

JURIDICAL ANALYSIS OF CRIMINAL ACCOUNTABILITY TO DISTRIBUTE ELECTRONIC DOCUMENTS THAT CONTAIN DECENT VIOLATIONS

(Case Study, Decision No. 133/Pid.Sus/2021/PN Jkt.Sel)

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ABSTRACT

Basically, moral crimes were only committed by those directly involved in committing them, such as showing female or male genitals in public. However, with the development of information technology, it now encourages those who witness the spectacle to record it with cameras or cellphones and distribute it through Social Media such as WhatsApp using their own accounts. The research approach employed is the normative juridical method, which entails the study of legal norms as outlined in statutes and regulations. The result is that there is no concept or limitation on decency, as alluded to in paragraph one of article 27 of the ITE Law, addressing who is the most accountable legal subject in terms of sending or disseminating content that is charged with immorality. In practice, the limit is a breach of Articles 281-294 of the Criminal Code's deficiency provisions. The crime of disability through electronic media happened at the time of distribution, transmission, and making accessible video recordings, photos, and images including disability violations through WhatsApp, Facebook, Instagram, Telegram, and other accounts, threatened with imprisonment for 6 (six) years, and the most accountable legal subject is the person who first viewed it through electronic media.

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INTRODUCTION

The development of immoral crimes is increasing along with the development of information technology. In society, the use of information technology by means of electronic computers, in addition to improving the quality,

also increases the quantity of these decency crimes. Previously, this sexual crime only occurred conventionally in the form of physical contact between the perpetrator and the victim, now sexual crimes can occur without physical contact, but it is enough to distribute, transmit recorded videos or images via social media. Initially, only perpetrators who exposed their genitals were charged with Article 281 of the Criminal Code, adultery under Article 284 of the Criminal Code, Rape under Article 285 of the Criminal Code, and intercourse with underage women under Article 287 of the Criminal Code and sexual immorality are punishable by imprisonment in Article 289 of the Criminal Code. But now the perpetrators who recorded the act of decency and distributed it through social media were charged with Article 45 in conjunction with Article 27 paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions threatened with Maximum imprisonment of 6 (six) years. And or a maximum fine of Rp. 1,000,000,000,- (one billion rupiah) (Fajar & Jelani, 2021) .

The regulation of decency crimes in this Special Law does not necessarily negate decency crimes in the Criminal Code because the objects regulated are different where the ITE Law only regulates and prohibits the act of transmitting or distributing these decency crimes through electronic means of computers or social media. Meanwhile, matters concerning acts of decency crimes remain in the Criminal Code. Due to the limited definition or indicators of this crime of decency in the Criminal Code, there are several expert opinions that define a crime of decency.

In criminal liability, it is implied what is the purpose of punishing the perpetrator, of course not just punishing the perpetrator but there are other goals besides the punishment itself, namely goals based on the theory of revenge which is referred to as the theory of revenge. The theory of retaliation can also be called an absolute theory which argues that the basis for punishment must be sought from the crime itself, because the crime causes suffering to other people, the perpetrator of the crime must feel again the suffering in the form of punishment for his actions (Marpaung, 2012) . The originator of the theory of revenge is Immanuel Kant who said " *Fiat Justitia Ruat Coelum* ". Which means, even though tomorrow the world will end, the last criminal must still carry out his sentence (Effendi, 2011) . On the other hand, the Purpose of Punishment Theory argues that sentencing is implemented to improve community dissatisfaction as a result of crimes that have occurred (Chazawi, 2010) . In this case punishment is interpreted as preventing the occurrence of a crime and at the same time as an effort to protect the community. The founder of the theory of sentencing purposes, Paul Anselm Van Feurback, argues that just imposing criminal threats will not be sufficient, but that criminal punishment is necessary. So that this goal theory gives birth to goals to frighten, to update and to protect (Effendi, 2011) .

Thus the criminal responsibility of perpetrators of decency crimes through electronic means in the form of social media aims not only to deter (retaliation theory) perpetrators of criminal acts as well as to protect the community and improve the perpetrators so that they will no longer repeat their actions.

