Attributing Legal Responsibility for Deepfake Pornography Generated by Artificial Intelligence: A Juridical Analysis

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ABSTRACT

The development of artificial intelligence technology has brought about major transformations in various fields, including in the digital media sector. One form of innovation that has emerged is deepfake technology. Although useful in some positive contexts, this technology has also been misused, especially in the form of pornographic deepfakes, namely the creation and distribution of fake pornographic content by displaying someone's face without permission. This phenomenon raises serious problems because it not only violates the right to privacy and individual dignity, but also has psychological and social impacts on victims. Although Indonesia does not yet have regulations that specifically regulate deepfakes, perpetrators can still be charged using the provisions of the Electronic Information and Transactions Law (UU ITE), the Pornography Law, and the Criminal Code (KUHP). However, the existing legal framework has not been fully able to answer the challenges of digital crime that continues to grow. Therefore, a more comprehensive and adaptive regulatory update is needed, as well as a strong legal protection mechanism for victims, to ensure legal justice in the increasingly complex digital era.

Keywords: *Deepfake, Artificial Intelligence, Digital Crime.*

Introduction

The Republic of Indonesia has constitutionally declared itself a state based on law, as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. This statement means that all aspects of social, national and state life must be based on law. In the context of a state based on law, respect for human rights is a fundamental principle that demands equality of rights and obligations for every individual before the law[1].

In the era of globalization, the development of information technology in society has shown rapid progress. Along with this progress, various forms of

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[1] Sri Warjiyati dan Fatma Afifah, *Tujuan, Fungsi Dan Kedudukan Hukum,* Jurnal Ilmu Hukum Wijaya Putra, Vol. 2 No. 2 (2024), h. 142

cybercrime have also become increasingly prevalent and difficult to contain. One rapidly developing technology is artificial intelligence (AI), a high-level computational capability designed by humans to perform specific tasks according to given instructions[2].

The development of artificial intelligence (AI) has given rise to a new technology known as deepfake. Deepfake is an AI-based technology used to produce fake videos, images, or audio with a very high level of realism. The term "deepfake" comes from a combination of the words deep learning and fake, reflecting the use of deep learning algorithms to create manipulated content. Some common applications of deepfake technology include face-swapping, facial expression manipulation, and accurate voice imitation. By utilizing this technology, perpetrators can edit or replace a person's face in content so that it looks so similar to the original, making it difficult to distinguish between the authentic and the fake[3].

Artificial intelligence (AI) technology is often misused by certain parties for purposes that conflict with ethical and legal values. One form of this misuse is the creation of pornographic content using deepfake technology, which causes unrest and anxiety in society because it violates moral norms and undermines social order. In addressing this issue, the law must play a central role in fostering a healthy and responsible technology ecosystem. Therefore, law enforcement officials are required to utilize regulations as an adaptive instrument to technological developments, including formulating provisions that allow artificial intelligence (AI) to be positioned as a legal subject that can be held accountable for the impacts of its actions[4].

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[2] Heni Widiyani Muhammad Rizki Kurniarullah, Talitha Nabila, Abdurrahman Khalidy, dan Vivi Juniarti Tan, *Tinjauan Kriminologi Terhadap Penyalahgunaan Artificial Intelligence: Deepfake Pornografi Dan Pencurian Data Pribadi*, Jurnal Ilmiah Wahana Pendidikan, Vol. 10 No. 10 (2024), h. 535, Dhevi Nayasari Sastradinata, dan Nabila Afrida, *Dispute Resolution Mechanism in Buying and Sale Transactions Conducted in E-Commerce*, Jurnal Independent 12, no. 2 (2024), h. 226.

[3] Pudji Astuti dan Heny Novyanti, *Jerat Hukum Penyalahgunaan Aplikasi Deepfake Ditinjau Dari Hukum Pidana*, Novum Jurnal Hukum, Vol. 1 No. 1 (2021), h. 2

[4] Izil Hidayat Putra, *Perlindungan Hukum Terhadap Korban Penyalahgunaan Artificial Intelligence (AI) Berupa Deepfake Pornografi Menurut Peraturan Perundang-Undangan*, UNJA Journal of LegalStudies, Vol. 1 No. 2 (2023), h. 112

Currently, Indonesia does not have specific laws explicitly regulating issues related to deepfake technology. However, as a country governed by the rule of law, basic principles of criminal law can still be used as a basis for addressing the misuse of artificial intelligence, including deepfakes. One fundamental principle in criminal law is the principle of nullum crimen sine culpa (no crime without fault), which can be used as a basis for criminal liability, even though there are no specific legal provisions regarding the misuse of this technology[5].

