

**JURIDICAL ANALYSIS OF VICTIMS OF REVENGE PORN ACCORDING TO
LAW NUMBER 44 OF 2008 AND *MAQASHID SHARIA*****Salma Yanita**

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mn272@ums.ac.id**ABSTRACT**

This research aims to juridically analyze victims of revenge porn in the context of Law Number 44 of 2008 and *Maqashid Sharia*. The research method used is document analysis and qualitative approach by collecting data from literature studies and related legislation. The novelty of this research lies in the approach that integrates the perspective of positive law with the principles of *Maqashid Sharia*, thus providing a holistic view of legal protection for victims of revenge porn. The results show that there is a gap in the legal protection of victims of revenge porn between Law Number 44/2008 and the principles of *Maqashid Sharia*. The legal and social implications of the gap are discussed in depth. In conclusion, legal protection for victims of revenge porn requires a holistic approach that considers aspects of positive law and sharia values. Harmonization between the two aspects is needed to ensure effective protection of revenge porn victims.

Keywords: Revenge porn; Law; *Maqashid Sharia*.

INTRODUCTION

The development of information and communication technology in Indonesia has brought many changes in various aspects of human life. However, it has also brought negative impacts, such as the increase in crimes committed through technology. Internet technology was initially neutral, but with its development, it can be utilized by malicious parties.

According to Soerjono Soekanto, changes in society can be caused by external factors. From a criminological perspective, technology is considered a criminogenic factor that facilitates crime (Soekanto, 1968). One form of crime that often occurs today, especially against women, is cyber crime. Cyber crime does not only involve the sophistication of computer technology, but also telecommunications technology in its implementation. Cyber crimes related to computer technology and telecommunication networks can be categorized into several forms, such as: (1) online identity theft, (2) online fraud, (3) hacking, (4) dissemination of illegal or harmful content, and (5) online sexual harassment or abuse. Technology development brings many benefits, but also poses new challenges related to security and privacy. Therefore, it is important to continue to increase awareness and protection of technology users in order to face the threat of cybercrime more effectively (Gema, 2000).

Revenge porn is a form of cybercrime in which indecent images or videos of the victim are shared online without the consent or authorization of the victim, with the aim of defaming the victim as revenge. The perpetrators are often individuals with whom the victim has a close personal relationship, such as friends, boyfriends, or ex-boyfriends. The act can cause the victim to experience embarrassment, defamation, and low self-esteem. Women who are victims of revenge porn are often judged by society and considered guilty, making it difficult to get protection. This is due to the imbalance of status and power between women and men, which is based on the patriarchal social structure that still exists in society (Perbawati & Candra , 2019). The act of revenge porn is an attack on moral values and common decency, and is a form of violence against women. Therefore, it should be considered an offense because it violates moral principles and disturbs inner peace and public decency.

The Criminal Code (KUHP) establishes the legal framework governing offenses related to public decency. The Indonesian government has enacted legislation that prohibits the possession of data that violates the standards of morality. The Indonesian Criminal Code (KUHP) contains several articles that prohibit pornography and related activities, as well as establishing penalties for violations. These articles include Article 281, Article 282, Article 283, Article 532, and Article 533. Additionally, Law No. 11/2008 on Electronic Information and Transactions also regulates indecent acts in the electronic sphere. And more specifically the Pornography Law which materially regulates the crime of pornography itself. However,

the offense of decency has evolved with the times. The laws that specifically regulate decency are Law Number 44/2008 on Pornography and Law Number 11/2011 on Electronic Information and Transactions (Djubaedah, 2011).

The formulation of the crime of pornography on the internet is regulated in Law No. 11/2011 on Electronic Information and Transactions Article 27 paragraph 1 which reads: “every person intentionally and without right distributes and/or transmits and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that have content that violates decency.”

In Islamic law, adultery behavior gets threats from Allah SWT and His Rosul. Allah says in Surah Al Is’ra verse 32 which reads:

سَبِيلًا وَسَاءَ فُجْشَةً كَانَ إِنَّهُ الزَّانِي تَقَرَّبُوا وَلَا

Meaning:

And do not approach adultery; (adultery) is indeed an abominable deed, and a bad way.

