

Additional criminal penalties for revenge pornography cases in Indonesia (Case Study of Court Decision No. 71/Pid.Sus/2023/PN Pdl)

Audrea Agnestacia Hariawan¹, Hartoyo², Dedi Wardana Nasution³
^{1,2,3}Ilmu Hukum, Universitas Dr. Soetomo, Surabaya, Indonesia

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ABSTRACT

Revenge porn cases have become a very important issue in cybercrime, especially in today's digital era. This phenomenon not only negatively impacts victims psychologically and socially but also poses challenges in law enforcement, particularly regarding the application of additional penalties. This study analyzes the imposition of additional penalties in revenge porn cases in Indonesia, focusing on Court Decision Number 71/Pid.Sus/2023/PN Pdl. Using a normative case study approach, this research examines how additional penalties are regulated in Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 on Electronic Information and Transactions (UU ITE) and Law Number 12 of 2022 on Sexual Violence Crimes (UU TPKS), and how these are implemented in the court decision. The results show that the judge's ruling in this case has considered additional penalties, such as the confiscation of profits obtained from the criminal act or the public announcement of the court decision, as efforts to provide deterrent effects and to restore the victim's losses. However, the study also identifies that there are still challenges in optimizing the application of additional penalties, especially related to the identification of material gains by the perpetrator and the effective implementation of non-financial sanctions. Therefore, there is a need to strengthen regulations and provide more comprehensive implementation guidelines to ensure that additional penalties can function optimally in combating revenge porn crimes and delivering justice for victims.

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Corresponding Author:

Hartoyo
Ilmu Hukum, Universitas Dr. Soetomo
Jl. Semolowaru No.84, Menur Pumpungan, Kec. Sukolilo, Surabaya, Jawa Timur 60118
Email: hartoyo.fhunitomo@gmail.com

1. INTRODUCTION

Indonesia is one of the countries that is very dependent on the use of technology, because technology has presented an unlimited variety of information. The development of technology has brought ease in communication and information exchange, but Technology can also have a negative impact on people's lives. With this negative impact, various forms of crime can emerge through technology, one of the crimes that is rampant today, namely *Revenge Porn*. *Revenge Porn* is the dissemination of intimate content without the consent of the individual featured in the content as a form of revenge or extortion. In general, the uploading of such content is driven by the intention of wanting to embarrass, hurt and harass one of the parties when a relationship ends badly. This

phenomenon is increasingly prevalent in the digital era and has become a form of online gender-based violence (KBGO) that damages the self-esteem, mental, and welfare of victims psychologically and socially. (Sinaga & Lidya, 2024)

One case of online violence can involve several types of online gender-based violence. For example, the case of revenge porn or now known as *non-consensual intimate image (NCII) abuse*, which is the most common type of violence, reaching 33% of cases, there has been a decrease in reports of 49 cases compared to the previous year. It is recorded from the Komnas Perempuan report on cases of gender-based sexual violence that as of 2024 there will be 1,801 cases related to this context. This number has increased compared to 2022 with 1,638 cases, and 940 cases in 2021. These figures are part of the cases of digital-based sexual violence because there are many digital-based victims who do not report. (Komnas Perempuan, 2022).

Seeing from the high number of revenge porn cases that occur in the community, there is a need for strict law enforcement in Indonesia so that welfare can be formed in daily life. However, even though the authorities have made efforts to achieve this, the fact is that not all people understand how to use technology wisely so that the number of cases of this crime is increasing every year.

The application of certain articles in imposing criminal penalties on revenge porn perpetrators often causes problems, where the victim is actually criminalized by law enforcement officials. This is due to the unclear legal norms and provisions that are not fully in accordance with the characteristics of the criminal act. One of the articles that is prone to multiple interpretations is Article 27 of the ITE Law, which does not expressly contain objective elements of the crime, thus opening up opportunities for victims to be punished. However, the ITE Law has not explicitly regulated additional crimes such as the revocation of internet access rights or other rights relevant to cybercrime. This causes judges sometimes to make legal discoveries (*rechtsvinding*) to impose additional penalties that have not been regulated in detail in the law.

