

ARTICLE

Specificity of The Pornography Law Over The Electronic Information and Transactions Law on Cyberporn Criminal Acts Via Whatsapp Telecommunication

Kekhususan Undang-Undang Pornografi Terhadap Undang-Undang Informasi dan Transaksi Elektronik Terhadap Tindak Pidana Cyberporn Melalui Telekomunikasi Whatsapp

Ghenta Werdana Utama¹, Edita Elda²

^{1,2} Andalas University, Padang, West Sumatera, Indonesia

* Corresponding author: ghentantama@gmail.com, editaelda@law.unand.ac.id

Abstract

Currently, there are still a lot of and rampant dissemination of pornographic content through social media, especially through whatsapp as happened in decision number 200/Pid.Sus/2022/Pn.Jmb which befell a female victim against the dissemination of the victim's personal video carried out by her own boyfriend which resulted in the victim feeling ashamed of it, there are 2 (two) rules specifically regulating cyberporn crimes, namely the Pornography Law and the ITE Law. The formulation of the problem of this study is How is the proof in the case of the decision Number 200/Pid.Sus/2022/PN.Jmb? Based on the results of the research, there are 2 (two) laws that are specific in regulating the spread of pornography in electronic media or cyberporn, the principle of systematic lex specialist is needed in its application. In the context of dissemination through electronic media, such as in Decision Number 200/Pid.Sus/2022/PN.Jmb, the ITE Law is more relevant to ensnare perpetrators in terms of the use of electronic media in the distribution of content that violates morality. In addition, there is also evidence in the form of 6 (six) sheets of pornographic photo screenshots and 1 flash disk containing pornographic videos as valid evidence according to Article 5 Paragraph (1) of the ITE Law. Decision Number 200/Pid.Sus/2022/Pn.Jmb the judge used the Pornography Law because it meets the elements of Article 4 Paragraph (1) of the Pornography Law. According to the author, the application of the Pornography Law is not appropriate because dissemination through social media and electronic evidence is more specifically regulated in the ITE.



Keywords

Pornography Crimes; ITE Crimes; Cyberporn Crimes; Lex Specialist Systematics; Indonesia.

Abstrak

Saat ini masih sangat banyak dan marak terjadinya penyebaran konten pornografi melalui media sosial terutama melalui whatsapp seperti yang terjadi pada putusan nomor 200/Pid.Sus/2022/Pn.Jmb yang menimpa seorang korban wanita terhadap penyebaran video pribadi korban yang dilakukan oleh pacarnya sendiri yang mengakibatkan korban merasa malu atas hal tersebut, terdapat 2 (dua) aturan secara khusus mengatur tindak pidana cyberporn yaitu UU Pornografi dan UU ITE. Adapun rumusan masalah dari penelitian ini adalah Bagaimana Pembuktian dalam perkara putusan Nomor 200/Pid.Sus/2022/PN.Jmb ?. Berdasarkan hasil penelitian adanya 2 (dua) undang-undang yang bersifat khusus dalam mengatur terkait penyebaran pornografi di media elektronik atau cyberporn ini, maka diperlukan asas lex spesialis sistematis dalam penerapannya. Dalam konteks penyebaran melalui media elektronik seperti dalam Putusan Nomor 200/Pid.Sus/2022/PN.Jmb, UU ITE lebih relevan untuk menjerat pelaku dari sisi penggunaan media elektronik dalam distribusi konten yang melanggar kesusilaan. Selain itu, terdapat juga barang bukti berupa 6 (enam) lembar screenshoot foto bermuatan pornografi dan 1 flashdisk berisikan video yang bermuatan pornografi sebagai barang bukti yang sah menurut Pasal 5 Ayat (1) UU ITE. Putusan Nomor 200/Pid.Sus/2022/Pn.Jmb hakim menggunakan UU Pornografi karena memenuhi unsur-unsur dari Pasal 4 Ayat (1) UU Pornografi. Menurut penulis Indonesia.penerapan UU Pornografi kurang tepat karena penyebaran melalui media sosial dan alat bukti elektronik lebih spesifik diatur dalam ITE.

