

Criminal Responsibility of Perpetrators of Pornography through the Internet in the Application of the Principle of Lex Specialis Derogat Legi Generalis in the Perspective of Criminal Law

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Abstract

The purpose of this study is to find out and understand about Criminal Liability for Internet Pornography Perpetrators in the Application of the Principle of Lex Specialis Derogat Legi Generalis in the Perspective of Criminal Law. This type of research uses a descriptive analysis research method, namely a method that describes and explains a fact or reality systematically. The legal materials used are primary, secondary and tertiary legal materials. Discussion Results: The Pornography Law does not expressly eliminate the crime of pornography in the Criminal Code or the ITE Law, but still applies the Criminal Code and the ITE Law for several other cases of pornography crimes. In certain cases and circumstances with stronger legal reasons, the crime of pornography in the Criminal Code or the ITE Law can be applied. In a case of pornography crime, criminal liability for perpetrators of pornography on the internet can be applied through the principle of lex specialis derogat legi generali, which means that special law overrides general law. Criminal liability for perpetrators of pornography via the internet In the Application of the Principle of Lex Specialis Derogat Legi Generalis is regulated in Articles 29 to 38 of Law Number 44 of 2008 concerning Pornography. That this Law specifically regulates pornography so that general legal rules can be set aside by using specific legal rules.

Keywords

Criminal Liability, Pornography, Via the Internet, Principle of Lex Specialis Derogat Legi Generalis, Criminal Law



I. Introduction

Social activities in social interactions are currently increasingly sophisticated. Where one and the other are not required to meet in person. The use of interactive media through social networks through electronic media has almost spread to all corners of the world, including in remote countries. This certainly makes it easier for humans to send messages online without meetings that require a lot of money and take too much time on the road. This ease of interaction certainly does not only have a positive impact on its users, of course there are negative impacts that apply in this case. Where perpetrators of cybercrime have been stalking their victims who are technologically illiterate or better known as gaptek. Of course, this is not without education from related parties and even law enforcement, to always be careful in using electronic mass media that brings convenience but can be dangerous for their victims. Cases related to fraud often occur through social media, including Facebook, Instagram, WhatsApp, Telegram, email and other social media. Not only fraud, cases related to pornography also occur through social networks.

The victims are not only female, but men are also not spared from becoming victims, not only teenagers, adults or parents can also become victims of pornography crimes.

Law enforcement for perpetrators of pornography has certainly been carried out by law enforcement. The crime of pornography has clearly violated the law, and is even very detrimental to its victims. The victim not only loses materially but also the threat of having his good name tarnished because the pornographic act was disseminated by the perpetrator of the crime. The criminal sanctions given sometimes do not guarantee that the perpetrators of this crime will be deterred from their actions, often these criminal sanctions continue to apply to perpetrators with the same crime in the future. The existence of acts that cause this indecency is shown in public places, or certain applications for no other reason than to reap a lot of profit, sometimes not infrequently with these events as material to threaten victims to continue to commit indecent or inappropriate acts and the perpetrator gets money from these activities. Another case that occurs, namely perpetrators of crimes who deliberately record pornographic videos or indecent acts for other commercial activities, namely selling the videos to internet websites to get some profit.

With the existence of various types of cases related to pornography on the internet that are currently happening, it is a reason for the author to conduct research on the title Criminal Liability for Perpetrators of Pornography Through the Internet in the Application of the Principle of *Lex Specialis Derogat Legi Generalis* in the Perspective of Criminal Law. So the author formulates about How is the criminal liability for perpetrators of pornography through the internet in the Application of the Principle of *Lex Specialis Derogat Legi Generalis* in the Perspective of Criminal Law.

II. Research Methods

This type of research uses a descriptive analysis research method, namely a method that describes and explains a fact or reality systematically. The legal materials used are primary, secondary and tertiary legal materials. Primary legal materials are the main legal materials, as authoritative legal materials, namely legal materials that have authority, primary legal materials include laws and regulations and all official documents containing legal provisions. Secondary legal materials are documents or legal materials that provide explanations to primary legal materials such as: books, articles, journals, research results, papers and so on that are relevant to the problems to be discussed. Tertiary legal materials as legal materials that provide instructions and explanations to primary and secondary legal materials, such as dictionaries and encyclopedias.

