

## Legal Analysis of Traffic Accident Victim Media Distribution Under Article 27 Paragraph 1 of ITE Law

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ARTICLE INFO	ABSTRACT
<p><b>Keywords:</b> Disseminators, Photos and Videos, Traffic Victims</p>	<p><i>This study aims to analyze the legal regulation of the dissemination of content containing decency in the form of spreading photos and videos of traffic accident victims according to Article 27, paragraph 1 of Law Number 19 of 2016 concerning Electronic Information and Transactions (ITE), as well as obstacles in determining suspects in the dissemination of such content. The research uses a normative juridical approach by studying legislation, theories, and related concepts. The results show that the legal regulation of the dissemination of content containing decency is regulated in Article 27, paragraph 1 and Article 45 of the ITE Law, which states that every Person who intentionally and without properly distributes, transmits, or makes accessible electronic information or electronic documents that have content violating decency can be punished with imprisonment of up to six years and a maximum fine of Rp 1 billion. Law No. 1, the Year 2024, reaffirms this provision with additional exceptions for public interest, self-defence, or if the information is a work of art, culture, sports, health, or science. Obstacles in disclosing the perpetrators of the distribution of decency and pornography content to traffic victims include a lack of adequate human resources, limited facilities and infrastructure, and a lack of cooperation between related agencies and the community. The implications of this research indicate the need for increased legal awareness and cooperation between various parties to effectively enforce the Law related to the dissemination of decency content. In addition, increasing the capacity and resources of law enforcement officials is essential to overcome the existing obstacles.</i></p>

### INTRODUCTION

The development of social media today is accelerating and reaching all levels of society. With the rapid development of social media and the broader reach of society, it is not impossible to cause some positive and negative effects. Social media combines two essential elements, namely information and communication, with several additional features that meet the needs of its users (Agustina, 2018). The uploading of several information systems in the form of news links, chat communication, uploading a person's or group's status, sharing links, audio/visual communication, and others are excellent features owned by social media.

There are many kinds of social media here, including Facebook, WhatsApp, TikTok, Messenger, Line, Snack Video, etc. This quickly conveys viral news from one community to another, from not knowing to knowing. This is what the sophistication of today's technology means. People prefer these applications rather than knowing about them from electronic media such as TV and radio or print media such as newspapers and magazines. The wrong use of social media will lead to fraud, forgery, pornographic impressions, insults/defamation, or other criminal acts (Kurniawan & Pasaribu, 2022). The act of someone spreading photos and videos of other people who are victims in a Traffic Accident (from now on abbreviated as Lakalantas) is a violation as stated in Law Number 19 of 2016 concerning Electronic Information and Transactions (from now on abbreviated as ITE) (Yuserlina, 2022). In addition to violating the ITE Law, the dissemination of photos and videos on social media is also considered to

hurt the feelings of the victim's family (HL & Nur, 2023). For this reason, the Law strongly urges the public not to share photos and videos on all social media platforms in the community.

The presence of Social Media is expected as a form of Freedom in the form of expressing thoughts and Freedom of opinion to obtain information through the use and utilization of Information and Communication Technology as a goal to advance the general welfare, educate the nation's life and provide a sense of security, justice and legal certainty for users as well as the Electronic System Operator. However, in the end, the Freedom to express thoughts and opinions and obtain information through information and communication technology has gone too far, and it turns out that the community cannot limit it. This will have a negative impact and harm to other communities. One example that the author mentions has a negative impact and harm to other communities, namely by spreading content containing elements of Pornography, such as uploading and disseminating photos and videos of other people as victims of traffic accidents to the public, which is done by someone so that other people see it. This may only negatively impact other people, even though others consider it normal for someone to spread the content in photos and videos so that the information is quickly known to the public. Also, the victim's family will know the information faster. But on the negative side, for the victim or the victim's family, if the victim is dead, it is a disgrace that does not need to be shown to the general public because digital traces cannot be erased unless the Person who uploaded it deletes it. So what if many people shared it with other users? This could allow other people to have unlimited access to photos and videos. Eventually, this becomes viral and cannot be overcome because the content has generally been viewed.

Electronic information and electronic documents are binding and recognized as valid evidence to provide legal certainty for implementing electronic systems and electronic transactions, especially in proof and matters relating to legal acts carried out through electronic systems (Anjani & Santoso, 2018). In this case, the good news for users of technology and information is that users get legal protection from all verbal and visual criminal acts that cause physical contact (Ardiputra et al., 2022). However, the vast private area of social network users with minimal prevention standards makes it difficult to prevent the occurrence of various criminal acts today.