Kata Kunci

Tindak Pidana Pornografi; Tindak Pidana ITE; Tindak Pidana Cyberporn; Lex Spesialis Sistematis;

Introduction

Internet media is one of the impacts of globalization and technological developments that cannot be avoided. The emergence of the internet does provide access to information, but we cannot say that this media does not only have a positive influence but also brings various kinds of crimes in it. Currently, social media as a connecting media with its users easily creates content in social networks that are used by people as a means of free expression and free and sustainable opinions. The definition of social media is a mass communication

tool that is seen from various factors that appear in mass communication.¹ Some of the characteristics of social media include the existence of networks that are interconnected through the exchange of information and the existence of information as the main form because of the existence of communication that is mutually needed.²

Nowadays, many people use social media incorrectly. Information Technology is currently considered a double-edged sword, namely in addition to making human life easier, increasing human welfare, progress, and civilization. In addition, it is also a place to commit criminal acts. People who commit criminal acts must be held accountable for their actions with criminal penalties if they have violations, someone has a mistake if at the time of carrying out the act, seen from the perspective of society, it proves normative thinking overrides the mistakes they have made.³

Along with the development and rapid progress of technology that drives the development of life in society to a more modern life, because with the advancement of technology always changes, influences the way of thinking and life of society. In socio-cultural dynamics, the reality of people's lives is always marked by movement and dynamics that lead to change and development.⁴ However, technological progress does not always have a positive impact and of course will give birth to negative impacts, and one of the negative impacts of this technological progress is moral crimes.

The many cases of morality in society actually raise a big question mark regarding the existence of moral rules that apply in society. Sexual harassment is an act that is carried out in physical or non-physical forms by taking pictures, peeking, showing sexual organs/parts either directly or indirectly, transmitting sexually charged information, making physical contact, and asking someone to do something that is not desired by them so that it causes someone to feel embarrassed, depressed, offended, feel insulted by the act and so on.⁵

Cybercrime is a behavior or act carried out by a perpetrator by relying on cyber networks as a medium to commit his crime.⁶ According to this definition, the requirements for a crime to be called a cybercrime are crimes committed in cyberspace and using media that can be used to enter the cyberspace.

One of the things that is of concern and often occurs today from cybercrime is illegal content. The term illegal content itself has the meaning of an activity by entering data and information into the internet that contains content that can violate the law and disrupt legal

¹ I Gede Pande Udayana, I Made Minggu Widyantara, and Ni Made Sukaryati Karma, "Penyalahgunaan Aplikasi Media Sosial Sebagai Eksploitasi Dalam Tindak Pidana Pornografi," *Jurnal Konstruksi Hukum* 3, no. 2 (2022): 438–43, <https://doi.org/10.55637/jkh.3.2.4852.438-443>.

² Udayana, I Made Minggu Widyantara, and Ni Made Sukaryati Karma.

³ Andi Hamzah, *Bunga Rampai Hukum Pidana Dan Acara Pidana* (Jakarta: Ghalia Indonesia, 2001).

⁴ Sahid HM, *Pornografi Dalam Kajian Fiqh Jinayah* (Surabaya: Sunan Ampel Press, 2011).

⁵ Fikka Wiannanda Putri, Nainty Amelinda Rizti, and Puti Priyana, "Tinjauan Yuridis Terhadap Tindak Pidana Pelecehan Sexual Melalui Media Sosial (Cyber Porn)," *Jurnal Justitia : Jurnal Ilmu Hukum Dan Humaniora* 8, no. 4 (2021): 785–94.

⁶ Kota Bogor, "Kejahatan Cyber," n.d., <https://kominfo.kotabogor.go.id/index.php/post/single/847>.

order. The form of cybercrime in question is illegal content with the type of cyber pornography or cyberporn which contains content that violates morality. Literally the word pornography means writing about or pictures of prostitutes. Pornography means an expression in the form of writing or painting about erotic life with the aim of arousing sexual arousal to those who read or see it

Cyberporn is one of the focuses of cybercrime that needs attention because cyberporn or sexual harassment crimes through social media or computer networks cause enormous losses that can damage the next generation of the nation and cause very fatal consequences because someone can easily access, distribute or display pornographic content and can cause anxiety, restlessness, shame, depression, and feeling humiliated. There are other opinions related to cyberporn, namely Cyberporn is the distribution of pornographic material or material via the internet, which can be in the form of text, images, photos, audio, or films/videos. Pornographic material on the internet can be found on porn sites, information media sites such as magazine and newspaper sites.⁷ The dissemination of content that knows no boundaries of space and time in cyberspace, in addition to not being in accordance with norms of decency, religious morality, and damaging the moral order of society.

