

**LEGAL PROTECTION OF REVENGE PORN**  
**(A Comparative Study of Legal Research in United States, Australia, and  
Indonesia)**

**THESIS**

**by:**

**SALWA**

**SIN 200201110137**



**ISLAMIC FAMILY LAW DEPARTEMENT**  
**SHARIA FACULTY**  
**STATE ISLAMIC UNIVERSITY MAULANA MALIK IBRAHIM**  
**MALANG**

**2024**

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**MALANG**

**2024**

## STATEMENT OF THE AUTENTICITY

In the name of Allah,

With consciousness and responsibility toward the development of science, the writer declares that thesis entitled:

**LEGAL PROTECTION OF REVENGE PORN**  
**(A Comparative Study of Legal Research in United States, Australia, and**  
**Indonesia)**

Is truly writer's original work which can be legally justified. If this thesis is proven result of duplication or plagiarism from another scientific work, it as precondition of degree will be stated legally invalid.

Malang, May 18, 2024

Writer,



Salwa  
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## APPROVAL SHEET

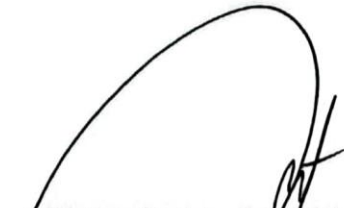
After reading and correcting thesis of Salwa Student ID 200201110137 Department of Islamic Family Law, Sharia Faculty of The State Islamic University Maulana Malik Ibrahim of Malang entitled:


**LEGAL PROTECTION OF REVENGE PORN  
(A Comparative Study of Legal Research in United States, Australia, and  
Indonesia)**

the supervisor stated that this thesis has met the scientific requirements to be proposed and to be examined on the Assembly Board of Examiners.


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(A Comparative Study of Legal Research in United States, Australia, and Indonesia)

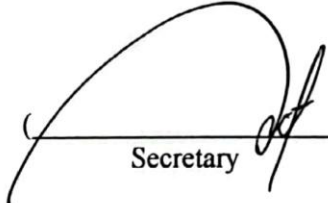
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7. Both of the author's parents; Jamaluddin Affan and Ety Susi Halimiaty whom the author loves and cares for very much, of course without them the author would not have reached this point. With full patience and sincerity in guidance, love, prayers and sacrifices until finally the author can complete this thesis, thank you for all the support that has been given both in the form of morally and materially and apologise for all the mistakes the author has made whether intentional or unintentional. As well as the author's siblings: Tasnim, Muhammad, and Raudahtul Jannah who also provide support.
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With the completion of this thesis, the author sincerely hopes that this thesis can benefit both the author and others, and that the knowledge gained becomes blessed knowledge. As a human being who is indeed a place of mistakes and sins, the author infinitely apologizes for the shortcomings in writing this thesis. Criticism and suggestions are needed for future improvements.

Malang, May 18, 2024

Author,

Salwa  
SIN.200201110137



## MOTTO

عن أبي هريرة عن النبي صلى الله عليه وسلم قال " لا يسترُ عبدٌ عبداً في الدنيا إلا ستره الله يوم القيامة "

(رواه مسلم)

Abu Hurairah reported that the Prophet said: "No one covers another person's disgrace in this world, but Allah will cover his disgrace on the Day of Judgement"

(HR Muslim).

## TRANSLITERATION GUIDENCES

### A. General

Transliteration transfers Arabic script into Indonesian (Latin) writing, not Arabic translation into Indonesian. Included in this category are Arabic names from Arabs, while Arabic words from nations other than Arabic are written as the spelling of the national language or as written in the reference book. Writing the text's title in the footnotes and bibliography still uses the provisions of this transliteration.

There are several provisions in transliteration that can be used in writing scientific papers. Whether it is national or international standards or requirements specifically used by certain publishers. The transliteration guidelines used in the scientific work of sharia students of UIN Malang are based on the provisions of the 2022 thesis writing guidelines for the Faculty of Sharia, State Islamic University Maulana Malik Ibrahim Malang, namely transliteration based on the Surat Keputusan Bersama (SKB) of the Minister of Religion and the Minister of Education and Culture of the Republic of Indonesia, January 22, 1998, No. 159/1987 and 0543.b/U/1987, as stated in the A Guide Arabic Transliteration, INIS Fellow 1992.

### B. Consonant

Arab	Indonesia	Arab	Indonesia
ا	‘	ط	t
ب	B	ظ	Z
ت	T	ع	‘
ث	Th	غ	Gh
ج	J	ف	F
ح	h	ق	Q
خ	Kh	ك	K
د	D	ل	L

ذ	Dh	م	M
ر	R	ن	N
ز	Z	و	W
س	S	ه	H
ش	Sh	ء	‘
ص	ṣ	ي	Y
ض	ḍ		

Hamzah ( ء ) which is often symbolized by alif, if it is located at the beginning of a word, then in its transliteration follows the vowel, it is not symbolized, but if it is located in the middle or end of a word, it is symbolized by the comma above ( ‘ ), turning around with a comma ( ‘ ) to substitute for the ”ع”symbol.

### C. Vocal, Long Pronounce, and Diphthong

Every Arabic writing in the form of latin fathah is written with “a”, kasrah with “i”, dlommah with “u”, while the length of each is written in the following way:

Vocal fathah = a

Vocal kasrah = i

Vocal dlommah = u

Long-vocal (a) = Â Example: قال become Qâla

Long-vocal (i) = Î Example: قيل become Qîla

Long-vocal (u) = Û Example: دون become Dûna

Especially for reading ya’ Nisbat, it cannot be replaced with “i”, but is still written with “iy” to describe ya’ Nisbat in the end. Likewise, for the sound of diphthongs, wawu and ya’ after fathah wrote with “aw” and “ay”, as in the example below:

Diphthong (aw) = دو Example: قول become Qawlun

Diphthong (ay) = ي Example: خير become Khayrun

#### **D. Ta' Marbutah**

Ta' marbûthah translited as “t” in the middle of word, but if Ta' marbûthah in the end of word, it translited as “h” e.g. المدرسة الرسالة become *alrisalat li al-mudarrisah*, or in the standing among two word that in the form of mudhaf and mudlaf ilaih, it transliterated as t and connected to the next word, e.g. الله في أمان become *fi amanillâh*.

#### **E. Auxiliary Verb and Lafadh al-Jalâlah**

Auxiliary verb “al” ( ال ) written with lowercase from, expect if it located in the position and “al” in lafadh al-Jalâlah which located in the middle of two or being or become idhafah, it remove frome writing.

1. Al-Imâm al-Bukhâriy said.
2. Al-Bukhâriy in muqaddimah of his book said.
3. *Masyâ Allah kâna wa mâ lam yasya 'lam yakun.*

#### **F. Indonesian Arabic Names and Words**

In principle, any word that comes from Arabic must be written using the translation system. If the name is the Arabic name of an Indonesian or an Arabic Indonesian, do not need to write using the transliteration system.

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## ABSTRAK

Salwa, 200201110137, 2024. Penanganan Hukum Revenge Porn (Studi Perbandingan Hukum Di Amerika Serikat, Australia, dan Indonesia). Skripsi, Program Studi Hukum Keluarga Islam, Fakultas Syariah, Universitas Islam Negeri Maulana Malik Ibrahim Malang. Pembimbing: Miftahus Sholehudin, M.HI

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**Kata Kunci:** revenge porn, kekerasan berbasis gender online, perbandingan

Revenge porn dimaknai sebagai penyebaran informasi bermuatan pornografi tanpa adanya persetujuan, terutama oleh korban. Dengan tujuan untuk membalaskan rasa dendam karena sakit hati terhadap korban. Kekerasan berbasis gender online terutama revenge porn meningkat dengan seirinya waktu dibelahan dunia. Penanganan hukum serta perlindungan pada korban revenge porn sangat perlu di tegaskan. Setiap negara memiliki hukum sendiri dalam menangani kasus revenge porn. Penulis tertarik untuk melakukan analisis terhadap perbandingan penanganan hukum revenge porn pada Amerika, Australia, serta Indonesia. Penelitian ini bertujuan untuk mengetahui perbandingan penanganan hukum revenge porn yang terjadi di negara maju dengan negara berkembang, serta membantu Indonesia dalam memaksimalkan upaya hukum terhadap revenge porn yang tergolong lemah.

Penelitian ini termasuk ke dalam jenis penelitian hukum normatif dengan menggunakan pendekatan perbandingan dan studi kasus. Bahan hukum yang digunakan ialah primer, sekunder, dan tersier. Teknik pengumpulan data dilakukan melalui studi kepustakaan dari sumber cetak maupun digital.

Hasil penelitian ini menunjukkan bahwa di Amerika dan Australia telah memiliki undang-undang secara jelas mengatur revenge porn dan memberikan sanksi hukum bagi pelaku. Sedangkan penegakan hukum revenge porn di Indonesia masih tergolong lemah. Karena penegak hukum dalam pengadilan Indonesia harus mengandalkan undang-undang Pornografi dan Informasi Transkasi Elektornik yang belum sepenuhnya mencakup aspek-aspek revenge porn dengan cukup jelas. Meski telah diterbitkannya Undang-undang TPKS namun penggunaannya belum maksimal. Dalam penanganan revenge porn di Indonesia dibutuhkannya upaya untuk menyusun undang-undang khusus yang secara eksplisit mengatur tentang revenge porn dan memberikan sanksi yang tegas bagi pelakunya. Tidak hanya berfokus pada sanksi pelaku namun perlindungan terhadap korban sangat perlu diperhatikan oleh Lembaga-lembaga yang bersangkutan. Selain dari segi hukum, pendidikan dan kesadaran masyarakat juga perlu ditingkatkan untuk mencegah dan menangani kasus revenge porn secara efektif.



## ABSTRACT

Salwa, 200201110137, 2024. Legal Protection of Revenge Porn (A Comparative Study of Legal Research in United States, Australia, and Indonesia). Thesis, Islamic Family Law Study Program, Faculty of Sharia, Maulana Malik Ibrahim State Islamic University Malang. Supervisor: Miftahus Sholehudin, M.HI

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**Keyword:** revenge porn, online gender-based violence, comparative

Revenge porn is defined as the distribution of pornographic information without the consent, especially of the victim. The purpose is to take revenge for the hurt caused to the victim. Online gender-based violence, especially revenge porn, is on the rise around the world. The legal treatment and protection of victims of revenge porn must be emphasized. Each country has its laws in handling revenge porn cases. The author is interested in analyzing the comparison of legal handling of revenge porn in America, Australia, and Indonesia. This research aims to find out the comparison of legal handling of revenge porn that occurs in developed countries with developing countries, as well as to assist Indonesia in maximizing legal efforts against revenge porn that is classified as weak.

This research is included in normative legal research using comparative and case approaches. The legal materials used are primary, secondary, and tertiary. Data collection techniques are carried out through literature studies from print and digital sources.

The results of this study show that America and Australia have laws that regulate revenge porn and provide legal sanctions for perpetrators. Meanwhile, law enforcement of revenge porn in Indonesia is still relatively weak. It would appear that law enforcement in Indonesian courts is currently unable to rely on the Pornography and Electronic Transaction Information law, which does not fully cover the aspects of revenge porn in question. Despite the issuance of the TPKS Law, its use has not been maximized. In handling revenge porn in Indonesia, efforts are needed to draft a special law that explicitly regulates revenge porn and provides strict sanctions for the perpetrators. Not only focusing on the sanctions of the perpetrators but the protection of victims is very important to be considered by the institutions concerned. Apart from the legal aspect, education and public awareness also need to be improved to prevent and handle revenge porn cases effectively.