In this case study, the defendant Priyo Prambudi bin Juhadi was charged with distributing electronic information which contained content that violated decency as defined in Article 45 in conjunction with Article 27 of Law No. 19 of 2016 concerning amendments to Law no. 11 of 2008 concerning ITE. The defendant received a videotape of intercourse between Gisel and Nobu at a hotel in the Medan area where the recording was intended for private collection and not for distribution. And the defendant accepted the upload of the pornographic video in the WhatsApp group which consisted of 6 people. Furthermore, the defendant saved the pornographic video in his cellphone gallery, which in turn the defendant sent/shared screenshots to the NNT group chat room with the intention of increasing his followers on his Twitter account. For this act the defendant was found guilty and sentenced to imprisonment for 9 (nine) months which was lower than the demands of the prosecutor, namely 1 (one) year in prison.

According to the author, this is not in favor of justice because the author's reasons are as follows;

1. The defendant was not the person who first distributed the 19-second immoral video content of Gisel and Nobu. The defendant received the video from the witness Muhamad Nurfajar who sent it from the NNT whatsapp group which consisted of 6 (six) members including the defendant.
2. Even though the Defendant got it from Witness Muhamad Nurfajar, Witness Muhamad Nurfajar was not the first person to distribute video with immoral Gisel and Nobu content. Because witness Muhamad Nurfajar got it from the BB18 New Telegram Group which has more than 24,000 members.
3. Whereas with regard to points 1 and 2 above, in accordance with the Expert's statement presented by the Prosecutor which in outline was conveyed in point 10 of the Expert's statement which was conveyed in the Prosecutor's Charge Letter, which said that in immoral content that was spread to the public, then be the legal responsibility of the makers. In this case Witness Gisel and Witness Nobu should be fully responsible because they are the creators and actors in the intercourse video, not the Defendant.
4. That Witness Gisel and Witness Nobu admitted before the court that they were the ones in the immoral video that lasted 19 seconds and it was Witness Gisel who recorded the intercourse scene.
5. That it is very clear and bright in this trial that it is impossible for the video with immoral content to be spread if it had not been recorded by the people who first made it, namely Witness Gisel and Witness Nobu.
6. It was not the defendant who made all of this happen (the viral video with immoral content of Gisel and Nobu which lasted 19 seconds which was widely circulated in the community), but Witness Gisel and Witness Nobu, where Witness Gisel and Witness Nobu have currently been named as suspects by Polda Metro Jaya investigators .

Based on the description above, the purpose of this study is to find out what indicators or limitations are used to determine whether an act has fulfilled the elements of a criminal act of decency in the Information and Electronic Transactions Law, considering that the criteria for decency violations in the Criminal Code are still very limited, on the contrary the criteria for decency violations in the Law are The law on pornography is very broad although there are exceptions. As well as the process of criminal responsibility for perpetrators of crimes that distribute electronic documents containing violations of decency in court decisions that are in accordance with justice and the purpose of punishment in Indonesia.

Justice Theory

According to Aristotle, in his main view, justice is as a grant of equal rights but not equality. In this case, Aristotle distinguished his equal rights according to proportional rights. Equal rights are seen by humans as the same unit or container. This is what can be understood that all people or every citizen before the law are equal. Proportional equality gives each person what he is entitled to according to his abilities and achievements. Furthermore, justice according to Aristotle's view is divided into two kinds of justice, "distributive" justice and "commutatif" justice. Distributive justice is justice that gives each person a portion according to his achievements. Commutatif justice gives the same amount to everyone without differentiating their achievements in this case related to the role of exchanging goods and services. (Friedrich, 2004)

Legal Legal Protection Theory

Fitzgerald explained Salmond's theory of legal protection that law aims to integrate and coordinate various interests in society because in a traffic of interests, protection of certain interests can only be done by limiting various

interests on other parties. The interest of law is to deal with human rights and interests, so that law has the highest authority to determine human interests that need to be regulated and protected. Legal protection must look at the stages, namely legal protection born from a legal provision and all legal regulations given by the community which are basically community agreements to regulate behavioral relations between members of the community and between individuals and the government who are considered to represent the interests of the community. (Rahardjo, 2010)

Legal Certainty Theory

Legal certainty has historically emerged since the notion of separation of powers stated by Montesquieu , that with the separation of powers, the task of creating laws is in the hands of legislators, while judges (**the** judiciary) are only tasked with voicing the contents of laws. Moentesquieu's opinion, which was written in his book *De iesprit des lois* (The Spirit of Laws) in 1788, was a reaction against the arbitrariness of the monarchy, where the royal head largely determines the legal system. The judiciary at that time actually became the ministry of the monarchy (Utrecht, 1989) . Certainty is a characteristic that cannot be separated from law, especially for written legal norms. Law without certainty value will lose meaning because it can no longer be used as a guideline for behavior for every person or society. Certainty itself is referred to as one of the objectives of the law .