III. Results and Discussion

3.1 Regulation of Pornography Crimes

A criminal act is an act that is prohibited by a legal rule, the prohibition of which is accompanied by a threat (sanction) in the form of a certain criminal penalty, for anyone who violates the prohibition.

According to Lamintang, "every criminal act in the Criminal Code can generally be described into 2 (two) types of elements, namely subjective elements and objective elements. Subjective elements are elements that are inherent in the perpetrator or related to the perpetrator and include everything contained in his heart. Objective elements are elements that are related to circumstances, namely circumstances in which the perpetrator's actions must be carried out."

So the author concludes that a criminal act is an act that is carried out by fulfilling the elements, namely subjective elements and objective elements by violating the provisions of the law and is subject to sanctions for the perpetrator of the crime.

3.2 Types of Criminal Acts

There are several types of criminal acts, including:

- 1) According to the Criminal Code (KUHP), there are several types of crimes, including:
 - 1) According to the Criminal Code (KUHP), there are Crimes contained in Book II and Violations contained in Book III.
 - 2) Formal crimes and material crimes.
 - 3) Dolus Crimes and Culpable Crimes.
 - 4) Commissionist offenses, omissionist offenses and commissionist offenses per omissionis commissi.
 - 5) Continuous offenses and non-continuous offenses.
 - 6) Report offenses and complaint offenses
 - 7) Ordinary offenses and qualified offenses

A criminal act can cause loss or suffering to other people. Other people here are meant by the victim. Losses or suffering can be in the form of losses in terms of material, physical suffering and psychological suffering for the victim. Material losses in the form of money suffered by the victim from the perpetrator of the crime. Physical suffering lies in the physical/limbs of the victim of the crime. While psychological suffering is suffering that concerns the soul and mind of the victim. For criminal acts committed by the perpetrator, the perpetrator can be given a criminal sentence in accordance with the article violated. Furthermore, criminal punishment is a punishment or criminal sanction given to the perpetrator of a crime.

The Criminal Code (KUHP) in Chapter II Article 10, regulates the sanctions for criminal acts, namely:

- a. Principal Criminal Penalties include: Death Penalty; Imprisonment; Detention; Fines.
- b. Additional Penalties include: Revocation of certain rights; Confiscation of certain goods; Announcement of the judge's decision.

The regulation of criminal sanctions in the Criminal Code is such that it aims to provide legal certainty for the community as victims of criminal acts. The criminal sanctions given should be expected to provide a deterrent effect for every perpetrator of the crime.

3.3 Definition of Pornography

According to the language, pornography comes from the Greek porn which means prostitute and graphein means expression. From this understanding, it shows that the main object and source of pornography are women. Porn also means obscene, pornography means depiction of erotic behavior with paintings or writing to arouse lust. Meanwhile, in terms of terms, there are several definitions put forward by experts and also formulated in the Pornography Law (Law of the Republic of Indonesia No. 44 of 2008).

Peter Webb as quoted by Rizal Mustansyir completes the definition of pornography by adding that pornography is related to obscenity (obscenity) more than just eroticism. Meanwhile, according to Law of the Republic of Indonesia No. 44 of 2008 concerning pornography, it is defined that pornography is a picture, sketch, illustration, photo, writing, voice, sound, moving picture, animation, cartoon, conversation, body movement, or other form of conversation through various forms of communication media and/or public

performances, which contain obscenity or sexual exploitation that violates moral norms in society.

According to Haidar et al. Currently, the term pornography is used to express anything that is sexual in nature, especially those considered to be in bad taste or immoral, if the making, presentation or consumption of the material is intended only to arouse sexual arousal. The meaning of pornography can also be associated with art that is oriented towards visualizing body shapes, arousing movements and all forms of speech that influence a person's emotions and sexual fantasies. This means that the development of the term pornography is increasingly widespread.

Regarding pornography, this is regulated in several provisions, including:

a. Criminal Code

The types of pornography crimes in the Criminal Code are as follows:

1. The crime of pornography is deliberate and with culpa

This crime of pornography is contained in Article 282.

