MJP Journal of Law and Justice (MJPJLJ)
Vol.3, No. 1 (2025): 6 – 11
https://jurnalilmiah.co.id/index.php/MJPJLJ

Legal Review of the Criminal Act of Disseminating Pornographic Content in Decision Number 24/Pid.Sus/2021/PN Tmt

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Article Info

Keywords:

Cyber crime; pornographic content; judge's considerations; criminal acts; Pornography Law.

ABSTRACT

The development of information technology has driven changes in communication patterns, but at the same time opened up space for the crime of distributing pornographic content through electronic media. This article analyzes the application of the law to perpetrators of distributing pornographic content and the judge's considerations in Decision Number 24/Pid.Sus/2021/PN Tmt. The research uses a normative-empirical legal method with a statutory approach, a case approach, and a conceptual approach. The main data comes from court decisions, information obtained in thesis research, laws and regulations, and literature on criminal law, cybercrime, and pornography. The results of the study indicate that the application of Article 4 paragraph (1) letter d in conjunction with Article 29 of Law Number 44 of 2008 concerning Pornography has fulfilled the elements of a legal subject, the act of making pornography, and explicit nudity. The judge's considerations have included legal and sociological aspects, but the weight of the punishment still needs to be critically examined because the defendant is a member of the National Police, the victim did not give consent, and the content has had a broad social impact. This article emphasizes the importance of proportional law enforcement, oriented towards victim protection, and sensitive to the nature of the distribution of pornographic content in the digital space.

Article History

Received : 15/04/2025
Revised : 10/05/2025
Accepted : 21/06/2025

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1. Introduction

The development of information and communication technology has created a new social space that significantly influences people's behavior. The internet, smartphones, and social media make it easy for everyone to create, store, send, and disseminate information very quickly. On the one hand, these advances facilitate communication, education, employment, and public services. On the other hand, the ease of technology can be misused to commit illegal acts, including the distribution of pornographic content through electronic media [1], [2].

Social changes resulting from digitalization demonstrate that technology is not neutral. As social values, moral norms, and patterns of societal interaction change, the law is required to adapt to protect new legal interests. One increasingly prominent issue is the crime of distributing pornographic content. This act not only violates moral norms but also has the potential to damage the victim's dignity, cause shame, trauma, social stigma, and expand the impact of victimization because digital content can be copied and distributed repeatedly [3].

Normatively, the state has provided legal instruments to address pornography and digital moral crimes. Law Number 44 of 2008 concerning Pornography defines pornography as images, sketches, illustrations, photographs, writings, sounds, voices, moving images, animations, cartoons, conversations, body movements, or other forms of messages through various forms of communication media and/or public performances that contain obscenity or sexual exploitation that violates moral norms in society [4]. In addition, the Electronic Information and Transactions Law regulates the prohibition on distributing, transmitting, or making accessible electronic information that contains moral violations [5].

The existence of these two legal regimes demonstrates that digital pornography crimes can be viewed from two perspectives. First, from the perspective of content, namely whether the content is pornographic, including nudity, sexual exploitation, or immoral content. Second, from the perspective of electronic means and acts, namely whether the perpetrator distributes, transmits, or makes the content accessible to others through electronic systems. The interconnectedness of the Pornography Law and the Electronic Information and Transactions Law makes the application of these articles in cases such as these require careful consideration, especially when the public prosecutor uses alternative charges.

Empirically, Sofyan Yadjitala's thesis shows that, based on data from the Supreme Court's Decision Directory, approximately 960 pornography cases were decided by district courts in Indonesia between 2019 and 2023, while approximately two cases were decided by the Tilamuta District Court. This data demonstrates that pornography cases are not only a national phenomenon but also present in regional judicial practices, including Boalemo Regency. This confirms that law enforcement against digital pornography needs to be examined not only from a regulatory perspective but also from the practical application of court decisions.

The main object of this article is Decision Number 24/Pid.Sus/2021/PN Tmt. In this case, the defendant recorded a pornographic incident using a mobile phone and then sent the video via WhatsApp to another party. The content then circulated through social media, including WhatsApp and Facebook. The victim was unaware of the recording process because she was in a helpless state, never gave permission to be recorded, and experienced shame after the video circulated. This case is significant because it raises legal issues regarding the creation of pornographic content, the distribution of electronic information containing indecency, and victim protection.