Revenge porn starts with two human beings who are usually not bound by marriage but carry out activities like husband and wife, but the incident can be done in another way, namely taking indecent videos or photos that have elements of pornography or pornoaction and disseminated on the internet or utilizing existing technology without any responsibility from the party who spreads it. Where this results in many negative impacts and disturbs one’s privacy

This research aims to examine revenge porn from two perspectives, namely according to Law Number 44 of 2008 and also from the perspective of *Maqashid Sharia*. Theoretically, this research is expected to contribute to the development of criminal law, especially in the context of criminal acts of pornography on internet social media, as well as to complete the study of Revenge porn as a whole. While practically, the results of this study are expected to provide a better understanding to the general public and students about Revenge porn from the perspective of positive law and Islamic law, so that it can be a guide in handling cases related to Revenge porn and increase awareness of the impact and consequences of these actions.

METHOD

This research uses a normative approach method, which focuses on theoretical analysis of principles, conceptions, doctrines, and legal norms related to the crime of revenge porn. The secondary data used includes various legal documents such as Law Number 44/2008 on Pornography, Electronic Information and Transaction Law, and Maqashid Syariah. In addition, this research also refers to books on criminal law theory and Islamic criminal law, ushul fiqh science (Syarifudin, 2014), Qur'an, and hadith. The research approach used is descriptive, which aims to provide an overview of the object of research, using a statute approach as the basis of research (Dimiyati & Wardiono, 2004). Data sources are divided into three, namely primary data (such as the Qur'an, hadith, and fiqh books), secondary data (including the results of previous research and scholars' opinions), and tertiary data (such as Arabic dictionaries and book translations). Data collection techniques are carried out through literature studies using document studies, namely by studying various written materials related to the research. Data analysis uses normative analysis techniques, which examine various legal materials with reference to the theory of criminal law and Islamic criminal law. The writing technique follows the thesis writing guidelines set by the Faculty of Law, Universitas Muhammadiyah Surakarta. Thus, this research uses structured approaches and methods to examine and analyze the phenomenon of revenge porn from the perspective of positive law and Islamic law (Ibrahim, 2006).

RESULTS AND DISCUSSION

1. Definition of Revenge Porn According to Law Number 44 of 2008

According to Law No. 44/2008 on Pornography, revenge porn refers to the act of distributing photos or videos containing sexual content of an individual without the permission or consent of the individual, with the purpose of humiliating, defaming, or degrading the victim (Guza, 2008). It is considered a form of exploitation and abuse, often done as revenge or as a form of punishment to the victim for a disappointment or disapproval. Revenge porn often involves a perpetrator who has a close relationship with the victim, such as an ex-partner or friend, and is often intended to inflict deep shame or trauma on the victim. In accordance with Law No.

44/2008, the act of revenge pornography is classified as a form of pornography that is prohibited and may result in legal consequences. This is due to the detrimental psychological and social impacts on victims, as well as the violation of their right to privacy and individual honor (Rongkene, 2020). As such, the Act emphasizes the need for legal protection of victims of revenge porn and law enforcement against perpetrators of such crimes to prevent the spread of harmful content that violates moral norms and applicable laws.

Legal protection for victims of revenge porn is an effort to provide justice, compensation, and recovery for the unauthorized dissemination of sexual content. In Indonesia, although there is no specific law regarding revenge porn, victims can use several relevant laws, such as Law No. 44/2008 on Pornography which provides criminal sanctions for providers of pornography services through electronic media (Adilla, 2023). Furthermore, Law No. 11/2008 on Electronic Information and Transactions establishes criminal penalties for the dissemination of electronic information that is indecent or harmful to others. Furthermore, the draft legislation on the elimination of sexual violence also establishes penalties for the dissemination of sexual images or recordings without the consent of the victim. In addition to criminal remedies, victims may pursue civil litigation, including tort, defamation, or copyright infringement claims, as appropriate to the circumstances. Assistance can also be requested from women's protection agencies such as Komnas Perempuan, Legal Aid Institute, or other civil society organizations. Thus, although there is no law specifically regulating revenge porn, victims still have several legal options to protect their rights and demand justice (Salimah, 2023).