The advancement of information technology (internet) and all its benefits have negative consequences, such as making it easier for criminals to carry out their actions, which is increasingly troubling the community. The misuse that occurs in cyberspace is then known as cybercrime (Ketaren, 2016).

ITE Law Articles 45 A and 45 B, all of which function to ensnare perpetrators of criminal acts related to Information Technology crimes (Cyber Crime) (Muzakkir & Saparudin, 2024). One of them is Article 45 paragraph (3) of the ITE Law of 2016, even in Article 27 of the ITE Law of 2016, which is stated to be an article on the provisions of defamation and slander regulated in the Criminal Code (KUHP).

This research raises the title of Legal Analysis of the Dissemination of Pornographic Content or Decency in the Form of Spreading Photos and Videos of Traffic Victims in the Perspective of Article 27, paragraph 1 of Law Number 19 of 2016 concerning Electronic Transaction and Information (ITE) which has now been amended by Law Number 1 of 2024 concerning ITE. People think that spreading photos and videos of victims who are victims of traffic accidents is considered normal and something good to share information, without knowing this is a violation and a criminal offence in the category of decency. With this research, it is hoped that we as a society will more clearly understand that every criminal act that can violate the Law and violate the interests or harm others will be punished by the applicable laws and regulations stipulated by the Law. Therefore, this research aims to analyze the legal aspects of the dissemination of pornographic content or decency in the form of spreading photos and videos of traffic accident victims from the perspective of Article 27 paragraph 1 of Law Number 19 of 2016 concerning Electronic Information and Transactions which has been amended by Law Number 1 of 2024. The benefits of this research are expected to provide a clearer understanding to the public about the legal consequences of spreading photos and videos of traffic accident victims. This research is also expected to assist law enforcement in handling cases related to the dissemination of such content and provide education to the public about the importance of maintaining ethics and decency in using social media.

## **METHOD**

The author used normative juridical research, a method of library legal research conducted by examining library materials or secondary data only. This research was conducted to obtain materials in the form of theories, concepts, legal principles, and legal regulations related to the subject matter.

The scope of normative legal research, according to Soerjono Soekanto, includes:

- a. Research into the principles of Law.

- b. Research into legal systematics.
- c. Research into the degree of vertical and horizontal legal synchronization.
- d. Comparative Law.
- e. Legal history.

This research was conducted using data collection tools, namely a literature or documentary study, to collect secondary data related to the problems raised by studying books, legal journals, research results, and legislative documents such as the Criminal Code (KUHP), Criminal Procedure Code (KUHP), Law Number 19 of 2016 concerning ITE, and Others.

## RESULTS AND DISCUSSION

### **Legal Arrangements for the Dissemination of Obscene Content in the form of Dissemination of Photos and Videos of Traffic Victims in the Perspective of Article 27, paragraph 1 of Law Number 19 of 2016 concerning Electronic and Transaction Information (ITE)**

The relevant laws and regulations governing criminal offences that violate decency are the Criminal Code, the Pornography Law, and the ITE Law (Nurisman, 2022). The word decency means smile, which is related to good manners, politeness, conditions, good order, and customs. Society considers decency as right and wrong behaviour related to sexual acts (Dewi et al., 2019).

We have often found cases of spreading content that violates decency, only with different media applications, even by various groups of children, teenagers and adults. One of the spread of content that violates decency is the distribution or transmission of photos and videos of victims of traffic accidents. Whether the victim is alive or dead violates the Law's provisions, mainly when the content is used to achieve commercial gain because it is seen, liked and commented on by many people on social media applications. Spreading content containing photos and videos belonging to other people without the owner's permission can be punished.

According to previous research, victims are those who suffer physically and mentally as a result of others' actions and who seek the fulfilment of their own or others' interests, which are contrary to the interests and human rights of those who suffer (Rosifany, 2018). The definition of victims here can mean individuals or groups, both private and Government.

