committed. In this regard, social media is a means for perpetrators to create pornographic content. In this case, the video uploaded by the perpetrator is part of a form of pornographic content. Focusing on information media and electronic transactions used by actors on social media networks. In consequence, if there is a punishment for the perpetrator, then it is retaliation for his actions which aims to improve attitudes and behavior so that they are even better in using social media services and are also intended to prevent others from the possibility of committing similar acts.

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