Human Rights Theory

According to Prof. Koentjoro Poerbopranoto Human rights (HAM) are rights that are fundamental or basic in nature. The rights that belong to each human being based on their nature , in essence cannot be separated so that they will be sacred. (Lahera & Dewi, 2021) According to the provisions of article 1 number 1 of Law Number 39 of 1999 concerning Human Rights what is meant by Human Rights are:

"Human rights are a set of rights that are inherent in the nature and existence of humans as creatures of God Almighty and are His gifts that must be respected, upheld and protected by the state, law, government, and everyone for the honor and protection of the dignity of human” .

Criminal Theory and Criminal Acts

The term "strafbaar feit" itself, which is Dutch, consists of three words, namely straf which means punishment (criminal), baar which means can (may), and feit which means action, event, violation and deed. So the term strafbaar feit is an event that can be punished or an act that can be punished. (Widnyana, 2010)

The term punishment contains a general meaning as a sanction that is intentionally inflicted on someone who has violated the law, both criminal law and civil law, while the term criminal is a specific meaning relating to criminal law. That is, in the event of a violation of the provisions of the criminal law. Criminal act

Criminal acts or offenses in Dutch are called strafbaar feit for three words, namely straf, baar and feit. Of the terms, each of which has the meaning of straf is defined as criminal and legal, baar is defined as able and permissible, and faith is defined as an act of event, violation and deed. (Ilyas & Mustamine, 2012)

RESEARCH METHODS

The approach used in this research is normative juridical finding *in-concreto law* (Soemitro, 1990) . The data needed in this study is secondary data obtained from a literature review. Secondary data in the field of law (viewed from the point of view of its binding strength) can be divided into primary raw materials and secondary raw materials (Soekanto, 1988) . Primary raw materials are library materials that contain new and up-to-date scientific knowledge, or new understanding of known facts about an idea. In this study the research method used was the method of decision making, namely a Secondary and tertiary *Library Research method* of various laws and regulations and various

literature books, journals. The research method used in this writing is a normative and empirical research method. The data were analyzed qualitatively, namely based on laws and regulations and the views of legal experts, the form of analysis is deductive-inductive which analyzes general data to synchronize with specific data.

RESULTS AND DISCUSSION

Analysis of Indicators or Limits of Action as Content of Decency If Spread Through Social media

The criminal acts of decency formulated in the Criminal Code can be grouped into two groups, namely intercourse, obscenity and can be expanded to acts of sexual harassment. With the enactment of Law No. 11 of 2008 which was later revised to become Law No. 19 of 2016 concerning Electronic Information and Transactions (UU ITE), the rules regarding the use of electronic information and transactions have received a legal umbrella. With the ITE Law, crimes in cyberspace can also be easier to legally process because electronic information, electronic documents and printouts are valid legal evidence so that proving in cybercrime cases becomes easier.

Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Information and Electronic Transactions does not explain the limits of decency, only changing the criminal threat contained in Article 27 paragraph (3) concerning defamation which was originally punishable by 6 (six) years imprisonment changed to 4 (four) years imprisonment, as well as explanations about distributing, transmitting and what is meant by making electronic information accessible does not provide references or explanations in article by article about acts violating decency in the ITE Law the same as those contained in the Criminal Code.

Violations that occur in Article 27 paragraph (1) of the ITE Law relating to acts of violating decency always refer to the provisions of the decency article in the Criminal Code, because the ITE Law does not provide an explanation and understanding of the elements of decency violations. If we look closely at the formulation of Article 27 paragraph (1) of the ITE Law, it will certainly give many interpretations. The ambiguity of the intent of the prohibited act as an element of the accompanying circumstances attached to the object of the crime creates an uncertainty and fairness in this electronic information and transaction case, simply stated "Sufficiently Clear". Quoting Barda Nawawi's opinion, the Special Law should not only formulate and explain criminal acts, but also must make general rules that can be used as guidelines in the application of the law.