According to Law number 22 of 2009 concerning Road Traffic and Transportation in Article 310, paragraphs (1) to (4), states: the definition of a traffic accident victim is any person who suffers losses, both physical and economic losses, caused by violations and negligence in traffic that cause traffic accidents. This means that the loss and suffering experienced by individuals and individuals in the form of vehicle damage, minor injuries, serious injuries, and resulting loss of life caused by traffic accidents in Article 310 that the victim of a traffic accident is every person who falls into the qualifications, among others:

- a) Experience damage to vehicles and goods.
- b) There were injuries, both minor and severe.
- c) People who died in traffic accidents.

So, the conclusion is that a traffic accident victim is any person who experiences an accident by suffering physical and economic losses caused by negligence or violations committed by other road users.

The legal arrangements regarding the Dissemination of Obscene Content in the form of spreading photos and videos of traffic accident victims can be seen in the following articles:

Article 26 of Law Number 19/2016 on ITE states:

- (1) Unless otherwise provided by laws and regulations, the use of any information through electronic media concerning a person's personal data must be done with the Person's consent.
- (2) Any person whose rights are violated, as referred to in paragraph (1), may file a lawsuit for losses incurred under this Law.

Article 27 paragraph (1) of Law No. 19/2016 ITE states that one of the prohibited acts in disseminating content is disseminating immoral content.

- (1) "Every person intentionally and without the right to distribute and/or transmit and make accessible Electronic Information and Electronic Documents that have content that violates decency."

As amended by Law Number 1 Year 2024, it reads as follows:

- (1) "Every person intentionally and without the right to broadcast, show, distribute, transmit, and make accessible Electronic Information and/or Electronic Documents that have content that violates decency for public knowledge."

What is meant by the term "distributing" is sending and/or distributing Electronic Information and/or Electronic Documents to many people or various parties through an Electronic System (Asmadi, 2021). The term "transmit" means sending Electronic Information and/or Electronic Documents to another party through an Electronic System (Lesar, 2021). What is meant by "making accessible" is all actions other than distributing and transmitting through an electronic system that causes electronic information and/or electronic documents to become known to other parties or the public (Fitriani, 2017).

Criminal penalties for violators are regulated in Article 45 of Law Number 19 of 2016 concerning ITE, namely:

- (1) Any person who intentionally and without right distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that have content that violates decency as referred to in Article 27 paragraph (1) shall be punished with a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp 1 billion.
- (2) Any person who intentionally and without right distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that contain insults and/or defamation as referred to in Article 27 paragraph (3) shall be punished with a maximum imprisonment of 4 (four) years and/or a maximum fine of Rp750,000,000.00 (seven hundred fifty million rupiah).

Amended in Law No.1 Year 2024 on ITE to:

- (1) "Every person who intentionally and without right broadcasts, shows, distributes, transmits, and/or makes accessible Electronic Information and/or Electronic Documents that have content that violates decency for public knowledge as referred to in Article 27 paragraph (1) shall be punished with a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp1,000,000,000.00 (one billion rupiah)."
- (2) The act, as referred to in paragraph (1), shall not be punished if:
  - a. done in the public interest;
  - b. carried out in self-defence or
  - c. The Electronic Information and/or Electronic Document is a work of art, culture, sports, health, and/or science.

Meanwhile, Article 310 of the Criminal Code explains that spreading videos and photos that contain someone's disgrace or without permission is a criminal offence and falls into the category of unpleasant actions and defamation. Suppose the disseminator "intentionally" does not ask for the Person's permission. In that case, they can be charged a minimum prison sentence of 2 years and a fine of billions of rupiah.

The dissemination of content containing photos and videos of other people without the rights and permission of the owner in the Copyright Act is a criminal act UUHC strictly prohibits users from disseminating content containing photos and videos of other people without the owner's permission. Article 12 of UUHC reads:

- (1) Every Person is prohibited from Commercially Utilizing, Duplicating, Announcing, Distributing, and/or Communicating his/her Portrait for commercial billboard or advertising without the written consent of the Person photographed or his/her heirs.
- (2) Commercial Use, Reproduction, Announcement, Distribution, and/or Communication of Portraits, as referred to in paragraph (1), which contains Portraits of 2 (two) or more persons, shall require the consent of the Person (s) in the Portrait or his/her heirs.