Article (1): "Anyone who broadcasts, displays or displays in public a text, image or object whose contents are known to violate morality, or anyone who, with the intention of broadcasting, displaying or displaying in public, creates the text, image or object, imports it into the country, forwards it, takes it out of the country, or has a stock of it, or anyone who openly or by distributing letters without being asked, offers it or displays it as being available for purchase, is threatened with a maximum prison sentence of one year and six months or a maximum fine of Rp. 4,500,-.

Article 2): "Anyone who broadcasts, displays, or posts in public a writing, picture or object that violates morality, or anyone who with the intention of broadcasting, showing or posting in public, makes it into the country, forwards, takes it out of the country, or has a stock, or anyone who openly or by distributing letters without being asked, offers, or indicates that it can be obtained, is threatened if there is a strong reason for him to suspect that the writing, picture or object violates morality, with a maximum imprisonment of nine months or a maximum fine of four thousand five hundred rupiah."

Article 3): "If the person guilty of committing the crime in the first paragraph as a profession or habit, he can be sentenced to a maximum imprisonment of two years and eight months or a maximum fine of seventy-five thousand rupiah."

b. Criminal Acts of Pornography against Minors

The criminal act of pornography is contained in Article 283.

Paragraph (1): "Threatened with a maximum imprisonment of nine months or a maximum fine of nine thousand rupiah, anyone who offers, gives continuously or temporarily, hands over or shows writing, pictures, or objects that violate morality, or a deed to prevent or terminate pregnancy to a minor, and who is known or should be suspected to be under seventeen years of age, if the contents of the writing, picture, object, or tool are known to him."

Paragraph (2): "Threatened with the same penalty, anyone who reads the contents of a writing that violates morality in front of a minor as referred to in the previous paragraph, if the contents of the writing are known to him."

Article (3): "Threatened with a maximum imprisonment of four months or a maximum imprisonment of three months or a maximum fine of nine thousand rupiah, anyone who offers, gives continuously or temporarily, hands over or shows, writing, pictures or objects that violate morality, or tools to prevent or terminate pregnancy to a minor as referred to in the first paragraph, if there is a strong reason for him to suspect

that the writing, picture or object that violates morality or the tool is a tool to prevent or terminate pregnancy.”

c. Criminal Acts of Pornography in Carrying Out a Search with Repetition

This criminal act of pornography is contained in Article 283 bis of the Criminal Code.

“If the guilty party commits one of the crimes referred to in Articles 282 and 283 in carrying out his search and at that time two years have not passed since the criminal conviction that has become permanent for such a crime, then his right to carry out the search can be revoked.”

d. Pornography Violations on Teenagers

This pornography crime is contained in Article 533 of the Criminal Code which states: Threatened with a maximum imprisonment of two months or a maximum fine of Rp. 3,000.00,-

- 1) Anyone in a place for public traffic openly displays or attaches writing with a title, cover, or contents that are made legible, or images or objects that can arouse the lust of teenagers;
- 2) Anyone in a place for public traffic openly plays the contents of writing that can arouse the lust of teenagers;
- 3) Anyone who openly or without being asked offers a writing, image or item that can arouse the lust of teenagers or openly or by broadcasting a writing without being asked, indicating as available, writing or images that can arouse the lust of teenagers;
- 4) Anyone who offers, gives permanently or temporarily, hands over or shows such images or objects to a minor and under the age of 17 years.
- 5) Anyone who plays the contents of such writing in front of a minor and under the age of 17 years.

e. Pornography Violation Showing Means to Prevent Pregnancy

This pornography crime is contained in Article 534 of the Criminal Code which states:

"Anyone who openly displays means to prevent pregnancy or openly or without being asked offers, or openly or by broadcasting a writing without being asked, shows as available, such means or intermediaries (diensten), shall be subject to a maximum imprisonment of two months or a maximum fine of three thousand rupiah."