Norms that contain prohibitions on decency are contained in the formulation of Articles 281, 282, 283, 289, 532 paragraph (1) of the Criminal Code, if the actions prohibited in the article are videotaped, photos, images are distributed or disseminated through electronic media with internet facilities such as smartphones, laptops, a computer with Facebook, WhatsApp, Instagram applications, then the culprit is threatened with Article 27 paragraph (1) of Law no. 11 of 2008 concerning Information and Electronic Transactions, referred to as the ITE Law, which carries a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah).

However, then the meaning of the element "violating decency" in the ITE Law becomes a problem because the ITE Law does not include definitions and instructions regarding this element in its explanation. The Panel of Judges in deciding cases regarding this article, one of which is in Decision No.2191/Pid.B/2014/PN.Sby. The Panel of Judges provided an understanding of the intention to violate decency as an act committed by anyone where the act is considered to have violated norms related to decency, for example disseminating content using several media, both communication and public displays, which have content contrary to decency norms, which exists.

The judge in giving limitations regarding the element of violating decency in the decision referred to the limitations of the object of a pornographic crime in the Pornography Law. The object of pornography crime has a wider scope than what is stated in the Criminal Code, while the Criminal Code only contains three objects, namely writing, pictures and objects but pornographic objects have two characteristics which contain obscenity or sexual exploitation and violate decency norms.

Thus the indicator or limitation of an act as a content of decency as referred to in Article 27 paragraph (1) of the ITE Law if the decency act formulated in Articles 281-283, 289 of the Criminal Code has been legally and convincingly proven and it has been proven that the perpetrator has finished distributing, transmitting from the account belonging to the perpetrator. However, when viewed from a sense of justice and the actual fact that the perpetrator was not the person who first spread the Immoral video, the author is of the opinion that the theory of legal certainty in this case is still far from the perpetrator's expectations.

Analysis of Criminal Responsibility for Distributing Electronic Documents Containing Violations of Decency in Decision No. 133/Pid.Sus/2021/PN Jkt.Sel

In decision No. 133/Pid.Sus/2021/PN Jkt.Sel, the defendant Priyo Pambudi bin Juhari was charged with alternative charges, namely first violating Article 29 in conjunction with Article 4 paragraph (1) of Law No. 44 of 2008 concerning Pornography or both violates Article 45 paragraph (1) in conjunction with Article 27 paragraph (1) of Law no. 19 of 2016 concerning Amendments to Law no. 11 of 2008 concerning Information and Electronic Transactions. After proving that the public prosecutor demanded that the defendant be guilty of violating Article 45 paragraph (1) in conjunction with Article 27 paragraph (1) of the ITE Law and charged the defendant with imprisonment for 1 (one) year and a fine of Rp. 50,000,000 (fifty million rupiah) subsidiary 3 (three) months in prison.

With reference to the provisions of Article 27 paragraph (1) of the ITE Law, a person who distributes and/or transmits and/or makes Electronic Information and/or Electronic Documents accessible that has content that violates decency, with elements intentionally and without rights is categorized as having commits a criminal act and can be held criminally responsible for it in the form of a criminal sentence with a maximum penalty of 6 (six) years and a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah).

The relationship between legal facts and the elements of Article 27 paragraph (1) of the ITE Law is that the Defendant was indicted by the Public Prosecutor with alternative charges, for which the Panel of Judges chose the alternative charge that was most likely proven to have been committed by the Defendant, namely the second alternative charge; violates Article 45 paragraph (1) in conjunction with Article 27 paragraph (1) of the Law of the Republic of Indonesia No. 19 of 2016 concerning Amendments to the Law of the Republic of Indonesia No. 11 of 2008 concerning Information and Electronic Transactions, the elements of which are as follows:

Ad. 1. Elements of everyone

Considering, that what is meant by everyone is a person or anyone who is the subject of criminal law, who commits a crime and is subject to criminal sanctions, and he can be held criminally responsible as a result of his actions, which in this case was confronted by a Defendant named Priyo Pambudi bin Juhari whose identity has been verified and in accordance with what is stated in the Public Prosecutor's indictment, and during the trial process the Defendant is a person who is physically and mentally healthy, so that as a legal subject the Defendant is seen as capable of being held accountable for all his actions.

Considering, that thus the 1st element "everyone" has been fulfilled;

Ad.2. Elements intentionally and without rights distribute and/or transmit and/or make accessible electronic information and/or electronic documents that have content that violates decency.