## صلخص البحث

سلوى، ٢٠٢٤، ٢٠٠٢٠١١١٠١٣٧. التعامل القانوني مع الإباحية الانتقامية (دراسة مقارنة للقوانين في الولايات المتحدة وأستراليا واندونيسيا). أطروحة، برنامج دراسة قانون الأسرة الإسلامي، كلية الشريعة، جامعة مولانا مالك إبراهيم الإسلامية الحكومية مالانج. المشرف: مفتاحوس شوليهددين، ماجستير في الشريعة الإسلامية.

الكلمات المفتاحية: الإباحية الانتقامية، العنف القائم على النوع الاجتماعي على الإنترنت، مقارنة

تُعرّف الإباحية الانتقامية بأنها نشر معلومات إباحية دون موافقة الضحية، خاصةً من قبل الضحية. بهدف الانتقام من المشاعر المجرّحة تجاه الضحية. يتزايد العنف القائم على النوع الاجتماعي عبر الإنترنت، وخاصةً الإباحية الانتقامية، في جميع أنحاء العالم. يجب التشديد على التعامل القانوني مع ضحايا الإباحية الانتقامية وحمايتهم من الناحية القانونية. لكل دولة قوانينها الخاصة في التعامل مع قضايا الإباحية الانتقامية. يهتم المؤلف بتحليل مقارنة التعامل القانوني مع الإباحية الانتقامية في أمريكا وأستراليا واندونيسيا. ويهدف هذا البحث إلى معرفة مقارنة التعامل القانوني مع الإباحية الانتقامية التي تحدث في الدول المتقدمة مع الدول النامية، وكذلك مساعدة إندونيسيا في تعظيم الجهود القانونية ضد الإباحية الانتقامية التي تصنف على أنها ضعيفة.

يندرج هذا البحث ضمن نوع البحوث القانونية المعيارية باستخدام نهج المقارنة ودراسات الحالة. المواد القانونية المستخدمة هي مواد أولية وثانوية وثالثية. وتنفذ تقنيات جمع البيانات من خلال دراسات أدبية من مصادر مطبوعة ورقمية.

تُظهر نتائج هذه الدراسة أن أمريكا وأستراليا لديهما قوانين تنظم بوضوح الإباحية الانتقامية وتنص على عقوبات قانونية لمرتكبيها. وفي الوقت نفسه، لا يزال إنفاذ القانون في إندونيسيا فيما يتعلق بالإباحية الانتقامية ضعيفاً نسبياً. ويرجع ذلك إلى أن القائمين على إنفاذ القانون في المحاكم الإندونيسية يعتمدون على قانون المواد الإباحية والمعلومات المتعلقة بالمعاملات الإلكترونية، والذي لا يغطي جوانب الإباحية الانتقامية بشكل واضح بما فيه الكفاية. وعلى الرغم من صدور قانون المعلومات الإباحية والمعاملات الإلكترونية، إلا أن استخدامه لم يتم تعميمه إلى أقصى حد. في التعامل مع الإباحية الانتقامية في إندونيسيا، هناك حاجة إلى بذل الجهود لصياغة قانون خاص ينظم صراحةً الإباحية الانتقامية وينص على عقوبات صارمة لمرتكبيها. ولا يقتصر الأمر على التركيز على عقوبات الجناة فحسب، بل إن حماية الضحايا أمر مهم للغاية يجب أن تنظر فيه المؤسسات المعنية. وبصرف النظر عن الجانب القانوني، يجب أيضاً تحسين التثقيف والتوعية العامة لمنع حالات الإباحية الانتقامية والتعامل معها بفعالية.

# CHAPTER I

## INTRODUCTION

### A. Research Background

In the current era of globalization, technology's rapid advancement has positive and negative effects on society. Technology and information, constantly evolving and advancing, make it easier for individuals to establish online social relationships. Through social media such as Instagram, Twitter, Facebook, Whatsapp, and Line, almost all smartphone users are used to finding friends and partners.

We are socially reporting that by January 2024, Internet usage will have reached 66.2% of the world's total population of 5.35 billion Internet users.<sup>1</sup> This is an increase of 1.8% in total global users over the past 12 months. In Indonesia, Internet users have reached 78.19% of the total population, an increase compared to 2022, specifically in 2022, up to 210 million people, and in 2023, up to 215 million people. According to an internet survey by the Indonesian Association of Internet Service Providers (APPJII), in 2023, male internet and social media users accounted for 51.19%, while females accounted for 48.81%.<sup>2</sup> From the survey results,

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<sup>1</sup> Amy.Thompson@Wearesocial.Net, "Digital 2024: 5 Billion Social Media Users," We Are Social Indonesia, January 31, 2024, <https://wearesocial.com/id/blog/2024/01/digital-2024-5-billion-social-media-users/>.

<sup>2</sup> "Survei Internet Apjii" (Asosiasi Penyelenggara Jasa Internet Indonesia, 2023), <https://survei.apjii.or.id/home>.

almost every individual in Indonesia accesses and uses the Internet and the number is increasing every year.

Internet access is fairly unlimited, so everyone can easily access it. With this convenience, it is undeniable that someone can lose their personal information and privacy. That is due to the need for more guarantees to secure social media users' personal information. In addition, social media users are often exposed to gender-based violence (GBV) online. Media-based cybercrime is closely related to existing gender roles, women and men.

Plan International interviewed women to understand their experiences using social media platforms. A 21-year-old woman from Myanmar said that cybercrime was still common and difficult to control and manage. The rapid spread of content allows people worldwide to access, comment, and even judge. It harms the victim's psychology.<sup>3</sup>

Gender-based cyber violence occurs on social media with various types including, Cyber Harassment, Cyber Grooming, Hacking, Infringement of Privacy, Malicious Distribution, Revenge Porn, impersonation, defamation and online recruitment.<sup>4</sup> With the rapid development of the Internet, pornography crimes on the Internet involve not only adults, but also children, who are both perpetrators and victims.

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<sup>3</sup> “Free To Be Online Girls And Young Women’s Experiences Of Online Harassment,” 2020.

<sup>4</sup> Jihan Risya Cahyani, Deassy Jacomina Anthoneta Hehanussa, And Yonna Beatrix Salamor, “Kekerasan Berbasis Gender Di Media Sosial,” *Pamali: Pattimura Magister Law Review* 1 (2021).

The term 'revenge porn' is defined as “*the distribution of sexually graphic images of individuals without their consent*” or “*the sharing of intimate images without the consent of the person depicted...*”.<sup>5</sup> In a few words, "revenge porn" is defined as distributing pornographic information without consent, especially from the victim. With the goal of avenging the victim's hurt.

Revenge porn often occurs in adolescents, as this is generally the age when one begins to believe in sexual orientation. Sexual orientation is an enduring pattern of emotional, romantic, and or sexual attraction to a man, woman, or both sexes.<sup>6</sup> At this stage, adolescents begin to recognize their attraction to the opposite sex and begin dating. When in a relationship, women and men often voluntarily have sexual intercourse. This is what triggers revenge porn. With a sense of not accepting the relationship's end. So the perpetrator avenges the hurt by distributing the victim's sexual content.

A survey conducted by eSafety Australia more than 1 in 10 adults have experienced violent revenge porn.<sup>7</sup> One of them is Anna's story, which begins with Anna and Adam, who are dating because they work on the same team. Their relationship was hidden from other colleagues. During their

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<sup>5</sup> Tyrone Kirchengast, “The Limits Of Criminal Law And Justice ‘Revenge Porn’ Criminalisation, Hybrid Responses, And The Ideal Victim,” *University Of South Australia Law Review* 2 (December 10, 2016), <https://doi.org/10.21913/Usrunisaslr.V2i0.1360>.

<sup>6</sup> Isroqunnajah Isroqunnajah Et Al., *Orientasi Seksual: Sikap Mahasiswa Uin Malang* (Uin Maliki Press, 2020), 19.

<sup>7</sup> “Revenge Porn Statistics: Market Report & Data • Gitnux,” Accessed February 20, 2024, <https://gitnux.org/revenge-porn-statistics/>.

relationship, they often spent time together and shared sexual content. In the end, Anna felt that the relationship was not going to work and decided to end it. But Adam did not accept his girlfriend's decision, so Adam sent Anna's sexual images to other colleagues via e-mail. As a result of this incident, Anna's colleagues and boss supported her in filing a report with the authorities and her company's human resources department, resulting in Adam's termination.

Revenge porn cases can not only happen to women, but men often suffer from similar crimes. Revenge Porn was also happened to one of the South Korean students, Min Jun, who was studying in Australia.<sup>8</sup> He met a woman who worked in a doctor's office. They connected via Facebook Messenger, and then had a video call. It didn't take long for the two to get sexual, and the woman ended up sending him a link showing a video of Min-jun masturbating during the call and publishing it online by creating a live website. The woman texted him demanding he transfer \$1,000USD for her to remove the video.

In Mexico, an 18-year-old teenager named Olimpia Coral Melo became a victim of revenge porn.<sup>9</sup> The crime was committed by her ex-boyfriend, who shared a video of her having sex with Melo on social media. However, her ex-boyfriend did not admit to his actions in spreading the

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<sup>8</sup> “Min-Jun | Image-Based Abuse Real Story | Esafety Commissioner,” Accessed February 21, 2024, <https://www.esafety.gov.au/key-issues/image-based-abuse/stories/min-jun>.

<sup>9</sup> “Body Shamed: New Latam Laws Fail To Delete Revenge Porn,” The Star, Accessed February 20, 2024, <https://www.thestar.com.my/Tech/Tech-News/2023/10/26/Body-Shamed-New-Latam-Laws-Fail-To-Delete-Revenge-Porn>.

content. The rapid spread of the video resulted in the emotional effects experienced by Melo, including depression and suicidal thoughts. From the above case, it can be concluded that revenge porn can affect all genders and ages.

Revenge porn cases do not only occur abroad. In Indonesia at the end of 2023, there was a pornography case experienced by a local celebrity with the initials RK. Through verdict Number 616/Pid.Sus/2023/PN JKT.SEL, Bayu Firlen became a defendant in distributing and buying and selling pornographic content, one of which was the content of RK and her ex-boyfriend RP. From the victim's testimony, RP never asked permission from the victim to document so the victim never saved the content.<sup>10</sup> In addition, the victims experience a huge loss of employment and suffer from psychological disorders.

According to data published by the National Commission on Violence against Women (Komnas Perempuan), there has been an increase in the number of complaints of GBV over the past 3 years. The increase was 1,721 reported cases in 2021 and 1,697 cases in 2022, compared to only 940 cases in 2020.<sup>11</sup> Of course, this does not include unreported and unnoticed incidents that may occur. The number of revenge porn crimes in Indonesia has been increasing every year. During the pandemic in 2020, revenge porn

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<sup>10</sup> "Direktori Putusan," Accessed February 2, 2024, <https://putusan3.mahkamahagung.go.id/direktori/putusan/zaeec0cdaa64dc04afb4313334363435.html>.

<sup>11</sup> Komnas Perempuan, "Catatan Tahunan Tentang Kekerasan Terhadap Perempuan," *Komnas Perempuan Republik Indonesia*, 2020.

cases increased from 126 cases in 2019 to 510 cases. In 2021 it will be 489 cases and in 2022 it will be 440 cases.<sup>12</sup>

Each country and continent has its own legal provisions in handling cases of harassment that occur to its citizens. With the rise of revenge porn cases, each state has different regulations in enforcing the law in revenge porn cases. In California the law protecting revenge porn is contained in California Penal Code section 647 (J) (4) which discusses the act of distributing sexual content without the consent of the person concerned. In addition, in Mexico the offense of revenge porn is contained in New Mexico Statutes section 30-37A-1, which contains distributing, publishing or making available sensitive content with electronic devices without the consent of the person concerned. Apart from American countries, Australia also has revenge porn laws. In South Australia, the offenses Act 1953 section 26C on Distribution of invasive image.<sup>13</sup> Meanwhile, New South Wales enforces the revenge porn offense in the Crimes Act 1900 - section 91q on Distribute intimate images without consent.<sup>14</sup>

There are several revenge porn cases that have been decided by the courts in Indonesia. Revenge porn in Indonesia has no law to enforce the case itself. However, through court decisions, the crime of revenge porn uses several related laws, specifically the Criminal Law No. 44 of 2008 on

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<sup>12</sup> Komnas Perempuan, "Catahu2023: Kekerasan Terhadap Perempuan Di Ranah Publik Dan Negara: Minimnya Perlindungan Dan Pemulihan" (Jakarta, 2023).