In a review of positive law in Indonesia related to revenge porn, it appears that although there is no specific law that explicitly regulates the crime, there are several relevant laws that can be used to handle revenge porn cases. Law No. 44/2008 on Pornography, Law No. 11/2008 on Electronic Information and Transactions, and the Draft Law on the Elimination of Sexual Violence provide the legal basis for the protection of victims and prosecution of perpetrators of revenge porn (Laksana & Suratman, 2014). Within this legal framework, the victim has a legal basis to prosecute the perpetrator, with criminal sanctions of imprisonment and fines applicable, depending on the law involving the case. The protection of individual decency and privacy in the context of the use of electronic media is a major focus, by addressing electronic information that violates norms of decency and involves threats of

violence. Despite the existence of pertinent legislation, the prosecution of revenge porn cases may still encounter obstacles and shortcomings. These include difficulties in identifying and apprehending perpetrators and the necessity for a more specialized approach to this form of criminality. Nevertheless, the formulation of the Draft Law on the Elimination of Sexual Violence demonstrates legislative initiatives to address the phenomenon of revenge porn in a more precise manner. Hopefully, with the improvement and refinement of more specific laws related to revenge porn, it will provide stronger legal protection for victims and overcome the challenges that may arise in handling such cases.

2. Victim Protection of Revenge Porn in Law Number 44 of 2008

Law Number 44/2008 on Pornography provides a legal basis for the protection of victims of revenge porn in Indonesia, although it does not explicitly mention revenge porn. Articles in the law, such as Article 4 which prohibits the production, distribution, and dissemination of pornography, and Article 6 which provides protection for victims and witnesses, provide the legal basis for protecting victims of revenge porn (Dewi, Dewi, & Widyantara, 2022). This protection encompasses the victim's entitlement to be safeguarded from any further instances of intimidation or threats to their personal safety and security. Nevertheless, the implementation of victim protection continues to encounter obstacles, including challenges in identifying and prosecuting perpetrators, as well as a lack of awareness regarding the adverse consequences of revenge porn among the general public and law enforcement (Herli U, 2023). In the context of *Maqashid Sharia*, the protection of victims of revenge porn can be seen as part of efforts to maintain the welfare of individuals and society, by emphasizing the importance of maintaining individual honor and dignity.

Revenge porn is the practice of distributing sexual content without the victim's permission with the aim of degrading or humiliating the victim emotionally and socially, often motivated by revenge (Lestari, 2023). Such content involves highly sensitive aspects of privacy and can have widespread and ongoing negative impacts on victims, including stress, depression, and serious social and professional consequences. In Indonesia, although there is no specific law governing revenge porn, several laws and regulations provide a legal basis for victim protection, such as Law No. 44/2008 on Pornography, the Electronic Information and Transaction Law (ITE Law), and the Criminal Code on Press Offenses. The law prohibits the

production, distribution and dissemination of pornography, which includes revenge porn. In addition, there are also aspects of victim and witness protection in criminal procedure law that can be utilized. A review of Law 44/2008 shows that although revenge porn is not directly mentioned, the principles in the law provide a relevant legal foundation. However, the implementation and enforcement of the law in the context of revenge porn still requires more intensive cooperation between various parties (Perangin-Angin, Rahayu, & Dwiwarno, 2019).

3. *Maqashid Sharia* Analysis of Revenge Porn

Maqashid Sharia is a basic concept in Islamic law that aims to achieve the overall benefit of humanity. The main principle is benefit (maslahah), which includes individual, social, and community interests at large (Sulistiani, 2019). In the context of revenge porn cases, *Maqashid Sharia* protects fundamental interests such as maintaining individual honor (*hifz al-irdh*), mental well-being (*hifz al-aql*), and privacy rights (*hifz al-nafs*). The principle of balance (*al-tawazun*) is also important in balancing the protection of victims with other individual rights, such as freedom of expression. *Maqashid Sharia* also emphasizes protecting the welfare of humanity at large, preventing social harm and ensuring the maintenance of basic values such as individual honor and dignity. As such, *Maqashid Sharia* provides a strong Islamic legal framework for dealing with revenge porn cases by prioritizing the welfare of individuals and society in a context that is in accordance with the principles of sharia.