Considering, that intentionality is of course related to the mental attitude of a person charged with committing a crime, and the Panel of Judges is aware that it is not easy to determine a person's mental attitude or prove the existence of an element of intent in the actions of someone charged with committing a crime, or in short it is a difficult thing to determine whether the intention really existed in the perpetrator, moreover what was his inner state when the person committed the crime, because of that his inner attitude,

must be inferred from the external circumstances, by means of which the Panel of Judges must objectify the existence the intentional element, guided by the theory of legal science, to arrive at a conclusion whether the Defendant's actions were a cause or a result of a criminal event that he must experience.

Considering, that the definition of electronic information as referred to in Article 1 point 1 of Law No. 11 of 2008 concerning Information and Electronic Transactions is one or a set of electronic data, including but not limited to writing, sound, images, maps, designs, photos, electronic data interchange (ED4), electronic mail, telegrams, telex, telecopy or the like, letters, signs, numbers, Access Codes, symbols, or processed perforations that have meaning or can be understood by people who are able to understand them. Electronic documents as referred to in Article 1 point 4 are any Electronic Information that is created, forwarded, sent, received, or stored in analog, digital, electromagnetic, optical, or the like, which can be seen, displayed, and/or heard through a Computer or Electronic System, including but not limited to writing, sound, pictures, maps, designs, photos, or the like, letters, signs, numbers, Access Codes, symbols or perforations that have meaning or meaning or can be understood by people who can understand it.

Whereas the witnesses Imam Wahyudi and Anjas Fambudi as members of the police from the Sub-Directorate IV/Tipid Siber Ditreskrimsus Polda Metro Jaya after collecting data on the 5 Twitter accounts above, on November 11 2020 have arrested the Defendant at his home at Pondok Aren Graha Raya Bintaro Kelurahan Perigi District Pondok Aren, South Tangerang and during the search, 1 unit of Gold color i-Phone Xs Max was found with email number: 357282099117320 and imei2 number: 357282099189972.

Witness Gisel and Michael Defretes alias Nobu in their statement stated that the video of intercourse that went viral on the Twitter account was those who did it at the Santika Hotel Medan at the end of 2017, at that time they were both under the influence of alcohol, which intercourse was recorded by Witness Gisel with using an i-Phone 7 which was then sent to Witness Nobu's i-Phone 8 via the airdrop application, according to the two of them the recording of intercourse was private consumption which was never meant to be published, because Witness Gisel was still married at that time.

Whereas the witness Muhammad Nurfajar in his statement stated that on November 6 2020 at around 22.47 WIB. Seeing that in the BB18 New Telegram Group, someone uploaded/distributed a 19-second video of intercourse played by a person who resembles Gisel's face with a man whose name is unknown, then at around 23.00 WIB. Witness Muhammad Nurfajar uploaded and then shared it on the NNT (Nom Noman Tae) WhatsApp Group, which consisted of 6 (six) members, one of whom was the Defendant.

That Expert DR. Bambang Pratama, SH, MH in his opinion stated that if the information that was sent and immediately deleted was immediately included in the transmitting category, because there has been sending and receiving, for example if someone sends and presses the sending button, the sender has no power to withdraw it. and instantly that electronic transactions have occurred, and legal actions have also occurred.

Considering, from the facts mentioned above it appears that the Defendant received a video recording of Witness Gisel's intercourse with Nobu in the NNT WhatsApp group sent by Witness Muhammad Nurfajar, even though the 19-second video recording of intercourse was withdrawn/deleted from the NNT Group Chat Room by Witness Muhamad Nurfajar. However, again the Defendant uploaded screenshots of intercourse in the NNT WhatsApp group and became the talk of 6 other group members, the Defendant's actions were included in the category of distributing content that violated decency, so that the second element was also fulfilled. With the fulfillment of the elements of Article 27 paragraph (1) of the ITE Law, the judge declared the defendant guilty and sentenced the defendant to 9 (nine) months imprisonment and a fine of Rp. 50,000,000.00 (fifty million rupiah).