Research methods

This research is a normative juridical study, employing both a legislative and a conceptual approach. The legislative approach is conducted by examining and analyzing various forms of legislation and regulations contained in laws and regulations relevant to the legal issues that are the focus of the research[6].

This research also uses a conceptual approach, one based on the views and doctrines put forward by legal experts that have developed and been recognized in legal science. This approach plays a crucial role because it serves as the basis for constructing legal arguments aimed at formulating solutions to the legal problems being studied[7].

A. The primary legal materials in this study are; (1) Criminal Code (KUHP), (2) Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law), (3) Law Number 44 of 2008 concerning Pornography, (4) Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law), (5) Law Number 27 of 2022 concerning Personal Data Protection, (6) Law Number 1 of 2023 concerning the Criminal Code (KUHP), (7) Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law).

Research Results and Discussion

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[5] Fasa Muhamad Hapid, Ija Suntana, dan Muhammad Yayan Royani, *Penerapan Asas Geen Straf Zonder Schuld Dalam Penindakan Terhadap Kejahatan Penyalahgunaan Teknologi Deepfake Application of the Geen Straf Zonder Schuld Principle in Taking Action Against Crimes of Misuse of Deepfake Technology*, Jurnal USM Law Review, Vol. 7 No. 3 (2024), h. 1157

[6] Peter Mahmud Marzuki, *Penelitian Hukum*, PT Kencana Prena Media Group, Jakarta, 2005, H. 133.

[7] Ibid. h. 135

1. **Legal Regulations Regarding the Use of Pornographic Deepfakes in Indonesia**

The development of digital technology has provided significant benefits to society, such as increased efficiency, easier access to information, and the ability to communicate globally. However, this progress also poses significant risks, including the potential for fraud, information manipulation, and various other forms of cybercrime. To prevent and address the misuse of deepfake technology, a comprehensive approach is required, encompassing public education, the development of deepfake detection technology, and the implementation and enforcement of relevant legal regulations[8].

The discussion regarding the regulation of the use of deepfake technology cannot be separated from the Electronic Information and Transactions Law (ITE Law), which is an important legal instrument in dealing with the misuse of technology, including in the context of pornographic deepfakes. This regulation is stated in Article 27 paragraph (1) of Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions, that:

> "Any person who intentionally and without the right broadcasts, displays, distributes, transmits and/or makes accessible Electronic Information and/or Electronic Documents that contain content that violates morality for public knowledge."

Furthermore, provisions prohibiting attacks on the honor or reputation of others are also regulated in Article 27A of Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions. This article emphasizes that everyone is prohibited from committing insults, defamation, or other acts that could demean a person's dignity through electronic media. This provision serves as an important reminder for all information technology users to always use

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[8] Olivia Novera dan Yenny Fitri Z, *Analisis Pengaturan Hukum Pidana Terhadap Penyalahgunaan Teknologi Manipulasi Gambar (Deepfake) Dalam Penyebaran Konten Pornografi Melalui Akun Media Sosial,* El-Faqih, Vol. 10 No. 2 (2024), h. 464

technology responsibly, ethically, and uphold legal, moral, and humanitarian values.

In the current situation, deepfake technology is often misused for the purpose of bringing down certain parties through the distribution of pornographic content. Pornography itself can be understood as any form of material, whether in written, visual, or audiovisual form, which is explicitly designed to arouse sexual arousal. This definition is in line with the provisions in Article 1 paragraph (1) of Law Number 44 of 2008 concerning Pornography, which defines pornography as material containing sexual content and/or exploiting sexual activity. Etymologically, the term "pornography" comes from the Greek, pornographia, which refers to writing or images depicting prostitution activities[9].

Pornographic deepfakes, which involve manipulating a person's face to create pornographic content, are an act that violates societal moral norms. Therefore, it is important to understand and limit the use of this technology in order to maintain moral values and social ethics. The prohibition against such acts is stipulated in Article 4 paragraph (1) of Law Number 44 of 2008 concerning Pornography, which states:

> "Everyone is prohibited from producing, making, reproducing, duplicating, distributing, broadcasting, importing, exporting, offering, selling, renting, or providing pornography that explicitly contains: sexual intercourse, including deviant sexual intercourse, sexual violence, masturbation or onanism, nudity or displays that suggest nudity, genitals or child pornography."