From the case of Alwi Husen Maolana (AHM) is a real example of the crime of revenge porn that occurred in Indonesia. Starting from Alwi Husen Maolana (AHM) and the victim named Isikha Aisi Khawari (IAK) having been in a relationship since junior high school around 2015, during the courtship IAK often experienced various physical and psychological violence from Alwi Husen Maolana such as beatings, forcible withdrawal and death threats. Alwi (AHM) also raped IAK 2 times, the first time around 2019 to 2020 and the second in 2021. In both incidents, Alwi (AHM) recorded the immoral act without the consent of the victim (IAK). The dissemination of the video and threats Alwi used the video footage to threaten the victim (IAK) to maintain a relationship with him. The threat lasted for 3 years. In addition, the victim was said to be in an unconscious state when the video was recorded because he was given liquor by the perpetrator (AHM).

Because the victim (IAK) was busy with his studies, Alwi (AHM) spread the immoral video to the victim's friends (IAK) and on December 14, 2022, Alwi sent an Instagram message (DM) to the victim's brother. Even Alwi (AHM) also threatened to spread the immoral video to the victim's lecturer (IAK), because Alwi (AHM) was upset that the victim (IAK) was busy studying and asked to break off the relationship with her.

This case went viral after the victim's brother Iman Zanatul Haeri shared the chronology of the incident via a twitter thread on June 26, 2023. Then Iman revealed that her sister had experienced rape and violence for 3 years and faced difficulties in her legal process, including a letter to report to the PPA Kejaksaan post. It is suspected that the prosecutor in this case led the victim and his family to resolve this case through reconciliation.

Based on information from the Head of the Sub-Directorate of Cyber Directorate of Criminal Investigation, AHM also threatened to send the video to the victim's lecturer, and was suspected of committing physical violence and threatening to kill the victim. In the legal process, Alwi Husen Maolana was found guilty of committing a criminal act deliberately and without the right to distribute that violated morality as stipulated in article 45 paragraph (1) juncto article 27 paragraph (1) of Law of the Republic of Indonesia Number 19 of 2016 concerning amendments to UURI Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE) and was also sentenced to imprisonment for 6 (six) years and sentenced to an additional penalty in the form of revocation of access rights internet for 8 (eight) years, even though the charges were not filed by the public prosecutor. The sentence imposed on Alwi Husein Maolana was not based on the Sexual Violence Law (TPKS Law), but on the ITE Law, Article 45 paragraph 1 juncto Article 27 paragraph 1, This case shows how difficult it is to get justice for victims of online gender-based violence in Indonesia. It

should be noted that the revocation of internet access rights has not been explicitly regulated in the Electronic Information and Transactions Act (ITE Law). This case raises questions about how the legal arrangements in Indonesia are positive in handling the crime of revenge porn, especially related to the criminal responsibility of the perpetrator and the judge's consideration in sentencing the suspect. In an official statement, the Banten Police through Kompol Wendy Adriantno said that the video was recorded when the victim was unconscious due to being given liquor by the perpetrator (Institute for Criminal Justice Reform. 2021).

This prompted the author to research further about how additional penalties (*revenge porn*) in Indonesia by examining the Supreme Court Decision Number 71/Pid.Sus/PN Pandeglang, with the title "Additional Criminal Cases of Revenge Porn in Indonesia (Case Study of Court Decision Number 71/Pid.Sus/PN Pandeglang.)" (Verdict et al., 2023)."

2. METHOD

2.1 Research Type

The research that the author researched is normative legal research. Normative here is understood as a method of research that relies on the existing legal order. This research uses an approach that sees law as norms, teachings, and systems that operate in society. The focus of this research is to analyze the applicable laws and regulations, especially those related to additional crimes in revenge porn cases in Indonesia. Meanwhile, an empirical approach is used to see the application of additional penalties in practice, especially in the case study of Court Decision Number 71/Pid.Sus/2023/PN Pdl.

2.2 Research Approach

The approaches used in this study are:

a. Statute Approach

This approach is carried out by examining relevant laws and regulations such as Law Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE) and its amendments, Law Number 44 of 2008 concerning Pornography, the provisions of Article 4 and Article 29 of the Pornography Law, and Law Number 12 of 2022 concerning the Crime of Sexual Violence (TPKS Law).

b. Case Approach

This approach is used to study and analyze the case of Alwi Husen Maolana in Court Decision Number 71/Pid.Sus/2023/PN Pdl.

c. Pendekatan Konseptual (Conceptual Approach)

This approach is used to understand the concept of additional crimes and the judge's considerations in imposing a sentence in Court Decision Number 71/pid.sus/2023/PN Pdl.