The criminal responsibility of the defendant Priyo Pambudi for violating Article 27 paragraph (1) of Law no. 19 of 2016 concerning amendments to Law no. 11 of 2008 concerning Information and Electronic Transactions by imposing a prison sentence of 9 (nine) months which is lower than the demands of the public prosecutor who asked the defendant to be imprisoned for 1 (one) year. And a fine of Rp. 50,000,000.00 (fifty million rupiah) sibsider 3 (three) months in prison, is in accordance with the process of examining cases in court including the process of proof, in addition to being based on Articles 183 and 184 of the Criminal Procedure Code, it is also based on electronic evidence. stipulated in Article 5 paragraph (3) of the ITE Law that electronic information and/or printed electronic documents are legal evidence as an extension of legal evidence stipulated in the Criminal Procedure Code.

During the trial of the defendant Priyo Pambudi, the electronic evidence used to prove the defendant's actions included electronic documents and electronic information regarding the circulation of the video of Gisel having intercourse with a male friend. The distribution of the intercourse video, which lasted 19 seconds, which we want to prove, was circulated from Priyo Pambudi's account. It must be ensured that the defendant's actions distributed electronic documents or electronic information.

To distribute is to send to many recipients, while what is meant by transmitting is to only send to one person, the act of distributing is definitely transmitting, but transmitting is not necessarily distributing because it may only be to one recipient. In terms of distribution, it can be sent to many people automatically, it can also be done manually one by one, with an example of one person posting on social media, if on social media there are 1000 followers or friends, then those 1000 friends will be distributed, but it can also be sent. electronic data is carried out one by one, so that the distribution is plural and the transmission is singular.

While the notion of making it accessible, for delivery to only one person it can be said to be accessible because there is no quantity in the distribution. The difference between information and electronic documents, in general, is electronic data or soft copies, or the small form is electronic information and the smallest form is an electronic document, the criteria for electronic data are information that is created and forwarded or sent and received, can be images, sounds, or a combination thereof.

If information is sent using an electronic device while the data is stored, processed using an electronic device, it meets electronic qualifications. The electronic evidence confiscated from the defendant Priyo Pambudi included a video recording to the NNT WhatsApp group on his Twitter accounts named @pambudi32 and @trio_pambudi with the aim of increasing his followers. From the defendant's house, a gold i-Phone Xs Max with imei number 35728209117320 was confiscated, including a screenshot of Gisel's intercourse with Nobu. The contents of the screenshots of the video of Gisel's intercourse were shared with more than 500,000 viewers.

If there is a link and one million people open the link but only open it and don't share the link with anyone, then it cannot be said to be a spreader, but if the link is shared, it will only enter the distribution element, and a video

that has been deleted can be re-emerged from a mobile phone. When it is on, the data on the cellphone can still be retrieved. When someone has destroyed or deleted a video, preventive measures have appeared, then the penalty has fallen, but if the mobile phone is still stored and the cellphone is hacked and the electronic data is not deleted by the creator, then that is where the crime appears.

In accordance with the decision of the Constitutional Court Number 20 of 2016, the object that is being applied for to the Constitutional Court is an electronic document that can be used as evidence in court, in the decision of the Constitutional Court it is decided that all electronic evidence is electronic evidence, but not all electronic evidence can become legal evidence, so There are qualifications that can be used as legal evidence, namely:

1. Must be taken by law enforcement officials;
2. Not taken in a way that violates the law;
3. Not violating the rights of other people because if you record someone's conversation without permission it cannot be used as legal evidence, because recording without permission is meant as wiretapping

In the case of electronic evidence that can be used as trial evidence if the evidence is examined by forensics, the results of the examination are in accordance with forensic procedures. Other means of evidence to account for the decency crime of the defendant is through examination of valid evidence formulated in Article 184 of the Criminal Procedure Code, namely witness statements, expert statements, letters, instructions, statements of the accused.

The legal facts from the trial in the form of statements from the witnesses presented at the trial stated that after the video of Gisel's intercourse was shared via the NNT WhatsApp group which consisted of 6 members, one of whom was the defendant Priyo Pambudi and the other a defendant who was online in the group. With the intention of increasing his followers, the defendant asked the witness who shared the video to withdraw and delete it. Then the defendant sent a screenshot of the video and posted it on his personal Twitter with the intention of increasing his Twitter followers, and since then many people have contacted his Twitter and asked for a video of the screenshot.