1. Law of the Republic of Indonesia Number. 44 of 2008 concerning pornography

In Law of the Republic of Indonesia Number. 44 of 2008 concerning pornography, the pornography crime is contained in Articles 29 to 38 of the Pornography Law.

a. Article 29 in the case of the crime of producing, making, reproducing, duplicating, distributing, broadcasting, importing, exporting, offering, selling, renting, providing pornography, formulates:

“Any person who produces, makes, reproducing, duplicating, distributing, broadcasting, importing, exporting, offering, selling, renting, or providing 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) and a maximum of IDR 6,000,000,000.00 (six billion rupiah).”

b. Article 30 in the case of the Criminal Act of providing pornographic services, formulates:

- “Any person 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 Rp250,000,000.00 (two hundred and fifty million rupiah) and a maximum of Rp3,000,000,000.00 (three billion rupiah).”
- c. Article 31 in the case of the Criminal Act of lending or downloading pornography, formulates:
- “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 Rp2,000,000,000.00 (two billion rupiah).”
- d. Article 32 in terms of the crime of listening to, watching, utilizing, possessing, or storing pornographic products, formulates:
- “Any person who listens to, watches, utilizes, possesses, or stores pornographic products as referred to in Article 6 shall be punished with imprisonment for a maximum of 4 (four) years and/or a maximum fine of Rp2,000,000,000.00 (two billion rupiah).”
- e. Article 33 in the crime of funding or facilitating pornographic acts.
- “Any person who funds or facilitates acts as referred to in Article 7 shall be punished with imprisonment for a minimum of 2 (two) years and a maximum of 15 (fifteen) years and/or a minimum fine of Rp1,000,000,000.00 (one billion rupiah) and a maximum of Rp7,500,000,000.00 (seven billion five hundred million rupiah).”
- f. Article 34 in the case of the crime of intentionally becoming an object or model containing pornographic content, formulates:
- “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 a maximum of 10 (ten) years and/or a maximum fine of Rp5,000,000,000.00 (five billion rupiah).”
- g. Article 35 in the case of the crime of intentionally making another person an object or model containing pornographic content, formulates:
- “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 a minimum of 1 (one) year and a maximum of 12 (twelve) years and/or a minimum fine of Rp500,000,000.00 (five hundred million rupiah) and a maximum of Rp6,000,000,000.00 (six billion rupiah).”
- h. Article 36 in the case of Pornographic crimes involving showing oneself or others in a show or in public depicting nudity, sexual exploitation, intercourse, formulates:
- “Any person who shows themselves or others in a show or in public depicting nudity, sexual exploitation, intercourse, or other pornographic content as referred to in Article 10 shall be punished with a maximum imprisonment of 10 (ten) years and/or a maximum fine of Rp5,000,000,000.00 (five billion rupiah).”
- i. Article 37 Pornographic crimes involving children.
- “Any person who involves children in activities and/or as objects 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.”
- j. Article 38 in the case of Pornographic Acts
- Article 27 paragraph (1) reads:
- “Any person who intentionally and without the right broadcasts, displays, distributes, transmits, and/or makes accessible Electronic Information and/or Electronic Documents that have content that violates morality for public knowledge.”
- Article 45 paragraph 1) in terms of criminal sanctions for the perpetrator.

Paragraph (1): "the right to broadcast, display, distribute, transmit, and/or make accessible Electronic Information and/or Electronic Documents that have content that violates morality for public knowledge as referred to in Article 27 paragraph (1) shall be punished with imprisonment for a maximum of 6 (six) years and/or a maximum fine of Rp1,000,000,000.00 (one billion rupiah)."

3.4 Criminal liability for perpetrators of pornography via the internet in the Application of the Principle of Lex Specialis Derogat Legi Generalis in the Perspective of Criminal Law

The Pornography Law does not expressly eliminate the crime of pornography in the Criminal Code or the ITE Law, but still applies the Criminal Code and the ITE Law for several other cases of pornography crimes. In certain cases and circumstances with stronger legal reasons, the crime of pornography in the Criminal Code or the ITE Law can be applied.