The specific legal issue in this case lies in the application of Article 4 paragraph (1) letter d in conjunction with Article 29 of the Pornography Law and the judge's considerations in sentencing. The public prosecutor prepared alternative charges, namely the first charge based on the Pornography Law and the second charge based on the ITE Law. The panel of judges then chose the first alternative charge and declared the defendant guilty of committing the crime of making pornography that explicitly contains nudity. The choice of article needs to be analyzed because it concerns the relationship between the elements of making pornography, the victim's consent, electronic evidence, and proof in court.

The urgency of this research is further strengthened by the fact that the defendant in this case is a member of the Indonesian National Police (Polri). The defendant's position as a law enforcement officer carries greater moral and social consequences than that of ordinary perpetrators. Law enforcement officers should be role models in upholding legal norms and morality. When officers engage in acts that demean the victim's dignity and tarnish public trust, the judge's considerations must be interpreted not only as an application of the article, but also as a measure of legal accountability for perpetrators who hold special status in society.

Previous studies on pornography and cybercrime crimes generally emphasize the importance of legal regulations in the Criminal Code, the Pornography Law, and the ITE Law [6], [7]. Several other studies discuss pornography as a crime against morality and cybercrime as a form of technology-based crime [8], [9]. However, there is still a research gap regarding how judges assess the element of making pornography in concrete decisions, especially when the victim does not give consent, the content is made via mobile phone, and the defendant has the status of a law enforcement officer.

The novelty of this article lies in its integrated analysis of criminal law norms, the nature of electronic evidence, the victim's position, and the sentencing considerations in Decision Number 24/Pid.Sus/2021/PN Tmt. This article goes beyond finding the defendant guilty, but rather examines whether the application of the law and the judge's considerations align with the principles of legality, criminal responsibility, proportionality of punishment, victim protection, and the objectives of the Pornography Law. Therefore, this article is expected to contribute to the development of digital criminal law studies and criminal justice practices at the regional level.

Based on this description, the problem formulation in this article is:

1. How is the law applied to perpetrators of the distribution of pornographic content in Decision Number 24/Pid.Sus/2021/PN Tmt?
2. the verdict against the perpetrator of the distribution of pornographic content in Decision Number 24/Pid.Sus/2021/PN Tmt?

In line with the problem formulation above, the purpose of this study is to analyze the application of the article to perpetrators of the distribution of pornographic content and to analyze the judge's considerations in issuing the verdict. The contribution of this research is to provide a legal explanation that

can be used as academic study material and a practical reference in digital pornography cases.

2. Research Methods

This study employs a normative-empirical legal research approach. Normative legal research examines legal norms governing pornography, crimes against morality, electronic information containing indecent content, and the basis for criminal penalties. Empirical legal research examines the applicability of these norms in judicial practice through a study of Decision Number 24/Pid.Sus/2021/PN Tmt and research data obtained from the Tilamuta District Court, as included in this thesis.

The approaches used include a statutory approach, a case approach, and a conceptual approach. The statutory approach is used to examine the Criminal Code, the Criminal Procedure Code, Law Number 44 of 2008 concerning Pornography, and Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions. The case approach is used to examine the construction of the indictment, legal facts, evidence, the judge's considerations, and the verdict in Decision Number 24/Pid.Sus/2021/PN Tmt. The conceptual approach is used to explain the concepts of criminal acts, cybercrime, pornography, morality, criminal responsibility, and punishment.

The object of this research is the crime of distributing pornographic content as stipulated in Decision Number 24/Pid.Sus/2021/PN Tmt. The analysis focuses on two aspects: the application of the law to the perpetrator and the judge's considerations in sentencing. These focuses were chosen because they are central to the problem formulation and simultaneously determine whether the decision meets the criteria of legal certainty, justice, and expediency.

The research data sources consist of primary and secondary data. Primary data consists of Decision Number 24/Pid.Sus/2021/PN Tmt and research findings obtained through the Tilamuta District Court, including a description of the case facts, indictment, charges, witness statements, expert testimony, defendant's testimony, evidence, and the judge's considerations. Secondary data consists of criminal law books, cyber law, literature on pornography, journal articles, laws and regulations, and other relevant legal sources.

Data collection techniques were conducted through document studies and interviews, as used in this thesis. Document studies were conducted on court decisions, laws and regulations, criminal law literature, and other documents related to pornography crimes. Interviews were used to obtain information regarding the judge's considerations in the cases studied. The collected data was then organized based on the problem formulation to ensure the analysis did not deviate from the research focus.