<sup>13</sup> "Summary Offences Act 1953," 2002, 4.

<sup>14</sup> "Crimes Act 1900 - Sect 91q Distribute Intimate Image Without Consent," Accessed February 27, 2024, [https://www5.austlii.edu.au/au/legis/nsw/consol\\_act/ca190082/s91q.html](https://www5.austlii.edu.au/au/legis/nsw/consol_act/ca190082/s91q.html).



Pornography and also on the Law No. 19 of 2016 on Electronic Information and Transactions.<sup>15</sup> In 2022, Law Number 12 of 2022 on the Crime of Sexual Violence (UUTPKS) was approved.

Although revenge porn laws were enacted to protect victims and punish perpetrators, they still have a huge impact on victims. Revenge porn survivors, especially women, are often held responsible by society and certain authorities for not maintaining their dignity. As a result, some victims choose not to report the crime. This factor is supported by the patriarchal culture that still exists in society. Patriarchal culture leads to unequal gender relations. Sadly, it is often the victim who bears the burden when a case of revenge porn is uncovered in the community.<sup>16</sup>

In addition, the media and the general public often report on the victims' private lives without any obligation to protect their personal data. The stigmatization of the victims has an impact on the psychological well-being of the victims. The long-term psychological effects experienced by victims are very difficult to recover from as a result of their fear of humiliation from the surrounding environment. Therefore, the role of family and surrounding people in supporting and closing the privacy of victims of revenge porn is very important.

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<sup>15</sup> Rahimah Ismah Salimah, "Perlindungan Korban Revenge Porn Dalam Hukum Positif Indonesia," N.D., 6.

<sup>16</sup> Eko Raharjo, Dona Raisa Monica, And Evina Dwi Maiyanti, "Analisis Faktor-Faktor Penyebab Meningkatnya Kasus Pornografi Balas Dendam (Revenge Porn) Di Indonesia," *Lex Lata*, N.D.

Islam states that children are beings who need to be loved and protected because of their helplessness in fulfilling their needs and protecting themselves.<sup>17</sup> In addition, the family has an obligation to take care of fellow family members. The Qur'an in surah At-Tahrim verse 6 explains about protecting oneself and one's family from sin. With that in the case of revenge porn, families need to remind each other and embrace victims by providing support and protecting them.

It seems that, based on the experiences of law enforcement in Indonesia as well as in the United States and Australia, the crime of revenge porn, especially in Indonesia, continues to increase due to the absence of a legal umbrella that provides special protection for victims. This is in contrast to law enforcement abroad which has a special legal umbrella in handling revenge porn cases.

## **B. Statement of Problem**

The issues discussed in this study, based on the background described, are:

1. How do the laws on revenge porn in the United States, Australia and Indonesia compare?
2. How are the rules on revenge porn being applied in Indonesian courts?

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<sup>17</sup> Cut Annisa Syafira Et Al., "Upaya Perlindungan Anak Dalam Pandangan Islam," *Berajah Journal* 2, No. 4 (November 6, 2022): 1, <https://doi.org/10.47353/Bj.V2i4.177>.

### **C. Objective of Research**

The objectives of this research, based on the problem statement above, are as follows:

1. Explanation of the legal concept and treatment of revenge porn in the United States, Australia and Indonesia.
2. To determine the application of revenge porn rules in Indonesian courts.

### **D. Benefit of Research**

1. Theoretical Benefits

The existence of this research is expected to increase the knowledge for the academic community at the Faculty of Sharia and Maulana Malik Ibrahim State Islamic University Malang in general. This research is also expected to provide information for the wider community about how legal handling for revenge porn in Indonesia is compared with the United States and Australia and the appropriate rules in enforcing revenge porn laws in Indonesia.

2. Practical Benefits

The results of this research in the form of a thesis, used as a requirement to obtain a Bachelor of Law degree at the Faculty of Sharia, Maulana Malik Ibrahim State Islamic University Malang.

## **E. Definitions of Key Terms**

Revenge Porn is distributing pornographic content without the consent of the person in the photo or video as a form of jealousy, revenge, or resentment. The distribution of pornographic photos or videos is usually accompanied by threats. The purpose is to humiliate, harass, intimidate, or bribe the person.

## **F. Research Method**

### **1. Type of Research**

This kind of research is normative legal research. According to Mahmud Marzuki, normative legal research is a process of finding legal rules, legal principles and legal doctrines to answer the legal content at hand.<sup>18</sup> Normative legal research is research that discusses law as a norm or rule that applies in society. The object of this research is to compare the similarities and differences of law enforcement on revenge porn crimes in Indonesia with the United States and Australia.

### **2. Research Approach**

This research uses a comparative approach and case approach. The comparative approach is one way in normative research to compare the law of one institution with the law of another institution. From this comparison, elements of differences and similarities can be found from both of them due

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<sup>18</sup> Mahmud Marzuki, *Penelitian Hukum: Edisi Revisi* (Jakarta: Kencana, 2017), 35.

to differences in climate, atmosphere, and history of each nation concerned with different legal systems.<sup>19</sup> Meanwhile, the case approach is research related to legal issues and problems that have become court decisions with permanent legal force.<sup>20</sup> This approach is used so that researchers can find similarities and differences between the legal enforcement of revenge porn in Indonesia and the United States and Australia.

### **3. Types of Data and Legal Materials**

The writing of normative legal research uses data collection techniques by conducting literature studies on legal materials. The type of data used in this research is secondary data. In this study there are three types of legal materials, primary legal materials, secondary legal materials and tertiary legal materials.

#### **a. Primary Legal Material**

Primary legal materials are legal materials that are authoritative or have authority. Primary legal materials consist of legislation, official records or transcripts of legislation, and judicial decisions. The primary legal materials used in this research are,

- 1) Pasal 29 Jo. Pasal 4 Ayat (1) Undang-Undang No.44 Tahun 2008 tentang Pornografi

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<sup>19</sup> Soerjono Soekanto And Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, Cet. Ke-6. (Jakarta: Rajagrafindo Persada, 2006), 33.

<sup>20</sup> Zulfi Diane Zaini, "Implementasi Pendekatan Yuridis Normatif Dan Pendekatan Normatif Sosiologis Dalam Penelitian Ilmu Hukum," *Pranata Hukum* 6, No. 2 (July 31, 2011): 129.

- 2) Pasal 27 ayat (1) jo. Pasal 45 ayat (1) Undang-Undang RI Nomor 19 Tahun 2016 tentang Perubahan Undang-Undang RI Nomor 11 Tahun 2008 tentang Informasi Transaksi Elektronik (ITE)
  - 3) Pasal 14 ayat (1) Undang-Undang Tindak Pidana Kekerasan Seksual.
  - 4) Putusan Pengadilan Negeri Batam dengan Nomor 889/Pid.B/2023/PN Btm
  - 5) Putusan Pengadilan Negeri Malang dengan Nomor 301/Pid.Sus/2023/PN Mlg
  - 6) Putusan Pengadilan Negeri Muara Tewe dengan Nomor 65/Pid.B/2023/PN Mtw
  - 7) Putusan Pengadilan Negeri Jakarta Selatan Nomor 616/Pid.Sus/2023/PN JKT.SEL
  - 8) New Mexico Statutes section 30-37A-1
  - 9) California Penal Code section 647 (J) (4)
  - 10) South Australia Undang-undang pelanggaran 1953 section 26C tentang Distribution of invasive image
  - 11) New South Wales crimes act 1900 - section 91q tentang Distribute intimate image without consent.
- b. Secondary Legal Materials

Secondary legal materials are legal materials in the form of all law-related publications, including textbooks, legal dictionaries, legal journals,

and commentaries on court decisions.<sup>21</sup> Researchers have access to scholarly writings, books, and publications that are relevant to the research.

c. Tertiary Legal Materials

According to Soerjono Soekanto, tertiary legal materials are classified as legal and non-legal tertiary materials. Tertiary legal materials are books, legal dictionaries, legal encyclopedias, legal magazines, and others, while non-legal tertiary materials include books, journals, and discussions that come from outside the legal field such as sociology, economics, politics, philosophy, and others.<sup>22</sup>

#### **4. Legal Material Collection**

Data collection method is a method used to collect data related to research, both written and unwritten. The data collection method used in this research is literature study, by collecting legal materials in the form of laws and regulations, judges' decisions, law books, previous research that has relevance to the research topic.

#### **5. Analysis of Material**

In data analysis, there are stages to analyze the accuracy of the data after it is obtained. Data analysis is performed through the stages of data inspection, classification, verification, analysis, and conclusion.

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<sup>21</sup> Marzuki, *Penelitian Hukum: Edisi Revisi*.

<sup>22</sup> Soerjono Soekanto, Sri Mamudji, *Penelitian Hukum Normatif* (Jakarta: Raja Grafindo Persada, 2006), 33.

## **G. Previous Research**

Previous research is research that has been completed by researchers before the author, the purpose of the existence of previous research is as a reference in research by looking at the differences and similarities between research written by the author and research that has been previously conducted based on studies in research discussions. As a comparison, the author takes several studies that have similarities in the types of problems and discussions with the aim of proving that this research has not been carried out by previous researchers. The author finds several research results related to the discussion to be studied, including:

First, Alvira puspa wardhani, 2022, "Juridical Review of Legal Protection of Crimes Against Victims of Cyberpornography with Revenge Motive (Revenge Porn)". Doctoral thesis, Faculty of Law, Universitas Brawijaya. This thesis contains a discussion of the laws that can ensnare the perpetrators of cyberpornography with revenge motive (revenge porn) and legal protection for victims of the spread of revenge porn content (revenge porn) on social media. The research method used in this research is normative law using a statutory approach and case approach. The results of this study are the criminal law of cyberpornography victims with revenge motives (revenge porn) also explains the laws that can ensnare the perpetrators of criminal acts, which are: Law No. 1 of 1946 on Criminal Provisions, Law No. 44 of 2008 on Pornography, Law No. 19 of 2016 on Amendments to Law No. 11 of 2008 on Electronic Information and



Transactions (ITE), and 4) Law on Criminal Acts of Sexual Violence (TPKS). In addition, legal protection against criminal acts against victims of revenge cyberpornography (revenge porn) is a mandatory protection and must be obtained, because legal protection is a human right and there is no difference between men and women before the law or in obtaining legal protection.

Second, Linda Agustina, 2022, "Legal Standing of Women in Revenge Porn Cases from the Perspective of Viktimology". Thesis of Law Study Program, Faculty of Law, University of Muhammadiyah Magelang. This thesis contains a discussion of the rights that victims of revenge porn should have as protection. The research method used in this research is a normative legal study using legislative and judicial approaches. The result of this research is that the implementation of women's rights as victims of revenge porn is less recognized by victims. Her reputation is tarnished, and negatively stigmatized by society. Women are more vulnerable because they are perceived as weak, give up easily, and are physically weaker, making them more susceptible to Revenge Porn. Victims share images with trusted people.