In a case of a crime of pornography, criminal liability for perpetrators of pornography on the internet can be applied through the principle of *lex specialis derogat legi generali*, which means that special law overrides general law. The use of law in ensnaring perpetrators of pornography can use either the Criminal Code, the Pornography Law, or the ITE Law. These three laws can be used to prosecute acts of pornography committed via the internet. However, it is more optimal if the use of the law that should apply is in accordance with the actual legal provisions. The special rules governing pornography are clearly regulated in Law Number 44 of 2008 concerning pornography specifically. This law only talks about provisions governing pornography and the following criminal sanctions. In contrast to the Criminal Code and the ITE Law which do not specifically regulate pornography. So if the provisions in Law Number 44 of 2008 are more optimal if used in cases of pornography crimes, then the term *lex specialis derogat legi generalis* principle has been truly applied.

The responsibility for pornography crimes of perpetrators of pornography via the internet is regulated in Articles 29 to 38 of Law Number 44 of 2008 concerning Pornography.

Criminal liability for perpetrators of pornography via the internet In the Application of the Principle of *Lex Specialis Derogat Legi Generalis* is regulated in Law Number 44 of 2008 concerning Pornography, in the provisions of several Articles including:

1. Article 29 in the case of Criminal Acts of producing, making, reproducing, duplicating, distributing, broadcasting, importing, exporting, offering, trading, renting, providing pornography 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) and a maximum of IDR 6,000,000,000.00 (six billion rupiah).
2. Article 30 in the case of the Criminal Act of providing pornographic services 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 Rp250,000,000.00 (two hundred and fifty million rupiah) and a maximum of Rp3,000,000,000.00 (three billion rupiah).
3. Article 31 in the case of the Criminal Act of lending or downloading pornography shall be punished with imprisonment of at most 4 (four) years and/or a fine of at most Rp2,000,000,000.00 (two billion rupiah).
4. Article 32 in the case of the Criminal Act of listening to, watching, utilizing, possessing, or storing pornographic products shall be punished with imprisonment of

- at most 4 (four) years and/or a fine of at most Rp2,000,000,000.00 (two billion rupiah).
5. Article 33 in the Criminal Act of funding or facilitating pornographic acts is punishable by imprisonment for a minimum of 2 (two) years and a maximum of 15 (fifteen) years and/or a fine of at least Rp1,000,000,000.00 (one billion rupiah) and a maximum of Rp7,500,000,000.00 (seven billion five hundred million rupiah).
 6. Article 34 in the case of the Criminal Act of intentionally becoming an object or model containing pornographic content is punishable by imprisonment for a maximum of 10 (ten) years and/or a fine of at most Rp5,000,000,000.00 (five billion rupiah).
 7. Article 35 in the case of a criminal act of intentionally making another person an object or model containing pornographic content 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 Rp500,000,000.00 (five hundred million rupiah) and a maximum of Rp6,000,000,000.00 (six billion rupiah).
 8. Article 36 in the case of a criminal act of pornography showing oneself or another person in a show or in public depicting nudity, sexual exploitation, intercourse shall be punished with imprisonment of at most 10 (ten) years and/or a fine of at most Rp5,000,000,000.00 (five billion rupiah).
 9. Article 37 The crime of pornography involving children shall be punished with the same punishment as the punishment 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 in the case of the crime of inviting, persuading, utilizing, allowing, abusing power, or forcing children to use pornographic products or services 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 IDR 250,000,000.00 (two hundred and fifty million rupiah) and a maximum of IDR 3,000,000,000.00 (three billion rupiah).

IV. Conclusion

The Pornography Law does not expressly eliminate the crime of pornography in the Criminal Code or the ITE Law, but still applies the Criminal Code and the ITE Law for several other cases of pornography. In certain cases and circumstances with stronger legal reasons, the crime of pornography in the Criminal Code or the ITE Law can be applied. In a case of a crime of pornography, criminal liability for perpetrators of pornography on the internet can be applied through the principle of *lex specialis derogat legi generali*, which means that special law overrides general law. Criminal liability for perpetrators of pornography via the internet In the Application of the Principle of *Lex Specialis Derogat Legi Generalis* is regulated in Articles 29 to 38 of Law Number 44 of 2008 concerning Pornography. That this law specifically regulates pornography so that general legal rules can be set aside by using specific legal rules.

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