The problem of cyberporn can be found specifically in Article 4 of Law Number 44 of 2008 concerning Pornography (Pornography Law) which explains that everyone is prohibited from producing, making, reproducing, duplicating, distributing, broadcasting, importing, exporting, offering, trading, renting, or providing pornography that is implicit. Furthermore, this law regulates the prevention and eradication of pornography crimes, including cyberporn crimes. This law regulates the procedures for determining sanctions for perpetrators of pornography crimes, both individual and group perpetrators, and regulates how to protect children from the dangers of pornography. In addition, the Pornography Law not only regulates prohibition articles but also regulates the role of society and government to prevent the spread of pornography.⁸

Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE) is a legal umbrella that provides the basis for regulating electronic transactions, personal data protection, electronic transaction security, and copyright and intellectual property in the digital world. The ITE Law was created with the aim of improving the nation's life, developing national trade and economy with the aim of improving people's welfare, increasing the efficiency and effectiveness of public services, opening up opportunities as widely as possible for everyone to advance knowledge and skills in the field of using and utilizing information technology to the maximum and responsibly, providing

⁷ Dwi Hariyadi, *Kebijakan Integral Penanggulangan Cyberporn Di Indonesia* (Yogyakarta: Lima, 2013).

⁸ Helda Utami, Alfiansyah Alfiansyah, and Aryo Fadlian, "Analisis Yuridis Terhadap Ancaman Cyberporn Bagi Pengguna Aplikasi Twitter," *De Juncto Delicti: Journal of Law* 1, no. 2 (2021): 106–31, <https://doi.org/10.35706/djd.v1i2.5738>.

a sense of security, justice, and legal certainty for users and organizers of information technology.⁹

In addition, the ITE Law also replaces and expands the previous law, namely Law Number 36 of 1999 concerning Telecommunications (Telecommunications Law). As a law that regulates the field of information technology, the ITE Law covers various things, including the rights and obligations of internet users and electronic system organizers. This includes aspects of data security and personal information security, protection of intellectual property rights in the digital world, and the responsibilities of everyone who uses information technology and electronic transactions in Indonesia.

So, cyberporn crimes are regulated in the ITE Law as a form of crime that occurs through the internet network that threatens and endangers morals, morality, or public order. Although the law on pornography and morality in general in the Criminal Code and outside the Criminal Code has been in effect for quite a long time in Indonesia, acts of pornography and other criminal acts of morality continue to develop and even tend to increase over time.¹⁰

One example of a cyberporn case in Decision Number 200/Pid.Sus/2022/PN.Jmb which befell a woman with the initials W with a perpetrator with the initials H. The case began on Saturday, December 25, 2021 at around 14.37 WIB, the perpetrator sent a message to the victim via Whatsapp to invite the victim to meet in the Talang Banjar area at Hotel T, after the victim arrived at the hotel the perpetrator took the victim's cellphone and read the chat history on the victim's Instagram and the perpetrator saw many chats between the victim and men, the perpetrator was angry with the victim and not long after the victim returned home.

On Wednesday, January 5, 2022 at around 02.18 WIB, the perpetrator invited the victim to meet again at the same place, but the victim did not want to meet the perpetrator, because she was annoyed that the perpetrator, without the victim's permission, sent or distributed videos and photos of the victim naked and half-naked showing the victim's genitals to RR as the victim's friend, to the victim's father named AB and also to LA as the head of the office where the victim worked.

In the indictment of the public prosecutor (JPU), there are 2 (two) laws that were charged to the perpetrator, namely Article 29 in conjunction with Article 4 Paragraph (1) of the Pornography Law and Article 45 Paragraph (1) in conjunction with Article 27 Paragraph (1) of the ITE Law. The JPU assessed that the two laws regulate violations of morality, namely the distribution of pornographic content carried out by the perpetrator.

In the verdict, the judge sentenced him based on the Pornography Law with the element of "Disseminating Pornography that Explicitly Contains Nudity or Displays that

⁹ Partodihardjo Soemarno, *Tanya Jawab Sekitar Undang-Undang No.11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik* (Jakarta: Gramedia Pustaka Utama, 2008).