A legal analysis of victims of revenge porn according to *Maqashid Sharia* entails an evaluation of the extent to which acts of revenge porn contravene the principles of *Maqashid Sharia*, as well as an examination of the ways in which Islamic law can safeguard victims. In this context, *Maqashid Sharia* demands the protection of honor, privacy, and individual welfare, which are aspects that are often violated by acts of revenge porn. The juridical analysis of revenge porn victims according to *Maqashid Sharia* emphasizes the protection of individual rights, the maintenance of honor, and the enforcement of justice in Islamic law.

Maqashid Sharia provides a strong legal foundation to protect victims of revenge porn, as its main principle is to achieve the benefit of humanity by prioritizing broad social and moral interests. In this context, victims of revenge porn can be viewed as individuals who are negatively affected by acts of violating privacy and honor that are contrary to Islamic

teachings. The principle of preserving the honor and dignity of individuals in *Maqashid Sharia* demands the protection of the rights to privacy and honor of individuals, including the right not to have personal content disseminated without permission.

The act of revenge porn, which is defined as the dissemination of sensitive material for the purpose of humiliating and demeaning the victim, can be considered a violation of this principle. Furthermore, *Maqashid Sharia* underscores the significance of ensuring justice within society. In the context of revenge porn, the enforcement of relevant legislation is of paramount importance to ensure that victims receive justice and appropriate redress for the violations they have experienced. Thus, the juridical analysis of revenge porn victims according to *Maqashid Sharia* confirms the need for strong protection of individual rights, maintenance of honor, and enforcement of justice in dealing with cases like this in accordance with Islamic values (Rahman & Tomayahu, 2020).

The protection of revenge porn victims can be analyzed from the perspective of the *Maqashid Sharia* principle, which aims to achieve the benefit of humanity by prioritizing broad social and moral interests. In this context, the protection of revenge porn victims is in accordance with the principle of the benefit of mankind, as it aims to protect individuals from the negative impacts and suffering caused by acts of violating privacy and honor. This principle emphasizes the importance of maintaining welfare and justice for all humanity, so the protection of revenge porn victims can be seen as an effort to achieve these goals.

In addition, the protection of revenge porn victims is also in accordance with the principle of preserving individual honor and dignity in *Maqashid Sharia*. Disseminating sensitive and personal content without the victim's permission is a violation of the privacy and honor rights of individuals, which is contrary to Islamic values that emphasize the importance of respecting and protecting individual rights. Thus, efforts to protect victims of revenge porn can be seen as an implementation of the principle of preserving individual honor and dignity in Islamic law.

The protection of victims of revenge pornography is also consistent with the principle of justice in *Maqashid Sharia*. The act of revenge porn can cause unfair harm and suffering to the victim, therefore it is important for law enforcement to take action against the perpetrator in order to ensure that victims receive justice and an appropriate remedy for the violations they have experienced. The principle of justice requires that all individuals be treated fairly

and equitably, regardless of their social or economic status. The protection of revenge porn victims, therefore, represents an effort to maintain justice in society. It is therefore crucial to ascertain the compatibility of the protection of revenge porn victims with the *Maqashid Sharia* principle. This is essential in guaranteeing that Islamic values, which advocate the safeguarding of individual rights, the preservation of honour, and the enforcement of justice, are effectively implemented in the handling of cases such as this.

In Indonesia, sanctions for perpetrators of revenge porn may vary depending on the provisions set out in various relevant laws, such as the Pornography Law, the Electronic Information and Transaction Law, as well as provisions in the Criminal Code on defamation, insults, and harassment.

