

Law Enforcement For the Creators of Pornographic Content on the OnlyFans Platform

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Abstract

Based on Indonesian law, the production of pornographic content based on the onlyfans site is a crime regulated in the Criminal Code and Law Number 44 of 2008 concerning Pornography regarding crimes related to pornography. Cases of pornographic content that are carried out often occur in Indonesia. Specifically for pornographic content based on onlyfans sites, there are only Siskae and Dea Onlyfans. For the production of pornographic content on Onlyfans, the perpetrator's actions can be subject to criminal sanctions because they fulfill the elements in the Criminal Code, the ITE Law, the Trade Law, and the Pornography Law. The research method used in this study is a doctrinal research method with primary, secondary and tertiary legal sources. The purpose of this research is to identify and analyze criminal law arrangements for creators of pornographic content based on the onlyfans site on social media, and law enforcement for creators of pornographic content based on the onlyfans site on social media. The results of this study, the researchers concluded that in addition to the Formulation of Criminal Acts for creators of pornographic content based on the onlyfans site, Article 4 paragraph (1) letters d and e of Law Number 44 of 2008 concerning Pornography can properly, clearly and firmly ensnare content creators. Second, existing law enforcement against pornographic content creators in Indonesia has not been carried out evenly. The ongoing legal process also has significant differences. Researchers are of the view that in law enforcement it is necessary to use the theory of legal certainty to provide equality in the law enforcement process for all existing pornographic content creators.

Keywords: *Crime, Pornographic, Content Creator, OnlyFans*

INTRODUCTION

The Republic of Indonesia is currently facing a serious problem due to the unstoppable advancement of technology. This concern arises from the proliferation of content on the Internet that tends to be negative and poses a significant danger to the nation's younger generation, particularly pornography. Pornographic content itself is explicitly prohibited under Article 29 of Law Number 44 of 2008, which states, "Anyone who produces, creates, duplicates, reproduces, distributes, broadcasts, imports, exports, offers, trades, rents, or provides pornography as referred to in Article 4(1) shall be punished with imprisonment for a minimum of 6 (six) months and a maximum of 12 (twelve) years and/or a fine of at least Rp250,000,000.00 (two hundred and fifty million rupiah) and at most Rp6,000,000,000.00 (six billion rupiah)." While existing regulations govern the prohibition of the creation and dissemination of pornography, the presence of social media remains largely unrestricted, including the creation of pornographic content.

Data from the Ministry of Communication and Information Technology reveals that 255,948 pieces of negative content were distributed across the internet throughout 2021. Of this total, Kominfo identified that pornography was the most predominant category, comprising 43,442 instances of pornographic content available online [7]. The presence of such content inevitably facilitates the growth of criminal activities, one of which is cybercrime. Cybercrime manifests in various forms, with one prevalent category being offenses related to morality, specifically cyberpornography. Cyberpornography has seen an evolution in its dissemination methods, including through platforms such as OnlyFans. OnlyFans is a subscription-based content service based in London, England. Content creators can earn revenue from users who subscribe to their content as a fan [8]. Due to the exclusive nature of the content, subscribers are required to register with a credit card. Users interested in accessing content may subscribe for a price starting at \$12 per month or approximately Rp.170,000. However, subscription fees can vary depending on the content provided by the creator, ranging from \$5 to \$50 per month, or approximately Rp.71,000 to Rp.711,000 for certain contents. Consequently, creators can freely market their pornographic content to the online community. By the end of 2021, OnlyFans had over 170 million users worldwide, and this number continues to grow to this day [6]. This surge is partly attributed to the pandemic, which has reduced employment opportunities and made platforms like OnlyFans a promising and immediate source of income.

Since access is restricted to those who can pay for the content, privacy is perceived to be secure. Additionally, other social media platforms can be used to promote their accounts, such as Twitter and Instagram, by simply including the relevant link. Recently, some Indonesian individuals have become content creators on the OnlyFans platform. However, there are instances where these individuals have not faced legal sanctions for their actions. This situation will lead to public concern if enforcement of the law is not carried out concerning pornography cases based on the OnlyFans platform, in accordance with Law Number 44 of 2008 on Pornography.