Third, Renald Markus Sinaga and Manunggal Kusuma Wardaya, Journal of Legal Dynamics Vol. 21 (02) 2021 on "The Right to be Forgotten as Protection for Children Victims of Non-Consensual Pornography Crime". This journal contains a discussion of legal victim protection against underage revenge porn newspapers and their impact. As well as discussing

human rights law in Indonesia and internationally in the phenomenon of revenge porn. The research method used is normative research. The results of this study show that revenge porn causes child victims to experience several side effects (such as behavioral problems and mental disorders). Handling child victims of revenge porn must be done with a victim-centered paradigm or Law No.23 of 2002.

Fourth, Mega Triutami Sundari, 2023, *Das Sollen: Journal of Contemporary Studies of Law and Society* Vol.1, "Victim Blaming for the Dissemination of Pornographic Video Content on Victims of Toxic Relationship and Revenge (Revenge Porn)". This journal contains a discussion of revenge porn committed by ex-lovers or parties when with the aim of bringing down the victim's character. As well as discussing the factors that cause the increase in revenge porn cases and legal protection in Indonesia for victims. The research method used is a normative judicial approach that refers to the law. The results of this study show that there are 5 factors causing the increase in revenge porn cases, which are ineffective legal protection, patriarchal culture, lack of understanding of gender among law enforcement, complaints that backfire on victims, and low understanding of the protection umbrella. The results also show that there are no specific rules that discuss revenge porn.

Fifth, Michelle Chandra Kasih and Irna Nurhayati, 2020, "Legal Protection for Revenge Porn Victim Using Copyright Law: A Comparative Study Between Indonesia and the United States of America". Thesis

Business Law Study Program, Faculty of Law, Gadjah Mada University. This thesis contains a discussion of the possibility of applying the protection of revenge pornography using the Copyright Law as practiced by the United States. The research method used is descriptive normative and empirical by collecting data from applicable law and interviewing legal experts. The results of this study indicate that the Indonesian Copyright Law can be a solution, but with regulatory and moral restrictions. As well as recommending the Indonesian Copyright Law to protect revenge pornography.

Previous Research Table

No	Researcher's name	Title of Research	Equation	Difference
1	Alvira puspa wardhani (Thesis, Legal Studies Program, Faculty of Law, Universitas Brawijaya, 2022)	<i>"Juridical Review of the Legal Protection of Crimes Against Victims of Cyberpornography with the Motive of Revenge Porn"</i>	<ol style="list-style-type: none"> <li>1. Discusses the legal protection of victims of revenge porn</li> <li>2. Using normative legal research</li> </ol>	1. Discusses the legal protection of victims of revenge porn in Indonesia while the author discusses legal protection in Indonesia, the United States, and Australia.
2	Linda Agustina (Thesis of Law Science Study Program, Faculty of	<i>"Legal Standing of Women in Revenge Porn Cases from the Perspective of Victimology"</i>	1. Using revenge porn cases that have been decided by Indonesian courts	1. Discusses the rights of victims of revenge porn while the author

	Law, Universitas Muhammadiyah Magelang, 2022)		2. Using normative legal research	discusses law enforcement. 2. Using cases in Indonesia while the author uses revenge porn cases in several countries.
3	Renald Markus Sinaga and Manunggal Kusuma Wardaya, Journal of Legal Dynamics Vol. 21 (02) 2021	“ <i>The Right to be Forgotten as Protection for Children Victims of Non-Consensual Pornography Crime</i> ”	1. Discusses the law enforcement of revenge porn victims in Indonesia and International 2. Using normative research	1. Discusses law enforcement against victims of child revenge porn while the author discusses law enforcement against victims of revenge porn in general.
4	Mega Triutami Sundari (Das Sollen: Journal of Contemporary Studies of Law and Society Vol.1, 2023)	“ <i>Victim Blaming for the Spread of Pornographic Video Content on Victims of Toxic Relationship and Revenge (Revenge Porn)</i> ”	1. Discussing legal protection for victims of revenge porn or online gender-based violence 2. Using normative jurisprudence research	1. Discusses the legal protection of victims of revenge porn in one country, Indonesia, while the author discusses legal protection in several countries.
5	Michelle Chandra Kasih (Thesis of Business Law Study Program, Faculty of	“ <i>Legal Protection for Revenge Porn Victim Using Copyright Law: A Comparative Study Between</i>	1. Discussing law enforcement against revenge porn in Indonesia	1. Discusses the enforcement of revenge porn using the Job Creation Law, while

	Law, Universitas Gadjah Mada, 2020)	<i>Indonesian and the United States of America”.</i>	with the United States	the author uses the Pornography Law and the ITE Law. 2. Using normative and empirical types of research while the author uses normative types of research
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Table 1

## H. Structure of Discussion

In writing this research, the author will divide it into 5 sub-sections using the following systematics:

### CHAPTER I INTRODUCTION

This thesis begins with an introduction that contains the background of the problems raised by the author, problem formulation, research objectives, theoretical framework, research methods, and writing systematics that serve to provide an overview of the research to be carried out.

### CHAPTER II LITERATURE REVIEW

This section contains presentations related to previous research related to research in order to compare the author's research with previous research. It also presents a theoretical foundation that contains an overview that discusses revenge porn.

### CHAPTER III RESULTS AND DISCUSSION

This section contains an explanation of the results of the research conducted by the author including how the legal concept and handling of revenge porn in Indonesia with America and Australia and the concept of revenge porn rules that are appropriate in Indonesia.

#### **CHAPTER IV CLOSING**

The closing section contains conclusions from the results of research conducted by the author. There are also suggestions that contain academic suggestions for institutions and researchers themselves as well as future research.

## CHAPTER II

### LITERATURE REVIEW

#### A. Gender-Based Violence Online

##### 1. Definition of Gender-Based Violence Online

Violence is etymologically a combination of "*vis*" meaning force or power and "*latus*" meaning to carry.<sup>23</sup> Violence is an act of physical assault on a person or an emotional or mental attack. Violence is often seen in the consequences in the form of physical injuries and disabilities to death, even psychological disorders.

The word gender comes from the Latin *genus*, which means kind, type, or species. Gender can be defined as the differences in roles, functions, and responsibilities between men and women.<sup>24</sup> In other words, gender is the difference between men and women and differences in rights, functions, roles, responsibilities and behaviours.

Gender-based violence is violence committed against a person based on gender. According to UNHCR, gender-based violence is a life-threatening violation of human rights, health, and protection, and occurs against women, children, and even men.<sup>25</sup> Gender-based violence can include sexual, physical, mental harm, to threats of violence, coercion and manipulation.

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<sup>23</sup> Jawade Hafidz Arsyad, "Perlindungan Hukum Korban Kekerasan Berbasis Gender Online (Kbgo) Dalam Hukum Positif Indonesia," *Jurnal Cakrawala Informasi* 2, No. 2 (December 30, 2022): 29, <https://doi.org/10.54066/Jci.V2i2.241>.

<sup>24</sup>

<sup>25</sup> "Gender-Based Violence," Unhcr, Accessed February 2, 2024, <https://www.unhcr.org/what-we-do/protect-human-rights/protection/gender-based-violence>.

## 2. Types of Gender-Based Violence Online

Meanwhile, online gender-based violence is a crime or violence committed through internet technology committed by one party to another by attacking gender. There are 6 types that can be categorised as online gender-based violence, they are:<sup>26</sup>

1. Breach of privacy
2. Surveillance and monitoring
3. Damage to reputation
4. Online harassment
5. Threats and violence
6. Community targeting

Forms of gender-based violence intend to harass the victim based on gender or sexuality. So the victim is attacked because of their gender and sexual identity. This cyber-based sexual violence relates to sexual violence, such as the threat of spreading intimate video content of a sexual nature that can bring down the victim. It can be concluded that online gender-based violence is violence committed by people or parties to other people in the internet domain with a specific purpose, which results in psychological harm.

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<sup>26</sup> Lm Psikologi Ugm, "Satu Tahun Pandemi: Meningkatnya Kekerasan Basis Gender Online – Lm Psikologi Ugm," March 29, 2021, <https://Lm.Psikologi.Ugm.Ac.Id/2021/03/Satu-Tahun-Pandemi-Meningkatnya-Kekerasan-Basis-Gender-Online/>.



## B. Revenge Porn

### 1. Definition of Revenge Porn

In the Oxford dictionary revenge porn is "*revealing or sexually explicit images or videos of a person posted on internet, typically by a former sexual partner, without the consent of the subject and in order to cause them distress or embarrassment*".<sup>27</sup> Revenge porn atau pornografi balas dendam merupakan konten seksual yang disebar luaskan di internet maupun media social tanpa adanya persetujuan dari korban dengan tujuan merugikan korban. Revenge porn dikenal juga dengan istilah Non consensual pornography atau involuntary pornography, yang biasanya digunakan untuk perbuatan penyebaran pornografi tanpa persetujuan pemiliknya.

Revenge porn is sexual content that is disseminated on the internet or social media without the consent of the victim with the aim of harming the victim. Revenge porn is also known as Non consensual pornography or involuntary pornography, which is usually used for the act of distributing pornography without the consent of the owner..

As for the opinion of Mutsui who is one of the legal experts, he defines Revenge Porn as "*the practice of posting and distributing sexually explicit images of an ex-partner on the internet after breakup*". While Frank

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<sup>27</sup> "Revenge-Porn Noun - Definition, Pictures, Pronunciation And Usage Notes | Oxford Advanced Learner's Dictionary At Oxfordlearnersdictionaries.Com," Accessed February 2, 2024, <https://www.oxfordlearnersdictionaries.com/definition/english/revenge-porn?q=revenge+porn>.

defines revenge porn as "*the distribution of sexually graphic images of individuals without their consent*". As for a similar opinion of Kirchengast, which explains "*the sharing intimate images without the consent of the person depicted*".<sup>28</sup> From the opinions of some of these experts, it can be concluded that revenge porn is the act of spreading pornographic content without the consent of the victim.

Revenge porn cases aim to avenge the hurt experienced by the perpetrator to the victim. In most cases in Indonesia, the perpetrator of revenge porn is the victim's ex-boyfriend. The photos or videos are taken when the perpetrator and the victim are still in a relationship with the victim's consent. However, in some cases the perpetrator did not ask for the victim's consent or was recorded without the victim's knowledge. In this case, the loss experienced by the victim is not only a psychological problem but also an impact on the judgement of the surrounding environment.

## 2. Elements of the Crime of Revenge Porn

An act can be classified as a criminal offense if the act has fulfilled the elements of a criminal offense. Revenge porn is analyzed using the elements of a crime according to the Criminal Code, namely:

### a. The existence of an act or behavior

The absolute element in a criminal offense is the act. The opinion put forward by Mutsui, Frank, and Kirchengast regarding revenge porn

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<sup>28</sup> Kirchengast, "The Limits Of Criminal Law And Justice 'Revenge Porn' Criminalisation, Hybrid Responses, And The Ideal Victim."

as nonconsensual pornography is a pornographic act that is carried out without obtaining permission or consent from related parties. Thus, if the pornographic act is carried out with the consent of the relevant party, then the act cannot be said to be a revenge porn crime, but a cyberporn crime in general because basically revenge porn has an element of revenge that can cause harm to someone due to the distribution of pornographic content without that person's consent. Based on the explanation, it can be found that the element of the act is the act of spreading or distributing the pornographic content without the person's consent..

b. The existence of a criminal offense object

Since the behavior is always related to the object of the crime, the object of the crime is always behind the behavioral element. In the case of revenge porn, the object of the criminal offense is explicit pornographic content in images or videos that contain pornographic elements that can cause damage to the parties involved.

c. Error

The element of guilt is a form of intentionality that is seen from the form of action in the form of spreading objects that contain pornographic elements which are contrary to decency in society. In addition, the element of guilt can also be seen from the presence of intent. Intentionality is the will to realize the action and cause the consequences of the action. In revenge porn, the act is done

intentionally with the intention of taking revenge on the party featured in the content.

d. The existence of the unlawful nature of the act

Actions can be reprehensible, which comes from two sources. Formelle wederrechtelijk or against formal law if the act is reproached by law, and materiele wederrechtelijk or against material law if the act is reproached by the legal consciousness of the community. In revenge porn there is clearly an element of unlawfulness which is seen from the elements of the act and the object of the act committed. In accordance with the prohibitions and restrictions in the provisions of Article 4 of the Pornography Law which states the prohibition for every person to produce pornographic content, disseminate, broadcast, and import such content that explicitly contains nudity, genitals, intercourse, and others.

e. The existence of accompanying circumstances

This element is every circumstance when the act is committed that is included in the formulation of the criminal offense. The accompanying circumstances can be about several things, one of which is about the way of doing the act. With the element of how to do it, the element of the act, which is initially abstract, can look more concrete because it is limited by the way of doing the act. In the case of revenge porn, the element of action is disseminating or distributing pornographic content which is done by broadcasting the content on the internet or social media.

