



Criminal Responsibility for Perpetrators of Pornography Crimes

Berly Usmany¹, Hadibah Zachra Wadjo², Elias Zadrach Leasa³

^{1,2,3} Faculty of Law, Universitas Pattimura, Ambon, Indonesia.

@ : berlyusmany695@gmail.com

Corresponding Author*



Abstract

This article analyzes the process of determining a suspect through a preliminary examination process against a perpetrator of a crime based on applicable legal regulations. Determination of a suspect as referred to, is carried out through a case title mechanism. The purpose of this writing is to examine and analyze the criminal responsibility of the perpetrators in the pornographic videos that are distributed and to analyze and analyze the judge's considerations in imposing criminal sanctions on the perpetrators of the pornographic videos that are distributed. The research method used in analyzing and discussing this research is a type of normative legal research that uses secondary legal materials as initial data to then be continued with primary legal materials or field data and tertiary legal materials that support and provide an understanding of primary legal materials and secondary legal materials over other legal materials. The legal materials that are prioritized come from literature studies, relying on scientific books such as criminal law literature, scientific magazines, and documents, then using three research approaches consisting of the Legislation approach, conceptual approach, and case approach. The results of the study show that a person being named a suspect must go through an examination process and must have at least 2 (two) sufficient pieces of evidence to prove that a crime has indeed occurred and the person suspected of committing the crime has been supported by 2 (two) pieces of evidence that can justify the occurrence of a crime and Legal Efforts against the determination of a suspect without an examination process, namely through Pretrial Legal Efforts and Civil Legal Efforts.

Keywords: Legal Efforts, Determination of Suspects, Preliminary Examination.

INTRODUCTION

Indonesia is a country of law where every activity or action taken by the country's government leaders must be based on law and not on authority.¹ that the Republic of Indonesia is a state of law based on Pancasila, upholding moral values, ethics, noble morals, and the noble personality of the nation, believing in and being devoted to the one and only God, respecting diversity in the life of society, nation, and state, and protecting the dignity and honor of every citizen. In the development of the creation, distribution, and consumption of pornography that is increasingly rampant in society, this phenomenon has the potential to threaten social life and the order of Indonesian society. Therefore, special regulations are needed to regulate pornography, considering that current legal regulations are not yet fully able to accommodate the needs of the law and the ever-evolving social dynamics.

Criminal law is public law which is used to regulate the behavior of society to maintain public order.² Moelyanto provides an understanding that criminal law is the basis of all laws that apply in each country, providing the essence and rules for: (1). Finding out which activities may not be carried out, which are limited, accompanied by danger or approval as a mistake of power, for individuals who abuse the prohibition; (2). Deciding when and in

¹ Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia*, (Jakarta: Sinar Grafika, 2014), p. 69.

² Sandiliama Sarumaha, *Pertanggung Jawaban Pidana Terhadap Pelaku Penyebaran Video Porno Melalui Sosial Media*, Jakarta, 2022, p. 1.

what cases people who have abused the prohibition can be forced or given criminal penalties as confirmed; (3). Deciding how disciplinary discomfort can be resolved if the person has abused the prohibition.³ A crime is an act that is prohibited by law and can be subject to criminal sanctions for anyone who violates it. "According to legal expert Simons, a crime is an act that is contrary to criminal law, carried out with error by someone who can be held accountable, and is threatened with punishment based on applicable provisions.⁴ One form of criminal act that is currently receiving attention in Indonesia is pornography cases."

Currently, pornography cases in Indonesia are increasingly rampant, not only involving adults but also teenagers aged 16 and over. Pornography includes various forms of media, such as images, sketches, illustrations, photos, writing, sound, video, animation, cartoons, conversations, body movements, or other messages conveyed through communication media or shown in public. The content contains elements of obscenity or sexual exploitation that are contrary to moral norms in society.

Based on Law Number 44 of 2008 concerning Pornography, pornography includes various forms of media, such as images, videos, text and sound, which contain elements of obscenity or sexual exploitation that are contrary to moral norms in society.⁵ The crime of pornography has been regulated in Law Number 44 of 2008 in Article 4, Article 29, concerning pornography which reads: "Everyone 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 or onani; (d). nudity or displays that give the impression of nudity; (e). genitals; or (f). child pornography. Then Article 29 regulates: "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. 250,000,000.00 (two hundred and fifty million rupiah). rupiah) and a maximum of IDR. 6,000,000,000.00 (six billion rupiah)".

