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Juridical Analysis of Criminal Liability for Perpetrators of Recording and Disseminating Pornographic Content through Electronic Media (Study of Decision Number 964/Pid.Sus/2025/PN Sby)

ABSTRACT

The development of information technology facilitates the hidden recording and dissemination of pornographic content through electronic media, while the criminal law regulation of the two acts is not uniform. This study aims to analyze the criminal law regulation of the act of recording and disseminating pornographic content through electronic media as well as the criminal liability of the perpetrators in the Surabaya District Court Decision Number 964/Pid.Sus/2025/PN Sby. This research is a normative legal research with a legislative, case, and conceptual approach, using primary, secondary, and tertiary legal materials collected through literature studies and qualitatively analyzed. The results of the study show that dissemination has been regulated in layers in the Law on Information and Electronic Transactions, the Pornography Law, and the National Criminal Code, while recording without consent has only been expressly regulated in the Sexual Violence Crime Law. In the verdict reviewed, the defendant's criminal liability has been fulfilled, but it is not yet intact because the act of recording is not charged as a separate act, the judge's consideration is not in accordance with the legal facts, the concurrent provisions are not applied, and the sentence imposed does not reflect the weight of the act. This study recommends the affirmation of the element of consent in laws and regulations as well as the preparation of indictments and verdict considerations that reach the entire series of perpetrators.

Keywords: Criminal Liability, Recording, Dissemination, Pornography, Electronic Media

INTRODUCTION

The development of information and communication technology has changed the way people produce, store, and share images and video recordings. Small recording devices that can operate secretly are now easy to obtain. Social media and instant messaging applications also allow a recording to change hands in seconds. This convenience is also used for crimes in the field of morality. Pornography is no longer seen solely as a moral offense, but also as a form of violence against women, because the victim's body and sexuality are used as commodities for financial gain, while advances in information technology have

actually facilitated the practice. This trend is reflected in the 1,271 complaints of online gender-based violence (KBGO) cases received by Komnas Perempuan throughout 2023. One form is the dissemination of intimate content without the consent of the victim or *Non-Consensual Intimate Images* (NCII).

The Telegram application is one of the channels most often associated with the circulation of pornographic content. The feature of groups and channels with an unlimited number of members, plus a large file delivery capacity, makes this application often used to spread and even trade pornographic content. The Ministry of Communication and Information noted that Telegram was the platform with the most negative content complaints in 2019, which was as many as 614 reports. The content circulating in it is often not content that was created from the beginning for public consumption, but a person's personal photos or recordings that are then disseminated by other parties.

In the case of NCII, the actual victim's losses can begin long before the content is disseminated. There are two NCII patterns. First, consensual recording, where the victim consents to the recording but does not consent to its dissemination. Second, non-consensual recording, where the victim does not know or does not consent to the recording being recorded, for example through a hidden camera. The second pattern puts the victim in the most disadvantaged position, because no single stage occurs against his will. This kind of crime thus consists of two acts that are juridically distinguishable, namely the act of recording without consent and the act of disseminating the results of the recording.

Indonesian criminal law regulates both acts in a dispersed manner. Article 27 paragraph (1) jo. Article 45 paragraph (1) of the Electronic Information and Transaction Law (ITE Law) threatens the criminal penalty of any person who deliberately and without the right to distribute, transmit, or make accessible electronic information that contains a violation of morality. This provision includes the group of illegal content crimes in the criminal law specifically in the cyber sector. However, the formulation only targets the stage of content circulation, not the act of recording it. The Pornography Law through Article 4 paragraph (1) jo. Article 29 prohibits, among other things, the act of making and disseminating pornography that contains nudity or genitals. However, the Explanation of Article 4 paragraph (1) excludes the act of "making" done for oneself and one's own interests, and the limits of this exemption are still debated. The same law, through Article 9 jo. Article 35, also prohibits everyone from

"making another person an object or model containing pornographic content", with a minimum penalty of one year in prison. An important development then came through the Sexual Violence Crime Law (TPKS Law) which was promulgated on May 9, 2022. Through Article 14 paragraph (1) letter a, this law for the first time confirms that recording a person in sexual content without his consent is included in electronic-based sexual violence.