2.3 Legal Ingredients

a. Primary Legal Material: Law Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE) and its amendments, Law Number 44 of 2008 concerning Pornography, the provisions of Article 4 and Article 29 of the Pornography Law, and Law Number 12 of 2022 concerning the Crime of Sexual Violence (TPKS Law), the Criminal Code (KUHP).

b. Secondary Legal Materials: legal books, scientific journals, legal expert opinions, and other official documents.

c. Tertiary Law Materials: legal dictionaries, legal encyclopedias, and other supporting sources.

2.4 Legal Material Collection Procedure

Data collection is carried out through: Library research on literature, legal documents, and jurisprudence; Search for documents related to Court Decision Number 71/Pid.Sus/2023/PN Pdl.

2.5 Legal Material Analysis

The data that the author has collected and analyzed in a qualitative descriptive manner, that is, by describing, describing, and interpreting data based on legal theories and applicable regulations. The analysis was also carried out to assess the extent to which additional crimes can be said to be effective in providing a deterrent effect and protecting victims in *revenge porn* crimes.

3. RESULTS AND DISCUSSION

3.1 Additional Criminal Arrangements in Revenge Porn Cases in Criminal Law in Indonesia

The phenomenon of revenge pornography or better known as revenge porn has become a serious issue in cybercrime in Indonesia. The characteristic of revenge porn is the dissemination of intimate content carried out with the motive of hatred or revenge that will have a very damaging impact on the victim, both psychologically, socially, and reputationally. In the context of criminal law in Indonesia, additional criminal arrangements for revenge porn cases have not been specifically regulated in one law because this act can be charged through various laws and regulations, especially those related to the dissemination of immoral content or privacy violations, especially with the existence of Law Number 12 of 2022 concerning the Crime of Sexual Violence (TPKS Law), Law Number 1 of 2024 (Amendment) The second is the ITE Law), and Law Number 44 of 2008 concerning Pornography. Therefore, additional criminal arrangements for these types of cases are crucial in providing comprehensive justice and protection for victims. For additional crimes, although the ITE Law does not explicitly regulate additional crimes other than fines, Article 47 of the ITE Law states that criminal acts in the ITE Law may be subject to other legal actions in accordance with the provisions of laws and regulations. This means that the judge can refer to the Criminal Code (KUHP) for additional crimes. The following are additional criminal regulations in revenge porn cases:

3.1.1 Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE Law)

Prior to the Law on Violent Crimes, the Electronic Information and Transaction Law (UU ITE), especially in Article 27 paragraph (1) jo. Article 45 paragraph (1) became the main basis for ensnaring perpetrators of illegal dissemination of content containing suspicious content. This article threatens any person who deliberately and without rights distributes and/or transmits and/or makes accessible Information or Electronic Documents that have content that violates morality, and can be sentenced to up to six years in prison and/or a maximum fine of Rp 1 billion. In addition, in Article 29 jo. Article 45B OF THE ITE Law can also be applied if there is an element of threat of violence or personal intimidation, with a maximum threat of imprisonment of four years and/or a maximum fine of Rp 750 million.

3.1.2 Criminal Code:

The Criminal Code regulates several additional types of crimes in general in Article 10. Additional crimes that are relevant and may apply include:

a. Revocation of certain rights (Article 35 of the Criminal Code)

The revocation of certain rights is one of the additional types of criminal offences regulated in Article 10 letter b jo. Article 35 of the Criminal Code (KUHP). This additional crime aims to prevent perpetrators from repeating criminal acts, provide a deterrent effect, and protect the community by depriving the public of rights relevant to the crime committed. Although Article 35 of the Criminal Code regulates the types of rights that can be revoked, its application in the case of revenge porn is not automatically or explicitly mentioned. Revocation of this right can only be done in matters specified by other laws governing the criminal act. In the context of revenge porn, which is charged through the Information and Electronic Transactions Law (ITE Law) and the Sexual Violence Crime Law (TPKS Law), additional penalties in the form of revocation of certain rights have not been specifically regulated as additional sanctions for revenge porn perpetrators. However, there is a possibility of interpretation or development of the law in the future, especially if the act of revenge porn is carried out with the abuse of certain positions, professions, or rights that the perpetrator has. Revocation of certain rights is one of the additional penalties that can be imposed in the case of revenge porn, revocation of the right to use or utilize internet-based electronic transactions within a certain period of time. Currently, the case is in Court Decision Number 71/pid.sus/2023/PN PdI which imposes an additional penalty in the form of revocation of the right to use the internet for 8 years to the perpetrators of revenge porn. This additional crime is particularly relevant because revenge porn crimes are highly dependent on the use of the internet and electronic media. By revoking internet access rights, the perpetrator is limited in his ability to repeat his actions.