The issue of pornography is a global problem, although each country has a different approach according to the moral values it adheres to. Indonesia itself has a different experience compared to Western countries, because Indonesia is known as a religious nation.⁶ The advancement of information and communication technology has made it easier to spread and access pornographic content. In Indonesia, pornography can now be easily accessed through various media, and this country is even listed as one of the top five most downloaded pornographic sites in the world.

METHODS OF THE RESEARCH

The type of research used is the Normative Juridical research type, with three (3) problem approaches used, namely the legislative approach, the concept approach, and the case approach. The sources of legal materials used are primary, secondary, and tertiary legal materials. The technique of collecting legal materials is carried out by library research, then

³ Sudaryono and Natangsa Surbakti, *Hukum Pidana Dasar-Dasar Hukum Pidana Berdasarkan KUHP dan RUU KUHP*, (Surakarta: Muhammadiyah University Press, 2017), p.19-20.

⁴ <https://fahum.umsu.ac.id/tindak-pidana-pengertian-unsur-dan-jenisnya>.

⁵ Adami Chazawi, *Tindak Pidana Pornografi*, (Malang: Bayumedia Publishing, 2013), p.9.

⁶ *Kualifikasi Tindak Pidana Pornografi (studi kasus Video Porno Artis GA)* <https://opac.fhukum.unpatti.ac.id/index.php?p=fstream-pdf&fid=9363&bid=8939>

after the legal materials are collected and analyzed to obtain conclusions with qualitative analysis which aims to find out the data obtained based on primary, secondary, and tertiary legal materials, then arranged systematically and then analyzed qualitatively based on the discipline of criminal law to find clarity and legal certainty.

RESULTS AND DISCUSSION

A. Criminal Responsibility of the Perpetrators in Pornographic Videos That Are Distributed

Criminal law is a provision relating to criminal sanctions. The term "criminal" refers to suffering or punishment imposed by the competent authority on an individual or certain party as a consequence of their actions. This punishment is unpleasant and causes suffering, but must be given based on clear and legitimate reasons.⁷ According to W.L.G. Lemaire, criminal law is a set of norms that include various obligations and prohibitions and have been linked by legislators to a series of specific punishments.⁸ In criminal law, the elements of a crime are divided into two types, namely objective elements and subjective elements.⁹ (a). Objective elements are elements that exist outside the perpetrator of the crime. (b). Subjective elements are elements that exist or are attached to the perpetrator, or are connected to the perpetrator and include everything contained in his heart. A crime is an act that is against the law and prohibited by law, where violations are subject to certain sanctions. One form of crime that is still rampant in Indonesia is the crime of pornography.¹⁰ According to H.B. Jassin pornography is any writing or image written or drawn with the intention of deliberately stimulating sexuality. Pornography makes the reader's fantasy become winged and "crawl" to the genital areas which causes lust to flare up.¹¹

With the advancement of digital technology, access to pornography via the internet has become increasingly easy. This poses a major challenge for law enforcement in handling pornography cases, given the rapid spread of content and the wide reach of distribution. In recent years, the issue of regulation and prosecution of pornography, especially that which circulates online and on social media, has become increasingly a concern. In the digital era, pornography crimes not only include the production or distribution of pornographic material, but also include cybercrimes such as the distribution of private images or videos without permission, which often occurs on various digital platforms.

Dogmatically, the main problem related to criminal law is discussing three things, namely:¹² (a). Prohibited acts. Where in the articles there are issues raised regarding prohibited acts and also regarding the issue of punishment as contained in Title XXI Book II of the Criminal Code; (b). Persons who commit prohibited acts. Regarding persons who commit prohibited acts (criminal acts), namely: every perpetrator who can be held criminally responsible for their actions which are prohibited in a law. (c). Threatened punishment. Regarding the threatened punishment against the perpetrator, namely the punishment that can be imposed on every perpetrator who violates the law, both in the form of principal

⁷ Afdhal Ananda Tomakati, "Konsepsi Teori Hukum Pidana Dalam Perkembangan Ilmu Hukum". *Jurnal Hukum Pidana Dan Kriminologi* 4, no. 1 (2023): 49-56.

⁸ Lemaire dalam Ruslan Renggong, *Hukum Pidana Khusus Memahami Delik-Delik Di Luar KUHP*, (Jakarta: Kencana, 2017), p. 12.

⁹ Lamintang P.A.F. *Hukum Pidana Indonesia*, (Bandung: Sinar Baru, 1984), p. 184.

¹⁰ Wirjono Prodjodikoro, *Tindak Pidana Tertentu di Indonesia*, (Bandung: Rafika Aditama, 2003), p. 78.

