



Criminal liability of cyberstalking perpetrators with material motives on social media

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Abstract

This study examines the criminal liability of perpetrators of materially motivated cyberstalking on social media through a case study of Decision Number 112/Pid.Sus/2021/PN/Jap. This research is motivated by the reality that digital space, which should be a means of free interaction, is often misused as a medium for threats, intimidation, and degrading human dignity. In these cases, technology is used by perpetrators to violate the victim's privacy and control the victim's life through threats based on personal content to fulfill the perpetrator's desires. The purpose of this study is to uncover the legal facts revealed in the trial regarding the perpetrator's pattern of behavior and to assess the appropriateness of the application of the criminal articles used in the decision. In addition, this study aims to assess the extent to which the articles applied are able to reflect the substance of the perpetrator's actions and provide maximum legal protection for the victim. The research method used is normative juridical with a statutory and conceptual approach. An analysis was conducted of the provisions of the ITE Law, the Criminal Code, the Pornography Law, and the Sexual Violence Crimes Law (TPKS) to understand cyberstalking as a form of crime that not only attacks the victim's body, but also their privacy, sense of security, and digital identity. Cyberstalking is understood as a crime involving power relations, emotional manipulation, and the misuse of digital assets. The results of the study indicate that the perpetrator consciously, repeatedly, and deliberately records the victim's body without permission, stores the recording as digital assets, and then uses it as a means of threat. However, the application of Article 27 paragraph (1) of the ITE Law is deemed not to fully represent the essence of the perpetrator's actions. Therefore, this study emphasizes the importance of accurate charges and the judge's sensitivity in assessing the motives and impact of the actions in order to achieve justice and reparation for victims in the digital era.

Keywords: Criminal accountability, fraud, social media, cyberstalking.

Introduction

As the digital age evolves, advances in information and communication technology have brought significant changes to social interaction patterns. The internet and social media not only serve as a means of communication without the constraints of time and space, but also provide various features that facilitate information exchange, data storage, and the formation of digital identities.

The rapid development of science and technology today not only provides positive benefits for its users, but also creates new challenges for the lives of society, the nation, and the state, in the form of misuse of technology, ultimately leading to complex problems. While these developments provide significant benefits for society, on the other hand, they also give rise to new problems in the form of misuse of technology, which has complex impacts on social life, the nation, and the state. Indonesia is one of the countries with very high levels of social media usage.

Platforms such as Facebook, Instagram, Twitter, WhatsApp, and various other social media platforms have become part of people's daily activities. Social media is primarily used as a means of socializing, both individually and in groups, with various supporting features such as instant messaging, photo and video uploads, and live broadcasts. However, this ease of access and openness of information also increases individual vulnerability to various forms of cybercrime.

One form of cybercrime that has become increasingly prominent with technological advancements is cyberstalking. Cyberstalking is an act of surveillance, harassment, and threats carried out repeatedly through electronic means, exploiting the victim's information or

digital assets. In practice, cyberstalking often begins with the collection of the victim's personal data through social media, which is then used to intimidate, control, or pressure the victim. This crime is often accompanied by sexual motives, with the perpetrator using photos, recordings, or personal data of the victim as a means of threat, coercion, and control, including in the form of digital-based sexual blackmail (sextortion). Fraud using electronic means is an act committed by an individual or group in which the perpetrator has committed an act that violates statutory regulations.

From a criminal law perspective, criminal liability is a fundamental concept in determining whether an individual can be punished for their actions. Not every unlawful act automatically warrants criminal punishment; rather, it must meet the elements of fault, intent (*mens rea*), and the perpetrator's ability to understand the consequences of their actions.

This principle also applies to cybercrimes, including cyberstalking. However, the easily copied, cross-border, and difficult-to-trace nature of digital objects presents unique challenges in law enforcement, particularly in establishing evidence and determining the appropriate article. Decision Number 112/Pid.Sus/2021/PN/Jap provides a concrete example of how sexually motivated cyberstalking is processed in the Indonesian criminal justice system. In this decision, the perpetrator was charged using the morality provisions of the Electronic Information and Transactions Law (UU ITE), even though the substance of the act more closely resembled digital-based sexual coercion and extortion. This demonstrates the limitations of positive law

in accommodating the characteristics of sexually motivated cybercrimes and the issue of the appropriateness of the application of the articles. Based on this description, this research is important to examine how criminal liability for perpetrators of cyberstalking regarding digital objects can be applied appropriately and fairly. Therefore, this research focuses on two main issues: first, how the legal facts in the trial were used as the basis for the judge's considerations in Decision Number 112/Pid.Sus/2021/PN/Jap; and second, whether the application of the criminal articles in the decision is relevant to the character and motives of the perpetrator's actions, particularly in providing optimal legal protection for victims of cybercrime in the digital era.