The analysis technique used is qualitative analysis with a descriptive-analytical model. Descriptive analysis is used to describe the facts of the case, the construction of the indictment, the evidence presented, and the judge's considerations. Juridical analysis is used to connect these facts with the elements of the articles and criminal law theory. The direction of the analysis is directed at answering two research questions: assessing the accuracy of the application of the law and assessing the quality of the judge's considerations in the decision.

3. Results and Discussion

The discussion in this section aims to systematically address two key issues. First, the analysis focuses on the application of the law to perpetrators of pornographic content distribution in Decision Number 24/Pid.Sus/2021/PN Tmt. This analysis includes the construction of alternative charges, the selection of articles by the panel of judges, the evidentiary elements of each person, the elements of making pornography, the elements of explicit nudity, and the position of electronic evidence. Second, the discussion focuses on the judge's considerations in issuing the verdict, both from a legal and sociological perspective.

The analysis and discussion of the results are not solely based on the text of the article, but also on the relationship between legal norms and the facts of the trial. Therefore, the verdict data, witness testimony, expert testimony, the defendant's testimony, evidence, and the defendant's status as a member of the Indonesian National Police (Polri) serve as the factual basis for assessing the quality of law enforcement. The discussion is also compared with previous studies of criminal law, cybercrime, and pornography so that the findings of this article are not only descriptive but also demonstrate the author's argumentative position regarding the analyzed verdict.

3.1. Implementation of the Law against Perpetrators of Pornographic Content Distribution in Decision Number 24/Pid.Sus/2021/PN Tmt

The application of the law to the crime of distributing pornographic content must begin with determining the most appropriate norm to encompass the perpetrator's actions. In Decision Number 24/Pid.Sus/2021/PN Tmt, the public prosecutor used alternative charges. The first charge is based on Article 4 paragraph (1) letter d in conjunction with Article 29 of Law Number 44 of 2008 concerning Pornography, while the second charge is based on Article 27 paragraph (1) in conjunction with Article 45 paragraph (1) of the ITE Law. The construction of these alternative charges indicates that the public prosecutor views the defendant's actions as being within the scope of two legal regimes, namely the pornography regime and the electronic information regime.

In criminal law, the selection of articles must be based on the principle of legality. An act can only be punished if it has been clearly defined in statutory regulations [10], [11]. Therefore, the fact that an act is considered morally reprehensible is not enough to impose a sentence. The judge must prove that the act meets the definition of a crime. In this case, the panel of judges chose the first alternative charge because the core of the proven act was the production of pornography that explicitly contained nudity, even though the act also overlapped with the distribution of electronic information.

Article 4 paragraph (1) letter d of the Pornography Law prohibits anyone from producing, making, reproducing, duplicating, distributing, broadcasting, importing, exporting, offering, selling, renting, or providing pornography that explicitly contains nudity or displays that give the impression of nudity. Meanwhile, Article 29 of the Pornography Law threatens criminal penalties against anyone who commits acts as referred to in Article 4 paragraph (1) [4]. This norm is the main basis used by the panel of judges to assess the defendant's actions.

The facts of the case indicate that defendant Ridwan Mohi recorded a pornographic incident using his cell phone. The recording was made while the victim was heavily intoxicated and incapacitated. The defendant then sent the video via

WhatsApp to another party, who then circulated it on social media. During the examination by an information technology expert, a video or recording on the defendant's cell phone was found to be consistent with the videos circulated on Facebook and WhatsApp. This fact is important because it connects the act of creating, storing, and sending the content with the electronic evidence examined.

The first element proven is the element of every person. This element refers to a legal subject who can be held criminally responsible. In this case, the defendant is an individual whose identity has been verified and there was no error regarding the legal subject. Thus, the element of every person is fulfilled. Fulfillment of this element also demonstrates that the defendant's status as a member of the Indonesian National Police does not eliminate his status as a subject of criminal law. Instead, this status becomes relevant during the sentencing considerations.

The second element is the act of making pornography. In its considerations, the panel of judges considered that the defendant's action of recording the incident was included in the act of making. The explanation of Article 4 paragraph (1) of the Pornography Law does exclude making for oneself and one's own interests, but this exception cannot be used if there is no consent from the party being recorded, the content contains sexual exploitation, and the content is then sent to another person. In this case, the victim was not aware of the recording process and did not give permission to the defendant. Therefore, the excuse that the recording was done spontaneously or for personal interests cannot erase the unlawful nature of the act.

The victim's consent is a central issue in this case. In sexually motivated crimes, consent cannot be assumed when the victim is helpless, intoxicated, unconscious, or unable to freely determine her own will. The absence of consent demonstrates that the defendant's actions not only violated moral norms but also degraded the victim's dignity. Therefore, the application of the law must view the victim not as an object in a video, but as a legal subject whose rights and dignity have been violated.