This arrangement has changed again since the enactment of Law Number 1 of 2023 concerning the National Criminal Code (National Criminal Code) on January 2, 2026. Article 622 paragraph (1) r and t repeal Article 27 paragraph (1) and Article 45 paragraph (1) of the ITE Law and Article 29 of the Pornography Law, and the reference to these provisions is replaced with Article 407. However, Article 407 paragraph (1) also does not contain the element of the absence of consent of the victim. As a result, the special character of the dissemination of intimate content without consent has not been expressly accommodated. In addition, based on the principle of legality, acts committed before the National Criminal Code takes effect are in principle assessed according to the criminal provisions in force at the time the act is committed, taking into account the transitional provisions in Article 3 of the National Criminal Code.

These various provisions are ultimately tested in determining the criminal liability of the perpetrator. Criminal liability is a process to determine whether a person who commits a prohibited act can be sentenced to a criminal sentence. The trick is to forward the objective reproach attached to the act to the perpetrator who meets the subjective requirements to be convicted. In criminal acts in the field of electronic information, the liability still rests on the existence of unlawful acts and mistakes, even though the proof is highly dependent on electronic evidence. Therefore, the accuracy of choosing the basis of the indictment and the accuracy of the judge in describing the elements determine whether all the actions of the perpetrator are really accountable.

This problem can be seen in the Surabaya District Court Decision Number 964/Pid.Sus/2025/PN Sby. The defendant is a freelance product designer who often uses the services of models for advertising shoots. He installed a hidden camera in the form of a keychain in the dressing room of an apartment that was used as a photo shoot. In 2015 and 2018, the camera recorded three models changing clothes and taking a shower without their knowledge and permission. The footage was kept by the Defendant as a personal collection, then sold and sent to three other people for IDR 250,000.00 to IDR 400,000.00 per video. On

October 28, 2022, the videos of the victims were known to have circulated on the Telegram group. The Public Prosecutor drafted an alternative indictment, namely Article 45 paragraph (1) jo. Article 27 paragraph (1) of the ITE Law or Article 29 jo. Article 4 paragraph (1) of the Pornography Law. The Panel of Judges chose the second alternative indictment and sentenced him to imprisonment for 2 (two) years and a fine of Rp250,000,000.00 and a subsidy of 3 (three) months of imprisonment, exactly the same as the Public Prosecutor's demands.

The decision leaves a number of problems. First, the second element consideration states that the content shows explicit sexual intercourse scenes, even though the legal facts show that the footage contains the victims changing clothes and taking a bath. The consideration also does not indicate which letter in Article 4 paragraph (1) is fulfilled. Second, the act of recording without consent, which is the basis of all the victim's losses, is not considered as an act in itself. In fact, in other covert recording cases, similar acts are charged with Article 35 jo. Article 9 of the Pornography Law. Because the recording occurred before the TPKS Law came into effect, Article 14 of the law also cannot be applied to the act of recording in this case. Third, the indictment describes several acts that stood alone against the three victims in the span of 2015 to 2022. Even so, the provisions regarding continued and concurrent acts in Article 64 or Article 65 of the Criminal Code are not included, either in the indictment or in the verdict.

Studies of similar rulings so far generally only highlight one stage of the act. Some highlight the stage of dissemination, for example the analysis of the application of Article 27 paragraph (1) jo. Article 45 paragraph (1) of the ITE Law in Decision Number 106/Pid.Sus/2023/PN Tjk, as well as the analysis of the evidence of Article 29 of the Pornography Law in Decision Number 139/Pid.B/2022/PN Wgp which also departs from an alternative indictment between the Pornography Law and the ITE Law. Others highlight the recording stage, as in the case of the secret recording mentioned earlier. This study is different because it places the act of recording without consent and the act of dissemination as two acts that must both be accounted for.