To utilize deepfake technology positively, implementing an effective oversight system and developing sophisticated deepfake detection tools are crucial to ensure the responsible and ethical use of artificial intelligence (AI). Establishing robust regulations should be a top priority in limiting and overseeing the use of this technology. Therefore, government agencies need to

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[9] Yuni Priskila Ginting, *Sosialisasi Perbandingan Penegakan Tindak Pidana Pornografi Yang Terjadi Di Indonesia Dan Thailand*, Jurnal Pengabdian West Science, Vol. 3 No. 04 (2024), h. 459, Fajar Seto Nugroho dan Putri Ainiyatur Rizkiyah, E-Consumer Privacy Policy on the Online Marketplace System, Jurnal Independent, 12, no. 1 (2024), h. 90

implement integrated regulations along with clear legal sanctions, including heavy fines and prison sentences for violators found to have misused it. Furthermore, education about Artificial Intelligence (AI) is crucial and must be disseminated widely to ensure the public understands the potential impacts and risks of using this technology[10].

However, in practice, artificial intelligence technology, including deepfakes, not only has negative impacts but also has the potential to be utilized positively. Therefore, it is important for the public to understand the rules for using this technology so that its use can provide benefits, assist, and ease human workloads in various aspects of life.

2. **The Impact of Deepfake Pornography**

Victims of deepfake technology abuse for the creation of pornographic content experience very serious negative impacts. These impacts include not only physical harm but also long-term, difficult-to-heal psychological damage. This condition significantly impacts the victims' quality of life, which can lead from a normal life to one filled with trauma. Furthermore, victims often experience sexual predation, emotional trauma, cyberbullying, and even feelings of deep shame that can lead to suicidal thoughts. Currently, the distribution of pornographic material is often ignored, even though efforts to repair reputations and erase digital traces after the content has spread widely on social media are extremely difficult[11].

Technological developments also have the potential to negatively impact children. Today, children have very easy access to the internet, allowing them to obtain information from various sites without adequate restrictions. Children who are not yet mentally and emotionally mature are at risk of accessing content inappropriate for their age or developmental level. Various websites and digital platforms may present information or content that is not suitable for children at this stage of development.

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[10] Muhammad Rizki Kurniarullah. Op.cit. h. 539-540
[11] ibid

Among the various impacts, one of the most detrimental is the negative impact on the psychological aspects, particularly the mental health of the victims due to the crime they experienced. Victims of sexual violence generally face detrimental consequences, both physical and mental, which can impact their social interactions. Psychological changes that often appear in victims include feelings of anger, anxiety, desire, even thoughts of suicide, and the emergence of panic symptoms when confronted with other individuals, especially those who resemble the perpetrator. Furthermore, the social impact often experienced by victims is a tendency to withdraw from social environments and avoid interaction with those around them[12].

3. **Legal Responsibility for Perpetrators of Artificial Intelligence Deepfake Pornography Abuse in Indonesia**

In a state governed by law, all aspects of social life, government, and relations between citizens are strictly regulated by applicable laws and regulations, including issues related to pornographic deepfakes. Therefore, every perpetrator of misuse of deepfake technology is obliged to be legally responsible for their actions.

Conceptually, criminal liability is a form of individual responsibility for violations of the law that they commit, based on the mistakes made and criminal acts that fulfill the elements stipulated in the law. In the event of an act prohibited by law, an individual is responsible for the violation and cannot avoid the consequences of criminal liability[13].

Indonesia currently has no specific legal regulations governing the misuse of deepfake technology. However, the Criminal Code (KUHP) generally regulates the distribution of pornographic or immoral material, as outlined in Article 281 of the Criminal Code, which states:

> "is punishable by a maximum imprisonment of two years and eight months or a maximum fine of four thousand five hundred rupiah: 1.