¹¹ Irma Runtianing Uswatul Hanifah, *Kejahatan Pornografi Upaya Pencegahan Dan Penanggulangannya Di Kabupaten Ponorogo. Justicia Islamica* 10, no. 2 (2013). p. 332.

¹² Pipin Syarifin, *Hukum Pidana di Indonesia*, (Bandung: Pustaka Setia, 2000), p. 44.

punishment and as additional punishment. The forms of pornography crimes in Indonesia are regulated in Law Number 44 of 2008 concerning Pornography and in the Criminal Code (KUHP) "Namely: (a). Production and Distribution of Pornography; (b). Provision of Pornography Services; (c). Possession and Storage of Pornography; (d). Sexual Exploitation; (e). Child Pornography; (f). Other Criminal Acts. In the case of a person who has committed a criminal act, an element is needed, namely the element of error so that a criminal act can be held accountable because a person who has committed an unlawful act will not be asked to account for his actions or be sentenced to criminal punishment if his actions cannot be proven legally and convincingly to have committed a mistake.

The element of action is the main element in criminal responsibility, because a person cannot be punished if he does not commit an act that is legally prohibited. This is in accordance with the principle of legality adopted in our legal system. The principle of legality, which states *Nullum Delictum Nulla Poena Sine Praevia Lege Poenali*, means that an act cannot be punished if there is no law or regulation that prohibits it.¹³ In addition, the element of error, which in foreign languages is called *schuld*, refers to a person's psychological condition related to the actions he or she does. If from this condition it can be concluded that the act committed is reprehensible, then the perpetrator can be held criminally responsible. Criminal liability is the continuation of objective blame on a criminal act based on applicable legal provisions. Subjectively to the perpetrator who meets the requirements in the law (criminal) to be subject to criminal penalties for his actions. Meanwhile, the requirement for criminal liability or the imposition of a penalty, there must be an element of error in the form of intent or negligence.¹⁴ Criminal responsibility, which in foreign terms is called *teorekenbaardheid* or criminal responsibility, refers to the process of punishing perpetrators of crimes. The goal is to determine whether a suspect or defendant can be held accountable for the crime that has been committed.

According to Pompe, a crime is an act committed by a human being that is against the law and is threatened with criminal sanctions based on the law. The act must be committed by someone who can be held responsible and considered guilty of the crime that occurred.¹⁵ Roeslan Saleh stated that criminal responsibility is a form of continuing objective blame for a criminal act committed by a person. In other words, in order for a person to be held criminally responsible, his actions must fulfill the elements that have been stipulated in the law.¹⁶ The policy of establishing a criminal responsibility system as one of the criminal policies is a matter of choosing from various alternatives. Thus, the selection and determination of the criminal responsibility system cannot be separated from various rational and wise considerations in accordance with the conditions and developments of society. In relation to the problems that occur, Romli Atmasasmita stated the following:¹⁷ "Talking about the concept of liability or "responsibility" seen from the perspective of legal philosophy, a great philosopher in the field of law in the 20th century, Roscoe Pound, in *An Introduction to the Philosophy of Law*, has expressed his opinion "I..Use the simple word "liability" for the situation where by one is exact legally and the other is legally subjected to the exaction.¹⁸ In Indonesia, criminal liability is regulated in the Criminal Code in Articles 44

¹³ Moeljatno, *Asas-Asas Hukum Pidana*, (Jakarta: Renika Cipta, 2008), p. 25.

¹⁴ Hamzah Hatrik, *Asas Pertanggungjawaban Korporasi Dalam Hukum Pidana Indonesia*, (Jakarta: Raja Grafindo, 1996), p. 11.

¹⁵ P.A.F. Lamintang, *Dasar-Dasar Hukum Pidana Indonesia*, (Bandung: Sinar Baru, 1990), p. 174.

¹⁶ Ayu Efritadewi, *Modul Hukum Pidana*, (Tanjungpinang: UMRH Press, 2020), p. 1.

¹⁷ Romli Atmasasmita, *Asas-asas Perbandingan Hukum Pidana*, (Jakarta: Yayasan LBH, 1989), p. 79.

¹⁸ Ferdinandus Kila, Nyoman Gede Sugiarta, "Pertanggungjawaban Pidana tanpa Sifat Melawan Hukum dalam Perspektif Pembaharuan Hukum Pidana", *Jurnal Konstruksi Hukum* 4, no. 1 (2023): 28-34.

to 56 relating to who can be held criminally responsible and the requirements. Article 44 of the Criminal Code: States that a person can only be held criminally responsible if he can be held legally responsible. This means that a person must have the legal capacity to be held responsible for the criminal acts committed. Article 45 of the Criminal Code: States that a person who cannot be held criminally responsible is someone who is insane or not yet of age.