Based on this description, the problems studied in this study are, first, how to regulate criminal law for the act of recording and disseminating pornographic content through electronic media in Indonesia; and second, how to criminally liability for perpetrators of recording and disseminating pornographic content through electronic media in Decision Number 964/Pid.Sus/2025/PN Sby.

RESEARCH METHODS

This research is a normative legal research, which is a research that examines law as norms, rules, principles, principles, doctrines, and legal theories to answer the legal problems being studied, by relying on the study of documents on laws and regulations, court decisions, and the opinions of legal experts. This type of research was chosen because the two problems studied are normative, namely the regulation of criminal law against the act of recording and disseminating pornographic content through electronic media, as well as the application of criminal liability in a court decision.

This research uses three approaches. First, the statute *approach*, which is carried out by examining the legal provisions related to the research issue, in this case the Electronic Information and Transaction Law, the Pornography Law, the Sexual Violence Crime Law, the Criminal Code, and the National Criminal Code. Second, the case *approach*, which aims to study the application of legal norms in legal practice, through an examination of the Surabaya District Court Decision Number 964/Pid.Sus/2025/PN Sby. Third, the *conceptual approach*, which relies on the views of experts and doctrines in legal science, especially the concept of criminal liability and the concept of intimate recording without consent.

This research uses three types of legal materials, namely primary, secondary, and tertiary. The primary legal materials are in the form of laws and regulations that have been mentioned in the legislative approach, namely the Criminal Code, the ITE Law and its amendments, the Pornography Law, the TPKS Law, and the National Criminal Code, plus the Surabaya District Court Decision Number 964/Pid.Sus/2025/PN Sby. Secondary legal materials include criminal law books and legal journal articles that are relevant to research problems. Tertiary legal materials include legal dictionaries and language dictionaries used to explain terms in primary and secondary legal materials. The Criminal Code and the Criminal Procedure Code referred to in this study are old provisions, namely the Criminal Code which applies based on Law Number 1 of 1946 and Law Number 8 of 1981 concerning the Criminal Procedure Code, because the case has been examined and decided before the National Criminal Code and Law Number 20 of 2025 concerning the Criminal Procedure Code takes effect on January 2, 2026.

Legal materials are collected through literature studies, namely by tracing laws and regulations, court decisions obtained from the Directory of Supreme

Court Decisions, books, and legal journals. These legal materials are then inventoried and grouped according to each problem formulation. After being collected, legal materials are inventoried, identified, classified, and then systematically arranged so that one legal material does not contradict another.

Legal materials are analyzed qualitatively by interpreting the legal materials that have been processed, especially to find whether there are gaps in norms, contradictions in norms, or vague norms. The analysis of the verdict is carried out by identifying legal facts, finding legal norms related to these facts, and then testing the application of these norms to legal facts as carried out by the panel of judges. The nature of the analysis is prescriptive, because this study offers arguments about how the law should be applied, while the conclusions are drawn deductively, departing from general provisions to concrete issues in the case being studied.

RESULTS AND DISCUSSION

The discussion in this study is prepared based on two problem formulations. Part A describes the criminal law regulation of the act of recording and disseminating pornographic content through electronic media, while part B analyzes criminal liability for perpetrators in Decision Number 964/Pid.Sus/2025/PN Sby.

Criminal Law Regulation on the Recording and Dissemination of Pornographic Content through Electronic Media

Criminal regulation of pornographic content in electronic media is in the realm of special criminal law, which is a criminal provision outside the general codification that regulates certain criminal acts with special characteristics and has a position as *lex specialis* to the Criminal Code. The regulated object is pornography, which according to the Pornography Law is "images, sketches, illustrations, photographs, writings, sounds, 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 that violates moral norms in society. The

formulation of "moving images" and "various forms of communication media" makes videos stored in electronic devices included in this sense. Recording, in the sense of language, is moving images or sounds into a recording medium, while recording is the process or act of recording. Thus, recording and dissemination are two different acts: recording produces content, while dissemination transfers that content to other parties. This distinction is a starting point to trace the extent to which each act is reached by criminal law.