## C. Legal Protection

### 1. Definition of Legal Protection

Legal protection etymologically comes from 2 basic words, namely protection and law. The word protection in Indonesian grammar is a place of refuge, things (actions and so on) protect. Meanwhile, in material law, the word protection found in Law Number 23 of 2004 is all efforts aimed at providing a sense of security to victims carried out by the family, advocates, social institutions, police, prosecutors, courts, or other parties both temporarily and based on court decisions. In addition, protection contained in PP No.2 of 2002 is a form of service that must be carried out by law enforcement officials or security forces to provide physical and mental security to victims and witnesses from threats, interference, terror, and violence from any party provided at the stages of investigation, investigation, prosecution, and court hearings.

Meanwhile, the definition of law is rules that are compelling in nature, which determine human behavior in a community environment made by authorized official bodies. Law is a set of rules made by the authorities with the aim of regulating the order of social life which has the characteristics of commanding and prohibiting and has a compelling nature by imposing punitive sanctions for those who violate.<sup>29</sup>

According to Philips M. Hadjon, legal protection for the people is a preventive and repressive government action. Preventive legal protection

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<sup>29</sup> Syamsul Arifin, *Pengantar Hukum Indonesia* (Medan: Medan area University Press, 2012), 20.

aims to prevent disputes, which directs government action to be careful in making decisions based on discretion, and repressive protection aims to resolve disputes including handling in legal institutions.<sup>30</sup>

From the definition of protection and law, it can be concluded that legal protection has a close main relationship between the components in it, namely principles or rules, implementing authorities, enforcement mechanisms, and there are sanctions on each legal protection regulation, so that its legal binding force can be enforced and legally accounted for.

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<sup>30</sup> Satjipto Rahardjo, *Ilmu Hukum* (Citra Aditya Bakti, 2000), 55.

## CHAPTER III

### RESEARCH RESULTS AND DISCUSSION

#### A. A Comparison of Revenge Porn Laws in the United States, Australia, and Indonesia

Cyber law is a relatively new area of law regulating information and communication technology use. The latest legal regime is defined as a legislative way to anticipate the phenomenon of convergence and information technology in the digital data age. As the use of electronic media as a means of transaction and communication increases, so does the number of crimes committed in cyberspace.

In the context of cyberpornography, sexual harassment can be understood as a form of online gender-based violence that uses technology to harass victims based on their sexuality. Online gender-based violence is defined as a type of gender-based violence that occurs on the Internet and uses technology to harass victims based on their sexuality.<sup>31</sup> It is important to recognize that there are various forms of online gender-based violence, including but not limited to cyber grooming, revenge porn, cyber hacking, impersonation, malicious distribution, and cyberstalking.

It would be remiss of us not to acknowledge that sexual violence perpetrated on the Internet is not a new phenomenon. According to the 2023 Annual Record, the data from Komnas Perempuan indicates that there were

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<sup>31</sup> Fadillah Adkiras, Fatma Reza Zubarita, And Zihan Tasha Maharani Fauzi, "Konstruksi Pengaturan Kekerasan Berbasis Gender Online Di Indonesia," *Jurnal Lex Renaissance* 6, No. 4 (October 1, 2021): 2, <https://doi.org/10.20885/Jlr.Vol6.Iss4.Art10>.

1,697 cases of KBGO in 2022. Notably, most perpetrators were ex-boyfriends, with a total of 534 cases, while boyfriends accounted for 220 cases.<sup>32</sup> This condition illustrates that sexual violence in the digital world is triggered by the limitations of meeting in the real world and the increasing intensity of using digital platforms.

Law No. 44/2008 on Pornography in Indonesia defines pornography as images, sketches, illustrations, photographs, writings, sounds, moving images, animations, cartoons, conversations, gestures, or other forms of messages through various forms of communication media and/or public performances, which contain obscenity or sexual exploitation.<sup>33</sup> Revenge pornography, also called revenge porn, is a type of gender-based violence (GBV) on the Internet. It is also a type of pornography with a new modus operandi in Indonesia. For this reason, there is still no clear definition of revenge porn.

One of the negative effects of the advancement of information technology and the Internet is revenge pornography, which causes deviant behavior. Some cases, such as the criminal offense of revenge pornography leading to Internet crimes, should be carefully watched and not underestimated. Revenge porn, also known as revenge porn, is when a spouse or ex-lover posts sexual content without the victim's knowledge. Women are the most victimized in revenge porn cases because the

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<sup>32</sup> Komnas Komnas, "Catatan Tahunan Tentang Kekerasan Terhadap Perempuan," *Komnas Perempuan Republik Indonesia*, 2023.

<sup>33</sup> Pasal 1 Ayat 1 Undang-Undang Nomor 44 Tahun 2008 Tentang Pornografi



perpetrators start their actions by targeting women as victims, forcing them to post pictures or videos with sexual content.

Revenge porn is usually committed by ex-lovers or third parties who try to ruin the victim's reputation by distributing pornographic videos. According to Komnas Perempuan, the high number of revenge porn perpetrators includes 549 ex-boyfriends and 10 ex-husbands.<sup>34</sup> When a sexually explicit video is widely shared or distributed without the consent of the person involved in the recording with the intent of revenge, or revenge porn, it is a clear violation of another person's right to privacy, and the distributor of the video should be arrested. However, in some revenge porn cases, the victim is always blamed. Victims of revenge porn are the ones who are blamed, harmed, and suffer the most.

Consider countries like Australia and the United States that specifically regulate revenge porn. In Australia, there have been significant developments in law enforcement against revenge porn. In 2018, the Australian government introduced the Online Safety Improvement (Non-consensual Sharing of Intimate Images) Act 2018 as part of its efforts to address the issue of revenge porn.<sup>35</sup> This law makes the Act of sharing "intimate images" without the consent of the individual pictured in the image a criminal offense under Australian law. The Act provides for serious

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<sup>34</sup> Perempuan, "Catahu2023: Kekerasan Terhadap Perempuan Di Ranah Publik Dan Negara: Minimnya Perlindungan Dan Pemulihan," 105.

<sup>35</sup> Majid Yar And Jacqueline Drew, "Image-Based Abuse, Non-Consensual Pornography, Revenge Porn: A Study Of Criminalization And Crime Prevention In Australia And England & Wales," March 13, 2020, 582, <https://doi.org/10.5281/zenodo.3709306>.

criminal penalties, with the penalty of imprisonment for offenders found guilty of sharing intimate images without consent. In addition, the Act also establishes a civil sanctions regime against internet and social media companies that fail to comply with orders to remove unlawful content related to revenge porn.

Several states, including Queensland, New South Wales, Victoria, South Australia, the Australian Capital Territory, and the Northern Territory have taken special care of revenge porn by passing amendments to the penal code.<sup>36</sup> This amendment specifically makes the act of distributing and threatening to distribute intimate images without consent a criminal offense. As such, the act of distributing intimate images without the consent of the individual photographed in the image has been recognized as a serious legal offense in the state. This demonstrates the local government's commitment to protecting the privacy and dignity of individuals from the unauthorized dissemination of intimate images, as well as providing legal protection to victims of revenge porn.

One of the states, South Australia, has made revenge porn a serious criminal offense that can be penalized. In this state, revenge porn can violate several laws relating to defamation, privacy, and sexual crimes. The legislation in place to address revenge porn in South Australia is contained

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<sup>36</sup> Majid Yar And Jacqueline Drew, "Image-Based Abuse, Non-Consensual Pornography, Revenge Porn: A Study Of Criminalization And Crime Prevention In Australia And England & Wales," March 13, 2020, <https://doi.org/10.5281/zenodo.3709306>.

in the Summary Offences Act 1953 section 26C on Distribution of Invasive Image. This section discusses,

1. A person who distributes an invasive image of another person, knowing or having reason to believe that the other person
  - a. does not consent to that particular distribution of the image; or
  - b. does not consent to that particular distribution of the image and does not consent to distribution of the image generally, is guilty of an offence.

Maximum penalty:

- a. if the invasive image is of a person under the age of 17 years—\$20 000 or imprisonment for 4 years;
  - b. in any other case—\$10 000 or imprisonment for 2 years.
2. It is a defence to a charge of an offence against this section to prove
    - a. that the conduct constituting the offence
      - 1) was for a purpose connected to law enforcement; or
      - 2) was for a medical, legal or scientific purpose; or
    - a. that the image was filmed by a licensed investigation agent within the meaning of the Security and Investigation Agents Act 1995 and occurred in the course of obtaining evidence in connection with a claim for compensation, damages, a payment under a contract or some other benefit and the distribution of the image was for a purpose connected with that claim.<sup>37</sup>

The law discusses the prohibition of distributing images that show a person in nude or sexually explicit situations without the consent of the party in the image. This offense is punishable by a penalty of up to 20,000 Australian dollars and a prison sentence of 2 years to 4 years.

In the different states of New South Wales, law enforcement in revenge porn cases is contained through amendments to criminal laws that specifically cover the act of distributing and threatening to distribute intimate images without consent as a criminal offense. The amendment to

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<sup>37</sup> “Summary Offences Act 1953,” 4.

Crime ACT 1900 Section 91Q on Distribute intimate image without Consent discusses the following,

**91Q Distribute intimate image without consent**

- b. A person who intentionally distributes an intimate image of another person
  - i. without the consent of the person, and
  - ii. knowing the person did not consent to the distribution or being reckless as to whether the person consented to the distribution,is guilty of an offence.

Maximum penalty--100 penalty units or imprisonment for 3 years, or both.

- c. A prosecution of a person under the age of 16 years for an offence against this section is not to be commenced without the approval of the Director of Public Prosecutions.<sup>38</sup>

This amendment includes a definition of criminal acts related to revenge porn, which includes the unauthorized dissemination of intimate images, as well as image manipulation such as body alteration or face swapping. With the inclusion of image manipulation, such as body alteration or face swapping, in the definition of criminal acts related to revenge porn, the New South Wales Criminal Code provides broader protection to individuals whom the practice may victimize. It demonstrates the government's seriousness in handling various forms of unauthorized dissemination of intimate images, including image manipulation that can damage an individual's reputation and privacy. The amendments also provide a clear legal basis for law enforcement to take action against

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<sup>38</sup> "Crimes Act 1900 - Sect 91q Distribute Intimate Image Without Consent."

revenge porn perpetrators who manipulate images to harm the individuals photographed in those images.

In the rules that have been explained, it can be concluded that law enforcement against revenge porn in Australia is very specific by building special rules. In addition, the government in Australia provides a special website to deal with the problem of revenge porn by imposing prison sanctions on revenge porn perpetrators. The Esafety Commissioner is an independent organization in Australia that focuses on online safety. It acts as a regulator and educator to protect Australians from cybercrime.<sup>39</sup> ESafety also includes efforts to protect internet users, especially children and young people, from cybercrimes such as cyberbullying, online grooming, online fraud as well as online sexual harassment such as Revenge porn.