b. Confiscation of certain goods (Article 39 of the Criminal Code)

c. The confiscation of certain goods is one of the additional types of crimes regulated in Article 10 letter b jo. Article 39 of the Criminal Code (KUHP). This additional crime serves to take over the possession of goods related to criminal acts from the convict to the state.

Article 39 of the Criminal Code reads:

- (1) Prohibited or seized movable items may be seized.
- (2) Confiscation can be carried out on the property of the convict and the property belonging to another person, even if it does not belong to the convict, if the goods are obtained from the proceeds of a crime or used to commit a crime.

Article 39 of the Criminal Code regarding the confiscation of certain goods is very relevant as an additional crime in the case of revenge porn. Electronic devices and storage media used to conduct or store revenge porn content are the main targets of piracy. This action aims to paralyze the perpetrator's means of crime, provide a material deterrent effect, and complement the principal criminal sanctions imposed under the Electronic Information and Transactions Law (ITE Law) and/or the Sexual Violence Crime Law (TPKS Law).

d. Announcement of the judge's decision (Article 43 of the Criminal Code)

The announcement of the judge's decision is one of three additional types of crimes known in the Criminal Code, in addition to the revocation of certain rights and the confiscation of certain goods. These additional crimes are often considered in cases involving defamation or reputational damage, which is highly relevant to the impact of revenge porn. This article gives the judge the authority to order that the court's decision be announced. This order is not mandatory for all criminal acts, but can only be imposed on certain criminal acts that have been specified in the Criminal Code or other legal rules. The announcement of the verdict can be made in the mass media to restore the victim's good name and provide a deterrent effect. Although regulated in the Criminal Code, the application of additional penalties in the form of announcement of judges' decisions in Indonesia is relatively rare in criminal justice practice in general, and there are even studies that have not found the existence of the application of the announcement of judges' decisions in criminal case jurisprudence in Indonesia which is in accordance with the concept and purpose of additional crimes. However, in the context of cybercrimes such as revenge porn, these additional crimes can be relevant to provide a stronger deterrent effect, given the broad social and psychological impact on victims due to the dissemination of content in the digital realm. With legal developments and the need to provide more effective protection for victims of cybercrime, additional criminal proceedings such as the announcement of judges' decisions can be an important instrument, provided that the implementation mechanism is clearly and consistently regulated.

3.1.3 Law Number 12 of 2022 concerning the Crime of Sexual Violence (TPKS Law)

The term "revenge porn" is not actually an official legal term, but is better known as the Non-Consensual Dissemination of Intimate Images (NCII). One of the very significant innovations in the TPKS Law is the existence of additional penalties that aim to provide a deterrent effect and protect victims more comprehensively. Although additional crimes are generally regulated in the Criminal Code (KUHP), the TPKS Law regulates this specifically as a form of Electronic-Based Sexual Violence (KSBE). This is regulated in Article 14 Paragraph (1) of the TPKS Law, which states "Every person who, without permission:

- b. Disseminating and/or transmitting electronic information and/or electronic documents with sexual content against the will or without the consent of the person who is the object of the information or electronic document;
- c. Uploading content of a sexual nature against the will or without the consent of the person who is the object of the content."

These actions are classified as Sexual Violence Crimes (TPKS). Perpetrators of electronic-based sexual violence as defined in article 14 paragraphs (1) and (2) will be subject to a maximum prison sentence of 6 years and/or a fine of up to IDR 300 million for extortion, threatening, coercion, misleading, or fraud related to the dissemination of pornographic content without the victim's consent.

In addition to the main crime, the TPKS Law emphasizes the importance of additional crimes in the form of restitution (compensation) to the victim. Article 30 paragraphs (1) and (2) explain that the judge is obliged to determine restitution as compensation for material and immaterial interests to the victim no later than 30 days after the verdict. If the perpetrator does not fulfill the restitution obligation within the time limit, then the court gives a warning to fulfill it immediately. The aim is to help the victim's recovery and add a deterrent effect to the perpetrator.