Arrangements for Recording Acts

The Criminal Code does not recognize the term pornography and only refers to acts that violate morality. Article 282 paragraph (1) of the Criminal Code does mention the act of making writings, images, or objects that violate morality, but the act can only be punished if the results are intended to be disseminated or exhibited to the imagination. As a result, recordings whose results are stored as private collections are not covered by this provision.

The Pornography Act expands this scope. Article 4 paragraph (1) jo. Article 29 prohibits everyone from producing and making pornography that explicitly contains, among other things, nudity or genitalia. However, the Explanation of Article 4 paragraph (1) states that the act of "making" does not include for oneself and one's own interests, and the Explanation of Article 6 provides a similar exception to the act of possessing or saving. The limits of this exception are still debated. According to the author, the problem lies in the formulation of an exception that does not distinguish between content created by a person on his own behalf and content created by recording another person without consent. Grammatically read, a perpetrator who secretly records someone else for private collection may take refuge behind the phrase "self-interest", when the exception should be intended to protect private space, not to justify infringement of the private space of others.

This loophole is in practice closed through Article 9 jo. Article 35 of the Pornography Law, which prohibits everyone from "making another person an object or model containing pornographic content", with a penalty of imprisonment between 1 (one) and 12 (twelve) years. This provision applies whether the person who is made the object gives consent or not, and has been applied to the perpetrator who secretly records the victim through video calls or while the victim is in the bathroom. This provision is in line with the Explanation

of Article 8 which emphasizes that people who are the object of pornography because they are forced, threatened, deceived, or lied to are not convicted. Moreover, victims who do not know that they are being recorded at all, so that the victim of hidden recordings cannot be positioned as the perpetrator.

Regulations that expressly target recording without consent are only present through Article 14 paragraph (1) letter a of the TPKS Law. This article ensnares a person who without the right to "record and/or take pictures or screenshots of sexual content against the will or without the consent of the person who is the object of recording", with a threat of imprisonment of up to four years and/or a fine of up to Rp200,000,000.00. If the recording is intended to extort, threaten, or deceive the victim, the threat increases to imprisonment for up to six years and/or a fine of up to Rp300,000,000.00. This provision is a complaint offense, unless the victim is a child or person with a disability, and his actions cannot be punished if they are done in the public interest or to defend themselves from the crime of sexual violence. In contrast to the ITE Law and the Pornography Law, which do not distinguish between consensual and non-consensual content, the TPKS Law is more in favor of the victim because it makes the absence of consent an element of the act. However, according to the principle of non-retroactivity, this provision can only be applied to recordings made since the TPKS Law came into effect, namely since it was promulgated on May 9, 2022.

The National Criminal Code through Article 407 paragraph (1) also contains the act of producing and making pornography, with the exception if it is a work of art, culture, sports, health, and/or science. However, the formulation does not contain the element of the absence of consent of the person who is the object of the content, so that special protection for victims of non-consensual recording still rests on the TPKS Law.

Regulation of Dissemination Acts

In contrast to recording, the act of dissemination is regulated more completely. Article 27 paragraph (1) jo. Article 45 paragraph (1) of the ITE Law as amended by Law Number 19 of 2016 prohibits everyone from deliberately and without the right to distribute, transmit, or make accessible electronic information with content that violates morality, with a maximum threat of imprisonment of six years and/or a maximum fine of one billion rupiah. The

explanation of the article distinguishes three acts, all through an electronic system:

a. "distribute", i.e. transmitting or distributing to many people or various parties;
b. "transmit", i.e. transmitting to one other party;
c. "making accessible", which is another act that causes electronic information to be known to other parties or the public.

This provision is a formal offense, so that the criminal act is considered completed when the prohibited act is committed, without waiting for certain consequences to arise. In this formulation, the delivery of content to one person has fulfilled the element of transmitting.