- 1) **Pornography Law:** The Pornography Law has provisions that prohibit the production, reproduction, distribution, and dissemination of pornographic content. Although revenge porn is not specifically mentioned in this law, the act of distributing sexual content without the victim's permission can be considered a violation of this law. Perpetrators of revenge porn may be subject to criminal sanctions in the form of imprisonment and/or fines in accordance with Article 29 of the Pornography Law.
- 2) **Electronic Information and Transaction Law:** The Electronic Information and Transaction Law is used as the legal basis for prosecuting revenge porn perpetrators who disseminate content through electronic media. Articles in the Electronic Information and Transaction Law, such as Article 27 and Article 27 Paragraph (3), regulate the dissemination of information or documents that harm or degrade a person through electronic media. Perpetrators of revenge porn may be subject to criminal sanctions in the form of imprisonment and/or fines in accordance with Article 45A of the Electronic Information and Transaction Law.
- 3) **Criminal Code on Defamation, Insult, and Harassment:** Provisions in the Criminal Code on defamation, insult, and harassment can also be used to prosecute revenge porn offenders. The act of disseminating sexual content without the victim's permission for the purpose of degrading or humiliating may be considered a violation of these provisions. Perpetrators may be subject to criminal sanctions of imprisonment or fines in accordance with the relevant Articles of the Criminal Code.

The sanctions include criminal penalties in the form of imprisonment for varying lengths of time, dependent on the gravity of the offence, as well as fines that can reach significant amounts. Furthermore, those convicted of revenge pornography may be subject to additional sanctions, including the removal of the disseminated content, compensation to the victim, or social rehabilitation. Consequently, the sanctions imposed on those who disseminate revenge pornography in Indonesia encompass a range of penalties that are designed to uphold the law and provide justice to victims.

The concept of justice in *Maqashid Sharia* towards victims of revenge porn refers to the principles that ensure the protection of individual rights, the maintenance of social welfare, and the enforcement of moral values in society. In this context, justice in *Maqashid Sharia* pays attention to various aspects, including the rights of victims, social responsibility, and efforts to prevent offenses that harm individuals.

First of all, justice in *Maqashid Sharia* guarantees the protection of the rights of revenge porn victims, such as the right to privacy, honor, and dignity. This principle emphasizes the importance of respecting and protecting the rights of individuals from degrading and humiliating acts. In the case of revenge porn, justice requires strict enforcement of the law against perpetrators to ensure that victims get proper justice and redress for the violations they have experienced.

Furthermore, the concept of justice in *Maqashid Sharia* encompasses the social responsibility to prevent the dissemination of revenge pornography and to safeguard the rights of victims. This principle underscores the necessity for active involvement from various societal actors, including state institutions and individuals, in fostering awareness of the detrimental consequences of revenge pornography and in providing support and assistance to victims. Consequently, the pursuit of justice in *Maqashid Sharia* necessitates the collective undertaking of measures aimed at the prevention and mitigation of actions that inflict harm upon individuals and society at large.

Finally, justice in *Maqashid Sharia* also involves efforts to maintain harmony and balance in society. This principle emphasizes the importance of maintaining a balance between individual rights and the public interest, as well as between freedom and responsibility. In the context of revenge porn, justice requires balanced law enforcement that considers the rights of the victim, the rights of the perpetrator, and the interests of society as a whole.

CONCLUTION

This research highlights the complexity of the issue of revenge porn in the context of Indonesian positive law and the perspective of Islamic law, by integrating the *Maqashid Sharia* approach. Although Indonesia does not yet have a specific law regulating revenge porn, several laws and legal principles, such as Law No. 44/2008 on Pornography and *Maqashid Sharia* principles, provide a relevant legal basis for victim protection. However, challenges in perpetrator identification and public awareness remain an obstacle. In the context of *Maqashid Sharia*, the protection of revenge porn victims is seen as an integral part of efforts to safeguard the welfare of individuals and society at large, as well as the maintenance of moral values in Islam. Therefore, the need for more specific legal development and a holistic approach in addressing revenge porn in Indonesia is necessary to provide more effective protection for victims and ensure balanced social justice. By providing counseling or appeals to the community to respect each other and protect the rights and dignity, especially women as fellow creatures of God. Thus the perpetrator does not only satisfy his own lust but also thinks about the negative impact, namely the future of the victim spiritually and materially.