¹⁰ Alimuddin Siregar, *Regulasi Hukum Pornografi* (Scopindo Media Pustaka, 2019).

Impress Nudity" with a prison sentence of 2 (Two) Years and 6 (six) Months and a fine of Rp. 250,000,000,- (Two Hundred and Fifty Million Rupiah) with the provision that if he cannot pay it will be replaced with imprisonment for 6 (six) months".

Considering the judge's decision which prefers to consider using the Pornography Law rather than the ITE Law, which clearly both regulate the criminal act of distributing pornography, it is interesting to examine the application of the systematic *lex specialist* principle in this case because outside the Criminal Code, the criminal act of distributing pornography is regulated by 2 (two) different laws.

Based on the background description that has been explained above, the author is interested in studying and researching the above problems for writing a thesis entitled *Specificity Of The Pornography Law Over The Electronic Information And Transactions Law On Cyberporn Criminal Acts Via Whatsapp Telecommunication In Indonesia*.

Method

This type of research is normative juridical legal research, namely legal research conducted by examining primary legal materials, secondary legal materials, tertiary legal materials and non-legal materials using a statutory approach and a conceptual approach. Related to this research, the approach that the author will use in this research is the case approach, where the case approach is an approach that is carried out by examining cases related to the legal issues being faced, and it is necessary to understand the *ratio decidendi*, namely the legal reasons used by judges to arrive at their decisions. And also by using the statute approach, namely an approach using legislation and regulations.

Result & Discussion

A. Evidence According to the Criminal Procedure

Another dimension of neurolaw relevant to environmental crimes is the role of executive function disorders, which can impair judgment and increase impulsivity. Individuals with Frontal Lobe Syndrome or damage to the dorsolateral prefrontal cortex may struggle with long-term planning, risk evaluation, and moral reasoning all faculties critical in environmental compliance. While such conditions are often associated with violent or overtly antisocial behavior, recent clinical literature has begun to explore their subtler manifestations in white-collar crime, including fraud, regulatory violations, and corporate negligence. This suggests that neuropsychological assessments could reveal underlying deficits in decision-making that are masked by the professional demeanor of environmental offenders.

The most important aspect in criminal proceedings is the evidence that shows whether the defendant actually did what is accused or not. The existence and truth of the material sought in the trial of a crime is evidence, therefore, evidence is the main element of criminal law in the examination of cases in court. Material truth is the truth obtained as a whole from an incident with the aim of clarifying what crime occurred and who the perpetrator was. Where Evidence is a series of examination processes in front of the trial, an effort to find and determine the existence of truth by the judge's decision.¹¹

Proof is an act of convincing, convincing means giving or showing facts, carrying out something as if it were the truth, doing, showing, seeing, and convincing. It can be concluded that facts refer to evidence or evidence that can determine whether an incident is true. Proof in a trial is a very important event, so that the application of evidentiary law without being based on a pure conscience and responsibility can cause legal uncertainty and justice, as well as cause public disappointment and doubt regarding law enforcement.¹²

Proof means that whether or not a crime has been proven to have occurred, in which the defendant has been declared legally guilty of committing it, so that the defendant must be fully responsible for his mistake. Explicitly in the Criminal Procedure Code there are no provisions that provide limitations or understanding of proof. The types of evidence that are legally regulated in Article 184 paragraph (1) of the Criminal Procedure Code are as follows:

1. Witness statements

Witness testimony in a trial is one of the very important factors for the judge to consider in making a decision supported by other evidence.

2. Expert testimony Expert testimony is information provided by a person who has special expertise related to matters required for the purpose of providing clues to a criminal case for the purpose of examination. Expert testimony is essential to convince the judge during the trial.

3. Letter

An explanation of the letter can be found in Article 187 of the Criminal Procedure Code with the conclusion that written evidence is a letter made or issued under an oath of office or strengthened by an oath.

4. Instruction

Clues are acts, events or circumstances, which due to their correspondence, either between one and the other, or with the crime itself, indicate that a crime has occurred and who the perpetrator is. Clues can only be obtained through witness statements, letters, and statements from the accused.

¹¹ Team iznesia, "Pengertian Teori Dari Pembuktian Dalam Hukum Pidana," accessed June 17, 2024, <https://iznesia.id/pengertian-teori-dari-pembuktian-dalam-hukum-pidana/>.

