

## THE IMPLEMENTATION OF LAW NO.44 OF 2008 CONCERNING PORNOGRAPHY IN THE CASE OF THE IMMORAL VIDEO DISTRIBUTION

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### Abstract

*One of the negative impacts of the rapid advancement of technology and information is the ease with which people can access and distribute immoral videos. The case of GA and MYD caused a polemic. Instead of arresting the video spreaders, the investigators chose GA and MYD as suspects. This article examines the application of Law no. 44 of 2008 concerning pornography in the case of distributing immoral videos. Law enforcement officials apply the Pornography Law in various ways. The Pornography Law actually protects the creators and owners of private immoral videos for their own interests, as the exception stated in the Elucidation of Articles 4 and 6. In the case of GA and MYD, the investigators do not pay attention to their position as victims where according to the theory of will, GA and MYD are not wants the video to be distributed and have deleted it. Therefore, in the plan to amend the Pornography Law, the DPR needs to propose the transfer of the exception to the provisions of the article into the body, not in the explanation of the article, because it contains norms.*

### Introduction

The rapid advancement of technology and information has a positive and negative influence and role in people's lives. One of the negative effects is that it is easy for people to access and distribute immoral videos.

The case of immoral videos that has recently been widely reported involves a public figure, GA. The video leaked online in

early November 2020. Polda Metro Jaya investigators have named GA and MYD as suspects in the case of distributing immoral videos on December 29, 2020. Head of Public Relations of Polda Metro Jaya, Kombes Yusri Yunus, said that GA acknowledged that the video was recorded in one of the hotels in Medan in 2017. The two suspects will be subject to Article 4 paragraph (1) in conjunction



with Article 29 and/or Article 8 of Law No.44 of 2008 concerning Pornography (Pornography Law), with a maximum imprisonment of 12 years (Media Indonesia, 30 December 2020). However, the police have not yet caught the first spreader of the video. The police have just arrested PP and MN, who are known to be massive spreaders of videos on their social media to increase the number of followers (kompas.com, 29 December 2020).

This case is in the spotlight of both domestic and foreign media. The UK-based media, The Sun, called the case experienced by GA as harsh justice because she was faced with a maximum prison sentence of 12 years (jawapost.com, January 2, 2021).

The determination of GA and MYD as suspects caused a polemic because the Pornography Law actually protects those who make and own pornographic products for personal gain, by not criminalizing them. Based on this, this article

examines the application of Law no. 44 of 2008 concerning pornography against the distribution of immoral videos. This study is important given the convictions of those who are actually victims.

### **Differences in the Application of the Pornography Law in the distribution of immoral videos**

The Pornography Law is considered controversial because it has put people in prison due to the distribution of immoral videos. Previously, the Bandung District Court sentenced Nazril Irham or Ariel Noah to a 3.5-year sentence and Rp. 250 million on January 31, 2011. Ariel was found to have violated Article 29 in conjunction with Article 4 of the Pornography Law (jakarta.tribunnews.com, 7 August 2018).

The differences in the application of the law in several similar cases that do not involve public figures can be seen in Table 1 below:

**Table 1. Differences in the application of the law in some cases of immoral video spreada**

No.	Perpetrator	Location and time	Case	Description
1.	DR	Bandung Regency, West Java, August 21, 2019	penyebar foto bugil dan vspreading nude photos and immoral videos with her boyfriend via Instagram	sentenced to 5 years in prison for spreading immoral content via Instagram
2.	DA	Bone Regency, South Sulawesi, November 25, 2020	menyebarkan video Distributed immoral videos of him with his girlfriend on social media because he was hurt that his proposal was rejected by the victim's parents	ends with mediation between the two parties

*Continued Table 1.*

No.	Perpetrator	Location and time	Case	Description
3.	MAS	Cianjur, West Java, January 6, 2021	Proven to record immoral acts with his lover and distributed it on social media	subject to Article 45 paragraph (1) in conjunction with Article 27 paragraph (1) of Law No. 11 of 2008 concerning Information and Electronic Transactions (UU ITE)
4.	MH	Pekanbaru, Riau, January 3, 2021	Distributed immoral videos between him and his ex-girlfriend	was sentenced to 7 months in prison after being found guilty of violating the ITE Law.

*Source: compiled from several sources*

These cases were reported by the women in the videos and the reporters were not prosecuted. On the other hand, law enforcement officials apply the Pornography Law and/or the ITE Law on the reported or resolve the case through mediation. The provisions of the ITE Law in question are Article 27 paragraph (1) which prohibits any person intentionally and without the right to spread and/or transmit and/or make accessible electronic information and/or electronic documents that have content that violates decency.