It carries a maximum sentence of 10 years in prison, and if it is disseminated through social media without the owner's permission, the penalty will increase by two years in prison and a fine of Rp150 million. The results of photos or videos that are distributed without permission are considered to violate privacy and defame and can be used as evidence to report the perpetrator to the authorities. This can be used as evidence. This is as stated in Article 5, paragraph (1) of the ITE Law, which reads: "Electronic Information and/or Electronic Documents and/or their printouts are valid legal evidence." So that the perpetrator can be brought to trial because electronic documents or printouts are recognized as valid legal evidence that can be used as evidence in a criminal case. Whether or not the perpetrator of unauthorized recording or photographing can be punished depends on the case. A video recording that is then disseminated to social media or virtualized without the permission of the Person concerned can be subject to criminal charges.

Provided that the content of the video contains alleged violations of insult or defamation, threatening, spreading false news, Sara, decency, and so on. So, in the case of a traffic accident, the distribution of photos and videos can be categorized as defamation and decency. Suppose it is considered a violation of privacy. In that case, a direct material loss must be calculated as an actual loss. However, if not, then it is not a criminal offence. For

example, suppose a person's photos and videos are published, and his or her name becomes more famous in the community. In that case, it is not a loss but rather a benefit that brings material value to a person, so it is not a criminal offence.

The Government has facilitated the utilization of Information Technology and Electronic Transactions by the provisions of laws and regulations (Fitri, 2022). The Government has provided certainty to protect the public interest from all types of disturbances due to misuse of Electronic Information and Electronic Transactions that disturb public order and prevent the dissemination and use of Electronic Information and/or Electronic Documents that have prohibited content. The method is by terminating access and/or ordering the Electronic System Operator to terminate access to Electronic Information and/or Electronic Documents deemed to have unlawful content, as well as terminating access and/or moderating content independently to Electronic Information and/or Electronic Documents that have pornographic content, gambling, or other content as referred to in the provisions of laws and regulations to the extent technologically possible.

### **What are the obstacles to uncovering content disseminators containing photos and videos of traffic victims?**

There are several obstacles faced by investigators to reveal the spreaders of content containing decency or Pornography related to Traffic Victims, among others:

#### ***Inadequate Human Resources***

Human resources are the first factor that supports the investigation and investigation process to arrest the perpetrators of the distribution of photos and videos of traffic accident victims; if the police human resources do not support it, it is difficult to uncover the perpetrators of the content disseminators. Because information technology is very sophisticated, finding crimes in the cybercrime field requires reliable human resources so that cybercrime can be adequately overcome as quickly as possible.

#### ***Facilities and infrastructure***

Facilities and infrastructure are the second factor after human resources. The importance of facilities and infrastructure as a supporting factor for the police in revealing the perpetrators of the spread of immoral or pornographic photos and videos. The spread of this content uses sophisticated equipment such as cell phones and various applications with various types of social media features. So that if the facilities and infrastructure do not support it, investigators will undoubtedly find it difficult to uncover it, even taking a long time. Therefore, sophisticated tools are needed to detect the perpetrators of the first spreader so that they are immediately arrested and prosecuted.

#### ***Cooperation with various agencies and the community***

The absence of cooperation between the police and relevant agencies in the field of information systems is a factor in the police's obstacles to uncovering the perpetrators of the spread of content containing decency or Pornography. There is a need for cooperation between various parties as supporters of the expected implementation of law enforcement. The most relevant agency in the information technology system is the Kominfo (Ministry of Communication and Information). This institution is the most relevant to organizing government affairs in communication and informatics. Suppose there are problems related to public order. In that case, the police and Kominfo can work together to find solutions in solving problems. Likewise, with the community with the participation of the community in the form of providing the latest information about the perpetrators of the spread of immoral or pornographic content, it is located then to catch and ensnare the perpetrators of the Law will be quickly realized.

## **CONCLUSION**

This study aims to analyze the legal regulation of the dissemination of content containing decency in the form of spreading photos and videos of traffic accident victims according to Article 27, paragraph 1 of Law Number 19 of 2016 concerning Electronic Information and Transactions (ITE), as well as obstacles in determining suspects in the dissemination of such content. According to Law Number 19 of 2016 concerning Electronic Information and Transactions (ITE), and its amendment by Law Number 1 of 2024, the dissemination of photos and videos of traffic accident victims is considered an act that violates decency. Article 27, paragraph (1) of the ITE Law states: "Every person intentionally and without right distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that have content that violates decency." This provision has been further clarified in the amended law, emphasizing that any such dissemination intended for public knowledge is prohibited. Violators of Article 27, paragraph (1) of the ITE Law face severe penalties. As per Article 45, paragraph

(1), individuals who distribute, transmit, or make accessible electronic content that violates decency can be sentenced to a maximum imprisonment of 6 years and/or fined up to Rp 1 billion. The amended law also provides exceptions under specific conditions, such as actions done in the public interest, in self-defense, or if the content is related to art, culture, sports, health, and/or science. The study identifies several obstacles in determining suspects in the dissemination of obscene content, including inadequate human resources, insufficient facilities and infrastructure, and a lack of cooperation between relevant agencies and the community, which hampers the efforts to reveal and prosecute those responsible for spreading obscene content.

