



Criminal Offenses of Misuse of Deepfake Porn Technology Based on Indonesia's Positive Law

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Abstract - This study aims to analyze the adequacy of Indonesia's positive law in addressing the criminal offenses related to the misuse of deepfake porn technology. As information and communication technology continues to advance significantly, many people utilize these technological developments for beneficial purposes. However, these advancements have also contributed to the rise of new forms of cybercrime, such as deepfake porn a manipulated video or photo containing pornographic content. The normative juridical technique used in this study includes secondary data analysis and literature review. Despite laws targeting the use of pornographic content on websites, such as the Criminal Code, Law Number 44 of 2008 on Pornography, Law Number 27 of 2022 on Personal Data Protection, and Law Number 1 of 2024 (Second Amendment to Law Number 11 of 2008 on Information and Electronic Transactions), the findings show that Indonesia's current legal framework is insufficient to effectively prosecute deepfake porn offenders. The absence of precision in these legal laws regarding deepfake porn reveals serious weaknesses in the criminal law policy of the nation.

Keywords: Crime, Deepfake Porn, Positive Law

I. INTRODUCTION

Information and communication technology has experienced many great and continuous developments to date, the use of this technology has also become commonplace and applied in all efforts in people's lives aimed at fulfilling a very positive impact on society, the use of information and communication technology is one of them is to make a positive impact such as facilitating the search for information quickly, understanding external information, facilitating business transactions, and social media for other purposes. Information and communication technology advancement has grown significantly and quickly. It is evident how quickly online media, or internet media, is developing. (Syihabudin et al., n.d.).

However, its use will also result in a negative impact on people's lives, namely the spread of false information or hoaxes, theft of information/personal data or Hacking, and allowing someone to create, disseminate, or access digital content that contains immoral content or SARA. (Faqih & Priowirjanto, 2022). Recent technological advancements have sparked the development of artificial intelligence (AI) technology, which is not specifically regulated by international law. According to Russel Stuart's book, "Artificial intelligence is typically used to characterize robots (or computers) that simulate Cognitive (Liégeois et al., 2009) capabilities that humans connect with the human mind, such as learning and problem solving." Nearly every country in the world uses smart technology to streamline and expedite the numerous tasks and jobs that people perform.

Using or utilizing artificial intelligence technology is a technological advancement that can be used in the legal field to explain or narrow legal loopholes. In fact, this technology has been widely used in various aspects of people's lives, making work and human life easier and

more productive. (Yudoprakoso, 2019) Around the world, artificial intelligence (AI) technology has been widely embraced with the main goal of increasing productivity and streamlining a variety of jobs or tasks that have historically been completed by humans. As a developing country, Indonesia has been the first to use artificial intelligence. Nonetheless, in contrast to more developed countries, its application is still restricted to all spheres of life. Artificial intelligence (AI) is currently being widely used and used by start-up businesses in Indonesia to support their core operational technologies.

Notable instances include of Kata.ai, Snapcart, BJTech, and Sonar (Muhammad Ilman Abidin, 2023) The features provided by these four startups allow users to create chatbots with artificial intelligence. Moreover, the industrial sector in Indonesia has also made use of artificial intelligence (AI), using robots and AI technologies to automate manufacturing and production operations. A complex network of interconnected operations including design, sourcing materials, production, management, planning, and marketing is commonly understood to include manufacturing. (Sobron & Lubis, 2021). Deepfake technology, a prominent application of artificial intelligence, has gained significant attention due to its ability to create highly realistic but manipulated media. The term "deepfake" is derived from "deep learning" and "fakes," reflecting its foundation in advanced machine learning techniques used to deceive or alter photos and videos. This technology enables the generation of synthetic media that can convincingly replace or overlay faces and voices, creating scenarios that never occurred.

