

***THE CRIME OF DEEFAKE PORNOGRAPHY IN
INDONESIAN LEGAL PERSPECTIVE***

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ABSTRACT

The evolution of technology and information has changed the variety and forms of sexual violence. Deepfake pornography is a powerful phenomenon of artificial intelligence that involves the manipulation of images and videos. This incident involves many famous figures, especially artists, due to the easy access to images and videos. But it can also happen to ordinary people, causing mental damage. Depression, humiliation, loss of self-confidence and being ostracized by society are the consequences experienced by victims. Meanwhile, the regulation of deepfake pornography in Indonesia does not regulate in detail the rights of victims, penalties for perpetrators and regulations on the use of AI, especially deepfake. Law is an inseparable part of social life, so it is necessary for there to be harmony between the law and what happens in society. Strong regulations and public awareness can make people aware of the dangers of sexual violence in the scope of cyber crime. Appropriate regulations in the form of high fines and long detention periods for perpetrators are efforts to prevent repetition of the same sexual violence.

Keywords: *Pornography, Deepfake, Artificial Intelligent, Regulation, Violence.*

INTRODUCTION

The development of technology and information is characterized by the emergence of the internet as a human invention in this development. The internet is a collection of computer networks connected to one another, which can read and apply various communication procedures, as well as the internet can help people to facilitate their work and activities. However, with the development of a technology, new challenges in the form of negative impacts in a form that has the potential to be detrimental to the institution or individual.

The greatness of digital technology has raised many legal issues due to digital misuse, resulting in many crimes known as cybercrime. Based on the Oxford dictionary, cybercrime is an activity that is carried out through computers or the internet.¹

The U.S Department Of Justice (DOJ) defines cybercrime or computer crime as an illegal activity whose activity orientation involves knowledge of computer technology for malicious conduct, investigation or prosecution.² Cybercrime in fact has various forms of crime whose orientation of use remains on the Internet. Some forms of cybercrime include: ³

1. Unauthorized Access to Computer System and Service, this crime is committed by entering or infiltrating a computer network system of the system owner without the owner's permission and this activity is illegal.
2. Illegal Contents, this crime is entering data or information that contains something unethical, not true and can be considered unlawful. Such as fake news, pornography, propaganda, etc.
3. Data Forgery, for this one, the crime involves falsifying data on important documents via the internet. It is aimed at e-commerce documents by making it appear as if there was a "typo" that would benefit the perpetrator.
4. Cyber Espionage, crimes that utilize the internet network to conduct spying activities by entering other parties' computer network systems. This crime attacks important documents or data stored in a computerized system.
5. Cyber Sabotage and Extortion, this crime causes damage or disruption to data on computer network systems connected to the internet. This crime usually infiltrates a logic bomb, computer virus so that the computer network cannot be used. In some cases, the perpetrators will offer themselves to the victim to repair the sabotaged data or computer network system, of course for a certain fee.
6. Offense Against Intellectual Property, this crime is committed against the intellectual property rights of others on the internet.
7. Infringements of Privacy, this crime is directed against a person's highly personal information. Such as a person's personal information such as credit card number, number, ATM personal identification number, etc.

The word cyber is used in the terms cyberspace, cyber child pornography, cybersex, cyberporn and other cyber terms. One cybercrime that is very troubling

¹ Osman Goni, dkk., The Basic Concept of Cyber Crime, *Journal Of Technology Innovations and Energy*, Vol. 1, No. 2, 2022, page. 30, <https://www.jescae.com/index.php/jtie/article/view/113>.

² Chris Kim, et al., Computer Crime, *Journal American Criminal Law Review*, Vol. 49, Issues. 12, 2012, page 443, <https://www.ojp.gov/ncjrs/virtual-library/abstracts/computer-crimes-7>.

³ Ibrahim Fikma Edrisy, *Pengantar Hukum Siber*, Sai Wawai Publishing, Lampung, 2019, page 5-7.

and has received attention from various people is the problem of cybercrime in the field of decency, namely cyber sex and cyber pornography.⁴

A deepfake is a fake image or video that puts someone to do or say something they never did. The four categories of deepfake are:⁵ 1. deepfake as a political campaign, 2. deepfake as a cost-saving tool, 3. original and creative deepfake and finally, 4. deepfake used in pornography. And in this paper, we will talk about deepfake, which is misused to create images and videos that contain pornographic elements. Which can involve anyone to participate in an act or action that violates the norms of life and is widely disseminated on the internet.