Article 47 of the Criminal Code: Mentions several things that can prevent criminal responsibility, for example forced circumstances, or orders from legitimate officials. Article 51-Article 56 of the Criminal Code: Regulates circumstances that can alleviate or exempt perpetrators of criminal acts from responsibility, such as emergency circumstances or lack of awareness at the time of committing the crime. In criminal responsibility, the burden of responsibility is imposed on the perpetrator of the criminal act in relation to the basis for imposing criminal sanctions. A person will have the nature of criminal responsibility if something or an act that is done by him is against the law, but a person can lose his nature of responsibility if an element is found in him that causes the loss of a person's ability to be responsible.¹⁹

Legally, to ask for criminal responsibility to the perpetrator of a crime or crime is divided into 2 (two), namely: first, the person fully responsible and second, the person partially responsible. The person fully responsible for criminal sanctions is those who are classified as perpetrators of criminal acts as independent persons responsible; mededader as joint persons responsible; medeplegen as persons responsible as well; doen plegen as persons responsible for the orderer; and uitlokken as persons responsible for the inducement or planner. While the person partially responsible is those who are classified as poger as persons responsible for attempted criminal acts and medeplichtige as persons responsible for providing assistance in committing criminal acts.²⁰ Criminal accountability is an important aspect in upholding justice for perpetrators of criminal acts. In facing the ever-growing legal challenges, strict prevention and enforcement efforts are needed, including through education, strengthening regulations, and cooperation between law enforcement officers and the community. Thus, the implementation of the law can run effectively to create a safer and more just social order.

B. Criminal Responsibility for Distributed Pornographic Videos

Criminal Liability in the Distribution of Pornographic Videos The distribution of pornographic videos is a crime that is strictly regulated in Indonesian law. This action involves various legal aspects, including the Pornography Law, the Electronic Information and Transactions Law (UU ITE), and the Criminal Code (KUHP). A person can be said to be a perpetrator of a crime when he commits an unlawful act according to the elements of the law.²¹ Criminal liability means that actions that are prohibited by law and violate norms in society are accountable to the perpetrators. Therefore, criminal liability means actions that weaken subjective and objective legal norms and social norms. Law Number 44 of 2008 Article 4 and Article 29 concerning Pornography: This law clearly regulates prohibited acts related to pornography, including the making, distribution, and possession. And Law on the Criminal Code Article 281 relates to acts that violate morality. Criminal liability in cases of disseminated pornographic videos involves several legal aspects that need to be considered.

¹⁹ Hamzah, A. *Pornografi dalam Hukum Pidana: Suatu Studi Perbandingan*. (Jakarta 1987), p. 28.

²⁰ TommyJ. Bassang, "Pertanggungjawaban Pelaku Tindak Pidana", *Lex Crimen* 4, no. 5 (2015), p. 124-125

²¹ Bambang Sudjito, "Tindak Pidana Pornografi dalam Era Siber di Indonesia", *Wacana* 19, no. 2 (2016). hal. 68

In the context of Indonesian criminal law, the act of distributing pornographic videos can be subject to criminal sanctions based on several applicable provisions, especially those in Law of the Republic of Indonesia Number 44 of 2008 concerning Pornography and the Criminal Code (KUHP).

In Indonesia, law enforcement against pornography is very low because there are many Commercial Sex Workers (CSWs) who serve horny men. Pornography certainly damages the lives of humanity in general, now and in the future. Therefore, a joint effort is needed to combat pornography efficiently. When someone can be said to be a perpetrator of a crime and must be held accountable, the perpetrator in a case must meet several requirements: (a). Unlawful Act (Actus Reus); (b). Mistake (Mens Rea); (c). Applicable Articles; (d). Elements of the Perpetrator's Mistake; (e). Protection of Victims and Social Impact; (f). Criminal Liability; (g). Justification or Exemption of Criminal Punishment; (h). Responsibility of Other Responsible Persons.

Overall, criminal liability in cases of distributing pornographic videos is highly dependent on the existence of sufficient evidence regarding the unlawful act, the perpetrator's intent or negligence, and the social impact of the distribution. The perpetrator can be punished in accordance with the provisions applicable in criminal law in Indonesia. The distribution of pornographic videos is a crime that has serious impacts on victims and society at large. Therefore, it is important to understand the criminal liability that can be imposed on the perpetrator. In this digital era, the distribution of pornographic videos is an increasingly complex challenge.