The protection of victims of revenge pornography can be achieved through the implementation of robust personal data protection policies and the establishment of effective content removal systems on online platforms. Furthermore, the attire worn in public spaces must also be considered. For instance, modest and closed-fitting garments may be worn to deter unwanted attention from the opposite sex and to prevent incidents in public areas such as restrooms. To ensure the area is kept private and secure, measures such as sufficient CCTV surveillance and strict access restrictions should be put in place to prevent misuse. Ventilation in public bathrooms should be designed in such a way that it does not compromise the privacy of its users, for example by using designs that pay attention to the balance between air circulation and user privacy. These measures are important to ensure that the identity of revenge porn victims is well protected and their privacy in public places is well maintained.

REFERENCES

1. Adilla, F. P. (2023). Perlindungan Hukum Bagi Korban *Revenge porn*. *Tamilis Synex: Multidimensional Collaboration 1*, no. 02, 11–17.
2. Dewi, N. K., Dewi, A. A., & Widyantara, I. M. (2022). Kajian Viktimologi terhadap Perlindungan Korban Balas Dendam Pornografi (*Revenge porn*). *Jurnal Konstruksi Hukum 3*, no. 1, 217-221.
3. Dimiyati, K., & Wardiono, K. (2004). *Metode Penelitian Hukum*. Fakultas Hukum Universitas Muhammadiyah Surakarta.
4. Djubaedah, N. (2011). *Undang-Undang Nomor 44 Tahun 2008 tentang Pornografi (Perspektif Negara Hukum Berdasarkan Pancasila)*. Jakarta: Sinar Grafika.
5. Gema, A. J. (2000). *Cybercrime: Sebuah Fenomena di Dunia Maya*. Diambil kembali dari diakses pada www.theceli.com.
6. Guza, A. (2008). *Undang-Undang Pornografi: UU No. 44 Tahun 2008*.
7. Herli U, H. A. (2023). Analisis Yuridis Putusan Hakim terhadap Pelaku Tindak Pidana Balas Dendam Porno (*Revenge porn*) di Media Sosial (Studi Putusan Hakim Nomor 555/PID. B/2022/PN JKT. BRT). *Disertasi, Universitas Islam Sultan Agung Semarang*.
8. Ibrahim, J. (2006). *Teori dan metodologi penelitian hukum normatif*. Malang: Bayumedia Publishing 57 .
9. Laksana, A. W., & Suratman, S. (2014). Analisis Yuridis Penyidikan Tindak Pidana Pornografi Berdasarkan Undang-Undang Nomor 44 Tahun 2008 Di Era Digitalisasi. *Jurnal Pembaharuan Hukum 1*, no. 2, 169–77.
10. Lestari, P. I. (2023). Tinjauan Hak Asasi Manusia Mengenai Perlindungan Hukum Bagi Perempuan Korban *Revenge porn*. *Civilia: Jurnal Kajian Hukum Dan Pendidikan Kewarganegaraan 2*, no. 5 , 1-10.
11. Perangin-Angin, I. I., Rahayu, R., & Dwiwarno, N. (2019). Kewajiban Dan Tanggungjawab Negara Memberikan Perlindungan Hukum Terhadap Perempuan Korban *Revenge porn* Di Indonesia. *Diponegoro Law Journal 8*, no. 1, 457-483.
12. Perbawati, C., & Candra . (2019). Konstitusi dan Hak Asasi Manusia.
13. Rahman, M., & Tomayahu, S. (2020). Penegakan Hukum Di Indonesia,. *Jurnal Al Himayah 4*, no. 1, 142-159.
14. Rongkene, B. (2020). Tindak Pidana Pornografi Menurut Kuhp Dan Undang-Undang Nomor 44 Tahun 2008 Tentang Pornografi. *Lex Crimen 9*, no. 1.
15. Salimah, R. I. (2023). Perlindungan Korban *Revenge porn* Dalam Hukum Positif Indonesia. *Jurnal Mahasiswa Indonesia 1*, no. 01 .
16. Soekanto, S. (1968). *Sosiologi: suatu pengantar*.
17. Sulistiani, S. L. (2019). Analisis Maqashid Syariah dalam Pengembangan Hukum Industri Halal di Indonesia. *Law and Justice 3*, no. 2, 91-97.
18. Syarifudin, H. (2014). *Ushul Fiqih Jilid II. Vol. 2*. Prenada Media.