## REFERENCES

- Agustina, L. (2018). Live video streaming sebagai bentuk perkembangan fitur media sosial. *Diakom: Jurnal Media Dan Komunikasi*, 1(1), 17–23.
- Anjani, M. R., & Santoso, B. (2018). Urgensi Rekonstruksi Hukum E-Commerce Di Indonesia. *Law Reform*, 14(1), 89–103.
- Ardiputra, S., Burhanuddin, B., AR, M. Y., Maulana, M. I., & Pahrudin, P. (2022). Sosialisasi UU ITE No. 19 Tahun 2016 dan Edukasi Cerdas dan Bijak dalam Bermedia Sosial. *Jurnal Abdi Masyarakat Indonesia*, 2(2), 707–718.
- Asmadi, E. (2021). Rumusan Delik Dan Pidana Bagi Tindak Pidana Pencemaran Nama Baik Di Media Sosial. *De Lega Lata: Jurnal Ilmu Hukum*, 6(1), 16–32.
- Dewi, A. A. R. P., Sujana, I. N., & Sugiarta, I. N. G. (2019). Tindak Pidana Persetubuhan Terhadap Anak Di Bawah Umur. *Jurnal Analogi Hukum*, 1(1), 11–15.
- Fitri, S. N. (2022). Politik Hukum Pembentukan Cyber Law Undang-Undang Informasi dan Transaksi Elektronik di Indonesia. *Jurnal Justisia: Jurnal Ilmu Hukum, Perundang-Undangan Dan Pranata Sosial*, 7(1), 104–124.
- Fitriani, Y. (2017). Analisis pemanfaatan berbagai media sosial sebagai sarana penyebaran informasi bagi masyarakat. *Paradigma*, 19(2), 148–152.
- HL, M. N. R., & Nur, H. (2023). Mekanisme Coping Pada Perempuan Penyintas Penyebaran Video Pornografi. *PESHUM: Jurnal Pendidikan, Sosial Dan Humaniora*, 3(1), 29–46.
- Ketaren, E. (2016). Cybercrime, cyber space, dan cyber law. *Jurnal Times*, 5(2), 35–42.
- Kurniawan, E., & Pasaribu, A. H. (2022). Jerat Hukum Pelaku Pencemaran Nama Baik via Media Sosial. *Jurnal Kewarganegaraan*, 6(1), 2182–2189.
- Lesar, E. V. (2021). Informasi Atau Dokumen Elektronik Yang Memiliki Muatan Perjudian. *LEX CRIMEN*, 10(2).
- Muzakkir, M., & Saparudin, S. (2024). TINDAK PIDANA PENCEMARAN NAMA BAIK DALAM UU ITE PASAL 27 NO. 11 TAHUN 2008 Jo PASAL 45 UU NO. 19 TAHUN 2016. *Metta: Jurnal Ilmu Multidisiplin*, 4(2).
- Nurisman, E. (2022). Risalah Tantangan Penegakan Hukum Tindak Pidana Kekerasan Seksual Pasca Lahirnya Undang-Undang Nomor 12 Tahun 2022. *Jurnal Pembangunan Hukum Indonesia*, 4(2), 170–196.
- Rosifany, O. (2018). Perlindungan Hukum Terhadap Korban Kejahatan. *LEGALITAS: Jurnal Ilmiah Ilmu Hukum*, 2(2), 20–30.
- Yuserlina, A. (2022). Tinjauan Yuridis Tindak Pidana Ujaran Kebencian Pada Media Sosial Terhadap Perilaku Cyberbulliyng Menurut Undang-Undang Nomor 19 Tahun 2016 Tentang Informasi Dan Transaksi Elektronik. *Ensiklopedia Education Review*, 4(3), 220–230.