The formulation was later amended by Law Number 1 of 2024. The new Article 27 paragraph (1) adds the act of broadcasting and performing, but at the same time requires that content that violates morality is intended "for public knowledge". The explanation defines "violating morality" as "performing acts of showing nudity, genitals, and sexual activities that are contrary to the values that live in society at the place and time when the act is committed", while "publicly known" is defined as "to be able or so that it can be accessed by a large group of people who mostly do not know each other. This change narrows the scope of the ITE Law. Limited delivery of content to certain people no longer automatically fulfills the elements of the article, unless it can be proven that the content is intended for public access.

The Pornography Law through Article 4 paragraph (1) jo. Article 29 covers a wider range of dissemination acts, namely disseminating, broadcasting, offering, trading, renting, and providing pornography. The perpetrator is threatened with imprisonment of six months to twelve years and/or a fine of Rp250,000,000.00 to Rp6,000,000,000.00. The elements of the act in this article are alternative, so that it is proven that one of the acts is sufficient to meet these elements. The Pornography Law does not require electronic media, but requires more specific content, namely one of the six categories in Article 4 paragraph (1) letters a to f.

The relationship between the ITE Law and the Pornography Law is viewed differently. Some opinions place the ITE Law as a *lex specialis* against the Criminal Code and the Pornography Law in cases of pornography through electronic media. The author has a different opinion. Both laws are special

criminal laws outside the Criminal Code, but their specificity lies in different aspects: the ITE Law is specific to the means, namely the electronic system, while the Pornography Law is specific to its content and contains a minimum criminal threat. Since the elements are not entirely the same, they are more appropriately viewed as two rules that can be both violated by one act. That is why in practice both are commonly charged alternatively, and the choice of article is determined by facts proven at trial.

Since January 2, 2026, Article 27 paragraph (1) and Article 45 paragraph (1) of the ITE Law and Article 29 of the Pornography Law were revoked by Article 622 of the National Criminal Code, and the reference was replaced with Article 407 paragraph (1). The criminal threat is imprisonment of six months to ten years, or fines in the range of category IV to category VI. The assessment of pornographic content in Article 407 follows the standards of public decency at a certain time and place *(contemporary community standard*). This standard provides flexibility, but at the same time opens up space for differences in interpretation between regions.

The amendment needs to be read together with Article 3 of the National Criminal Code. Article 3 paragraph (1) imposes new laws and regulations on acts that occurred before the change, except that the old provisions are more favorable to the perpetrator, while Article 3 paragraph (7) stipulates that the implementation of a criminal decision that has legal force is still adjusted to the criminal limit according to the new regulation if the act is threatened with a lighter penalty. The maximum threat of Article 407 paragraph (1), which is 10 (ten) years, is indeed lighter than the maximum threat of Article 29 of the Pornography Law, which is 12 (twelve) years. However, this provision does not change the analysis in this study. The decision under review has permanent legal force before the National Criminal Code takes effect, and the penalty imposed, namely 2 (two) years in prison and a fine of Rp250,000,000.00, is still within the threat range of Article 407 paragraph (1), with a minimum fine of category IV of Rp200,000,000.00 and a maximum of category VI of Rp2,000,000,000.00. Thus, there is no adjustment in the implementation of the penalty, and the verdict is still assessed based on the provisions in force at the time the verdict is rendered.

Criminal Procedure Arrangement

Recording and dissemination can be carried out by one perpetrator at different times and against more than one victim. For such a situation, the Criminal Code provides two constructions:

a. Article 64 paragraph (1) regulates continuing acts, namely several acts that are related in such a way that they are seen as one act, and are only subject to one criminal rule.
b. Article 65 regulates the simultaneous collection of several independent acts. The perpetrator is sentenced to one crime with a maximum in the form of the maximum number of threats for each act, but must not exceed the heaviest maximum plus one-third.

The construction of continuing acts has been applied in cases of pornography that are carried out repeatedly. As for if one act at the same time fulfills several criminal rules, there is a *concursus idealis* concomitant. The choice between these constructions has a direct effect on the maximum limit of the crime that can be imposed. The scope of each provision can be summarized as follows.