Despite its innovative applications in various fields, including entertainment and media, deepfake technology poses serious risks, particularly in the context of criminal law and privacy. One troubling misuse of this technology is in the creation of deepfake pornography—manipulated videos or images that falsely depict individuals in pornographic contexts. This form of abuse can cause significant harm to individuals, including reputational damage and psychological trauma. The legal and ethical challenges associated with deepfake porn underscore the inadequacy of current legal frameworks to address such technological abuses effectively. The widespread misuse of deepfake technology highlights the urgent need for specific legal regulations to address these emerging threats. By focusing on the mechanics of deepfake technology and its implications for privacy and criminal law, this study aims to provide a detailed analysis of how existing legal structures in Indonesia respond to these challenges.

Deepfake porn is the manipulation of photos or videos to create pornographic content using one of the artificial intelligence techniques. The case of creating pornographic videos with deepfake technology is a new phenomenon that utilizes artificial intelligence to merge, replace, or overlay images and video clips into new videos, so that the end result looks like the original video. The deepfake technique allows the creation of videos that feature someone as if they are saying or doing something they didn't actually do or say (Rifka Gebriella Daytor, 2023). The misuse of deepfake technology has the consequence that victims who are the objects of fake pornographic content by the perpetrators of deepfakes suffer a lot of losses, including contamination of the good name and victims feel harassed, which cannot be valued by money. The most serious consequence is that the victim experiences psychological trauma, this is exacerbated by victim blaming, where the victim of the crime is actually blamed and considered responsible for the crime that befalls them, which often occurs in the context of sexual violence. (Wulandari & Krisnani, 2020) And it will definitely have a big impact on the procedures for victims to live in society.

In the case of the misuse of deepfake porn technology and its spread through social media, the perpetrators of abuse do not commit pornographic acts directly, but use other figures, for example celebrities or public figures, in making pornographic photos or videos. The actions of these perpetrators violate several laws and regulations in Indonesia because they create and disseminate pornographic content on social media, so many people believe that the pornographic videos or photos are genuine and disseminated by the perpetrators. The National Commission on Women reported that Online-Based Gender Violence increased during Covid-19. In 2020, there were 1,617 cases of violence, of which 1,458 were Gender-Based Violence. As of October 2020, Komnas Perempuan had 659 cases of Online-Based

Gender Violence, while in 2017 there were only 17 cases. This increase is influenced by policies (WFH) which make many public activities switch to the digital world. Sadly, most victims of sexual harassment at the time of WFH do not report the incident and choose to remain silent, with 55% of women and 79% of men not reporting. There are about 11% of women and 5% percent of men who recommend such harassment as evidence to report to the authorities. (Kasita, 2022) Until now, there are often cases of irresponsible individuals who use deepfake technology. In fact, not a few individuals engineer pornographic videos or photos. The more sophisticated the technology, the easier it is for perpetrators to engineer pornographic videos or photos.

Deepfake porn was created by Geoffrey Hintori in November 2017, the first video appeared on www.reddit.com sites featuring the faces of actors and actresses in pornographic videos, then in 2018 there were 7,964 pornographic videos, and in 2019 there were 14,678 pornographic videos in deepfake porn, which means a 2x increase in one year. and 96% of those in the video are women. Due to the impact experienced by the victims, there are several relevant legal regulations. However, law enforcement faces many obstacles in distinguishing real videos from fake videos produced by deepfake technology. Deepfake technology uses the latest complex technology, making it difficult to identify the perpetrators who created it. In the laws and regulations in Indonesia, there is already a law as a basis for imposing criminal penalties on website owners who contain pornographic content. These regulations include: "Law Number 1 of 2024 concerning the second amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions, Number 44 of 2008 concerning Pornography, and Law Number 27 of 2022 concerning Personal Data Protection". (Rifka Gebriella Daytora, 2023)

In Indonesia, there are a number of cases of criminal abuse of deepfake porn using artificial intelligence technology. One of the controversial cases that has been widely discussed is the spread of pornographic videos involving the names of well-known public figures, in January 2020 a short video featuring inappropriate or indecent scenes was widely spread, which used the image of one of Indonesia's artists, Nagita Slavina, the video has been reported to the police. After being checked and confirmed that the video was made by an irresponsible party. However, the provisions of the laws and regulations that have been outlined previously are often not complied with. In fact, until now there are still many videos or photos of deepfake porn that change the voice to the face of the victim. This right is very detrimental to the victims because the good name and honor of the victims of deepfake porn are tarnished due to the spread of deepfake porn videos or photos.