Article 15 of the TPKS Law regulates more comprehensive basic criminal sanctions and additional criminal penalties, including the revocation of certain rights, the confiscation of profits and property resulting from criminal acts, the payment of restitution, the implementation of medical

rehabilitation or social rehabilitation, the revocation of business licenses, the announcement of the judge's decision, the payment of compensation. The TPKS Law provides more additional criminal options oriented towards victim recovery.

With the implementation of the TPKS Law, Indonesia now has a stronger legal basis to crack down on revenge porn perpetrators and provide more comprehensive protection for its victims, including through the implementation of innovative additional penalties.

3.1.4 Law Number 44 of 2008 concerning Pornography

It should be understood that the Pornography Act does not explicitly regulate the term "revenge porn". This law focuses more on the definition and prohibition of the production, dissemination, possession, and use of pornography in general. However, revenge porn acts that involve the dissemination of intimate content without consent can be included in certain articles of the Pornography Law, especially those related to disseminating or providing pornography.

Article 4 states "Everyone is prohibited from producing, creating, reproducing, duplicating, disseminating, broadcasting, importing, exporting, offering, selling, renting, or providing pornography that explicitly contains: Adultery, including obscene; Sexual violence; Masturbation or masturbation; Nudity or an impressive display of nudity; Genitals; or Child pornography."

Article 29 of the Pornography Law regulates the penalties for violations in Article 4 Paragraph (1): "Every individual who produces, makes, reproduces, reproduces, disseminates, broadcasts, imports, exports, offers, sells, rents, or provides pornography as referred to in Article 4 paragraph (1) shall be sentenced to imprisonment for a minimum of 6 (six) months and a maximum of 12 (twelve) years and/or a fine of at least Rp250,000,000, 00 (two hundred and fifty million Rupiah) and a maximum of Rp6,000,000,000.00 (six billion Rupiah)." Therefore, if the act of revenge porn meets the elements of "disseminating" or "providing" pornography regulated in Article 4 Paragraph (1), then the perpetrator can be charged with Article 29 of the Pornography Law.

Although the Pornography Law actually regulates more principal and aggravated crimes, the existence of this provision provides an opportunity for judges to consider aggravating factors and impose additional penalties, especially for revenge porn cases that illegally distribute pornographic material and harm victims psychologically and socially.

However, Law No. 44 of 2008 explicitly does not explain the specific type of additional criminal offence intended for revenge porn, so in law enforcement practice, additional criminal arrangements are further developed through court decisions or combined with other regulations such as the ITE Law and the TPKS Law which are also relevant to overcome revenge porn. The handling of this case also demands detailed digital proof mechanisms, such as the collection of digital evidence (screenshots, metadata, communication evidence) and digital forensic investigations to track down the perpetrators. This is regulated in the ITE Law, especially Article 27 paragraph (1) and Article 45 paragraph (1), making evidence without consent the core of proving the crime of revenge porn.

The Pornography Act plays an important role in regulating protection against the dissemination of illegal pornographic material, providing the basis for severe punishment and the possibility of additional criminal charges in general, but additional criminal provisions specific to revenge porn are more supported by other laws besides Law No. 44 of 2008.

In practice, the judge will consider the facts of the case, the motives of the perpetrators, the impact on the victim, as well as the articles charged by the Public Prosecutor to determine the additional relevant and proportionate types of crimes. Law enforcement against revenge porn still faces challenges, including a lack of specific rules explicitly governing revenge porn, an inherent patriarchal culture, a low gender understanding among law enforcement, and the boomerang impact on victims when law enforcement is involved.

3.2 The Judge's Consideration in Court Decision Number 71/Pid.Sus/PN Pandeglang.

The judge in this decision shows the existence of a legal invention (*rechtsvinding*), which is the action of the judge to create or discover a new law that has not been explicitly regulated in written laws and regulations, but is considered necessary to achieve justice and provide a deterrent effect. The judge also paid attention to the development of the times where the use and utilization of technology has become the primary need of the community.