The eSafety Commissioner is responsible for overseeing and regulating online safety issues. It works to provide advice, information, and support to individuals and families on how to use the internet safely and deal with online offenses and internet abuse. The eSafety Commissioner typically has the authority to issue warnings, request the removal of harmful content, and sanction online offenders, as well as raise public awareness about the importance of online safety and provide resources to help individuals who are victims of online harassment or abuse.

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<sup>39</sup> Lilly Moody, Linda Marsden, And Betty Nguyen, “Consultations With Young People To Inform The Esafety Commissioner’s Engagement Strategy For Young People,” N.D.

From the legal handling of revenge porn in South Australia and New South Wales, it can be concluded that the governments in both states are paying attention to sexual crimes that occur in the digital world. Establishing specific regulations and providing online services enabling victims to report and become aware of their obligations and rights constitute an essential aspect of the process.

Similar to Australia, the United States has revenge porn laws that vary from state to state. Some states have laws that specifically criminalize the act of revenge porn, while other states may not have specific laws regarding this issue. At the federal level, the United States does not yet have a federal law that explicitly regulates revenge porn.

However, some states have adopted laws that prohibit revenge porn. California has its own California Sexual Privacy Offenses Act that covers revenge porn. Such laws usually make it illegal to distribute sexually explicit material without the permission of the person involved. The criminal statute that covers revenge porn laws in the state is contained in California Penal Code section 647 (J) (4) which explains as follows;

(J) (4) (A) A person who intentionally distributes or causes to be distributed the image of the intimate body part or parts of another identifiable person, or an image of the person depicted engaged in an act of sexual intercourse, sodomy, oral copulation, sexual penetration, or an image of masturbation by the person depicted or in which the person depicted participates, under circumstances in which the persons agree or understand that the image shall remain private, the person distributing the image knows or should know that distribution of the image will cause serious emotional distress, and the person depicted suffers that distress.

(B) (i) A person intentionally distributes an image described in subparagraph (A) when that person personally distributes the image.

(ii) A person intentionally causes an image described in subparagraph (A) to be distributed when that person arranges, specifically requests, or intentionally causes another person to distribute the image.

(C) As used in this paragraph, the following terms have the following meanings:

(i) “Distribute” includes exhibiting in public or giving possession.

(ii) “Identifiable” has the same meaning as in paragraphs (2) and (3).

(iii) “Intimate body part” means any portion of the genitals, the anus and, in the case of a female, also includes any portion of the breasts below the top of the areola, that is either uncovered or clearly visible through clothing.

(D) It shall not be a violation of this paragraph to distribute an image described in subparagraph (A) if any of the following applies:

(i) The distribution is made in the course of reporting an unlawful activity.

(ii) The distribution is made in compliance with a subpoena or other court order for use in a legal proceeding.

(iii) The distribution is made in the course of a lawful public proceeding.

(iv) The distribution is related to a matter of public concern or public interest. Distribution is not a matter of public concern or public interest solely because the depicted individual is a public figure.

(5) This subdivision does not preclude punishment under any section of law providing for greater punishment.

(k) (1) A second or subsequent violation of subdivision (j) is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars (\$2,000), or by both that fine and imprisonment.

(2) If the victim of a violation of subdivision (j) was a minor at the time of the offense, the violation is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars (\$2,000), or by both that fine and imprisonment.<sup>40</sup>

California Penal Code Section 647 (j) describes the distribution of sexual content without the consent of the relevant parties. In this rule, the

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<sup>40</sup> “Law Section,” Accessed May 1, 2024, [https://leginfo.ca.gov/Faces/Codes\\_Displaysection.Xhtml?Lawcode=Pen&Sectionnum=647](https://leginfo.ca.gov/Faces/Codes_Displaysection.Xhtml?Lawcode=Pen&Sectionnum=647).

perpetrator will be subject to a prison sentence of up to 6 months and a penalty of up to 1,000 US dollars.

Enforcement of revenge porn laws in California can not only be followed up with criminal channels, but through civil channels as well. Civil actions relate to personal disputes between individuals or entities, aiming for compensation and resolution through a plaintiff-initiated lawsuit. In civil actions, revenge porn perpetrators can be sued using California Civil Code Section 1708.85(a). The statute explains as follows;

**1708.85.** (a) A private cause of action lies against a person who intentionally distributes by any means a photograph, film, videotape, recording, or any other reproduction of another, without the other's consent, if (1) the person knew, or reasonably should have known, that the other person had a reasonable expectation that the material would remain private, (2) the distributed material exposes an intimate body part of the other person, or shows the other person engaging in an act of intercourse, oral copulation, sodomy, or other act of sexual penetration, and (3) the other person suffers general or special damages as described in Section 48a.<sup>41</sup>

The law is meant to protect individuals from the emotional and financial harm caused by the crime of revenge porn. It also gives individuals the right to bring civil suits against people who knowingly distribute their intimate images or videos without consent. It can be concluded that revenge porn law enforcement in the state of California is very specific, with two laws covering revenge porn crimes, which also take into account the impact on victims.

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<sup>41</sup> "Law Section," Accessed May 1, 2024, [https://leginfo.ca.gov/Faces/Codes\\_Displaysection.Xhtml?Lawcode=Civ&Sectionnum=1708.85](https://leginfo.ca.gov/Faces/Codes_Displaysection.Xhtml?Lawcode=Civ&Sectionnum=1708.85).



The state of New Mexico also applies special rules to deal with the crime of revenge porn. Revenge porn in New Mexico is governed by New Mexico Statutes Annotated, sections 30-37A-1 to 30-37A-4. Revenge porn in New Mexico is defined as the act of distributing images or video recordings depicting sexual or other intimate acts of individuals without their permission. Violations of this law are subject to criminal penalties. In addition, the law contains the following;

A. Unauthorized distribution of sensitive images consists of distributing, publishing or otherwise making available, by an electronic communications device or other means, sensitive images of a person, with or without information identifying that person, without that person's consent:

3. with the intent to:
  - a) harass, humiliate or intimidate that person;
  - b) incite another to harass, humiliate or intimidate that person;
  - c) cause that person to reasonably fear for that person's own or family members' safety;
  - d) cause that person to suffer unwanted physical contact or injury; or
  - e) cause that person to suffer substantial emotional distress; and
4. where the conduct is such that it would cause a reasonable person to suffer substantial emotional distress.<sup>42</sup>

New Mexico further has a law that criminalizes revenge porn as a class 4 felony, which is punishable by imprisonment of up to 18 months and a penalty of up to USD 5,000. The law also provides provisions to increase the punishment if the offender had malicious intent or committed the act with the intention of harming or annoying the victim.

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<sup>42</sup> "New Mexico Statutes 30-37a-1. Unauthorized Distribution Of Sensitive Images; Penalties » Lawserver," Accessed May 2, 2024, [https://www.lawserver.com/law/state/new-mexico/nm-statutes/new\\_mexico\\_statutes\\_30-37a-1#Google\\_Vignette](https://www.lawserver.com/law/state/new-mexico/nm-statutes/new_mexico_statutes_30-37a-1#Google_Vignette).

While the revenge porn laws in New Mexico and California share the goal of protecting individuals from the dissemination of sexually explicit material without their permission, there are differences in the enforcement of the laws in the states. In New Mexico, revenge porn laws are governed by the New Mexico Sexual Privacy Offenses Act. However, enforcement of revenge porn laws in New Mexico may vary depending on the case and the legal resources available.

On the other side, California has the California Sexual Privacy Offenses Act, which is more specific and detailed in regulating revenge porn. Enforcement of revenge porn laws in California is through criminal and civil penalties. The enforcement of revenge porn laws in California may be more stringent and structured compared to New Mexico.

In Indonesian positive law, the regulation on revenge porn refers to several regulations, namely, "Law Number 11 of 2008 on Electronic Information and Transactions" (ITE Law), "Law Number 44 of 2008 on Pornography" (Pornography Law), and in 2022 the Indonesian House of Representatives (DPR RI) officially passed Law Number 12 of 2022 on the Crime of Sexual Violence (TPKS Law). However, these regulations do not specifically guarantee protection for victims due to their very general formulations with limited elements.

Explanations of acts related to revenge porn in several provisions of the legislation in force in Indonesia, including the following:

1. Law No. 44 Year 2008 on Pornography

"Every person is prohibited from producing, reproducing, duplicating, disseminating, broadcasting, importing, exporting, offering, trading, renting, or making available pornography that explicitly contains: intercourse including deviant intercourse; sexual violence; masturbation; nudity or the appearance of nudity; genitals; or child pornography." Article 4 paragraph (1)

2. Law No. 19 Year 2016 jo Law No. 11 Year 2008 on Electronic Information and Transactions

"Every person intentionally and without right distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that have moral content." Article 27 paragraph (1)

3. Law No. 12 of 2022 on the Crime of Sexual Violence

"Any person who without right:

- a. Recording and/or taking sexually charged images or screenshots against the will or without the consent of the person who is the object of the recording or image or screenshot;
- b. Transmits electronic information and/or electronic documents that are sexually charged against the will of the recipient that are directed towards sexual desires; and/or
- c. Stalking and/or tracking using an electronic system of the person who is the object of the electronic information/document for sexual purposes." Article 14 paragraph (1).

The existing regulations in the Criminal Code and outside the Criminal Code have not specifically regulated the crime of revenge porn. Therefore, it is feared that it will impact the legal vacuum of the situation, creating legal uncertainty that, in the long run, can lead to legal chaos. Regulations related to Online Gender-Based Violence (KBGO), especially Revenge Porn, can previously be seen in Law Number 44 of 2008 concerning Pornography, Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and

Transactions. However, in its application, the two positive laws in Indonesia cause problems related to one another. Often, the provisions in the ITE Law cause uncertainty, inconsistency between law enforcement, and overlapping rules with provisions in other laws and regulations. In this case, victims often do not get their rights that should be protected by law.