METHOD

This study employs doctrinal legal research. Doctrinal research involves the examination of legal rules, principles, concepts, or doctrines. It encompasses a systematic exposition, thorough analysis, and critical evaluation of legal rules, principles, or doctrines, and their interrelationships. This approach pertains to a critical review of legislation, decision-making processes, and the underlying policies [2]

RESULTS AND DISCUSSION

Criminal Offense Formulation for Content Creators of Pornography on the OnlyFans Platform in Social Media

Regarding the OnlyFans platform on social media, based on information from the official OnlyFans account [5], is a platform owned by Fenix International Limited, founded by its CEO, Tim Stokley, in September 2016. OnlyFans aims to revolutionize the connection between content creators and fans by providing content creators with the opportunity to monetize the content they wish to share. This London-based platform includes artists and content creators from all genres and facilitates the development of more intimate relationships between content creators and their fans.

On OnlyFans, there are several sections, including Home, Notifications, Create, Chat, and Menu. Home is the area for viewing content shared by followed accounts, including close friends; Notifications is where users can view notifications and also includes sections for comments, likes, tips, and a search bar; Create is for posting content; Chat serves as a space for initiating private conversations; Menu displays the profile name, username, and the number of fans and followers. Additionally, users can access their profile, bookmarks, lists, settings, cards, bank account information, and activate dark mode, as well as log out of their account. A distinctive feature is the bank account information section, which sets it apart from general applications by allowing account holders to conduct transactions through OnlyFans with content creators' accounts.

This also creates a loophole for Indonesian society to engage in similar activities to earn money from content creation. Despite the presence of criminal elements. Accessing the site remains difficult in Indonesia. Although direct access to OnlyFans is not available in Indonesia through standard app stores, there are several methods to bypass this restriction, one of which is using a Virtual Private Network (VPN). With a VPN, Indonesians can easily access the OnlyFans application through search engines. Not only do users access the OnlyFans site, but many are also interested in becoming content creators on the platform.

A perpetrator of a criminal offense is an individual or group who commits the act or offense in question, meaning a person who engages in the act with either intentional or unintentional elements as stipulated by the law, or who has caused an outcome not desired by the law. This includes both objective and subjective elements, regardless of whether the act was carried out by the individual's own decision or under the influence of a third party.

Barda Nawawi Arief states that 'a criminal offense in general can be defined as an act that violates the law, both formally and materially'.^[3] The individuals who can be identified as perpetrators of a criminal offense can be categorized into several types, including:

- a. The Principal Actor (*dader plagen*): An individual who acts alone to achieve their objectives in committing a criminal offense.
- b. The Instigator (*doen plagen*): To commit a criminal offense, at least two people are required: the person who commits the act and the person who instructs them to do so. In this case, it is not the first party who commits the offense directly, but rather with the assistance of another party who acts as a means to execute the crime.
- c. The Accomplice (*mede plagen*): This refers to individuals who participate in committing the offense together. At least two people are required for the commission of the offense, including both the principal actor and the accomplice.
- d. The Abuser of Authority: This refers to individuals who, by exploiting or abusing their position, offer bribes, enter into agreements, coerce someone, or intentionally persuade others to commit a criminal offense."

Based on various definitions of criminal offenses, it can be concluded that pornography offenses are unlawful acts that result in criminal liability for the perpetrator. This also clarifies the status of content creators of pornography on the OnlyFans platform as perpetrators.

The perpetrators, as explained in the context of creating pornography content on the OnlyFans platform, have varying elements. Some individuals commit the offense by creating pornographic content themselves, producing, selling, and importing or exporting it independently. However, there are also cases where individuals are involved in pornographic content in collaboration with others, and there are instances where content is produced by agencies with

producers and directors involved in the content creation process.

In this context, the author aims to focus on perpetrators as individuals who act alone to achieve their objectives in committing a criminal offense (*dader plagen*). The author limits this definition by using the term 'creator' instead of 'perpetrator.' The focus is on content creators of pornography on the OnlyFans platform who conduct their activities independently.