In the first-instance decision at the Pandeglang District Court, it was determined that the defendant Alwi Husen Maolana was legally and convincingly proven to have committed the crime of disseminating electronic information containing content that violated morality without rights. This is based on the dissemination of intimate videos of the victim to other parties through Instagram direct messages. The Pandeglang District Court sentenced the defendant Alwi Husen Maolana to 6 years

in prison and an additional criminal sentence using internet-based electronic devices for 8 years. The judge reasoned that the revocation of internet access rights is necessary to prevent the perpetrator from repeating his actions, considering that this revenge porn crime is digital and the perpetrator uses the internet as a means of disseminating pornographic content without the victim's permission. In the judge's consideration, it was stated that there was personal data protection and psychological support for the victim. However, the overall legal protection of victims is not discussed in detail in the ruling. The judge's focus is more on the aspect of giving punishment to the perpetrator in accordance with the applicable legal provisions. The following is the verdict from Court Decision Number 71/pid.sus/2023/PN Pdl:

- a. Declaring that the Defendant Alwi Husen Maolana Bin Anwari Husnira has been legally and convincingly proven guilty of committing a criminal act deliberately and without the right to distribute electronic information and electronic documents that have content that violates morality, as in the first alternative indictment;
- b. Imposing a penalty on the Defendant therefore with a prison sentence of 6 (six) years and a fine of Rp1,000,000,000.00 (one billion rupiah) with the provision that if the fine is not paid, it will be replaced with imprisonment for 3 (three) months;
- c. Imposing an additional penalty on the Defendant in the form of revocation of the right to use or utilize internet-based electronic communication devices for 8 (eight) years, which comes into effect on the day this judgment can be carried out;
- d. Stipulating that the period of arrest and detention that has been served by the Defendant shall be deducted entirely from the sentence imposed;
- e. Stipulate that the Defendant remains in custody;
- f. Stipulating evidence in the form of: 1 (one) bundle of whatsapp conversation printouts between the victim (VICTIM) and the owner of the number 08xxx; 2 (two) printout sheets of Instagram DM screenshot printouts from the owner of the Instagram account in the name of alealwii (alwihmm) with a URL link <https://instagram.com/alealwiii?igshid=ZmRIMzRkMDU>; Destroyed. 1 (one) flash drive of the red and black Sundisk brand with a capacity of 8 (eight) GB; Instagram account in the name of alealwi (alwihmm) with a URL link <https://instagram.com/alealwiii?igshid=ZmRIMzRkMDU> along with 1 (one) screenshot bundle exported to the 8 (eight) GB Sundisk brand flasdisk; The following along with all data and/or electronic information contained therein to be destroyed; 1 (one) unit of white Iphone mobile phone model Iphone XR Model Number MRY52X/A, Serial Number: DNPX FT6LKXK2, IMMEI 35735009 3237095 with Sim Card: 08xxx: Returned to the Victim Witness

The judge considered that the defendant's actions of distributing the victim's intimate video without rights through Instagram (direct message) were very detrimental to the victim psychologically and socially. Therefore, the provision of additional penalties for revocation of internet access rights is considered an effort to protect victims as well as a sustainable prevention of the dissemination of harmful material.

The judge used the Electronic Information and Transaction Law, as well as the Pornography Law as the legal basis for granting criminal charges. The additional crime of revocation of internet access rights was imposed as an innovation to adapt law enforcement to technological advances and prevent the misuse of electronic devices by defendants in the future. Thus, the consideration of the judge of first instance prioritizes aspects of protection and prevention for victims in the context of digital crime, while the appellate judge upholds the principle of legal certainty and the principle of criminal legality over the imposition of additional sanctions.

The High Court Decision Number 96/Pid.Sus/2023/PT Btn is a reflection of the correction and evaluation process of the first-instance court decision in a special criminal case. The judge at the appellate level has the duty to review all aspects of a previous decision based on the appeal and counter appeal memory (if any), as well as the facts and evidence disclosed at the trial.