The defendant Priyo Pambudi did not refute or deny the testimony of these witnesses at trial but instead admitted that it was the defendant who sent/shared screenshots of the sexual intercourse scene in the video to the NNT group chat room, whereupon the defendant uploaded screenshots of the sexual intercourse scene on the defendant's Twitter account. @trio_pambudi with the intention of increasing the number of followers and uploading the video recording of the intercourse on the defendant's private Twitter @pambudi32 and finally the screenshot of the pornographic scene posted by the defendant went viral on Twitter.

Expert statement Dr. Bambang Pratama is of the opinion that the element of distributing, transmitting electronic documents or information carried out by the defendant Priyo Pambudi is in accordance with the notion of electronic data transmission consisting of electronic information or electronic documents both to one person and to many people. By sending pornographic sub elements or video recordings, the recipient will be able to access them within one hour later. In accordance with Article 8 of the ITE Law, the time when tempus delicti occurred was from the time the pornographic video was entered into the recipient's electronic system, even though there was an attempt to delete it, if it has exceeded 10 minutes it can no longer be deleted.

Based on these legal facts, the judge assessed that there was an agreement between one piece of evidence and another so that the judge believed that the defendant was guilty of violating Article 27 paragraph (1) of the ITE Law and sentenced the defendant Priyo Pambudi to imprisonment for 9 (nine) months and a fine of Rp. 50,000,000.00 (fifty million rupiah). The judge's decision was in accordance with the demands of the public prosecutor who demanded the defendant to be one year in prison and the judge handed down a third of the demands of the public prosecutor. to create a deterrent effect on the community, and in accordance with social justice that even though the

penalty for Article 27 paragraph (1) of the ITE Law is 6 (six) years, the judge only sentenced him to 9 (nine) months in prison.

Whereas even though the defendant Priyo Pambudi was convicted by the Panel of Judges as intended with all the legal considerations, here the author has not seen a true sense of justice for the defendant which in the trial of case No. 133/Pid.Sus/2011/PN Jkt.Sel, the author also acts as the Legal Counsel for the accused Priyo Pambudi. The most principle thing that should be taken into consideration by the Panel of Judges deciding the case is, where did the immoral video come from so that Gisel and Nobu's immoral video could be widely spread on social media.

The defendant Priyo Pambudi received an immoral video from witness Muhammad Nurfajar which was shared by witness Muhammad Nurfajar via their WhatsApp group which only contained 6 (six) people including the defendant Priyo Pambudi. Meanwhile, witness Muhammad Nurfajar received immoral videos of Gisel and Nobu from the Telegram Group which has more than 24,000 members. This means that by the time the video about the immorality of Gisel and Nobu was received by witness Muhammad Nurfajar, at least 24,000 people had distributed the video. Not to mention apart from the telegram group that received the immoral videos of Gisel and Nobu, there are other social media accounts that have spread these immoral videos through other social media, including in this case social media Twitter. This can be proven by the existence of a police report made by Witness Febriyanto Dunggio, who not only reported the account belonging to the defendant Priyo Pambudi but other accounts which actually had a more severe impact because it clearly contained an immoral video with a duration of 19 seconds and was watched by viewers of more than 500,000 accounts, while the defendant Priyo Pambudi only shared screenshots (not in video form) and was seen by approximately 20,000 accounts.

If it is related to the theory of legal certainty for the defendant Priyo Pambudi, the author hereby assesses that what has been decided by the Panel of Judges examining the case is a wrong decision and does not fulfill a sense of justice for the defendant Priyo Pambudi. The main reason is that the defendant Priyo Pambudi was not the first person to transmit and even distribute the immoral video of Gisel and Nobu so that it was known by the general public, but based on the facts of the trial, Gisel was the first person to transmit the immoral video to Nobu, which then developed rapidly and widely spread in society. The next reason is, if the defendant Priyo Pambudi was found guilty of distributing immoral videos of Gisel and Nobu (even though he was known not to have distributed them in the form of videos but only screenshots), then why was only the defendant Priyo Pambudi convicted while there were those who distributed the videos more massively? Asusila Gisel and Nobu, who up to the time the writer wrote this thesis, have never been arrested or convicted for their actions.