Table 1 Range of Settings to Recording Acts and Dissemination of Pornographic Content

Conditions	Recording	Deployment	Remarks
Article 282 of the Criminal Code	Only if it is intended to be published in public	In public	Not familiar with the term pornography
Article 27 paragraph (1) jo. Article 45 paragraph (1) of the ITE Law (Law 19/2016)	No	Distribute, transmit, make accessible	Formal delicacy; a maximum of 6 years
Article 27 paragraph (1) jo. Article 45 paragraph (1) of the ITE Law (Law 1/2024)	No	Yes, it must be known to the public	Narrower range
Article 4 paragraph (1) jo. Article 29 of the Pornography Law	Make, except for yourself	Yes, including trading	6 months–12 years
Article 9 jo. Article 35 of the Pornography Law	Yes, making others objects	No	1–12 years

Conditions	Recording	Deployment	Remarks
Article 14 paragraph (1) letter a of the TPKS Law	Yes, strictly without consent	No	Since May 9, 2022; complaint deliction
Article 407 of the National Criminal Code	Create	Yes	Since January 2, 2026; without an element of consent

Based on the description above, the dissemination of pornographic content through electronic media has been regulated in layers through the ITE Law, the Pornography Law, and now Article 407 of the National Criminal Code. On the other hand, recording without consent has only been expressly regulated since the enactment of the TPKS Law. Prior to that, the act of secretly recording another person could only be charged through the construction of Article 9 jo. Article 35 of the Pornography Law, or through the element of "making" in Article 4 paragraph (1) if the recording is not solely for self-interest. This condition requires the thoroughness of the public prosecutor in drafting an indictment, because the chosen article determines whether the act of recording is also accounted for or only the act of disseminating it. This issue is tested in the discussion of Decision Number 964/Pid.Sus/2025/PN Sby below.

Criminal Liability for the Perpetrator in Decision Number 964/Pid.Sus/2025/PN Sby

Decision Number 964/Pid.Sus/2025/PN Sby has had permanent legal force since it was read on July 16, 2025, because the Public Prosecutor and the Defendant both stated that they received the verdict on that day. In the verdict, the Defendant was declared proven to have committed a pornographic crime as the second alternative indictment and was sentenced to 2 (two) years in prison and a fine of Rp250,000,000.00 and a subsidy of 3 (three) months of confinement. To assess whether the criminal liability in this verdict has been applied appropriately, it is necessary to test the fulfillment of the elements of the criminal act, the existence of errors, and the Defendant's ability to be responsible, because objective reproach for the act can only be forwarded to perpetrators who are eligible for punishment. This is in line with the principle of no crime without fault (*geen straf zonder schuld*), which emphasizes that the fulfillment of the

elements of the crime is not enough to convict a person, because it must still be proven that the perpetrator has a mistake, that is, he can be blamed for his actions because he can actually do something else. The test also includes the accuracy of the basis of the indictment and the conviction.

Accuracy of the Indictment Policy

The Public Prosecutor drafted an alternative indictment, namely Article 45 paragraph (1) jo. Article 27 paragraph (1) of the ITE Law as amended by Law Number 19 of 2016, or Article 29 jo. Article 4 paragraph (1) of the Pornography Law. The choice of the Panel of Judges on the second alternative indictment can be justified for two reasons.

First, Article 1 paragraph (2) of the Criminal Code requires the application of provisions that are most beneficial to the defendant if there is a change in the law after the act is committed. The act of disseminating in this case occurred in 2022, while Article 27 paragraph (1) of the ITE Law was amended by Law Number 1 of 2024 before the case was examined. The new formulation requires that the content be intended "for public knowledge", that is, it can be accessed by a wide audience who generally do not know each other. The sale and delivery of recordings to three specific people does not necessarily meet these requirements, so the new formulation has the potential to be more beneficial to the Defendant. However, the first indictment still refers to the old formulation. By choosing the Pornography Law, which has not changed until the verdict is handed down, the issue of the application of Article 1 paragraph (2) of the Criminal Code is no longer relevant.