The Panel of Judges at the Banten High Court stated that basically the legal considerations and facts used by the Pandeglang District Court in its decision were appropriate and correct, so that they could be used as a basis for deciding cases at the appellate level. However, in the appeal decision at the Banten High Court Number 96/Pid.Sus/2023/PT Btn, the panel of judges actually canceled the additional penalty of revocation of the defendant's right to use internet-based electronic communication devices for 8 years. The main consideration of the panel of judges in the appeal is that legally, the Information and Electronic Transactions Law (ITE Law) Number 19 of 2016 on the amendment of Law Number 11 of 2008 does not regulate the existence of additional penalties in the

form of revocation of internet access rights. In other words, there is no additional criminal rule that is *lex specialis* that allows the revocation of these rights, so the application of the additional criminal law violates the principle of criminal legality which states that "no crime without a law" (*nullum crimen nulla poena sine lege*) must be upheld. Additional crimes such as the revocation of the right to use the internet cannot be applied based on Article 10 of the Criminal Code (common law) because this case uses the ITE Law as a *lex specialis* that overrides the general law (*lex specialis derogat legi generali*). The following is the verdict from the Banten High Court Decision Number 96/Pid.Sus/2023/PT Btn:

"Considering, that based on the legal considerations mentioned above, the decision of the Pandeglang District Court Number: 71/Pid.Sus/2023/PN Pdl. (ITE) regarding the additional crime, so that the full sentence is as stated in the judgment below;

Considering, that the length of time the defendant is in arrest and detention is deducted entirely from the sentence imposed:

Considering, that because in the opinion of the Panel of Judges of the High Court there is no sufficient reason to release the defendant from custody and in accordance with the provisions of article 21 yo article 27 paragraphs 1 and 2. article 193 paragraph 2 and article 242 of the Criminal Procedure Code, then order that the defendant remain in custody;

Considering, that because the defendant was sentenced to a crime, he was burdened with paying the costs of the case in both levels of justice, for which the level of appeal is stipulated in this judgment:

Considering article 45 paragraph 1 (1) yo article 27 paragraph 1 of the Law of the Republic of Indonesia Number: 19 of 2016 concerning amendments to the Law of the Republic of Indonesia Number 11 of 2008 concerning Information and Electronic Transactions, Law number 8 of 1981 concerning the Criminal Procedure Law, and other Laws and Regulations related to this case. "

The panel of appeal judges stated that the decision of the Pandeglang District Court Number 71/Pid.Sus/2023/PT Pdl remained correct regarding the subject matter that Alwi was proven guilty of disseminating electronic information containing videos that violated morality, but changed the verdict related to additional crimes and exempted the defendant from revoking internet access rights for 8 years. The main punishment of six years in prison and a fine of Rp1 billion with a three-month subsidy is still being carried out. Despite the change to the additional sentence, the appeal judge still stated that the defendant had been legally and convincingly proven guilty of committing the criminal act as charged in accordance with Article 27 paragraph (1) jo Article 45 paragraph (1) of the ITE Law regarding the distribution of content containing immorality without rights. The High Court emphasized the importance of harmony between the verdict and the applicable legal rule for the sake of upholding legal certainty and protecting the human rights of defendants, especially related to rights that are not explicitly regulated in the norms that are used as the basis for criminal acts. Therefore, the appellate ruling seeks to provide procedural and substantial justice without neglecting the protection of the victim and the public interest.

In proving a case of disseminating non-consensual intimate content (such as a revenge porn case or disseminating personal photos/videos without permission), the judge will dig up and confirm a number of legal facts as follows:

a. Proven Legal Facts

- 1) The Existence of Non-Consensus Intimate Content
Whether the content (photos/videos) that are disseminated really belong to the victim and are intimate/personal.
- 2) Absence of Victim Consent
The judge will ensure that the victim does not give consent to the retrieval and/or dissemination of such content, this issue is a crucial element.
- 3) Dissemination Actions by the Defendant
The judge will ensure that the defendant is indeed the one who carried out the act of dissemination, including through what media and to whom the content is disseminated.
- 4) Perpetrator's Motive
While not always a delicate element, motives (e.g., revenge after a breakup, hurt, threats, or extortion) are often a weighing factor in judges' considerations.