Legal Regulations Concerning the Criminal Offense of Creating Pornographic Content on the OnlyFans Platform in Social Media

Pornographic offenses, as a form of norms, rules, or laws, are formulated in legislation, including provisions in the Penal Code (KUHP) and other legal statutes outside the KUHP. These include offenses related to pornography or pornographic acts and, in their evolution, cyberpornography^[10] OnlyFans is one of the platforms that facilitates the occurrence of pornographic offenses due to its services being prohibited in Indonesia yet still easily accessible. Despite this, criminal sanctions cannot be avoided, even though such services are not available within Indonesia.

Criminal sanctions are a form of punishment that involves cause and effect: the cause being the offense and the effect being the penalty. Individuals who are subject to the consequences will receive sanctions, which may include imprisonment or other penalties imposed by the authorities.^[1] Criminal sentencing aims to prevent the recurrence of similar offenses in the future and to uphold legal norms. The implementation of sentencing must avoid injustice by establishing limits on sentencing and the level of sentencing.^[12]

The most fundamental violation for creators of pornography content on the OnlyFans platform is outlined in Law Number 44 of 2008 on Pornography. The prohibition against producing pornographic content is stated in Article 4, paragraph (1), which reads as follows: "Everyone is prohibited from producing, creating, reproducing, duplicating, presenting, broadcasting, importing, exporting, offering, selling, renting, or providing pornography that explicitly includes: a) sexual intercourse, including deviant sexual intercourse; b) sexual violence; c) masturbation or onanism; d) nudity or images that suggest nudity; e) nudity; f) genitalia; or g) child pornography."

The criminal penalties for violating Article 4, paragraph (1) of the Pornography Law are outlined in Article 29, which reads as follows: "Anyone who produces, creates, reproduces, duplicates, disseminates, broadcasts, imports, exports, offers, sells, rents, or provides pornography as specified in Article 4, paragraph (1) shall be sentenced to imprisonment for a minimum of 6 (six) months and a maximum of 12 (twelve) years and/or a fine of at least Rp250,000,000.00 (two hundred fifty million rupiahs) and at most Rp6,000,000,000.00 (six billion rupiahs)."

Pornographic offenses related to the OnlyFans platform, as outlined in Articles 29 to 38 of the Pornography Law, can be categorized as follows :

- a. Offenses Related to the Production and Creation of Pornographic Content (Article 29 in conjunction with Article 4, paragraph (1)): This offense encompasses 12 types of prohibited actions concerning pornographic material.
- b. Offenses Related to Providing Pornographic Services (Article 30 in conjunction with Article 4, paragraph (2)).

- c. Offenses Related to Presenting, Displaying, and Other Uses of Pornographic Products (Article 32 in conjunction with Article 6).
- d. Offenses Related to Intentionally Becoming an Object or Model Containing Pornographic Material (Article 34 in conjunction with Article 8).
- e. Offenses Related to Displaying Oneself or Others in Performances or in Public (Article 36 in conjunction with Article 10).
- f. Offenses Related to Inviting, Persuading, or Involving Children in Using Pornographic Products or Services (Article 38 in conjunction with Article 12)."

UU The Pornography Law does not provide detailed explanations on how to broadcast, display, or misuse the internet for the dissemination of pornography. However, according to the definition of pornography, which includes media or means through various forms of communication and/or public performances [11] OnlyFans becomes an integral part of the media referenced in this context.

Another relevant provision concerning the creation of pornographic content based on the OnlyFans platform is found in Article 282 of the Penal Code (KUHP). The elements of the offense outlined in Article 282 can be used to address the crime of creating pornographic content as follows:

1. Broadcasting;
2. Displaying or posting in public, writings, images, or objects that are known to contain immoral content;
3. Importing into the country, forwarding, or exporting;
4. Possessing in stock;
5. Making it a source of livelihood or habit.[9]

Difficulties in addressing pornography offenses are partly due to varying interpretations of the provisions in the Penal Code (KUHP) that regulate issues of pornography, and historically, society has been slow to respond to pornography. In point 2, concerning 'displaying or posting in public,' there is potential for multiple interpretations. However, the researcher includes social media as one of these public spaces, thereby allowing the application of this provision to the elements of the offense described above.