Discussion

In criminal law, the concept of criminal responsibility plays a crucial role in determining whether a person can be punished for their actions. Criminal responsibility refers to a person's ability to consciously and freely accept responsibility for their actions. This means that not all wrongful acts automatically result in criminal liability. There must be an element of fault, malicious intent (*mens rea*), and the perpetrator's ability to understand the consequences of their actions. This principle also applies to modern crimes, including crimes occurring in cyberspace.

Legal facts

Based on the legal facts revealed in the trial of Decision Number 112/Pid.Sus/2021/PN/Jap, it was proven that the defendant consciously and deliberately recorded the victim's body without permission by installing a hidden camera in the bathroom. The recording was stored as digital material and then sent to the victim via social media, accompanied by threats of distribution if the victim did not comply with the defendant's wishes for sexual intercourse. This series of actions was supported by the testimony of the victim, witnesses, a digital forensics expert, and electronic evidence in the form of photographs, screenshots of conversations, a recording device, and the defendant's cell phone.

The trial evidence demonstrated that the defendant not only violated the victim's privacy but also used digital material as a means of control and psychological pressure. The victim directly experienced the impact of these actions, who, during the trial, stated that she experienced shame, fear, and mental distress due to her body being recorded without permission and used as a means of threat. This situation demonstrates that the defendant's actions meet the characteristics of cyberstalking accompanied by sexual threats (*sextortion*), where technology is used to intimidate and exploit the victim.

The testimony of a digital forensic expert reinforces this construction by explaining that the systematic collection, storage, and management of intimate material are generally carried out with a specific purpose, not by chance. Electronic evidence, including file metadata, messaging patterns, and photo storage histories, demonstrates the defendant's intentional and continuous behavior in pressuring and controlling the victim. Therefore, each of the defendant's actions in the digital space represents a structured attempt to degrade the victim's dignity through electronic means.

Overall, the trial evidence confirms that the defendant's actions not only violated the victim's right to privacy but also profoundly undermined her honor and dignity. The

misuse of technology in this case demonstrates how digital media can transform into a tool of power that coerces, intimidates, and leaves long-term psychological impacts on victims, thus underscoring the urgency of criminal accountability for perpetrators of technology-based crimes.

Public prosecutor's indictment

In the indictment read out at trial, the Public Prosecutor emphasized that defendant Joshua Laly was charged with violating three criminal provisions, structured in a layered manner. This layered indictment reflects the Public Prosecutor's view that the defendant's series of actions constituted a single, gradual, planned, and entirely electronically mediated act. These actions were classified as a form of digital stalking (*cyberstalking*) accompanied by sexual threats and the distribution of intimate photos of the victim without consent.

These layered indictments served as the foundation for the Panel of Judges in assessing the defendant's criminal responsibility. The Public Prosecutor structured them from the primary charge to subsidiary and alternative charges, ensuring that if one charge is not fully proven, there are other legal grounds for establishing criminal responsibility. This approach demonstrates that the primary focus of the indictment is not solely on the number of articles used, but rather on the quality of the violations committed, particularly the violation of human dignity and privacy through the misuse of digital technology.

In Jayapura District Court Decision Number 112/Pid.Sus/2021/PN Jap, the Public Prosecutor (Public Prosecutor) presented a layered indictment against defendant Joshua Laly, based on three criminal provisions: the Electronic Information and Transactions (ITE) Law, the Pornography Law, and the Criminal Code (KUHP). This layered indictment reflects the view that the defendant's actions constituted a single, deliberate, and planned act, carried out in stages using electronic means. All of these acts were classified as digital stalking (*cyberstalking*), accompanied by sexual threats and the distribution of intimate photos of the victim without consent.

This layered indictment serves as a crucial foundation for the Panel of Judges in assessing the defendant's criminal responsibility. The Public Prosecutor structured the indictment, starting with the primary charge and proceeding to subsidiary charges, as a form of legal prudence, ensuring that if one charge is not fully proven, other legal grounds remain available to establish criminal responsibility. This approach demonstrates that the primary focus of the indictment lies not in the quantity of articles but rather in the quality of the violations, particularly the violation of human dignity and privacy through the misuse of digital technology.