The third element relates to pornography that explicitly contains nudity or depictions that suggest nudity. Based on the trial facts, the recorded content shows sexual parts of the victim's body and immoral acts. This content meets the definition of pornography under the Pornography Law because it contains obscenity or sexual exploitation that violates societal moral norms [4]. Therefore, the judge deemed this element fulfilled.

From an evidentiary perspective, the application of the law was supported by witness testimony, expert testimony, the defendant's testimony, and electronic evidence. The victim testified that she never gave permission to be recorded and felt embarrassed by the video's circulation. Other witnesses explained the existence and distribution of the video via social media. A criminal law expert explained the relationship between the defendant's actions and the elements of the articles in the Pornography Law and the ITE Law, while an information technology expert explained the video's status as an electronic document and the process of identifying digital evidence. The defendant's testimony also acknowledged recording and sending the video to another party.

The panel of judges' choice of the first alternative charge must be considered appropriate because the primary focus of the verdict was the act of producing pornography containing explicit nudity. The ITE Law remains relevant because the defendant's actions were committed electronically, but in the verdict's construction, the most compelling element is the creation of pornographic content without the victim's consent. Thus, the Pornography Law becomes a lex specialis, more directly addressing the object and content of the act.

When compared with previous studies on cyber crime, this case shows that the character of digital crime lies not only in the use of the internet as a means, but also in the ability of content to circulate widely and cause repeated harm [7], [9]. Meanwhile, studies on pornography emphasize that pornography crimes protect moral values and human dignity [8], [17]. This article complements these studies by showing that the victim's consent and the status of electronic evidence are important points in proving digital pornography cases.

Based on this description, the author is of the opinion that the application of the law in Decision Number 24/Pid.Sus/2021/PN Tmt is legally and formally correct. The elements of every person, the element of making pornography, and the element of nudity have been explicitly proven through trial facts and evidence. However, the application of the law should not be interpreted solely as successfully proving the elements of the article. This decision should also be read as a warning that the creation and transmission of pornographic content without the victim's consent constitutes a serious violation of the victim's dignity and the legal interests of society.

The affirmation of the findings in this subsection is that the application of Article 4 paragraph (1) letter d in conjunction with Article 29 of the Pornography Law in the decision is in accordance with the proven legal facts. The construction of alternative charges provides room for the judge to choose the most relevant norm. In this case, the choice of the Pornography Law is more appropriate because the core of the defendant's actions was creating pornographic content that explicitly contained nudity and was done without the victim's consent.

3.2. The Judge's Considerations in Sentencing the Perpetrator of Pornographic Content Distribution in Decision Number 24/Pid.Sus/2021/PN Tmt

The judge's considerations are a core part of a criminal decision, as they demonstrate the reasons why an individual was found guilty and why a particular sentence was imposed. In cases of the distribution of pornographic content, the judge's considerations serve not only to prove the elements of the article but also to ensure that the decision protects the victim, upholds societal moral values, and affirms the perpetrator's accountability. Therefore, the judge's considerations must be read from two perspectives: the legal and the sociological.

The legal considerations in Decision Number 24/Pid.Sus/2021/PN Tmt are evident in the way the panel of judges proved the first alternative charge. The judges first assessed the elements of each person, then the element of making pornography that explicitly contains nudity. Proof of the elements was conducted by linking witness testimony, expert testimony, the defendant's testimony, and evidence. This approach aligns with the principle of criminal procedure law that a decision must be based on facts revealed at trial and valid evidence [22].

The judge also considered the absence of justification and excuses. The defendant's being under the influence of alcohol was not seen as a reason to eliminate criminal responsibility. This consideration is important because in criminal law, the perpetrator's guilt can still be accounted for if the perpetrator is

able to understand the consequences of his actions and there are no circumstances that legally excuse or excuse his actions [13], [15]. Thus, the panel of judges considered that the defendant can still be held criminally responsible.

Another legal consideration relates to evidence. The mobile phone used by the defendant to record and store the video was confiscated and destroyed. This consideration demonstrates that electronic evidence not only serves as a means of proof but also poses a risk if it remains in circulation or is reused. In digital pornography cases, securing evidence is crucial because electronic content is easily copied, transferred, and distributed.