The differences in law enforcement of revenge porn in these three countries show that each country has different strategies and laws for handling revenge porn cases with the same goal of providing legal protection and stopping the dissemination of pornographic content. This difference in law enforcement is motivated by the different legal systems adopted by each country. The enforcement of revenge porn laws in the three countries is by the following table:

Revenge porn law enforcement table

No	Nation		Legal Protection
1	Australia	South Australia	<p>Summary Offences Act 1953 section 26C Distribution of Invasive Image</p> <p>1. A person who distributes an invasive image of another person, knowing or having reason to believe that the other person</p> <p>c. does not consent to that particular distribution of the image; or</p> <p>d. does not consent to that particular distribution of the image and does not consent to distribution of the image generally, is guilty of an offence.</p> <p>Maximum penalty:</p> <p>c. if the invasive image is of a person under the age of 17 years—\$20 000 or imprisonment for 4 years;</p> <p>d. in any other case—\$10 000 or imprisonment for 2 years.</p>

		New South Wales	<p>91Q Distribute intimate image without consent</p> <p>d. A person who intentionally distributes an intimate image of another person</p> <p>i. without the consent of the person, and</p> <p>ii. knowing the person did not consent to the distribution or being reckless as to whether the person consented to the distribution,</p> <p>is guilty of an offence.</p> <p>Maximum penalty--100 penalty units or imprisonment for 3 years, or both.</p> <p>A prosecution of a person under the age of 16 years for an offence against this section is not to be commenced without the approval of the Director of Public Prosecutions.</p>
2	United State	California	<p>(J) (4) (A) A person who intentionally distributes or causes to be distributed the image of the intimate body part or parts of another identifiable person, or an image of the person depicted engaged in an act of sexual intercourse, sodomy, oral copulation, sexual penetration, or an image of masturbation by the person depicted or in which the person depicted participates, under circumstances in which the persons agree or understand that the image shall remain private, the person distributing the image knows or should know that distribution of the image will cause serious emotional distress, and the person depicted suffers that distress.</p> <p>(5) This subdivision does not preclude punishment under any section of law providing for greater punishment.</p> <p>(k) (1) A second or subsequent violation of subdivision (j) is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars (\$2,000), or by both that fine and imprisonment.</p> <p>(2) If the victim of a violation of subdivision (j) was a minor at the time of</p>

			<p>the offense, the violation is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars (\$2,000), or by both that fine and imprisonment</p> <p>California Civil Code Section <b>1708.85.</b> (a) A private cause of action lies against a person who intentionally distributes by any means a photograph, film, videotape, recording, or any other reproduction of another, without the other's consent, if (1) the person knew, or reasonably should have known, that the other person had a reasonable expectation that the material would remain private, (2) the distributed material exposes an intimate body part of the other person, or shows the other person engaging in an act of intercourse, oral copulation, sodomy, or other act of sexual penetration, and (3) the other person suffers general or special damages as described in Section 48a</p>
		New Mexico	<p>New Mexico Statutes Annotated, section 30-37A-1 until 30-37A-4.<sup>43</sup></p> <p>A. Unauthorized distribution of sensitive images consists of distributing, publishing or otherwise making available, by an electronic communications device or other means, sensitive images of a person, with or without information identifying that person, without that person's consent:</p> <p>5. with the intent to:</p> <p>f) harass, humiliate or intimidate that person;</p> <p>g) incite another to harass, humiliate or intimidate that person;</p> <p>h) cause that person to reasonably fear for that person's own or family members' safety;</p> <p>i) cause that person to suffer unwanted physical contact or injury; or</p>

<sup>43</sup> Hayden Hilliard, "Rewriting Arizona's Revenge Porn Statute To Fill The Gap In Sex Crime Punishment," *Arizona State Law Journal*, N.D., 10.

			j) cause that person to suffer substantial emotional distress; and where the conduct is such that it would cause a reasonable person to suffer substantial emotional distress.
3	Indonesia		<p><b>1. Law No. 44 Year 2008 on Pornography</b>  "Every person is prohibited from producing, reproducing, duplicating, disseminating, broadcasting, importing, exporting, offering, trading, renting, or making available pornography that explicitly contains: intercourse including deviant intercourse; sexual violence; masturbation; nudity or the appearance of nudity; genitals; or child pornography."  Article 4 paragraph (1)</p> <p><b>2. Law No. 19 Year 2016 jo Law No. 11 Year 2008 on Electronic Information and Transactions</b>  "Every person intentionally and without right distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that have moral content." Article 27 paragraph (1)</p> <p><b>3. Law No. 12 of 2022 on the Crime of Sexual Violence</b>  "Any person who without right:</p> <p>a. Recording and/or taking sexually charged images or screenshots against the will or without the consent of the person who is the object of the recording or image or screenshot;</p> <p>b. Transmits electronic information and/or electronic documents that are sexually charged against the will of the recipient that are directed towards sexual desires; and/or</p> <p>c. Stalking and/or tracking using an electronic system of the person who is the object of the electronic information/document for sexual purposes." Article 14 paragraph (1).</p>

Table. 2

In Indonesia, the legal system is based on the constitutional law contained in the 1945 Constitution. It is a combination of traditional, Islamic, Dutch, and Roman legal systems. The Indonesian legal system is dualistic, which recognizes and combines national and customary law. It is divided into two systems: the criminal law system and the civil law system.

Meanwhile, the United States has a different legal system from that of Indonesia. This country adheres to the common law legal system based on precedents or previous court decisions. This means the court decides a case based on previous court decisions with similar facts. The United States legal system also recognizes the country's constitution as the supreme law. The United States legal system consists of two levels, namely Federal and State.

Australia's legal system takes many forms, including a written constitution, unwritten constitutional conventions, statutes, regulations, and a judicially determined common law system. Its legal institutions and traditions are substantially derived from the English legal system. Australia is a common-law jurisdiction, i.e., its court system is derived from the English common law system. The country's common law is the same across the states and territories.

Based on the enforcement of revenge porn laws in Australia and the United States, the enforcement of revenge porn laws in Indonesia is relatively weak. This is based on the absence of special protection for



victims of revenge porn. In addition, in the consideration of judges in the verdict of revenge porn cases, they often use the Pornography Law and the Electronic Transaction Information Law rather than the Sexual Violence Crime Law. Meanwhile, in Australia and the United States, the protection and law enforcement for victims of revenge porn is very clear. It provides a special space for victims to understand their rights and obligations.

Table of advantages and disadvantages of revenge porn law enforcement in Australia, United State, and Indonesia

No.	State	Advantages	Disadvantages
1	Australia	<ol style="list-style-type: none"> <li>1. Rules established in states like South Australia and New South Wales provide strong laws to deal with revenge porn.</li> <li>2. Provides a specialized form called Esafety that works to assist victims in understanding their rights and obligations as well as a complaint form.</li> </ol>	<ol style="list-style-type: none"> <li>1. Implementation of laws differs between states, which can create complexity in cases involving victims or perpetrators in more than one state.</li> </ol>
2	United State	<ol style="list-style-type: none"> <li>1. Have special regulations to deal with revenge porn crimes.</li> <li>2. In California, enforcement of revenge porn is not only through criminal law, but also through civil law.</li> </ol>	<ol style="list-style-type: none"> <li>1. Some states only focus on prosecuting perpetrators, without providing specialized services to victims.</li> </ol>

3	Indonesia	<ol style="list-style-type: none"> <li>1. Have a TPKS Law that can provide protection to victims.</li> <li>2. The existence of a special institution in the form of the National Commission on Violence against Women.</li> </ol>	<ol style="list-style-type: none"> <li>1. The courts have used the pornography law and the Electronic Transaction Information Law rather than the TPKS Law.</li> <li>2. The applicable laws are still unable to provide special enforcement.</li> <li>3. Not providing special services to victims.</li> </ol>
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Table 3

### B. Legal Application of Revenge Porn in Indonesian Courts

The increase in activity in the digital world is in line with the increasing number of cases of gender-based online violence (GBV). According to data uploaded by Komnas Perempuan in the 2023 Annual Report (CATAHU), there has been a sharp growth in the last 3 years. Online violence usually occurs and affects both men and women, but women are considered more likely to be victims from a gender perspective, at 71%. According to Komnas Perempuan's report on CATAHU 2023, revenge porn includes 13 groups of gender-based cyber violence, the highest number in 2021.<sup>44</sup> Like other forms of sexual violence, this figure is just the tip of the iceberg, as many cases go unreported and become dark numbers.

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<sup>44</sup> Perempuan, "Catahu2023: Kekerasan Terhadap Perempuan Di Ranah Publik Dan Negara: Minimnya Perlindungan Dan Pemulihan."

### Number of Online Gender-Based Violence

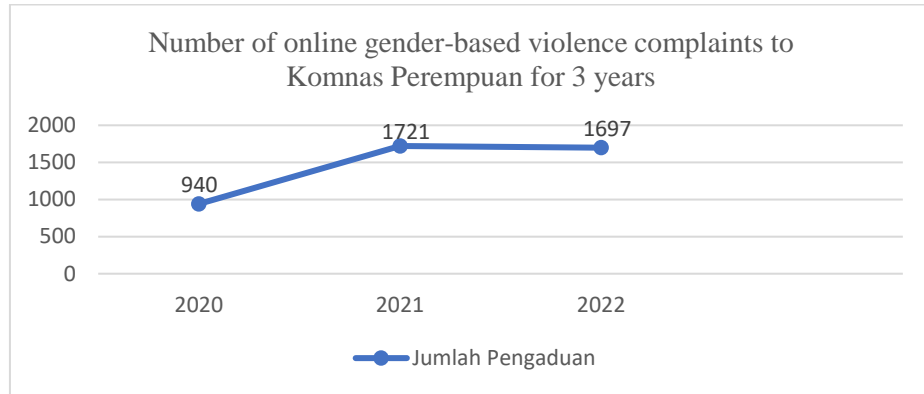


Table 4

Revenge porn is one type of Online Gender-Based Violence. Revenge porn is the act of disseminating through electronic media sexually charged material of the victim for revenge on the perpetrator. This sexually charged material is usually done when the victim and the perpetrator still have a good relationship as a couple, either as boyfriends or husbands. Often, these acts are preceded by sextortion, which is a threat to the victim to return to the relationship or to perform an act desired by the perpetrator, not necessarily in the form of extortion for monetary purposes. When the victim does not carry out the perpetrator's wishes, the sexually charged material is then uploaded for revenge.

The number of revenge porn crimes in Indonesia is increasing every year. During the pandemic in 2020, revenge porn cases increased to 510 cases from the previous 489 cases in 2021 and 440 cases in 2022. The high number of ex-boyfriends, 549 people, in addition to ex-husbands, and 10

cases of violence against women in cyberspace are important indications of revenge porn.

The relationship between revenge porn and the use of smartphones is an important factor in the spread and consumption of revenge porn. Smartphones can easily capture, save, and share photos and videos through various apps and social media platforms. This can lead to the risk of abuse, where intimate photos or videos that teens have can be taken and shared by others without their permission. In addition to smartphones, social media is a factor in the spread of revenge porn content. Social media plays an important role in influencing teens' perceptions of their bodies and sexuality. The desire to look perfect and get attention can lead teens to engage in harmful behaviors, including uploading or sharing intimate content as a form of social validation.

It can be argued that the role of smartphones in the spread of revenge porn and the importance of education on privacy, digital security, and the legal consequences of revenge porn. Teenagers' dependence on smartphones and social media is not a good thing. The role of parents, schools, and educational institutions should be active in providing teens with an understanding of the risks associated with revenge porn and how to manage smartphone use with wisdom.

Indonesia, as a state of law, has an obligation to protect the rights of its citizens by making adequate regulations. The state also has an obligation to respect, protect, and fulfill the human rights of each of its citizens. As an

obligation holder, the state should be able to fulfill its obligations in implementing human rights, both national and international.

Several revenge porn cases in Indonesia have been resolved through legal action. One is the decision number 65/Pid.b/2023/PN. By the way, the perpetrator and the victim are a couple who have been dating since 2020. The sexual content created by the perpetrator and the victim was intended for personal consumption. However, in 2022, the perpetrator spread the content to the victim's friends via Messenger. This was the perpetrator's intention because he felt hurt after his relationship with the victim ended. This case refers to Article 29 Jo. Article 4 Paragraph (1) of Law No. 44 of 2008 on Pornography and Article 45 Paragraph (1) Jo. Article 27 Paragraph (1) of Law No. 19 of 2016 on the Amendment to Law No. 11 of 2008 on Electronic Information and Transactions. The perpetrator is charged with imprisonment for 5 years and a penalty of Rp.500,000,000; if not paid, it will be replaced by 3 months imprisonment.

In the difference case number 301/Pid.b/2023/PN.mlg, the victim did not know that the offender was recording the immoral scene, which was done by mutual consent. The relationship between the victim and the perpetrator was that of a couple, but the victim asked to break up with the perpetrator. The perpetrator found this unacceptable and distributed the sexual content to the victim's younger sibling and sent it to the victim's friends and the victim's work account through direct messaging on Instagram and Facebook. This case refers to Article 45 Paragraph (1) Jo.

Article 27 Paragraph (1) of Law No. 19 of 2016 on the amendment of Law No. 11 of 2008 on electronic information and transactions. The perpetrator was sentenced to 2 years imprisonment and a penalty of Rp.100,000,000.00.