Then the case experienced by a famous artist, namely Syahrini, on May 12, 2020 an indecent video similar to the artist Syahrini spread, then the family of Syahrini reported the incident to the authorities, the perpetrator was arrested on May 19, 2020 at his residence. The Law of the Republic of Indonesia No. 19 of 2016 concerning ITE charged him with violating Article 27 paragraph 1 jo Article 4 paragraph 1 and/or Article 27 paragraph 3 jo Article 45 paragraph 3. Additionally, the police employ paragraph 1 of Article 4 of the Pornography Law. Meanwhile, in the Criminal Code, the article used is article 310 or article 311, which is defamation. And the perpetrator was threatened with 12 years in prison. The impact of this crime certainly results in many losses because of the tarnishing of the good name and honor of the victims, especially innocent people. In this case, in addition to committing pornography crimes, deepfake porn perpetrators also commit criminal acts of defamation and sexual violence. Based on the explanation above, the author decided to submit a journal entitled Criminal Offenses of Misuse of Deepfake Porn Technology Based on Indonesia's Positive Law.

II. METHOD

The research method applied in this study is the normative juridical method. This method involves the analysis of legal norms and rules as they are applied in society and serve as behavioral guidelines for individuals. Specifically, this study will analyze various types of legal materials, including statutory laws, case laws, legal doctrines, and academic commentary. (Askin & Masidin, 2023)

The research using the normative juridical method is carried out by analyzing literature materials or secondary data in the study of literature law. This article will review and review legal regulations related to artificial intelligence technology in Indonesia, as well as the misuse of deepfake technology in the production of pornographic videos according to Indonesia's positive law. This study is classified as normative research because the author explains the classification of criminal acts related to the abuse of deepfake porn. In this research problem, the researcher also elaborates on the relevant laws and regulations and is the basis for the existence of the criminal act.

III. RESULT AND DISCUSSION

1. Criminal Law Regulation Against Deepfake Porn Technology

The abuse of *deepfake porn* is a form of exploitation, abuse of privacy that can be a big problem in Indonesia. According to a survey by The AI firm Deeptrace in 2019, as many as 96% of pornographic videos uploaded on pornographic sites were viewed more than 134 million times.(Kasita, 2022). *Deepfake porn* is a type of fake adult content or a type of fabricated video that is pornographic-loaded, created using artificial intelligence technology. In this condition, *deepfake porn* is used to exchange a person's face in a video or photo that violates morals with another person's face. The abuse of *Deepfake Porn* has sparked privacy and legal concerns because it involves misleading visual manipulation and is very detrimental to the privacy of individuals present in the fake adult content.

The laws and regulations in Indonesia are very broad. However, the misuse of artificial intelligence technology or in the special regulation of *Deepfake Porn* is not in the special regulation in the laws and regulations in Indonesia. However, an act that makes content with content that violates immorality using *deepfake* technology and spreading it on social media can be said to be a certain criminal act on the basis of the right act and the harm it can cause. There are several types of criminal acts in the abuse of *deepfake porn* itself, namely the dissemination of pornography, theft, slander, and fake news (hoaxes). Consequently, laws such as the Criminal Code, Law Number 44 of 2008 about pornography, Law Number 27 of 2022 concerning personal data protection, and Law Number 1 of 2024 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions may be cited for violations of the misuse of deepfake technology.