Nothing can stop the development of information technology in the current era, as the author has stated at the beginning of writing. However, along with the development of technology from time to time, especially cases that the author has handled, namely case No. 133/Pid.Sus/2011/PN Jkt.Sel which can be used as an example of the non-fulfillment of an essential sense of justice for society, then the government should have **issued** a new decision if necessary to revise Law No. 19 of 2016 concerning changes to Law no. 11 of 2008 concerning Information and Electronic Transactions, especially regarding moral content, which in essence states that if there is electronic content that contains elements of decency and has been widely disseminated in society, then it must be firmly said that the person who first transmitted or even distributed the content containing violations of decency, is a person who is responsible and must be held accountable for his actions according to criminal law, not the next person to participate in spreading it because it is impossible for the next person to be able to spread immoral content, without getting it first from the person who first transmitted or even distributed the intended immoral content.

CONCLUSION

Based on the previous results, this study concluded that:

1. An indicator or limitation of an act includes a violation of decency if the violation meets decency according to the Criminal Code, because there is no explanation of Article 27 paragraph (1) of Law no. 19 of 2016 concerning changes to Law no. 11 of 2008 concerning Information and Electronic Transactions regarding moral content. So that in practice the reference or limitation of decency violations is as formulated in Article 28 concerning damaging decency in public such as intercourse, touching a woman's breasts, touching a woman's genital area, showing a woman's or man's genitals. Article 282 of the Criminal Code regarding displaying writing or pictures or items that violate decency, Article 283 of the Criminal Code regarding offering, showing children under the age of writing, pictures or items that violate a sense of decency, Article 287 of the Criminal Code concerning intercourse with minors, Article 289 of the Criminal Code regarding acts obscenity, Article 290 of the Criminal Code concerning obscenity of minors, Article 292 of the Criminal Code concerning sexual abuse of same sex and Article 294 of the Criminal Code of obscenity of their children. If the decency crime formulated in the Criminal Code is recorded on video, drawn in photos using electronic devices and the internet, it becomes electronic information that is generated, received or stored in analog, digital, electromagnetic, optical or the like which can be seen, displayed via a computer or electronic system which then distributes or transmits through his account to the WhatsApp or Facebook group which is received and accessed by group members, since then there has been a criminal act of decency via social media as defined by Article 27 paragraph (1) of the ITE Law.
2. The criminal responsibility of the perpetrators of decency crimes distributed through electronic media in case no. 133/Pid.Sus/2011/PN Jkt.Sel investigated and tried the defendant Priyo Pambudi on charges of violating Article 27 paragraph (1) in conjunction with Article 45 paragraph (1) of the ITE Law. To account for the defendant's actions, electronic evidence such as the Twitter accounts @pambudi32 and @trio_pambudi and a gold iPhone XS Max with IMEI number 357282099117320 show the distribution of the pornographic video to the NNT WhatsApp group, accompanied by evidence, witness statements, letters, expert statements, instructions and statements of the defendant Priyo Pambudi explaining that there had been distribution of electronic information and each of the pieces of evidence corresponded to each other giving rise to the judge's belief that the defendant Priyo Pambudi was guilty and could be held accountable for his actions that violated Article 27 paragraph (1) 1) UU ITE and he was sentenced to imprisonment for 9 (nine) months and a fine of Rp. 50,000,000.00 (fifty million rupiah) subsidiary 3 (three) months in prison.
3. The decision handed down to the defendant Priyo Pambudi did not satisfy the defendant's sense of justice because the defendant was not the first person to transmit and even distribute the immoral videos of Gisel and Nobu, but it was proven in court that Gisel was the first to transmit the pornographic videos to Nobu, so that for the first time there has been the spread of videos with immoral contents and in the end they became known to the wider community.

Suggestion

1. The prohibition formulated in Article 27 paragraph (1) specifically regarding the formulation of decency creates multiple interpretations, therefore the distribution of pornographic videos through social media needs to be supplemented by government regulations that regulate and formulate the distribution of electronic information with certain criteria regarding actions that contain violations of decency especially the rules regarding the person who first transmits and/or distributes immoral content must be legally responsible, so that not all photos, images or videos that have been widely spread in society are criminalized as a violation

of Article 27 paragraph (1) UU ITE to other people while It is known that the people who are suspected of participating in spreading the immoral content are not the first time.

2. In order to reduce decency crimes through social media, it is necessary for the government together with community leaders and community members to socialize the correct use of social media and not have an impact on breaking the law through non-formal education, forming discussion groups starting at the Neighborhood Association (RT) level down to the sub-district level, so that the distribution of electronic information with moral content that was previously intended only to increase the number of followers or just to play around to become a suspect in Article 27 paragraph (1) of the ITE Law can be prevented.

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