The same case occurred in Batam through case number 899/Pid.b/2023/PN.Btm. The victim and perpetrator had been a couple since 2022. Both of them had sexual intercourse with each other in April. During the sexual intercourse, the perpetrator recorded the scene without the knowledge of the victim. In July 2023, the perpetrator tagged the victim in one of the TikTok videos containing 15 seconds of her content. It is known that this happens every time the relationship between the victim and the perpetrator is having problems, where the perpetrator continues to threaten by spreading the content to the closest people to the workplace. In August, the victim received a threat from another account asking her to transfer Rp.2,000,000. Until September 2023, the victim's indecent content was spread and known by the entire office where the victim worked.

In this case, there are elements of producing, making, reproducing, duplicating, distributing, broadcasting, importing, exporting, offering, selling, renting, or providing pornography that explicitly contains sexual intercourse, including deviant sexual intercourse, sexual violence, masturbation, or masturbation, nudity or the appearance of nudity, genitals, or child pornography. This refers to Article 29 Jo. Article 4 Paragraph (1) of the Indonesian Law No. 44 of 2008 on pornography with a prison sentence of 1 year and 6 months and a penalty of Rp.250,000,000.00.

The case above can be summarized as follows:

Table of revenge porn cases in Indonesian Courts

No	Case Numbers	Deployment	Legal Considerations
1	65/Pid.b/2023/PN.Mtw	Distribution of sexual content to relatives via Messenger without the consent of the victim	Article 29 Jo. Article 4 Paragraph (1) of Law No. 44 of 2008 on Pornography and Article 45 Paragraph (1) Jo. Article 27 Paragraph (1) of Law of the Republic of Indonesia No.19 of 2016 concerning Amendments to Law of the Republic of Indonesia No. 11 of 2008 concerning Electronic Information and Transactions. The perpetrator is charged with imprisonment for 5 years and a penalty of Rp.500,000,000.00,
2	301/Pid.b/2023/PN.mlg	Distributed sexual content to the victim's younger sibling and sent it to the victim's friends and work accounts via direct message on Instagram and Facebook.	Article 45 Paragraph (1) Jo. Article 27 Paragraph (1) of Law No.19 of 2016 on the Amendment to Law No. 11 of 2008 on Electronic Information and Transactions. Prison sentence of 2 years with a penalty of Rp.100.000.000,00
3	899/Pid.b/2023/PN.Btm	Distributing sexual content through Tiktok with threatening the victim.	Article 29 Jo. Article 4 Paragraph (1) of Law No. 44 of 2008 on Pornography. Prison sentence of 1 year 6 months and a total amount of

			Rp.250.000.000,00 as penalty.
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Tabel 5

From the above cases, it can be concluded that Indonesia's prosecution of revenge porn uses the Pornography Law and the Electronic Transaction Information Law. Article 29 Jo. Article 4 Paragraph (1) of Law of the Republic of Indonesia No. 44 of 2008 on Pornography stipulates that any person who produces, manufactures, reproduces, duplicates, distributes, broadcasts, imports, exports, offers, sells, rents or provides pornography that explicitly contains sexual intercourse, sexual violence, masturbation, nudity or child pornography shall be punished with imprisonment for a minimum of 6 months and a maximum of 12 years and a maximum fine of Rp3,000,000,000.00.

In Article 45, Paragraph (1) Jo. Article 27 Paragraph (1) of Law of the Republic of Indonesia No. 19 of 2016 on Amendments to Law of the Republic of Indonesia No. 11 of 2008 on Electronic Information and Transactions states that "Any person who intentionally and without right broadcasts, displays, distributes, transmits and makes available electronic information and electronic documents that have contents that violate public decency."

In this article, there are several elements,



1. "Broadcasting" means the act of transmitting, distributing, and making available electronic information or electronic documents in an electronic system.
2. "Distribute" means sending or disseminating electronic information or documents to many people or different parties through an electronic system.
3. "Transmitting" means sending electronic information or documents to other parties through an electronic system.
4. "Making available" means any act other than distribution and transmission through an electronic system that causes electronic information or documents to become known to other parties or the public.
5. "Violation of decency" means displaying nudity, genitalia, and sexual activity that is contrary to the values of the community at the place and time the act is committed. The interpretation of the term "decency" is based on the community's standards at a particular time and place (contemporary community standards).
6. "Publicly known" means that it can be or is accessible to a large group of people, most of whom do not know each other.

Article 45, paragraph (1) explains the criminal penalties for perpetrators who intentionally and without rights spread false and misleading news that results in consumer losses in electronic transactions with a maximum imprisonment of years or a maximum fine of Rp1,000,000,000.00.

In addition to these two regulations, in 2022, the House of Representatives of the Republic of Indonesia formalized Law No. 12 of 2022 on the Crime of Sexual Violence (TPKS Law). This law explicitly regulates the protection of victims of sexual violence. The rights of victims were also regulated in Articles 66 to 70 of the TPKS Law. In Article 66, paragraph (1) of the TPKS Law, victims are entitled to treatment, protection, and recovery from the occurrence of criminal acts of sexual violence. Then, in the provisions of paragraph (2), it is explained that victims with disabilities are entitled to accessibility and appropriate accommodation in terms of fulfilling their rights by the provisions contained in laws and regulations. Article 67 paragraph (2) of the TPKS Law also confirms that the state must fulfill victims' rights, which is carried out according to the conditions and needs of victims.

Article 69 of the TPKS Law regulates the victim's right to protection. In this article, victims of sexual violence are entitled to protection, which includes several aspects.<sup>45</sup> Victims of sexual violence are entitled to protection of the confidentiality of their identity, which means that their personal information should not be disseminated or disclosed without their permission. In addition, victims of sexual violence are entitled to protection from the threat of sexual violence that may occur again. Victims of sexual

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<sup>45</sup> Farel Mochammad Zafrullah And Nandang Sambas, "Analisis Viktimologis Kekerasan Seksual Yang Dilakukan Oleh Driver Ojek Online Dihubungkan Dengan Uu No.12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual," *Bandung Conference Series: Law Studies* 3, No. 1 (January 27, 2023): 4, <https://doi.org/10.29313/Bcsls.V3i1.5060>.

violence are entitled to protection from loss of employment or education that can occur as a result of sexual violence.

Meanwhile, Article 68 of the TPKS Law delineates the rights of victims to handling. In this article, victims of sexual violence are entitled to several rights related to the handling of cases of sexual violence, as follows:<sup>46</sup>

1. Entitled to information on the entire process and results of handling, including information on protection rights and facilities
2. Eligible to obtain handling result documents, which include information about the process and results of handling sexual violence cases
3. Entitled to legal services required to obtain justice and legal protection
4. Eligible for psychological strengthening necessary to overcome trauma and stress caused by sexual violence
5. Entitled to health services necessary to overcome physical and psychological injuries caused by sexual violence
6. Entitled to the removal of sexually charged content related to cases of sexual violence that occurred with electronic media

Those who have been victims of revenge pornography require assistance from a number of agencies and organisations in order to maintain their physical and psychological stability. This assistance should be

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<sup>46</sup> Intan Nur Fauzah, Sunardi Sunardi, And Arfan Kaimuddin, “Perlindungan Hukum Terhadap Korban Pornografi Balas Dendam (Revenge Porn) Berdasarkan Undang-Undang Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual,” *Dinamika* 30, No. 1 (February 2, 2024): 9182.

provided by agencies and organisations specialising in health, psychology, witness and victim protection, as well as by families. Even though victims are protected by the TPKS Law, they may still experience external pressure as a result of the public dissemination of their images.

It is inherently difficult to remove or eliminate content from the internet entirely, rendering it inaccessible to others. To date, no action has been taken in relation to the removal of pornographic content from victims of revenge porn and other victims of electronic-based sexual violence scattered across the internet. Therefore, law enforcement should consider ways to remove data or pornographic content from similar cases in order to maintain the dignity and worth of victims. One potential avenue for addressing this issue is through a judge's decision to remove pornographic content from the internet. This could be achieved by relying on several experts who are competent in their respective fields, or through the Ministry of Communication and Information.

In addition to state protection of revenge porn victims, it is also important to consider the role of the family in handling revenge porn cases. The existence of a tenuous family relationship, and the occurrence of misunderstanding, which results in the victim being isolated, are two key factors that require attention. This results in a lack of recognition between family members and the inability to fulfill the functions of the family role. The impact of revenge porn on the emotional and mental well-being of the victim is significant. Revenge porn also has a significant social impact.

Society is often inclined to form negative judgments of victims, often without consideration of the external forces that may contribute to their victimization. This can result in victims experiencing feelings of shame and guilt, leading to social isolation and potential loss of social connections, such as friends, or even discrimination. In addition, the manner in which law enforcement officials handle cases of sexual violence can also negatively impact victims.<sup>47</sup> Reputations formed in person and reputations formed in cyberspace become connected to each individual.

A revenge porn case can have long-term effects on the victim's career, relationships, and social opportunities. The psychological impact of revenge porn is an ongoing process that is unique to each individual. In some cases, it may also be necessary to seek legal assistance to prosecute the perpetrator and protect the victim's rights. The psychological impact experienced by victims is long-term, and if not addressed or assisted, can lead to the end of life.

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<sup>47</sup> Nur Alfy Syahriana, Erfaniah Zuhriah, And Ahmad Wahidi, "Legal Protection For Female Victims Of Electronic-Based Sexual Violence (Ebsv): A Legal System Theory Perspective," *Sawwa: Jurnal Studi Gender* 17, No. 2 (October 30, 2022): 25.

## CHAPTER VI

### CONCLUTIONS AND SUGGESTIONS

#### A. Conclutions

1. The United States of America and Australia have enacted legislation that explicitly regulates revenge porn and provides legal consequences for perpetrators. In the American state of California, law enforcement against revenge porn can be pursued through both criminal and civil channels, with the latter option referencing California Civil Code Section 1708.85 (a). In contrast, law enforcement of revenge porn in Indonesia is still relatively weak. As law enforcement is constrained by existing legislation, such as the Electronic Information and Transaction Law and the Pornography Law, which may not fully address the nuances of revenge porn, there is a need for more comprehensive legal frameworks.
2. In addressing the issue of revenge porn in Indonesia, it is imperative to develop specific legislation that explicitly defines and regulates revenge pornography and imposes stringent penalties on perpetrators. While the focus of current efforts is on the sanctions for perpetrators, it is equally important to consider the protection of victims. While the TPKS Law does address the protection of victims of gender-based violence (GBV), its implementation has not been fully realized. In addition to legal considerations, public education and awareness initiatives must be enhanced to effectively prevent and address revenge porn cases.

## **B. Suggestions**

The author presents suggestions for increasing attention to online gender-based violence, including the establishment of a specialized platform to inform victims of their rights and obligations and to facilitate the legal process. The author also proposes a legal comparison between the United States and Australia as a means of informing Indonesia's legal efforts against revenge porn.

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1	Monday, 12 February 2024	Konsultasi Proposal Skripsi	
2	Tuesday, 20 February 2024	Revisi Proposal Skripsi	
3	Tuesday, 27 February 2024	Konsultasi Revisi Proposal Skripsi	
4	Wednesday, 28 February 2024	Acc Proposal Skripsi	
5	Thursday, 28 March 20254	Revisi Pasca Seminar Proposal	
6	Monday, 13 May 2024	Konsultasi Bab 1-4	
7	Wednesday, 15 May 2024	Konsultasi Dan Revisi Bab 3	
8	Friday, 17 May 2024	Konsultasi Dan Revisi Abstrak	
9	Monday, 20 May 2024	Konsultasi Bahasa	
10	Wednesday, 22 May 2024	Acc Skripsi	

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