According to Criminal Code Article 310, paragraphs (1) and (2), using deepfake pornographic technology inappropriately and disseminating it on social media is illegal because it damages a person's honor or reputation by falsely asserting that something is known by the general public. Since the film contains adult content that makes use of another person's body and face, it can be argued that dissemination of deepfake pornographic photographs and videos is subject to Article 310 Paragraph (1) juncto Article 310 Paragraph (2) of the Criminal Code. When this content is shared on social media, it can lead to false information and victim slander. However, the description of Article 310 paragraph (1) of the Criminal Code applies when the elements of defamation are carried out orally. So that regarding the case of abuse of *deepfake porn*, the only element that meets is "Article 310 paragraph (2) of the Criminal Code and is threatened with imprisonment for the longest time, namely 1 year and 4 months or a fine of Rp. 4,500,000. Under the ITE Law, the misuse of deepfake porn disseminated through social media is classified as a prohibited act, specifically addressed in Article 27, Paragraphs (1) and (3) of Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law). These provisions state:

1. Anybody who intentionally and without authorization disseminates information or electronically documents that include illegal content to the general public.
2. Distributing, transmitting, or creating electronic documents and information that contain insults or defamatory content is done by anybody without authorization, knowingly.

Due to the fact that the offender disseminated or distributed pornographic images or films that contained objectionable content, he has broken the terms of Article 27 Paragraph (1) and Paragraph of Law Number 1 of 2024 about Information and Electronic Transactions.

The pornographic images or videos featured content that insulted and defamed the victim through manipulation utilizing deepfake technology, which is another way in which the offender violated Article 27 Paragraph (3) of Law Number 1 of 2024 about Electronic Information and Transactions (ITE). Article 45 paragraph (1) of the ITE Law then stipulates that those who violate article 27 paragraphs (1) and (3) of the law may face a maximum sentence of 6 (six) years in prison and/or a fine of Rp1 billion (1,000,000,000).

In the case of misuse of deepfake porn technology that uses other people's faces, the image of the face falls into the category of biometric data that has special characteristics. This is related to the provisions of Article 66 of Law Number 27 of 2022 concerning Personal Data Protection, which states that: "Everyone is prohibited from creating false personal data or falsifying individual data to benefit themselves or others, which can harm others." Although the PDP Law does not specifically regulate deepfake porn, it still provides protection to data subjects from the misuse of deepfake porn technology. This is because data is a key component in the process of creating deepfake porn content, so regulations that govern data flows can be an effective control to protect legal subjects from potential abuse. Thus, legal protection for legal subjects can still be carried out through regulatory arrangements related to data flow.

Based on Article 66 of the PDP Law, violators of these provisions can be subject to a maximum of six years in prison and/or a maximum fine of six billion, in accordance with what is regulated in Article 68 of the PDP Law. In the law, it is explained about the prohibitions for perpetrators of the abuse of *Deepfake Porn technology*, which is classified as a prohibition listed in article 1 Paragraph (1). Law Number 44 of 2008 concerning Pornography Article 4 Paragraph (1). The Pornography law reads:

- (1) Any image, drawing, illustration, photograph, writing, sound, moving image, animation, cartoon, conversation, gesture, or other type of message conveyed through various communication media and/or public performances that contains sexual exploitation or obscenity and goes against accepted moral standards is considered pornography.

Based on the case of distributing *deepfake pornographic* photos or videos, the perpetrator has violated Article 4 Paragraph (1) of Law Number 44 of 2008 concerning Pornography due to his actions in making, producing, and disseminating pornographic videos using *deepfake* technology which has violated the elements of the article. In addition, the perpetrator has also violated Article 6 of Law Number 44 of 2008 concerning Pornography" because the perpetrator has a motive to show, store things that contain pornography, and use pornographic videos in order to have a large number of followers on social media, and get profits to be traded, and the result is in the form of money. Perpetrators who have violated as stipulated in "Article 4 paragraph (1) of the Pornography Law" can be subject to a minimum of six months in prison and a maximum of twelve years, as well as a minimum fine of IDR 250 million and a maximum of IDR 6 billion, in accordance with Article 29 of the Pornography Law.