Second, the act of spreading in this case also fulfills the formulation of the ITE Law and the Pornography Law. According to Article 63 paragraph (1) of the Criminal Code, if an act is included in more than one criminal law, only one of them is imposed, namely the one that contains the most severe basic criminal threat. Article 29 of the Pornography Law threatens a maximum penalty of 12 (twelve) years, which is heavier than Article 45 paragraph (1) of the ITE Law which is a maximum of 6 (six) years. The choice of the Pornography Law is thus in line with the provisions of the accompanying regulations.

The weakness of the indictment lies precisely in the acts that were not charged. The legal facts show that the defendant installed a hidden camera in the dressing room and repeatedly recorded the victims in a naked state without their permission and without their knowledge. This act fulfills the formula "making

another person an object or model containing pornographic contents" in Article 9 jo. Article 35 of the Pornography Law, as applied in other covert recording cases. Because it is not charged, the act of recording, which is the basis of all the victim's losses, is not accounted for as an act in itself.

Proof of Elements of Article 29 jo. Article 4 paragraph (1) of the Pornography Law

The element of "everyone" has been considered appropriately, because the identity of the Defendant is in accordance with the identity in the indictment. The problem arises in the second element. The elements of the act in Article 29 are alternative, so it is enough to prove that only one of the acts is proven. The actual legal facts show two clear acts:

a. **making**, i.e. recording the victims with hidden cameras;
b. **selling**, that is, selling the footage for IDR 250,000.00 to IDR 400,000.00 per video.

The exception of "making" for oneself and one's own interests in the Explanation of Article 4 paragraph (1) also cannot be applied, because the recordings are not only stored, but also sold to others.

The Panel of Judges did not base its consideration on the two acts. The Panel actually stated that the element was fulfilled because the Defendant "actively uploaded and circulated content to the public through digital platforms". Even though the legal facts only explain that the videos of the victims are known to be circulating in the Telegram group on October 28, 2022, without specifying who uploaded them. The Panel of Judges also stated that the content showed explicit scenes of sexual intercourse, even though the legal facts showed footage containing the victims changing clothes and taking a shower. The content that was proven to be true included the category of nudity or genitals in Article 4 paragraph (1) letter d and e, not sexual intercourse in letter a.

This inconsistency is contrary to Article 197 paragraph (1) letter d of the Criminal Code, which requires the criminal verdict to contain considerations of the facts and circumstances along with the evidence that is the basis for determining the guilt of the defendant. However, the mistake does not abort the proof of the elements. The minimum requirements for proof in Article 183 of the Criminal Code are still met through witness testimony and the defendant's testimony that are in accordance with each other, and the act of making and selling pornography containing nudity is still proven from legal facts. In other

words, the verdict can be maintained, but the consideration is not built on the correct facts.

Mistakes and Accountability

On the aspect of error, the Panel of Judges assessed that the Defendant knew that the content was pornographic material and still consciously disseminated it, so that there was intentionality, not negligence. This assessment is correct. Intentionality is a form of mistake in the form of an act that is intended and known by the perpetrator, with the most emphatic form in the form of intentionality as an intention, namely when the creator intends to cause certain consequences. The series of actions of the Defendant shows a complete will and knowledge, starting from preparing a hidden camera, turning it on before the victim enters the changing room, repeating it several times, moving and editing the recording, to selling it. In criminal acts in the field of electronic information, the fulfillment of this kind of act and inner attitude is the basis for criminal responsibility of the perpetrator. The Panel of Judges also found no justification or excuse, so the Defendant was considered capable of being responsible. Thus, the conditions for criminal liability for the alleged acts have been met.