Criminal liability in the above case has been explained that the perpetrator of making a pornographic video can be subject to criminal sanctions and sentenced to 2 years in prison and a fine of 500,000,000.00 (five hundred million rupiah). The punishment that has been imposed, hopefully, will make the perpetrator and the people in Indonesia aware that this act is wrong and detrimental to themselves and others and not repeat and commit this criminal act of pornography again.

C. Basic Considerations of Judges in Imposing Criminal Sanctions on Perpetrators of Distributed Pornographic Videos

The case of the pornographic video that occurred in Ambon City, a pornography case carried out by Paulus Sabono or commonly called Opa Poli who is 62 years old, and a woman named Elvira Lattu who is 21 years old. Elvira Lattu is Paulus Sabono's neighbor, both live close together, the distance from Paulus Sabono's house to Elvira Lattu is not too far. Paulus Sabono often comes to Elvira's house to buy yellow rice and when Paulus Sabono buys yellow rice he often gives Elvira the change.

The pornographic video was recorded in room 311 of the Sahabat Hotel located at Jl. Said Perintah Number 5 Kel. Ahusen Kec. Sirimau Ambon City on May 17, 2024 at 21.30 WIT and at 22.30 WIT Elvira returned home, as time went by on Tuesday, June 18, 2024 at around 03.00 WIT, Elvira received a message from Rommy Lesilolo informing Elvira that a pornographic video of Paulus and Elvira had been spread, after that Elvira called Paulus to ask how the video could have been spread "Om This Why Did The Video Reach Romi Paulus answered. "Om Police Doesn't Know Anything, then on Friday at around 09:00 WIT, someone came to Elvira's house and told Elvira's biological mother, Enika Urialaly, that Elvira's pornographic video had been spread, knowing this, Elvira and witness Enika Urialaly (Alia) then went straight to the Ambon Island Police Office & P.P Lease to make reports.

Paulus Sabono and Elvira Lattu looked very close and confident appearing in front of the camera without clothes when making the 6 minute 50 second pornographic video. Elvira Lattu put her cellphone on the table in a tilted position, after that Elvira and Paulus were in sexual intercourse, where at the beginning Elvira and Paulus were standing in front of the camera while making out with a kiss on the lips, then the two of them had intimate relations. Elvira Lattu admitted that the people in the pornographic video were herself and Paulus Sabono, Elvira Lattu also admitted that she was conscious when it was recorded, because when making the pornographic video Elvira Lattu had time to adjust the position of the cellphone camera, said Elvira. The pornographic video was recorded in room 311 of the Sahabat Hotel located at Jl. Said Perintah Number 5 Kel. Ahusen Kec. Sirimau City of Ambon on May 17, 2024 at 21.30 WIT, after Paulus Sabono and Elvira Lattu had sex, Paulus Sabono gave Elvira money amounting to Rp. 1,200,000 (one million two hundred thousand rupiah). Looking at the decision Number: 265/Pid.B/2024/PN Amb which has been issued by the Ambon District Court, the judge hereby states that Elvira is declared a victim and Paulus is determined as a perpetrator of a pornography crime and is sentenced to 2 years in prison for violating the provisions of Article 35 of Law of the Republic of Indonesia Number: 44 of 2008 concerning pornography. In the decision issued by the Ambon District Court regarding the pornographic video case made by Paulus Sabono and Elvira Lattu, it seems as if only Opa Poli as the defendant was guilty while Elvira was only a victim without any fault whatsoever.

Considering, that the Defendant has been charged by the Public Prosecutor with an alternative charge, so that the Panel of Judges, by taking into account the legal facts above, directly chooses the first alternative charge as regulated in Article 35 of the Republic of Indonesia Law Number 44 of 2008 concerning Pornography, the elements of which are as follows: 1) The element "Everyone"; 2) The element "Which Makes Other People Objects or Models Containing Pornographic Content as Referred to in Article 9, namely that everyone is prohibited from making other people objects or models containing pornographic content".

Ad.1 The Element of "Every Person": Considering, that the element of Every Person is meant as a person or anyone as a legal subject who can be held legally responsible for the criminal act he/she has committed, and in this case based on the statements of witnesses and the statement of the Defendant himself in court, it is shown that the Defendant Paulus Sabono alias Poli is the perpetrator of the crime of pornography as charged, and the Defendant has confirmed his identity completely as described in the indictment and in the examination in court is an adult human being, not mentally disabled and during the examination in court, no reasons were found in the Defendant that could eliminate the criminal act so that he/she can and is able to be held legally responsible. Considering, that thus this element has been fulfilled for the Defendant;