2. Criminal Offenses Against the Misuse of *Deepfake Porn Technology*

The use of the internet today has a significant impact on various aspects of life, not only making it easier for various activities, but also causing several problems. The existence of internet-based gender violence that utilizes deepfake technology is one of these problems. Google's previous list of prohibited content included "accidental pornographic imagery" in September 2018. that is, victims of *deepfake porn* abuse can block the results of a mistaken search that shows them in an indecent state. (Kasita, 2022). However, this solution does not completely address the problem. Many videos and photos of Deepfake Porn abuse are widespread on the internet, even targeting women who are not public figures. As a result, victims of deepfake pornography often do not realize that they are victims, and their videos do not go viral and are only consumed by a small number of people. In the case of *deepfake porn* abuse, the perpetrator has committed several violations simultaneously, such as stealing photos of others, creating immoral fake video content, spreading pornographic content, insults, and defamation.

The abuse of *deepfake porn* also They can be subject to several applicable legal regulations. So that the case of deepfake porn abuse can be seen as an idealistic concursus.

Concursus Idealis, or eendaadse samenloop in Netherlands, refers to a situation where there is an act or action that violates several laws or articles in the legislation. (Rifka Gebriella Daytora, 2023). In the case of the misuse of *deepfake porn technology*, it is clear that it is a technological crime that violates morality and spreads it on social media through the internet and spreads it on social media through the internet. so specifically the "Electronic Information and Transaction Law or ITE Law" is enforced, because the ITE Law is more relevant even though special laws such as the Personal Data Protection Law have a criminal element that can cover it. There are 4 regulations regarding the abuse of deepfake pornography (deepfake porn). It can be found in "Article 310 paragraph (2) of the Criminal Code, then Law Number 1 of 2024 concerning amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions., Law Number 44 of 2008 concerning Pornography, and Law Number 27 of 2022 concerning Personal Data Protection".

However, in accordance with the criminal justice that applies the principle of *lex specialis derogate legi generalis*, the law specifically deviates from the general law. So what is applied here are the provisions of criminal law outside the Criminal Code, namely the PDP law and the ITE law. Therefore, the Indonesia government must rethink the laws related to the misuse of *deepfake porn technology* by considering existing laws, such as "Article 315 of the Criminal Code". The unlawful misuse of *deepfake porn technology* will cause losses to other parties, who are responsible for reimbursing the damages. Therefore, the government can stop the development of deepfake technology by strengthening regulations related to personal data protection as well as the handling and recovery of victims of sexual violence caused by pornography deepfakes. In addition, the government and law enforcement officials must inform the public about the dangers of deepfake technology and provide training to law enforcement officials so that they can identify and handle cases involving the use of deepfake technology more effectively. Law enforcement officials who are not familiar with this technology are prone to mistakes in assessing the veracity of videos and photos of victims of gender violence.

It is important for law enforcement to understand how criminals use deepfake technology, how deepfakes can impact the use of video evidence for law enforcement in investigations and prosecutions, and what steps will be taken to prepare for a future where authenticity and voice each video is used as a tool to commit crimes. On the contrary, often people criticize and ridicule victims of deepfake pornographic videos without checking the authenticity of photos and videos that are widely spread on the internet. This has caused most victims of internet-based gender violence, especially deepfake porn, to choose to remain silent and not report to the authorities to take action against perpetrators who create deepfake videos or photos and spread the content. This factor is one of the obstacles to the government's efforts to deal with deepfake pornography cases, especially since law enforcement may not be aware of the dangers of deepfake porn technology.