¹² Hendar Soetarna, *Hukum Pembuktian Dalam Acara Pidana* (Jakarta: P.T. Alumni, 2017).

5. Defendant's statement

The reason for the defendant's statement as the last evidence is intended for the defendant to see first and hear the existing evidence so that it is hoped that the defendant can realize and reflect on what is being charged to him. As valid evidence, the defendant's testimony must be made directly in front of the court and the incident or event must be something experienced by the defendant himself. When the defendant gives a statement openly in court, it must be without fear and pressure from any party, this has been stated in Article 52 of the Criminal Procedure Code.

In Decision Number 200/Pid.Sus/2022/Pn.Jmb, witnesses were presented, such as the victim witness, the victim witness's friend, the victim witness's father, and the head of the office where the victim witness worked, who provided statements during the trial, confirming that the defendant's actions in spreading videos and nude photos of the victim witness via social media WhatsApp.

In addition, an expert from the Indonesian Ulema Council (MUI) of Jambi City was also presented stating that the defendant's actions were prohibited according to MUI fatwa Number 287 of 2001 concerning Pornography and Pornoaction, because distributing printed or visual images of other people whose genitals are exposed or sexual scenes is forbidden. After the statements from the witnesses presented, the clues obtained were in the form of the defendant's actions, incidents or circumstances indicating that a crime had occurred and who the perpetrator was.

The defendant during the trial gave a statement that the defendant justified his actions in accordance with the statements that had been submitted by the witnesses, namely distributing videos and photos of the victim in the form of screenshots to the victim's father, the victim's brother and the head of the office where the victim worked. In addition, the defendant did not present mitigating witnesses (a de charge) and also experts.

There are 3 (three) valid pieces of evidence according to the Criminal Procedure Code, such as witness statements from both the victim and witnesses other than the victim, expert testimony from the MUI, and the defendant's statement. Without any defense from the defendant himself, it is clear that the act of spreading the news via WhatsApp social media is the root of the problem in this case.

In the case of cyberporn in decision Number 200/Pid.Sus/2022/Pn.Jmb, of course, if only the Criminal Procedure Code is applied as a reference in evidence in court, it is certainly very limited and has less strong legal force because the Criminal Procedure Code does not regulate the latest evidence that has been born in accordance with the progress of the times, such as evidence in the form of electronic documents. Therefore, a special law was born or commonly called *lex specialis* which contains evidence that follows the development of the times and has legal force related to violations according to existing laws.

B. Evidence According to the Pornography Law and the Electronic Information and Transactions Law

The Indonesian legal system, like many other civil law jurisdictions, relies heavily on doctrinal and codified foundations for assessing criminal responsibility. In the context of environmental crimes, two primary instruments serve as the legal basis: the Indonesian Criminal Code (Kitab Undang-Undang Hukum Pidana or KUHP) and Law No. 32 of 2009 on Environmental Protection and Management (Undang-Undang Perlindungan

In the Pornography Law, evidence that can be used in court can be found in Article 1 number 1 that pornography consists of images, sketches, illustrations, photos, writing, voice, sound, moving images, animation, cartoons, conversations, body movements, or other forms of messages through various forms of communication media and/or public performances, which contain obscenity or sexual exploitation that has violated moral norms in society. It is explained that the form of evidence that can be used in court as a supporter of the Criminal Procedure Code which does not explicitly regulate evidence against pornography crimes.

In addition, Article 24 states that:

“In addition to the evidence as regulated in the law on criminal procedure, evidence in criminal cases also includes but is not limited to:

1. items containing writing or images in printed or non-printed form, whether electronic, optical, or other forms of data storage; and
2. data stored on the internet network and other communication channels” The ITE Law regulates proof in the form of electronic evidence, namely: Article 5 Paragraph (1): “Electronic Information and/or Electronic Documents and/or printouts thereof constitute valid legal evidence.” Electronic information and document evidence has the power of proof if it can be accessed,

its authenticity and integrity are guaranteed.¹³ There are several requirements that must be met so that evidence can be accepted in court, one of which is that the evidence must be competent (reliable and credible) so that its validity is guaranteed.

The existence of evidence regulated separately by the ITE Law is considered an extension of valid evidence in criminal procedure law. Although it is expressly regulated as an extension of evidence in Indonesian criminal procedure law, electronic evidence is considered evidence that only covers criminal acts regulated by the ITE Law and certain criminal acts that specifically regulate electronic evidence as evidence.