Article 27, paragraph (1) of the Electronic Information and Transactions Law (UU ITE) is also relevant to the creation of pornographic content on the OnlyFans platform on social media, as it addresses activities that violate decency norms conducted through electronic media. Article 27, paragraph (1) of the UU ITE states: 'Any person who intentionally and without authorization distributes and/or transmits and/or makes accessible electronic information and/or electronic documents containing content that violates decency.'

According to the explanation of Article 27, paragraph (1), it is specified that:

- a. "Distributing" refers to sending and/or disseminating electronic information and/or electronic documents to a large number of people or various parties through an electronic system.
- b. "Transmitting" refers to sending electronic information and/or electronic documents intended for one other party through an electronic system.
- c. "Making accessible" includes all other actions beyond distributing and transmitting through an electronic system that result in electronic information and/or electronic documents being accessible to others or the public.

Referring to the provisions of Article 27, paragraph (1) of the UU ITE, an individual who distributes and/or transmits and/or makes accessible electronic information and/or electronic documents containing content that violates decency, with intentionality and without authorization, is categorized as having committed a criminal act and may be held criminally accountable according to criminal law.

This is because the OnlyFans site is part of electronic media that serves as a platform for the dissemination of content. In the case of transmitting content that is then resold through electronic media by sharing snippets or links to promote the presence of creators' content, the distribution of pornography via the OnlyFans site becomes increasingly accessible and draws attention.

Law Enforcement Against Producers of Pornographic Content on the OnlyFans Platform

According to the Pornography Law, the definition of pornographic objects is broader than that in the Criminal Code (KUHP). The KUHP specifies three objects: written material, images, and items. Among these items are devices used for preventing and terminating pregnancy.^[10] The Pornography Law has expanded the definition of pornographic objects to include images, sketches, illustrations, photographs, written material, sound, audio, moving images, animations, cartoons, conversations, body movements, or other forms of messages through various types of communication media. Pornographic content is characterized by three attributes:

- (1) It contains indecency,
- (2) It involves sexual exploitation,
- (3) It violates moral standards.

In various forms of social media, there are numerous accounts with pornographic content. OnlyFans is one such platform used for the dissemination of pornographic material. This platform hosts a wide range of content categories, including those of a pornographic nature, which can be traded by account owners to their followers who wish to purchase and indulge in the content. The types of pornography found on the OnlyFans social media platform include:

1. Explicit Content

This refers to content comprising photographs, images, videos, and moving images with pornographic material accessible to a broad audience. Consequently, individuals accessing this content may engage in fantasizing and enjoying such explicit scenes depicting nudity.

2. Live chat streaming

This involves live broadcasts featuring nudity and exotic dancing by account owners, which can be viewed by many people, particularly followers of the account. Additionally, viewers can interact directly by sending messages to the account model.

Access to the OnlyFans social media platform is not directly available in Indonesia through conventional app download channels. However, there are various methods to bypass this restriction, with one notable approach being the use of a Virtual Private Network (VPN). Through the use of a VPN, Indonesian users can easily access the OnlyFans application via search engines. Not only are they able to access the OnlyFans site, many individuals are also interested in joining as content creators on the platform. The term 'content creators' primarily refers to individuals who produce pornographic content, uploading photographs or videos of nudity to the site for consumption by subscribers to their profiles.

Previously, there was an instance where an Indonesian national was arrested for involvement in the production of pornographic videos, leading to the revelation of other individuals also engaged in similar content creation. However, the enforcement of the law for such content creators has exhibited inconsistencies. In some cases, content creators have avoided imprisonment, while in other similar cases, individuals have been sentenced to 1-2 years of imprisonment. This variation in enforcement occurs despite the fact that the actions were undertaken voluntarily and with full awareness, without coercion from others. The discrepancies in legal enforcement are not limited to pornographic content created on the OnlyFans platform but extend to other websites as well. Consequently, the author will highlight the differences in legal enforcement related to the creation of pornographic content across various sites and applications. The following discusses the existing enforcement practices.