Ad.2 Elements of "Making Other People Objects or Models Containing Pornographic Content as Referred to in Article 9, namely, everyone is prohibited from making other people objects or models containing pornographic content"; Considering, that what is meant by pornography is images, sketches, illustrations, photos, writing, voices, sounds, moving images, animations, cartoons, conversations, body movements, or other forms of messages through various forms of communication media and/or public performances, which contain obscenity or sexual exploitation that violates moral norms in society. Considering, that what is meant by Article 9 of the Republic of Indonesia Law Number 44 of 2008 concerning Pornography is that every person is prohibited from making another person an object or model that contains pornographic content (Article 35). Whereas, this Law prohibits various acts and products related to pornography, including: a) Creating,

distributing, and using pornography; b) Involving children in pornographic activities; c) Making children the object of pornography; d) Inviting, persuading, exploiting, allowing, abusing power, or forcing children to use pornographic products or services.

Considering, that based on the description of the facts revealed in court that starting in August 2023, the victim witness knew the defendant because the defendant was the victim witness' neighbor, then the defendant asked for the victim witness' cellphone number and the victim witness became close to the defendant, that then the defendant also often came to the victim witness' house to buy yellow rice because it so happened that the victim witness' biological mother, witness Enika Urlialy, sold yellow rice in front of the house, when the defendant bought yellow rice the defendant often gave change to the victim witness.

Considering, that further on Friday, May 17, 2024, at around 21.30 WIT, at the Sahabat Hotel, Jl. Said Perintah Number 5, Kel. Ahusen, Sirimau District, Ambon City, which began when the defendant Paulus Sabono alias Om Poli told the victim witness to go to the hotel and upon arriving at the hotel room, the defendant told the victim witness to have sex with the victim witness and told him to record the defendant's actions against the victim witness. Considering, that further on Friday, May 17, 2024, at around 21.30 WIT, at the Sahabat Hotel, Jl. Said Perintah No. 5, Kel. Ahusen, Sirimau District, Ambon City, which began when the defendant Paulus Sabono alias Om Poli told the victim witness to go to the hotel and upon arriving at the hotel room, the defendant told the victim witness to have sex with the victim witness and told him to record the defendant's actions against the victim witness. Sirimau City of Ambon which began when the defendant Paulus Sabono alias Om Poli told the victim witness to go to the hotel and when he arrived at the hotel room the defendant told the victim witness to have sex with the victim witness and told him to record the defendant's actions against the victim witness but at that time the victim witness refused to record but the defendant said to the victim witness "Already This Phone, Only Beta Is The Only Who Resists, People Have Never Hold BT HP, BT HP Also Uses A Lock, All Applications Use A Lock", after that the victim witness put the cellphone on the table with the defendant's cellphone standing then the defendant told the victim witness to tilt her cellphone, after that the defendant and the victim witness who were in a state of having sex while saying "Already This Phone, Only Beta Is The Only Who Resists, People Have Never Hold Bt Hp, Bt Hp Also Uses A Lock, All Applications Use A Lock", after that the witness The victim then put the cellphone on the table with the defendant's cellphone standing, then the defendant told the victim to tilt the cellphone, after that the defendant and the victim were having sexual intercourse.

Considering, that then the victim witness returned to a supine position while placing a bolster under her buttocks and the defendant pressed her down while inserting the defendant's genitals and moving her buttocks up and down until the defendant's semen came out and the defendant spilled it inside the victim witness's genitals, after that the defendant took the defendant's cellphone and told the victim witness to open both thighs while the defendant took a picture of the victim witness lying on her back on the mattress while the victim witness opened her genitals with both hands, then the victim witness went to the bathroom, then the defendant followed her to the bathroom and the defendant again recorded a video of the victim witness who was still naked who was sitting on the toilet to clean herself, after having sex the defendant gave the victim witness money in the amount of IDR. 1,200,000 (one million two hundred thousand rupiah).

Considering, that the Public Prosecutor submitted the following evidence: a) 1 (one) unit of Samsung Galaxy A04s brand cellphone in black belonging to the suspect, Mr. Paulus Sabono; b) 1 (one) pornographic video recording file of sexual intercourse of Suspect. Paulus Sabono alias Poli with Saudi. Elvira Santy Lattu alias Vira stored in the Gallery File of a Black Samsung Galaxy A04s Mobile Phone belonging to Suspect Paulus Sabono alias Poli; c) 1 (one) pornographic video recording file of Ms. Elvira Santy Lattu alias VIRA sitting naked on a sitting toilet stored in the gallery file of a black Samsung Galaxy A04s cellphone belonging to the suspect Paulus Sabono alias Poli.