The view that electronic evidence is only considered as evidence or indicative evidence in the event of a match between facts and criminal events based on the following reasons. First, the

¹³ Feroza Meviahanna Noor Pratiwi, “Penilaian Kekuatan Alat Bukti Elektronik Dalam Pembuktian Tindak Pidana Penyebarluasan Konten Pornografi Melalui Media Sosial,” *Jurnal Verstek* Vol.10 No. (2022): hlm.64, <https://doi.org/10.20961/jv.v10i1.63940>.

criminal act charged only refers to the criminal procedure law in the Criminal Procedure Code. The criminal acts in question are mostly regulated in the Criminal Code such as murder, assault, theft, and so on or outside the Criminal Code which does not specifically regulate evidence or evidence other than the explanation of the Criminal Procedure Code. Second, electronic evidence is only considered evidence because it is expressly stated in the ITE Law and other laws that specifically regulate it as evidence.¹⁴

In decision Number 200/Pid.Sus/2022/Pn.Jmb, it fulfills the element that the evidence found in the trial is considered valid because it is expressly stated in the ITE Law. However, if the evidence obtained by law enforcement is unlawful (unlawful legal evidence) it will be set aside by the judge or considered to have no evidentiary value by the court.

C. Analysis of Evidence in Decision Number 200/Pid.Sus/2022/Pn.Jmb

Based on the evidence from the regulations that have been described above, the evidence in the criminal case in Decision Number 200/Pid.Sus/2022/Pn.Jmb has been clearly stated in the Criminal Procedure Code, the Pornography Law, and the ITE Law. However, it is necessary to pay attention again to which rules explicitly regulate the evidence in the trial so that the use of the systematic *lex specialist* principle is more optimal. In the case of Decision 200/Pid.Sus/2022/Pn.Jmb, the witnesses present at the trial supported each other regarding what they experienced and the defendant gave an opinion that he confirmed it and did not object because it was true that the defendant sent photos in the form of screenshots and videos of the victim to the victim's father, the victim's younger sibling, and the head of the office where the victim worked. The witness's testimony in this case has fulfilled the elements of one of the proofs contained in Article 184 Paragraph (1) of the Criminal Procedure Code, namely witness testimony.

In addition, in Decision 200/Pid.Sus/2022/Pn.Jmb there is an expansion of evidence other than that regulated in the Criminal Procedure Code, namely in the Pornography Law in Article 24 which states that in addition to the evidence regulated in the Criminal Procedure Code, items containing writing or images in printed form in electronic, optical, or other forms of data storage are included as evidence in pornography criminal cases.

In the ITE Law, the expansion of evidence is contained in Article 5 Paragraph (1) which states that electronic information and/or electronic documents and/or printed results are valid legal evidence. Article 5 Paragraph (2) emphasizes that what is contained in

¹⁴ Jefferson Hakim, "Mempertanyakan Bukti Elektronik Sebagai Alat Bukti Dalam Kasus Pidana," HukumOnline, n.d., <https://www.hukumonline.com/berita/a/mempertanyakan-bukti-elektronik-sebagai-alat-bukti-dalam-kasus-pidana-lt667b57ba9f459/?page=1>.

Article 5 Paragraph (1) is an expansion of valid evidence in accordance with the procedural law applicable in Indonesia.

If we look at the expansion of evidence from the Pornography Law and the ITE Law, there is a wider expansion of evidence in terms of electronic documents, because the Pornography Law only limits evidence in the form of writing and images in printed form or not other than electronic prints. Meanwhile, the ITE Law regulates that electronic information or documents in the form of photos, images, or videos in printed or non-printed form are valid evidence according to law. Therefore, the application of the systematic *lex specialist* principle helps law enforcers to make it easier for them to choose if there are two different rules governing the expansion of evidence outside the Criminal Procedure Code.

The position of electronic evidence, that conceptually in terms of electronic evidence, is basically not appropriate to be categorized as evidence and is more appropriate to be categorized as evidence and still the evidence in the form of electronics must be managed based on digital forensic methods. Thus, in the author's opinion, that in terms of convincing the judge regarding the existence of evidence in the form of evidence, a scientific study method must be carried out so that the judge obtains confidence in a case that occurs.