In the indictment, the Public Prosecutor detailed the time, location, and means used by the defendant. On August 29, 2020, in Abepura, Jayapura, the defendant used a B-Pro camera hidden behind a bathroom door and connected to his Oppo F3 mobile phone to monitor the victim in real time while she showered. After obtaining the images via screenshots, the defendant sent photos of the victim showing her naked body and face via private Instagram messages using two different accounts. The photos were accompanied by threats to distribute the photos on social media if the victim did not comply with the defendant's demands for sexual intercourse, which were repeated several days later.

In the first indictment, the Public Prosecutor assessed that the defendant's actions met the elements of Article 27 paragraph (1) in conjunction with Article 45 paragraph (1) of the Electronic Information and Transactions (ITE) Law because he intentionally and without authority distributed or transmitted electronic documents containing indecent content. Although sent via private messages, the sending of the photos still qualifies as distribution within the context of ITE law, thus confirming that crimes in the digital space still have a real impact on victims.

The second charge is based on Article 4 paragraph (1) in conjunction with Article 29 of the Pornography Law. The Public Prosecutor explained that taking, storing, editing, and sending nude photographs of the victim without permission fulfills the elements of producing and distributing pornographic material. This charge emphasizes that pornography crimes do not have to be committed en masse, but can occur through individual actions if pornographic content is used as a means of exploitation and intimidation of the victim.

As a subsidiary charge, the Public Prosecutor also applied Article 310 paragraph (2) of the Criminal Code concerning written defamation. Sending nude photographs of the victim accompanied by threats of distribution is considered an attack on the victim's honor and reputation, causing shame, fear, and psychological distress. This charge demonstrates that the provisions of the Criminal Code remain relevant in protecting human dignity amidst the development of technology-based crimes.

The entire indictment is supported by interconnected electronic evidence, including hidden cameras, cell phones, social media accounts, threatening messages, photographs, and screenshots of conversations. This approach demonstrates that the indictment was not structured formally, but rather as a coherent legal construct to illustrate the complexity of the defendant's actions.

Overall, this case emphasizes that the criminal liability of cyberstalkers must be understood comprehensively, taking into account the elements of intent, the unlawful nature of the act, and the psychological and social impacts on the victim. The use of technology to stalk, control, and pressure victims, whether for sexual or material motives, strengthens the basis for criminal conviction. This decision demonstrates that Indonesian criminal law is capable of accommodating and addressing the crime of cyberstalking through a progressive interpretation of existing laws and regulations, with a primary focus on protecting the victim's dignity and honor.

This discussion demonstrates that criminal liability for cyberstalkers cannot be viewed in isolation but must be understood comprehensively, taking into account the elements of intent, the unlawful nature of the act, and the actual consequences for the victim. In the context of cyberstalking, whether materially or sexually motivated, the perpetrator consciously utilizes information technology as a means to stalk, control, and pressure the victim. Both material and sexual motives strengthen the basis for criminal prosecution because they indicate the intention to exploit the victim, not simply a simple digital disruption.

Jayapura District Court Decision Number 112/Pid.Sus/2021/PN Jap provides a concrete illustration of the pattern of sexually motivated cyberstalking. The defendant conducted covert electronic surveillance by installing a camera in the victim's bathroom, a naturally

private space. This action demonstrates digital surveillance, the initial stage of cyberstalking, in which the perpetrator systematically places the victim in a vulnerable position by secretly monitoring their private activities without their consent. The defendant's actions did not stop with taking photos but continued to repeatedly store, edit, and send intimate photos of the victim via social media using more than one account. This pattern demonstrates the characteristics of cyberstalking, a form of digital harassment carried out repeatedly to increase psychological pressure on the victim.

The use of multiple accounts also reflects the perpetrator's efforts to disguise their identity while increasing the victim's fear and helplessness. In compiling the indictment, the Public Prosecutor adopted a multi-layered approach, combining the provisions of the ITE Law, the Pornography Law, and the Criminal Code. This approach demonstrates that the defendant's actions violated not only a single criminal norm, but also encompassed multiple dimensions of legal violations, ranging from morality and violation of privacy to attacks on the victim's honor and dignity.

The indictment also demonstrates how elements of cyberstalking can be accommodated within existing positive criminal provisions, even though the term "cyberstalking" has not been explicitly regulated. The indictment, based on Article 27 paragraph (1) in conjunction with Article 45 paragraph (1) of the ITE Law, asserts that sending nude photos of the victim accompanied by threats of public distribution not only fulfills the element of distributing content that violates morality, but also reflects a pattern of sexually motivated cyberstalking that is coercive in nature. Intimate content is used as a means of pressure to force the victim to comply with the perpetrator's wishes, a phenomenon known in the literature as coercive sexual cyberstalking. In this context, the content of violating morality lies not only in the content, but also in the perpetrator's goals and the psychological impact it has on the victim.