Which has been used to commit a crime and is feared to be used to repeat the crime/is the result of a crime, then it is necessary to determine that the evidence be destroyed; Considering, that in order to impose a criminal penalty on the defendant, it is necessary to first consider the aggravating and mitigating circumstances of the defendant; Aggravating circumstances: 1) The defendant's actions caused Ms. Elvira Santi Lattu alias Vira to feel ashamed; 2) Mitigating conditions: 1) The defendant was polite during the trial; 2) The defendant promises not to repeat his actions; 2) The defendant openly admitted his actions.

Mengadili: 1) Declare that the Defendant Paulus Sabono alias Poli has been proven legally and convincingly guilty of committing the crime of "making another person an object or model containing pornographic content" as stated in the Public Prosecutor's first alternative charge; 2) To sentence the Defendant to a prison sentence of 2 (two) years and a fine of IDR. 500,000,000.00 (five hundred million rupiah) with the provision that if the fine is not paid it will be replaced with a prison sentence of 4 (four) months; 3) Determine that the length of the arrest and detention period served by the Defendant shall be deducted in full from the sentence imposed; 4) Determine that the Defendant remains in detention; 5). Determine evidence in the form of: a) 1 (one) unit of Samsung Galaxy A04s brand mobile phone in black belonging to the suspect, Paulus Sabono alias Poli; b) 1 (one) pornographic video recording file of sexual intercourse between Suspect Paulus Sabono alias Poli and Ms. Elvira Santy Lattu alias VIRA stored in the Gallery File of a Black Samsung Galaxy A04s cellphone belonging to Suspect Paulus Sabono alias Poli; c) 1 (one) pornographic video recording file of Ms. Elvira Santy Lattu alias Vira sitting naked on a sitting toilet stored in the gallery file of a black Samsung Galaxy A04s cellphone belonging to the suspect Paulus Sabono alias Poli. destroyed; 6) Charge the Defendant to pay court costs amounting to IDR. 5,000 (five thousand rupiah).

D. Implementation of Criminal Sanctions in Decision No.265/Pid.B/2024/PN.Ambon.

In the verdict issued by the Ambon District Court regarding the pornographic video case carried out by Paulus Sabono and Elvira Lattu, it seems as if only Opa Poli as the defendant is guilty while Elvira is only a victim without any fault whatsoever. Paulus Sabono was charged with Article 35 of the Republic of Indonesia Law Number 44 of 2008 concerning Pornography which reads: "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 IDR 500,000,000.00 (five hundred million rupiah) and a maximum of IDR 6,000,000,000.00 (six billion rupiah)." The article above explains that Paulus Sabono made Elvira the object in making a pornographic video, but in reality in the pornographic video they made there was no element of coercion or rape carried out by Paulus Sabono to Elvira because it was clear that in making the pornographic video both of them seemed to have the same interest and without any coercion from any party, in reality every time Paulus gave

money to Elvira she took it/accepted it, which meant she gave Paulus the opportunity to approach her, and when they finished having sex, Paulus still gave money to Elvira and she accepted it, which meant Paul's desire was fulfilled and Elvira was paid.

As the author, I have several reasons for the judge's considerations that aggravate and mitigate Paulus Sabono as the defendant so that the verdict issued by the Ambon District Court includes: 1) The purpose of Paulus Sabono recording or making the pornographic video was for his own sake, not to be shown to others because in Paulus' statement above he said "Already This Phone Is Only Beta Who Resists, People Have Never Held A BT HP, BT HP Also Uses A Lock, All Applications Use A Lock. That means he will not spread and show the pornographic video to others, because he has promised and he cannot possibly deny it because he is an elderly person so he will not lie; 2) Paulus Sabono's purpose in making the video was for personal satisfaction, not to be distributed to others because in the context of Indonesian law, making pornographic videos for. However, it is important to understand that although making for personal gain is not a criminal offense, there are limitations that must be considered. Article 6 of the Pornography Law prohibits the act of possessing or storing pornographic content, except for personal gain. This means that as long as the content is not distributed or used for purposes other than personal gain, it is not considered a violation of the law. And there is a mutual symbiosis because Paulus Sabono's desire is fulfilled and Elvira Lattu gets paid 1,200,000 (one million two hundred thousand rupiah) from Paulus; 3) In the judge's consideration that has been issued, it is said that the impact of the distribution of the pornographic video Elvira became traumatized and ashamed, the question in my opinion is whether Paulus Sabono who was declared as the defendant did not feel ashamed too? While it is clear that not only Elvira's face and body are seen naked, but also Paulus's face and body are seen naked, which person wants to be ashamed by sending or showing the pornographic video he made to other people; 4) The person who must be declared guilty and arrested is the person who spread the pornographic video of Paulus and Elvira. From this case we can see that the law in Indonesia is not evenly distributed, because it is very clear that the law that must be used to resolve this problem is Law Number 44 of 2008 in Article 4, Article 29 concerning pornography and the Criminal Code (KUHP) in Article 281 which has prohibited the making and reproduction of pornographic videos, not using the Pornography Law in Article 35.