Pornography deepfake of manipulating a video not only destroys a reputation, it can also destroy a person's psychological state in social life. The engineering of such content is very detrimental to certain parties, it can also be used as a tool to bring down others to realize the satisfaction of someone who wants sexual intercourse by fantasizing about others.

There are even cases of people who have fabricated someone's voice and face in the making of pornographic video content as blackmail material. It is known that in a deepfake porn video, often the voice or face of a person is altered and disseminated with unknowing victims in this case including against the will of the victims. The impact of this crime certainly causes a lot of losses because of the defamation of the good name and honor or dignity of the victims, especially innocent people, in this case not making or even spreading pornographic videos, can be defamed and harassed through the spread of fake photos or videos using their appearance that shows all their curves without clothes.

RESEARCH METHOD

Every research is based on the scope of science that is the basis of research activities. The research method is a way to achieve goals by searching, recording, and formulating and analyzing to compile a scientific paper.

This research is classified as normative research, which is to analyze laws and regulations that have been conceptualized as norms or rules that apply in society.

RESULT AND CONCLUSION

a. Pornography Deepfake

In recent years, technology has emerged from the dark corners of the internet. Pornographic images and videos have been engineered so that they can display a

⁴ Dwi Haryadi, *Kebijakan Integral Penanggulangan Cyberporn Di Indonesia*, Publisher V Lima, Bangka Belitung, 2012, page. 8.

⁵ Edvinas Meskys, et al., *Regulating Deep-fakes: Legal and Ethical Considerations*, *Journal of Intellectual Property Law & Practice*, Vol. 15, Issues. 1, 2020, page 3, <https://academic.oup.com/jiplp/article-abstract/15/1/24/5709090?redirectedFrom=fulltext&login=false>

very realistic video and image, despite the fact that the activities in the images and videos are not proven to have occurred. Technology, social and legal academics refer to this as deepfake. Although the resulting images and videos are fictitious, they are convincingly mapped onto the bodies of those involved in sexually explicit acts, a product of the technological sophistication of artificial intelligence.⁶

The term deepfake was first introduced by a Reddit user in 2017 on a thread that featured a female celebrity in a porn movie. The Reddit user who posted the video coined the term “deepfake” which is a combination of “deep learning” and “fake”.⁷ Non-consensual pornography is a resulting application of deepfake as an image and video engineering technology that emerged in 2017. And it continues to increase year by year with the index number progressing. What has brought about this proliferation is the rapid technological advancements in machine learning that have removed previous technological barriers.⁸

The technology of manipulating faces and voices in a pornographic video content so that a person can play a role in a pornographic video from ordinary people to famous figures, this engineering technique is known as Deepfake which is a product of artificial intelligence (AI) that can apply the falsification of a person's face and voice to a pornographic video content. There are several cases that have occurred regarding the engineering of images and videos containing pornographic elements in Indonesia, one of which has become the center of public attention is the circulation of Nagita Slavina's video containing pornographic elements. The video with a duration of 61 (sixty-one) seconds contains Nagita Slavina, who is an artist, performing indecent acts and violating, but after being reported for follow-up and investigation, the police stated that the Nagita Slavina video was fake because it had been changed or manipulated by the actor's face so that it was similar to Nagita Slavina. The face in the video is allegedly using the deepfake porn technology.⁹

Not all sexually explicit images or videos can be declared as deepfakes. What can distinguish deepfake images and videos from regular sexual images and videos. The two categories can be distinguished: firstly, the realistic image potential results, only need two different individual photos, and with fast computer processing, it can result in very convincing images and videos. Secondly, public access that can be easily accessed by the public without exception. Now everyone

⁶ Rebecca A. Delfino, Pornographic Deepfakes: The Case for Federal Criminalization of Revenge Porn's Next Tragic Act, *Ohio State Law Journal*, Vol. 88, Issue 3, page 1-2, 2019, <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=5640&context=flr>.