The indictment based on the Pornography Law further clarifies that intimate photos of the victim function as an instrument of digital domination. Visuals of the victim's body are not merely produced or disseminated as pornographic material, but are used by the perpetrator to demonstrate control over the victim's privacy. Sending the photos to the victim themselves serves as a strategy of intimidation that asserts the perpetrator's superior position in an unequal power relationship. Meanwhile, the application of Article 310 paragraph (2) of the Criminal Code concerning written defamation demonstrates the dimension of the attack on the victim's honor. The threat of distributing nude photos has the potential to damage the victim's reputation and dignity in the digital public space, as well as instill fear, shame, and lasting trauma.

From a cyberstalking perspective, this type of threat is one of the most damaging forms because its impact extends beyond legal losses to include psychological and social aspects of the victim. Overall, the Public Prosecutor's indictment in this case serves not only as an instrument of proof of the criminal elements but also as a legal narrative that comprehensively illustrates how technology is used to oppress the victim.

The indictment connects the technical aspects of electronic device use with a deep understanding of the emotional impact experienced by the victim. Thus, this case confirms

that cyberstalking is a complex modern crime, and Indonesian criminal law is able to provide a basis for criminal accountability for perpetrators through the interpretation and application of existing legal provisions in a progressive manner oriented toward the protection of human dignity.

Analysis of the public prosecutor's indictment

The principle of proportionality of punishment, a fundamental principle in Indonesian criminal law, requires that the punishment imposed be commensurate with the degree of culpability, including moral blameworthiness, the perpetrator's motive, and the actual impact on the victim. In the context of Decision Number 112/Pid.Sus/2021/PN Jap, the analysis focused on the consistency between the elements of the articles used, the trial facts, and the judge's decision, particularly regarding the element of material gain. Based on the trial facts, it was proven that the defendant filmed the victim's body without permission, stored, edited, and sent nude photos of the victim via electronic media, accompanied by threats. However, the entire series of acts was driven by personal sexual motives, namely the defendant's desire for sexual intercourse, not for economic or material gain. There was no evidence that the defendant demanded money, goods, or other forms of financial gain from the victim.

This absence of the element of material gain is crucial because certain articles used in the indictment require a material motive or economic exploitation as a key element. In criminal law, if a core element is not proven, the application of the article is invalid under the principles of legality and *lex certa*. Therefore, the use of articles that focus on material gain for sexually motivated acts has the potential to lead to criminal disproportionality.

In terms of the indictment, although the Public Prosecutor has compiled a coherent description of the actions and strongly illustrated the violation of the victim's privacy and dignity, there is a fundamental weakness in the choice of articles. The indictment does not explicitly and factually outline the purpose of material gain, even though this element is an essential part of the articles used. As a result, the indictment is potentially incomplete (*obscur libel*) due to the lack of consistency between the normative elements and the facts of the trial.

In its decision, the judge accepted the entire Public Prosecutor's charges and declared that all elements of the articles were met. However, critically, it can be seen that the judge still considered the element of material gain proven even though it was not supported by valid evidence. The judge's considerations tended to focus more on a moral assessment of the defendant's reprehensible actions, rather than a strict normative analysis of the fulfillment of the elements of the crime. This approach risks turning criminal law into a tool of moral control, rather than an instrument of justice based on the principle of legality.

The fundamental error in this decision lies in equating personal sexual motives with economic exploitation, when doctrinally, these two motives are distinct and have unequal legal consequences. Exploitation requires material gain, while personal sexual motives, while reprehensible and unlawful, cannot automatically be categorized as such. This inaccuracy resulted in a disproportionate sentence, as the penalty imposed was more severe than the actual nature of the defendant's actions.

Substantively, the defendant's actions are more accurately classified as electronic-based sexual violence, characterized by sexually motivated cyberstalking. The defendant engaged in covert surveillance, repeated and pressured electronic communications, and used the victim's sexual content as a means of control and manipulation to coerce her into fulfilling his sexual desires. This pattern reflects a form of coercive sexual cyberstalking, not a crime oriented toward economic gain.

Therefore, a more appropriate legal framework would utilize provisions specifically designed to prosecute sexual coercion and the misuse of intimate content, such as Article 14 paragraph (2) of the TPKS Law, Article 4 paragraph (1) in conjunction with Article 29 of the Pornography Law, and Article 27 paragraph (1) of the ITE Law, which reinforce the fact that the acts were committed electronically. These articles are normatively aligned with the facts of the trial because they reflect sexual motives, manipulation and threats through electronic media, and the misuse of pornographic material.