Case of Pornographic Content Production Based on Website/Application with Court Verdict (as adjudicated by the District Court of Wates under Verdict Number 23/Pid.B/2022/PN Wat) the judge found the defendant Fransiska Candra Novitasari binti Parsono (deceased) also known as Siskae had been found guilty beyond a reasonable doubt of the criminal offense of 'Producing, Creating, Distributing, Offering, Selling, and Providing Pornography.' The defendant was convicted of this offense as charged and sentenced to imprisonment for 10 (ten) months and a fine of Rp. 250,000,000 (Two Hundred Fifty Million Rupiah). Should the fine not be paid, it would be substituted with an additional 3 (three) months of imprisonment. The judge ordered that the time already served by the defendant be deducted from the imposed sentence and decreed that the defendant remain in custody. Furthermore, the judge ruled on the evidence, including the mobile phone used during the video recording of the pornographic content, a laptop for storing illicit video and photo collections, and other items, totaling 57 pieces of evidence. The defendant was also ordered to pay court costs amounting to Rp. 2,500 (Two Thousand Five Hundred Rupiah).

Law Enforcement for Producers, Distributors, and Sellers of Pornographic Content in Indonesia

Law enforcement essentially involves efforts to align legal values with actions and behavior in social interactions to achieve justice, legal certainty, and utility by applying sanctions. In law enforcement, there are five key aspects that need to be considered:

1. Legal Certainty
2. Legal Utility
3. Legal Justice
4. Alignment between Order and Peace Values
5. Resolution of Conflicts between Justice and Legal Certainty Values

When comparing law enforcement concerning creators of pornography on OnlyFans, the five aspects mentioned above serve as the fundamental considerations for the observed differences in the enforcement of law against pornography creators on this platform. Therefore, it is necessary to compare other existing pornography cases that relate to the elements involved in the creation of pornography on OnlyFans. The comparison of case positions will be conducted with respect to:

Creation of Pornographic Content on Other Social Media Platforms The verdict of the West Jakarta District Court on the case of live-streaming pornographic content on the Mango application (Ruling_13_pid.sus_2021_pn_jkt.brt) revealed facts that led to Indah being charged

under Article 29 in conjunction with Article 4(1) of Law No. 44 of 2008 on Pornography. The elements involved are as follows :

1. Element of “every person”

In this case, the term “every person” refers to the defendant, Indriyani, who, based on the facts revealed during the trial from witness testimonies, is indicated as the perpetrator of the alleged criminal act. During her testimony, the defendant did not avoid being classified as “every person.” She acknowledged her identity in the indictment and admitted her role in the criminal act. The defendant's mental and physical health during the trial process was evident from her ability to respond to witness statements and provide detailed testimony. Therefore, it can be concluded that the defendant is a legal subject capable of being held accountable and responsible for her actions. Thus, the element of “every person” has been proven and fulfilled in accordance with the law.

2. Element of “producing, making, reproducing, distributing, broadcasting, importing, exporting, offering, selling, renting, or providing pornography”

This element is addressed by the fact that the police conducted a cyber patrol on Jalan S. Parman, West Jakarta, by opening the Mango Live application and discovered the account RD7 Indah with ID number 70897821, which was live-streaming at that time. Upon joining the account, they observed a woman performing a strip dance while wearing only a bra and panties, revealing her nipples. This performance was recorded on a cellphone for a duration of 17 minutes and 54 seconds, and the woman in the video was identified as the defendant, Indah, who was working as a live-streamer on Mango Live.

The judge then ruled that the defendant, Sri Indriani alias Indri alias Indah binti Giram, was proven beyond a reasonable doubt to be guilty of the crime of producing, making, reproducing, distributing, broadcasting, importing, exporting, offering, selling, renting, or providing pornography as charged in the second indictment. The judge sentenced the defendant to 2 (two) years of imprisonment and a fine of Rp. 250,000,000 (two hundred fifty million rupiah), with the stipulation that if the fine was not paid, it would be substituted with an additional 4 (four) months of imprisonment.

Sale and Distribution of Pornographic Content: Based on the Medan District Court Verdict No. 701/Pid.B/2018/PN Mdn. In this case, the appropriate charge applied to the defendant is the second indictment, which violates Article 32 of Law No. 44 of 2008 on Pornography. This article includes the following elements:

1. Element of Whoever ;

Regarding this element, every person is a bearer of rights and obligations and must be held accountable for their actions. In this case, the defendant, Ramindo Manurung, has been correctly identified, and throughout the examination, it was confirmed that the defendant is a legally responsible individual. The defendant has been charged with committing the acts specified in the indictment, which will be proven during the trial. Since the defendant's identity is accurate and the defendant acknowledges and confirms the details of their identity while being in good physical and mental health, the defendant can be held accountable for their actions. Therefore, the element of “Whoever” has been fulfilled.