According to the Supreme Court's Judicial Judge, Afdil Azizi, electronic evidence must be valid, original and can be proven or displayed in court, as long as it has been acknowledged by the perpetrator or victim that they are indeed the ones in the electronic evidence considered as witness and defendant statements in accordance with Article 184 of the Criminal Procedure Code, then it has become electronic evidence that has been recognized by the ITE Law and can be used as evidence in a case. However, if one of the perpetrators or victims denies that it is not him/her in the electronic evidence, then it must also be proven forensically.

Evidence presented in court for the purpose of strengthening the existing evidence in order to prove that the defendant actually committed the crime. If the evidence is mentioned in the indictment and brought during the trial, the judge is obliged to show the evidence in front of the defendant and witnesses in order to prove that the evidence is true. The evidence presented in the case of decision 200/Pid.Sus/2022/Pn.Jmb is as follows:

1. 6 (six) sheets of print out screenshots of WhatsApp conversations containing pornographic photos. This evidence meets the requirements as evidence in Article 24 of the Pornography Law which states that goods containing writing or images in printed form, either electronic or optical, are valid evidence. In addition, it also meets the requirements as evidence regulated in the ITE Law in Article 5 Paragraph (1) that electronic documents are valid legal evidence.
2. 1 (one) white flash disk containing a pornographic video.

The author is of the view that the evidence in the trial meets the evidence regulated in

Article 184 of the Criminal Procedure Code in the form of witness statements, namely from the victim witness who provided information that the defendant did indeed distribute photos and videos of the victim who was naked. Furthermore, the victim's father, the victim's younger sibling, and the head of the office where the victim worked as witnesses also confirmed that the defendant sent them photos and videos of the victim who was naked. In addition, the defendant gave an opinion that he confirmed the incident and there was no defense or objection. There were 3 (three) valid pieces of evidence according to the Criminal Procedure Code obtained during the trial, namely witness statements, expert statements, and the defendant's statement.

In addition, according to the author, the evidence in the form of a printout of a screenshot of the victim without clothes which was obtained by the defendant through a video of the victim in a naked state meets the requirements as valid evidence as contained in Article 5 Paragraph (1) of the ITE Law which states that electronic information and/or electronic documents and/or printouts thereof constitute valid legal evidence in criminal procedure law in Indonesia.

Next is the evidence in the form of a video of the victim without clothes which meets the requirements as valid evidence also according to the ITE Law which is part of an electronic document. In addition, it can also meet the requirements of evidence in the Pornography Law in Article 24 which states that data stored in the internet network and other communication channels are valid evidence. According to the author, although the Pornography Law also regulates evidence through the internet network, the use of Article 5 of the ITE Law is more relevant to be applied with the principle of systematic *lex specialis* that the ITE Law explains evidence in the form of information or documents in electronic form in more detail.

The proof of electronic evidence in Decision 200/Pid.Sus/2022/Pn.Jmb is considered valid because the victim witness admitted that it was indeed him in the electronic evidence and the confession conveyed by the victim witness is regulated by Article 184 of the Criminal Procedure Code, namely the existence of witness statements. The existence of the victim witness statement is no longer necessary to prove the authenticity of the electronic document authentically.

Therefore, the evidence in Decision 200/Pid.Sus/2022/Pn.Jmb should be relevant to apply the ITE Law in accordance with the principle of systematic *lex specialis* because the evidence in the form of screenshots was obtained through the victim's video which is included in the electronic document and the victim's video evidence is included in the electronic document because in the Pornography Law, evidence in the form of videos is not regulated in Article 24 as an expansion of evidence.

Conclusion

The evidence in the case of Decision Number 200/Pid.Sus/2022/Pn.Jmb is that there is evidence in accordance with Article 184 of the Criminal Procedure Code in the form of witness statements, expert statements, and defendant statements. In addition, there is an expansion of evidence according to Article 24 of the Pornography Law in writing or images in electronic print form and Article 5 Paragraph (1) of the ITE Law explains in detail the form of electronic information/documents and it is emphasized that electronic information/documents are valid legal evidence.

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"Wawancara Dengan Hakim Yustisial Mahkamah Agung, Afdil Azizi, Pada 9 Desember 2024, Pukul 13:00.," n.d.