Unenforced Criminal Acts

The indictment describes that the Defendant committed several acts that must be seen as stand-alone acts, namely the recording of two victims in 2015, the recording of other victims in 2018, and the sale of recordings to several people. However, neither the indictment nor the verdict include Article 64 or Article 65 of the Criminal Code. According to *Memorie van Toelichting*, continuing acts require three things, namely some of these acts arise from a single prohibited will, the time gap between acts is not too long, and the acts are similar. The defendant's acts were committed against different victims with an interval of about three years, so the time gap requirements are difficult to meet and a more appropriate construction is the concomitant act in Article 65 of the Criminal Code. With this construction, the maximum penalty can reach the maximum of the heaviest threat plus one-third, which is 16 (sixteen) years. For comparison, in other repeated pornography cases, Article 64 paragraph (1) of the Criminal Code is still included so that the nature of the repetition of the act is also considered. The absence of concurrent provisions in this case makes the entire series of acts against the three victims treated as if they were an ordinary act.

Criminalization

The prison sentence of 2 (two) years is at the lower end of the threat range of Article 29, which is 6 (six) months to 12 (twelve) years, while the fine imposed is the same as the minimum in particular. Article 8 paragraph (2) of the Judicial Power Law requires judges to pay attention to the good and evil nature of the defendant, and Article 197 paragraph (1) letter f of the Criminal Code requires the verdict to contain aggravating and mitigating circumstances. In this decision, there are only two aggravating circumstances, namely the defendant's act of harassing the victims and can result in sexual crimes. On the other hand, the mitigating circumstances amount to four. A number of circumstances revealed at the trial are not considered as aggravating, namely:

a. commercial motives, which were even mentioned by the Panel of Judges themselves;
b. the number of victims was three people;
c. the act is repeated over a span of years;
d. abuse of the employment relationship between the Defendant as a service user and the victims as a model.

The consideration of the purpose of the sentence also emphasizes more on the construction of the Defendant than on the recovery of the victim. The difference in the severity of the crime between pornography cases is indeed possible because of the freedom of the judge. However, the difference must be based on clear juridical and non-juridical considerations. As an illustration, in the case of secretly recording through a video call accompanied by the threat of dissemination, the perpetrator is sentenced to 1 (one) year. Comparisons between cases cannot be made absolutely because the facts and articles applied are different, but this case contains three victims, planned hidden recordings, and the sale of recordings, so the sentence imposed does not reflect the difference in the weight of the act. In addition, the victim in the NCII case suffered prolonged immaterial losses, so the punishment should also reflect the protection of the victim.

Based on the description above, the Defendant's criminal liability in Decision Number 964/Pid.Sus/2025/PN Sby has been fulfilled in terms of elements of criminal acts, mistakes, and the ability to be responsible, so that the criminalization of the Defendant can be justified. However, the liability is not yet complete. The act of recording without consent is not charged as a separate act, the consideration of the second element is not in accordance with the legal facts,

the concurrent provisions are not applied even though the act was repeated against the three victims, and the conviction does not reflect the overall weight of the act.

CONCLUSION

Indonesia's criminal law regulation of the recording and dissemination of pornographic content through electronic media has not been balanced. The distribution has been regulated in layers in the ITE Law, the Pornography Law, and Article 407 of the National Criminal Code. In contrast, recording without consent has only been expressly formulated in Article 14 paragraph (1) letter a of the TPKS Law since May 9, 2022. Before that, this kind of recording could only be charged through Article 9 jo. Article 35 of the Pornography Law or the element of "making" in Article 4 paragraph (1), which is still limited to exceptions for self-interest.

In Decision Number 964/Pid.Sus/2025/PN Sby, the Defendant's criminal liability has been fulfilled for the alleged act, so that the punishment based on Article 29 jo. Article 4 paragraph (1) of the Pornography Law can be justified, but the liability is not yet complete. Charges that only reach the spread make the act of recording, as the basis of the victim's losses, not accountable. The void continues in the non-application of the concurrent provisions and in the criminal justice system that does not reflect the weight of the acts against the three victims, plus the consideration of elements that are not in accordance with the legal facts.

The author suggests that the lawmakers clarify the Explanation of Article 4 paragraph (1) of the Pornography Law and supplement Article 407 of the National Criminal Code with the element of non-consent. The public prosecutor should prepare an indictment that covers the act of recording along with the provisions of co-operation if there is more than one victim. The judge should prepare considerations based on legal facts and take into account all aggravating circumstances in imposing a crime.

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