Therefore, it can be concluded that the inaccurate selection of articles in the initial indictment and subsequent verdict has resulted in disproportionate criminal liability. This case should be understood and decided as a crime of electronic-based sexual violence characterized by cyberstalking, not as a crime oriented toward material gain. Accurate and fair law enforcement can only be achieved if the sentencing is based on the appropriateness of the perpetrator's motive, the facts of the trial, and the elements of the articles that are truly fulfilled.

Conclusion

Based on the research results, it was revealed that the defendant's actions were not motivated by material gain because there was no evidence of a demand for money, goods, or other economic benefits. The defendant's actions actually indicated electronic-based sexual coercion through threats to distribute nude photos of the victim. Therefore, the Public Prosecutor's use of Article 27 paragraph (1) in conjunction with Article 45 paragraph (1) of the ITE Law was deemed inconsistent with the defendant's actions.

Legally, these actions are more appropriately classified as sexual crimes, as they include the production, storage, and use of pornographic content against the victim as stipulated in Article 4 paragraph (1) in conjunction with Article 29 of the Pornography Law, and fulfill the elements of Electronic-Based Sexual Violence as stipulated in Article 14 paragraph (2) of the TPKS Law. Furthermore, the threat to force the victim to engage in sexual intercourse also fulfills the elements of extortion under Article 368 paragraph (1) of the Criminal Code, even though the intended benefit was sexual compliance. The inaccurate application of these articles renders the indictment *obscur libel*, as it does not accurately reflect the elements and nature of the defendant's actions.

Recommendation

The Public Prosecutor must carefully examine the suitability of the revealed legal facts to the elements of the crime charged. The inaccuracy in the application of the articles, as seen in Decision Number 112/Pid.Sus/2021/PN/Jap, indicates a lack of synchronization between the substance of the defendant's actions and the formulation of the crime used, thus creating a potential for the indictment to become

obscur libel. Therefore, the Prosecutor must conduct a thorough analysis of the facts, particularly regarding the motive, form of threat, and the resulting consequences, before determining the most relevant article. In cases involving electronic-based sexual coercion, the provisions of the Pornography Law, the TPKS Law, or Article 368 of the Criminal Code are more appropriate to consider than Article 27 paragraph (1) of the ITE Law. Accuracy in drafting the indictment is key to ensuring clarity of evidence, maximum protection for victims, and the realization of substantive justice.

Reference

1. Law Number 8 of 1981 concerning Criminal Procedure Law, State Gazette of the Republic of Indonesia 1981 Number 76, Supplement to the State Gazette of the Republic of Indonesia Number 3209.
2. Law Number 44 of 2008 concerning Pornography, (State Gazette of the Republic of Indonesia 2008 Number 181, Supplement to the State Gazette of the Republic of Indonesia Number 4928).
3. Law Number 11 of 2008 concerning Electronic Information and Transactions, (State Gazette of the Republic of Indonesia 2008 Number 58, Supplement to the State Gazette of the Republic of Indonesia Number 4843).
4. Alexy, Robert, "Legal Regulation of Cyberstalking in the United States,"
5. Frommholz, et.al., On textual analysis and machine learning for cyberstalking detection.
6. P.A.F. Lamintang and Franciscus Theojunior Lamintang, Basics of Indonesian Criminal Law.
7. Kaplan, et.al., "Users of the World, Unite! The Challenges and Opportunities of Social Media.
8. Jordy Herry Christian, "Sextortion: Online Gender-Based Violence in the Indonesian Legal Paradigm.
9. Aris Munandar *et al.*, "The Role of Intention (Mensrea) in Criminal Responsibility in Indonesia.
10. Jayapura District Court, 2021, Decision Number 112/Pid.Sus/2021/PN Jap. Directory of Decisions of the Supreme Court of the Republic of Indonesia. <https://putusan3.mahkamahagung.go.id/>.
11. National Legal Development Agency (BPHN), (2022), Study of the EU Convention on Cybercrime Linked to Efforts to Regulate Information Technology Crimes. https://bphn.go.id/data/documents/kajian_eu_convention_on_cybercrime_dikaitkan_dengan_upaya_aturan_tindakan_pidana_teknologi_informasi.pdf.
12. UNESCO, (2023), Global education monitoring report. <https://unesdoc.unesco.org/ark:/48223/pf0000387214>.
13. United Nations Office on Drugs and Crime (UNODC), The Role of Technology in Facilitating and Combating Sexual and Gender Based Violence: Report <https://www.unodc.org/documents/NGO/PPP/UNODC-PPP-Interactive.pdf>.