CONCLUSION

Criminal liability for perpetrators of pornographic videos in Indonesia in the case of the pornographic video carried out by Elvira Lattu and Paulus Sabono, namely the perpetrator can be subject to criminal sanctions and sentenced to 2 years in prison and a fine of 500,000,000.00, from the sentence that has been imposed by the court. The basis for the judge's consideration in imposing criminal sanctions on perpetrators of pornographic videos, the decision study number: 265 / pid.b / 2024 / pn.ambon which was disseminated includes several important aspects. First, the judge considers aggravating circumstances, such as the social impact of the perpetrator which can cause unrest in the community. Second. The judge also pays attention to mitigating circumstances, such as the defendant's cooperative attitude, regret for his actions.

REFERENCES

Adami Chazawi, *Tindak Pidana Pornografi*, Malang: Bayumedia Publishing, 2013.

- Afdhal Ananda Tomakati, "Konsepsi Teori Hukum Pidana Dalam Perkembangan Ilmu Hukum". *Jurnal Hukum Pidana Dan Kriminologi* 4, no. 1 (2023): 49-56.
- Andi Hamzah, *Pornografi dalam Hukum Pidana: Suatu Studi Perbandingan*. Jakarta 1987.
- Ayu Efridadewi, *Modul Hukum Pidana*, Tanjungpinang: UMRAH Press, 2020.
- Bambang Sudjito, "Tindak Pidana Pornografi dalam Era Siber di Indonesia", *Wacana* 19, no. 2 (2016).
- Ferdinandus Kila, Nyoman Gede Sugiarta, "Pertanggungjawaban Pidana tanpa Sifat Melawan Hukum dalam Perspektif Pembaharuan Hukum Pidana", *Jurnal Konstruksi Hukum* 4, no. 1 (2023): 28-34.
- Hamzah Hatrik, *Asas Pertanggungjawaban Korporasi Dalam Hukum Pidana Indonesia*, Jakarta: Raja Grafindo, 1996.
- <https://fahum.umsu.ac.id/tindak-pidana-pengertian-unsur-dan-jenisnya>.
- Irma Runtianing Uswatul Hanifah, Kejahatan Pornografi Upaya Pencegahan Dan Penanggulangannya Di Kabupaten Ponorogo. *Justicia Islamica* 10, no. 2 (2013).
- Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia*, Jakarta: Sinar Grafika, 2014.
- Kualifikasi Tindak Pidana Pornografi (studi kasus Video Porno Artis GA) <https://opac.fhukum.unpatti.ac.id/index.php?p=fstream-pdf&fid=9363&bid=8939>.
- Lamintang P.A.F. *Hukum Pidana Indonesia*, Bandung: Sinar Baru, 1984.
- Lemaire dalam Ruslan Renggong, *Hukum Pidana Khusus Memahami Delik-Delik Di Luar KUHP*, Jakarta: Kencana, 2017.
- Moeljatno, *Asas-Asas Hukum Pidana*, Jakarta: Renika Cipta, 2008.
- P A F Lamintang, *Dasar-Dasar Hukum Pidana Indonesia*, Bandung: Sinar Baru, 1990.
- Pipin Syarifin, *Hukum Pidana di Indonesia*, Bandung: Pustaka Setia, 2000.
- Romli Atmasasmita, *Asas-asas Perbandingan Hukum Pidana*, Jakarta: Yayasan LBH, 1989.
- Sandiliama Sarumaha, *Pertanggung Jawaban Pidana Terhadap Pelaku Penyebaran Video Porno Melalui Sosial Media*, Jakarta, 2022.
- Sudaryono and Natangsa Surbakti, *Hukum Pidana Dasar-Dasar Hukum Pidana Berdasar KUHP dan RUU KUHP*, Surakarta: Muhammadiyah University Press, 2017.
- TommyJ.Bassang, "Pertanggungjawaban Pelaku Tindak Pidana", *Lex Crimen* 4, no. 5 (2015).
- Wirjono Prodjodikoro, *Tindak Pidana Tertentu di Indonesia*, Bandung: Rafika Aditama, 2003.