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[12] Khansa Farinda Khalishah, Ruli Ardiansyah, dan Laely Wulandari, *Perlindungan Hukum Terhadap Perempuan Korban Balas Dendam Pornografi Dengan Mempergunakan Aplikasi 'Deepfake' Sebagai Kekerasan Berbasis Gender Online,* Jurnal Parhesia, Vol. 2 No. 2 (2024), h. 8

[13] Dicky Fachrozy, Budi Sastra Panjaitan, *Pertanggungjawaban Pidana Terhadap Pelaku Penyakit Bipolar Dalam Penyebarluasan Tindak Pidana Pornografi,* Jurnal Hukum Dan Pranata Sosial Islam, Vol. 5 No. 1 (2023), h. 637

whoever intentionally and openly violates decency. 2. whoever intentionally and in front of other people who are present goes against his will, violates decency"

The misuse of deepfake technology for pornographic purposes is also a serious concern, as such acts constitute defamation. Therefore, perpetrators are required to be held accountable for their actions in accordance with the provisions of Article 310 paragraph (1) of the Criminal Code (KUHP);

"Anyone who intentionally attacks the honor or good name of someone by accusing them of something, with the clear intention of making it public knowledge, is threatened with defamation with a maximum prison sentence of nine months or a maximum fine of four thousand five hundred thousand rupiah."

In discussing the concept of legal responsibility, Hans Kelsen provides an important insight. According to him, the theory of responsibility in law is related to the concepts of legal obligation (responsibility) and legal responsibility (liability). An individual who is legally responsible for a particular action is obliged to accept sanctions if their actions violate applicable regulations. This is because such actions form the basis for the individual's legal responsibility[14].

Article 27 paragraph (1) of Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions stipulates that the actions of perpetrators of deepfake technology abuse who intentionally broadcast or display electronic information to the public with content that violates morality constitutes a violation of the law. Perpetrators of such actions may be subject to sanctions as expressly regulated in Article 45 paragraph (1) of Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions;

"Any person who intentionally and without the right broadcasts, displays, distributes, transmits and/or makes accessible Electronic Information and/or Electronic Documents which contain content which violates morality for public knowledge as referred to in Article 27

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[14] Kartika Sari, Firdaus, dan Setia Putra, *Pertanggungjawaban Perdata Terhadap Pemberi Dana Donasi Masyarakat Secara Online*, Sibatik Journal, Vol. 2 No. 7 (2023), h. 1956

paragraph (1) shall be punished with imprisonment for a maximum of 6 (six) years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah)."

Likewise, legal regulations that can be used as a basis for addressing the problem of misuse of deepfake technology for pornographic purposes are stated in Law Number 44 of 2008 concerning Pornography, specifically in Article 35 which states that:

"Any person who makes another person an object or model containing pornographic content as referred to in Article 9 shall be punished with imprisonment for a minimum of 1 (one) year and a maximum of 12 (twelve) years and/or a fine of at least IDR 500,000,000.00 (five hundred million rupiah) and a maximum of IDR 6,000,000,000.00 (six billion rupiah)".

Regarding the issue of deepfakes, although Law Number 27 of 2022 concerning Personal Data Protection does not specifically regulate this, the law explains that making another person an untrue object constitutes a violation of the right to personal data protection. In this context, the act of falsifying another person's personal data and misusing it to distribute pornographic content, especially for the purpose of personal gain, is an unlawful act. Perpetrators of such acts may be subject to sanctions in accordance with the provisions of Article 68 of Law Number 27 of 2022 concerning Personal Data Protection, namely a maximum imprisonment of six (6) years and/or a maximum fine of six billion rupiah (Rp6,000,000,000.00).

Conclusion

The development of Artificial Intelligence (AI) technology, particularly in the form of deepfakes, has had a significant impact on various aspects of life. However, the misuse of AI technology in the form of deepfakes to create pornographic content raises serious legal issues, particularly related to violations of privacy rights, moral norms, and defamation. Despite this, Indonesian regulations do not yet explicitly address the misuse of AI deepfake technology in the context of pornography.

Regarding applicable statutory provisions in handling the misuse of AI deepfake technology, several relevant provisions include the Criminal Code

(KUHP), which regulates crimes related to morality and defamation. Furthermore, Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions (UU ITE) regulates the distribution of content that violates moral norms and the dissemination of false information. Furthermore, Law Number 44 of 2008 concerning Pornography prohibits the creation and distribution of pornographic material, including that involving digital manipulation. Furthermore, Law Number 27 of 2022 concerning Personal Data Protection also regulates the falsification and misuse of other people's personal data.

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