- 5) Impact on Victims
The judge will consider the impact caused by the defendant's actions on the victim, be it psychological (depression, trauma, shame), social (exclusion, stigmatization), or other potential material losses. This can be proven through the victim's statement, witnesses, psychologists, or other evidence.
- b. Evidence of Criminal Elements
The judge will match the proven facts with the elements of the article charged. In the case of revenge porn, the most likely article is Article 27 paragraph (1) of the ITE Law Jo. Article 45 paragraph (1) of the ITE Law. The judge will ensure the fulfillment of the elements of "everyone", "intentionally", "without rights", "distribute and/or transmit and/or make accessible", and "Information or Electronic Documents that have content that violates morality".
- c. Weighting and Lightening Considerations
In addition to the element of delicacy, the judge will also consider matters that are incriminating and mitigating for the defendant:
 - 1) The aggravating matters (Criminal Aggravating Reasons) are the impact of the victim's suffering that is very severe and prolonged, the motive of revenge or hatred, the widespread dissemination of content and is difficult to control, the defendant does not show remorse or even repeats his actions, the defendant's actions disturb the community, the defendant is the person who is supposed to protect the victim (for example, the ex-spouse).
 - 2) The mitigating factors (Reasons for Criminal Mitigation) are that the defendant was frank at the trial, the defendant regretted his actions and apologized, the defendant had never been convicted before, there was an attempt to remove the content (although it was completely difficult), and the young age of the defendant.
- d. Additional Criminal Relevance
Specifically for additional crimes, the judge will consider:
 - 1) Compatibility with Revenge Porn Characteristics
For example, if the main impact is defamation, then an additional penalty of announcing the judge's decision may be an option. If there is an electronic device used, confiscation of goods can be applied.
 - 2) Criminal Intent
The judge will consider the purpose of imposing an additional penalty, whether it is to provide a deterrent effect (prevention), as a commensurate retribution (retributive), or to provide recovery/compensation to the victim (restorative). Criminalization also serves as a form of legal protection for victims, who in this case experience privacy harassment, psychological pressure, and social stigma due to the spread of immoral content. The judge considered psychological impacts such as depression, anxiety, shame, and post-traumatic stress disorder experienced by the victim as factors that aggravated the defendant's sentence. The judge in his consideration also prioritized legal certainty by imposing sentences based on a clear norm, namely Article 27 paragraph (1) of the ITE Law, which prohibits the dissemination of electronic content containing pornography without consent. Compliance with this principle of legality is to ensure that the punishment imposed is in accordance with the normatively applicable provisions. With a firm decision, the judge also carries out the function of legal education so that the public understands the legal consequences of disseminating intimate content without permission. This aims to foster awareness of laws and social norms that protect the privacy and dignity of individuals in the digital age.
 - 3) Proportionality
The imposition of the principal penalty and fine is in line with the nature and severity of the defendant's actions who have disseminated intimate content without permission, so that the proportionality of the principal crime is appropriate. Additional penalties must be adjusted to the level of the offense and the impact of the act. If the act is considered very detrimental and there is a risk of repetition, additional penalties that limit the rights of the perpetrator can be considered, as long as the regulations support the imposition. These facts are the basis for implementing the provisions in Article 27 paragraph (1) of Law Number 19 of 2016 concerning electronic information which expressly prohibits the dissemination of electronic content containing pornographic content without permission. This violation is considered a

violation of the right to privacy related to human rights aspects and can cause serious psychological harm to the victim.

4. CONCLUSION

The revenge porn case with revenge motives is a criminal offense of distributing pornographic content that has received legal attention in Indonesia. In the decision of the Pandeglang District Court Number 71/Pid.Sus/2023/PN Pdl, the defendant Alwi Husen Maolana was legally and convincingly proven to distribute electronic information containing moral content without rights. As a legal consequence, the defendant was sentenced to 6 years in prison and a fine of Rp1,000,000,000, with the provision that if the fine is not paid, it will be replaced with imprisonment for 3 months. In addition to the main penalty, the verdict also imposes an additional penalty in the form of revocation of the right to use internet-based electronic communication devices for 8 years, as an effort to prevent the recurrence of the crime. The period of arrest and detention of the defendant during the trial process is calculated as a reduction in the sentence imposed.

Normatively, revenge porn in this case is strengthened as a pornographic crime based on the applicable laws in Indonesia, although there is still room for discussion regarding special regulations for this crime. The judge's consideration in handling this case is based on the legal facts found and the use of the provisions of the ITE Law and the Pornography Law to ensnare the perpetrator. The imposition of additional penalties is an important sanction so that the perpetrator no longer accesses the technology used to commit the crime, showing a more comprehensive legal approach in regulating new crimes based on information technology.

Thus, this ruling sets an important precedent in the enforcement of additional criminal laws related to revenge porn-based pornography cases in Indonesia, which at the same time shows the seriousness of the judicial system in dealing with cybercrimes that harm victims personally and socially.

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