2. Element of “Distributing, exhibiting, utilizing, possessing, or storing pornographic products” as referred to in Article 6;

The facts revealed in the trial indicate that on the day of the incident, the defendant was selling at his DVD kiosk located at Jalan K. L. Yos Sudarso, Kel. Pulo Brayan, Medan Barat, Medan City. During an inspection, witnesses found one plastic bag containing 48 (forty-eight) DVDs of pornography and cash amounting to Rp. 16,000 (sixteen thousand rupiah). According to the defendant’s confession, he had purchased the pornographic DVDs from a salesman named Anto, with a total of 50 (fifty) DVDs bought at Rp. 5,000 (five thousand rupiah) each. The defendant sold these DVDs at Rp. 8,000 (eight thousand rupiah) each and had sold 2 (two) DVDs to customers at the time. The defendant was selling the pornographic DVDs freely to his customers. Upon being questioned by the police witnesses, the defendant did not have permission to sell these pornographic DVDs. Consequently, the defendant and the evidence were taken to the Medan City Police Station for further legal proceedings.

In the verdict, the judge ruled that the defendant, Ramindo Manurung, was proven beyond a reasonable doubt to be guilty of the crime of “Distributing, exhibiting, utilizing, possessing, or storing pornographic products.” The judge sentenced the defendant to 6 (six) months of imprisonment and decreed that the time served in custody be deducted from the imposed sentence, thus the defendant remains in custody.

From the two cases above, which are a series of cases similar to the offenses committed by creators of pornographic content on OnlyFans, the following articles of pornography-related criminal offenses can be applied:

1. Article 29 in conjunction with Article 4, Paragraph (1) of Law No. 44 of 2008 on Pornography
2. Article 32 in conjunction with Article 6 of Law No. 44 of 2008 on Pornography
3. Article 45, Paragraph (1) in conjunction with Article 27, Paragraph (1) of Law No. 19 of 2016 on Amendments to Law No. 11 of 2008 on Electronic Information and Transactions

In essence, the two cases above can be regarded as comparable to the creation of pornographic content on the OnlyFans site. Therefore, layered criminal charges can also be applied in cases involving the creation of pornographic content on OnlyFans on social media. This is because, in addition to creating and subsequently presenting such content through electronic media, the content may also be subject to legal consequences due to transactions of buying and selling, as well as showcasing the pornographic content. This can occur through the promotion of accounts on other social media platforms such as Twitter, Facebook, and Instagram, which serve as channels for promoting the presence of the accounts involved.

CONCLUSION

The regulation of criminal acts by creators of pornographic content on the OnlyFans site clearly violates and fulfills the elements of several laws. According to Article 282 of the Indonesian Penal Code, the elements of the criminal act outlined in this article are met by broadcasting, exhibiting, or offering objects that violate decency, such as pornographic content. Sellers are subject to a maximum imprisonment of one year and six months or a maximum fine of four thousand five hundred rupiah. Article 29 in conjunction with Article 4, paragraphs (1)(d) and (e) of Law No. 44 of 2008 concerning Pornography explicitly prohibits the display of nudity

or images that imply nudity or genitalia. The creation of pornographic content on the OnlyFans site fulfills the elements of the criminal act outlined in this article. Those who create and sell such content are subject to imprisonment for a minimum of six months and a maximum of twelve years and/or a fine ranging from two hundred fifty million rupiah to six billion rupiah. Article 27, paragraph (1) of the Electronic Information and Transactions Law applies to content creators who distribute such content through any electronic media or applications. This provision meets the criteria for criminal offenses and may result in a maximum imprisonment of six years and/or a fine of up to one billion rupiah.

In the enforcement of laws concerning creators of pornographic content on the OnlyFans site, there are differences in legal implementation, as evidenced by the cases of Siskae and Dea OnlyFans, which both involve the use of OnlyFans as a medium for disseminating pornographic content. However, due to differing legal reasons and considerations in each case, the enforcement outcomes vary.

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