IV. CONCLUSION

Article 310 paragraph (2) of the Criminal Code, article 66 of Law Number 27 of 2022 concerning Personal Data Protection, and articles 27 paragraph (1) and paragraph (3) of Law Number 1 of 2024 concerning Amendments to Law No. 11 of 2008 concerning Information and Electronic Transactions all regulate the misuse of deepfake technology with pornographic content (deepfake porn), despite the lack of specific regulations. An idealistic concursus occurs when a person conducts an act that violates multiple criminal laws; this type of concursus occurs when an act breaches many criminal laws. Systematische specialiteit (systematic specificity) is the basis for the application of Law Number 27 of 2022 concerning Personal Data Protection and Law Number 1 of 2024 concerning Amendments to Law No. 11 of 2008 concerning Information and Electronic Transactions, both of which are special laws, in the case of the misuse of deepfake technology with pornographic content (deepfake porn). Consequently, the matter may fall under Law Number 1 of 2024's Article 27 Paragraphs (1) and (3) Regarding Amendments to Law No. 11 of 2008 Concerning Information and Electronic Transactions, with a Article 45 paragraph (1) of the ITE Law stipulates a maximum penalty of IDR 1 billion in fines and/or a potential prison sentence of 6 years.

REFERENCES

- Faqih, M., & Priowirjanto, E. S. (2022). Pengaturan pertanggungjawaban pelaku penyalahgunaan deepfakes dalam teknologi kecerdasan buatan pada konten pornografi berdasarkan hukum positif Indonesia. *Jurnal Indonesia Sosial Teknologi*, 3(11), 1156–1168.
- Kasita, I. D. (2022). Deepfake pornografi: Tren kekerasan gender berbasis online (KGBO) di era pandemi COVID-19. *Jurnal Wanita Dan Keluarga*, 3(1), 16–26.
- Liégeois, J.-P., Mogessie, A., Asrat, A., Demissie, M., Bowden, P., & Bonin, B. (2009). Russell Black (1930–2009). *Journal of African Earth Sciences*, 55(3–4), 129–133. <https://doi.org/10.1016/j.jafrearsci.2009.04.007>
- Muhammad Ilman Abidin. (2023). Legal Review Of Liability From Deepfake Artificial Intelligence That Contains Pornography. *MIMBAR: Jurnal Sosial Dan Pembangunan*, 79, 344–352. <https://doi.org/10.29313/mimbar.vi.2965>
- Prof. Dr. H. Moh. Askin, S. H., & Masidin, S. H. M. H. (2023). *Penelitian Hukum Normatif: Analisis Putusan Hakim*. Prenada Media.
- Rifka Gebriella Daytora. (2023). *Tinjauan Hukum Pidana Terhadap Penyalahgunaan Teknologi Deepfake Berkonten Pornografi (Deepfake Porn)*.
- Sobron, M., & Lubis. (2021). Implementasi Artificial Intelligence Pada System Manufaktur Terpadu. *Seminar Nasional Teknik (SEMNASTEK) UISU*, 4(1), 1–7. <https://jurnal.uisu.ac.id/index.php/semnastek/article/view/4134>
- Syihabudin, A., Jatnika, A. W., Singarimbun, A., & Khoiri, S. (n.d.). The Development of Information Technology Application of Religious Charity Through Humanities Technology Approach. *MIMBAR Jurnal Sosial Dan Pembangunan*, 35, 2. <https://doi.org/10.29313/mimbar.v35i2.4885>.
- Wulandari, E. P., & Krisnani, H. (2020). Kecenderungan menyalahkan korban (victim-blaming) dalam kekerasan seksual terhadap perempuan sebagai dampak kekeliruan atribusi. *Share: Social Work Journal*, 10(2), 187–197.
- Yudoprakoso, P. W. (2019). Kecerdasan Buatan (Artificial Intelligence) Sebagai Alat Bantu Proses Penyusunan Undang-Undang Dalam Upaya Menghadapi Revolusi Industri 4.0 Di Indonesia. *Simposium Hukum Indonesia*, 1(1), 450–461.