Sociological considerations are evident in the aggravating and mitigating circumstances. Aggravating circumstances include the defendant's actions failing to uphold the moral values prevalent in society, the defendant being a member of the Indonesian National Police (Polri), who should be a good example for society, and the defendant's actions having a negative influence on society, particularly women, children, and the younger generation. Mitigating circumstances include the defendant's polite behavior during the trial and his prior convictions.

The defendant's status as a member of the Indonesian National Police (Polri) should be given significant weight in the judge's deliberations. Law enforcement officers have a moral and institutional responsibility to maintain public trust. When officers commit crimes, the impact is not only on the direct victims but also damages the image of law enforcement agencies. From a sociological perspective, this can erode public trust in the law. Therefore, the defendant's status should be considered a strong aggravating factor in determining the sentence.

From the victim's perspective, the judge's considerations also need to be strengthened. The victim is in a helpless state, has not given consent, is unaware of the recording, and subsequently experiences shame when the video circulates. In digital crimes, the victim's loss does not end with the perpetrator's sentence. Content that has already circulated can continue to cause psychological and social impacts. Therefore, decisions in digital pornography cases should pay greater attention to victim recovery and the protection of their dignity.

Punishment in criminal law has a broader purpose than simply retaliating for the perpetrator's actions. Punishment theory recognizes the goals of retribution, prevention, community protection, perpetrator reform, and restoration of social balance [16]. In this case, a three-year prison sentence falls within the range of the threat of Article 29 of the Pornography Law. However, considering the maximum threat of twelve years, the defendant's status as a member of the Indonesian National Police, and the impact on the victim, the sentence is still debatable from a proportionality perspective.

The principle of proportionality demands that the punishment be commensurate with the seriousness of the crime, the level of culpability of the perpetrator, the consequences, and the need for public protection [16]. In this case, the seriousness of the act is evident from the recording without consent, the victim being in a helpless state, the sending of the video to other parties, and the widespread distribution through social media. Therefore, the author believes that the judge's considerations should provide a stronger explanation regarding the reasons why a three-year sentence is considered sufficient to satisfy a sense of justice.

Compared to previous studies on pornography and the ITE Law, the main problem in law enforcement is not only the availability of norms, but also the courage of law enforcers to provide a proportional response to the victim's losses and the social impact of the act [3], [6], [9]. This decision shows that criminal elements can be proven, but discussions regarding victim recovery and digital impacts are still limited. Thus, this study fills the gap by emphasizing that judges' considerations in digital pornography cases need to combine legal certainty, victim protection, and criminal proportionality.

The author believes that the judge's considerations in Decision Number 24/Pid.Sus/2021/PN Tmt meet the basic structure of a criminal decision, as they include proof of the elements of the article, assessment of the evidence, and consideration of aggravating and mitigating circumstances. However, from a substantive perspective, these considerations require further criticism, as they fail to fully explain the relationship between the defendant's status as a member of the Indonesian National Police (Polri), the victim's losses, digital distribution, and the severity of the sentence imposed.

The findings in this subsection confirm that the judge's considerations encompassed both legal and sociological aspects, but did not fully prioritize victim protection and proportionality of punishment. This decision demonstrates that legal certainty has been relatively achieved, but substantive justice still requires stronger consideration, particularly in digital pornography cases, which can have long-lasting impacts on victims and society.

4. Conclusion

The application of the law against perpetrators of the distribution of pornographic content in Decision Number 24/Pid.Sus/2021/PN Tmt has been in accordance with the legal-formal provisions of Article 4 paragraph (1) letter d jo. Article 29 of Law Number 44 of 2008 concerning Pornography. The panel of judges correctly chose the first alternative charge because the core of the defendant's actions was creating pornographic content that explicitly contained nudity and was done without the victim's consent. The elements of each person, the element of making pornography, and the element of content containing nudity were explicitly proven through the statements of witnesses, experts, the defendant, and electronic evidence. However, the application of the law must be understood not only as proof of the elements of the article, but also as a form of protection for the victim's dignity in the digital space.

The judge's reasoning in handing down the verdict included both legal and sociological considerations. The legal considerations were evident in the evidentiary elements of the article, the assessment of the evidence, and the lack of justification or excusal. The sociological considerations were evident in the aggravating and mitigating circumstances, particularly the defendant's status as a member of the Indonesian National Police (Polri) and the negative impact of the act on society. Nevertheless, the three-year prison sentence still requires critical review from a proportionality perspective, as the victim did not consent, the content was widely circulated, and the defendant's position as a law enforcement officer. Therefore, the judge's considerations in digital pornography cases should emphasize victim protection, the impact of electronic distribution, and the perpetrator's responsibility.

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