This is different from the GA and MYD case where the victims (GA and MYD) were actually named suspects even though they did not distribute the video. In this case, the victim means the person who is directly harmed by the spread of the immoral video.

### **Protection of Victims of the distribution of Immoral Videos in the Pornography Law**

In a law, explanation functions as an official interpretation of the provisions of the article. The correct interpretation of the formulations contained in the law is closely related to giving respect to human rights and avoiding arbitrary action by the authorities.

Basically, Article 4 paragraph (1) of the Pornography Law prohibits anyone from producing, making, reproducing, duplicating, disseminating, broadcasting, importing, exporting, offering, trading, renting, or providing pornography, with the threat of imprisonment of at least 6 (six) months and a maximum of 12 (twelve) years and/or a fine of at least Rp. 250,000,000.00 (two hundred and fifty million rupiahs) and a maximum of

Rp. 6,000,000,000.00 (six billion rupiahs); and Article 6 prohibits any person from listening to, showing, utilizing, possessing, or storing pornographic products, with a maximum imprisonment of 4 (four) years and/or a maximum fine of Rp. 2,000,000,000.00 (two billion rupiah).

However, the prohibition of "making" (Article 4 paragraph (1)) and "owning or storing" (Article 6) does not cover immoral videos that are made, owned, and stored for personal interests. Referring to these provisions, GA and MYD deserve protection because the video is for their own interests, is not distributed, and has been deleted.

Article 6 of the Pornography Law explains that those who own or store pornography for personal gain are actually protected by law, regardless of the immoral act they have committed. Therefore, investigators should focus on the distribution of the video, not on GA and MYD.

Another problem in the Pornography Law is the prohibition for someone who deliberately (agrees) to become an object or model of immoral material. Article 8 of the Pornography Law states "Every person is prohibited from deliberately or with his consent from becoming an object or model that contains pornographic content". Violators of this provision are subject to imprisonment of up to 10 (ten) years and/or a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah).

The elucidation of Article 8 states that the law, to a limited extent, protects those who are coerced, threatened, under pressure, persuaded or deceived, or lied to into becoming pornographic objects or models are not prosecuted. This provision should be read in the context that even if the model is not coerced, threatened, under pressure from others, persuaded or deceived, or lied to by others; these models knowingly know that the photos, videos, or other forms of pornography they make are intended to be distributed and not for personal interests.

According to the theory of will in criminal law, a person (the model in pornographic material) can be prosecuted if they wish to record and realize the consequences of the distribution of the material (Mahrus Ali, 2012: 174). It means that GA and MYD cannot be prosecuted because they do not want both conditions.

The determination of GA and MYD as suspects shows that someone who knowingly records their immoral acts must be responsible for the risk of the recording being distributed. This interpretation does not pay attention to their position as victims. Therefore, law enforcement officers must be more careful in determining the status of the perpetrator or victim in the crime of pornography. The justice system should be able to protect victims, not punish them.

Responding to the case, Gadjah Mada University Faculty of Law lecturer, Sri Wiyanti Eddyono, said that GA should be

positioned as a victim. Recording for personal documentation is not a criminal offense. The violation of that case was the unauthorized distribution of the recordings. Therefore, the Pornography Law should not be used in the case of GA and MYD (Kompas, 4 January 2021).

Researcher of The Institute for Criminal Justice Reform, Maidina Rachmawati, also stated that those who record their personal activities and do not distribute the video cannot be convicted. This is following Article 4 of the Pornography Law, which states that immoral content creators for personal interest cannot be convicted (Kompas, 4 January 2021).

Based on the above problems, the DPR RI as the implementation of the legislative function in the plan to amend the Pornography Law needs to propose placing the exclusion norms in the Elucidation of Article 4 paragraph (1), Article 6, and Article 8 into the body so that law enforcers do not apply these articles differently.

### Closing

Law enforcement officials apply the Pornography Law in cases of immoral videos differently. In the case of GA and MYD, both were named suspects for their immoral video distribution. In other cases, actors who reported their partners as broadcasters of the video were not identified as suspects. Based on the theory of will, GA and MYD should not have been made suspects because they did not want the video to be distributed and had deleted it. The

Pornography Law protects GA and MYD for making videos for their own interests and does not violate any provisions of the Pornography Law. They are victims of their immoral video distribution.

In this regard, the explanation of the article should not contain exceptions because it contains norms. Therefore, the DPR in its plan to amend the Pornography Law needs to propose the transfer of the formulation of the exception in the explanation of articles into the body of the Law.

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Law Number 44 of 2008 concerning Pornography.



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