⁷ Emily Pascale, Deeply Dehumanizing, Degrading, And Violating: Deepfake Pornography And The Path To Legal Recourse, *Syracuse Law Review*, Vol. 73, Book 1, page 337, <https://lawreview.syr.edu/wp-content/uploads/2023/03/Pascale-335-366.pdf>

⁸ *Id.*

⁹ <https://www.kompas.tv/entertainment/252564/fakta-terkait-laporan-pnyebar-video-syur-mirip-nagita-slavina?page=all>, accessed 09 Juni 2024.

uses systems or tools that can help them with their work. Including the use of the FakeApp and Reface application which is a public deepfake application.¹⁰

Deepfake technology is rapidly evolving and public interest has also increased, so apps to create deepfakes are now available widely. The ease offered in technical images and videos in a deepfake application, which can most likely make images and videos of public figures even personal individuals into explicit images and videos containing pornographic elements, is becoming more common. At worst, anyone can now star in pornography against their will, and currently, the law does not have specific regulations governing the regulation, use and prevention of deepfake technology.

b. Pornography and Pornography Regulations in Indonesia

An act that fulfills the elements of a crime is usually contained in the Penal Code of Indonesia 1982. The same goes for something that violates the norms of modesty. In the Penal Code of Indonesia or hereinafter referred to as the KUHP, mentioning an act that contains elements of pornography or immorality is referred to as modesty.

Article 282 Paragraph 1 which reads:

Any person who openly broadcasts/exhibits or puts up a writing, drawing or known article which offends the sense of decency, shall be liable to a maximum imprisonment of one year and four months and a fine of IDR 45,000.

As well as several other articles in the Penal Code of Indonesia 1982 which regulate offenses against feelings of modesty such as article 281, such as article 532, article 310 paragraph 1, etc.

In Indonesia, the principle of “*lex specialis derogat legi generali*” applies, meaning that special laws override general laws. Pornography itself is a special law that has its own regulation, which in the application of the law also discusses pornography in more detail. In Law Number 44 of 2008 concerning Pornography and Pornography. It contains an in-depth definition of pornography.

Article 1 Paragraph (1) in the General Provisions Chapter:

Pornography is images, sketches, illustrations, photographs, text, 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 the norms of decency in society.

¹⁰ Marissa Koopman, et al. Detection of Deepfake Video Manipulation, University of Amsterdam & Netherland Forensic Institute, 2018.

According to R. Soesilo¹¹, modesty in the sense of decency is a feeling of shame that is related to sexual lust, for example having sex, groping a woman's chest, groping a woman's pubic place, showing female or male genitalia, kissing and so on. Pornography is seen as a crime because it is considered contrary to public decency.

Deepfake pornography is a crime that plays on the internet. Indonesia has regulations related to cybercrime, which are regulated in Law No. 19 of 2016 concerning amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions. Article 45 of Law Number 11/2008 on Electronic Information and Transactions (UU ITE):

States that anyone who disseminates electronic information or electronic documents that have content that violates decency can be punished with a maximum imprisonment of 6 (six) years or a maximum fine of IDR 1,000,000,000.00 (one billion rupiah).

As well as article 27 A of Law Number 1 of 2024 concerning the second amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions. Article 27 A states that:

Every person intentionally attacks the honor or good name of another person by alleging a matter with the intention that it becomes public knowledge in the form of electronic information and/or electronic documents carried out through an electronic system.

CONCLUSION

Deepfake pornography is a new challenge in the field of technology that disturbs the privacy of a person as a victim. Deepfake pornography was originally done only for celebrities, public figures or politicians. However, with the reduction of barriers to editing faces, bodies, voices, etc., deepfake pornography has become more prevalent even among civilians. In fact, this crime can affect anyone, be it an adult or a child. So with the narrative that has been explained, there is a need for targeted regulations that fully regulate deepfake pornography. If it cannot be a new stand-alone regulation, it can be included and harmonized in the applicable law to be included regarding deepfake pornography.

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¹¹ Martini, Pengaturan Tindak Pidana Pornografi dalam Sistem Hukum Indonesia, Vol. 19, No. 2, 2021, page 291, <https://jurnal.unpal.ac.id/index.php/solusi/article/view/366>.

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