

Criminal Law Accountability of Sexual Stalking Perpetrators Through Social Media

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Abstract

Sexual stalking is a new form of crime that has emerged along with the development of technology. In the past, stalking was done directly, such as following the victim. However, now, stalking can occur in the digital world, especially through social media. Perpetrators can easily access the victim's personal information, send sexually suggestive messages, or carry out other disturbances without meeting in person. This study aims to understand in depth the legal protection mechanism for victims and the form of criminal liability for perpetrators of sexual stalking through social media. This research method uses a normative juridical research type, with a legislative approach and a conceptual approach. The results of this study conclude: that legal protection for victims of sexual stalking through social media can be in the form of preventive legal protection and repressive legal protection. Meanwhile, the criminal legal liability, perpetrators of sexual stalking through social media can be subject to criminal sanctions in the form of imprisonment, fines, and/or other actions as stipulated in applicable laws and regulations. However, there are exceptions in certain conditions that cause a person not to be held accountable for their actions.

Keywords : *Accountability, Stalking, Sexual violence*

Introduction

At this time, technological advances are increasing rapidly with the support of an increasingly modern era and the presence of advanced tools that can make human life easier. So that technology today has become the most important thing for modern society and has dominated almost all aspects of life.

One of the existing technological advances is in the field of information and communication, especially social media. It is undeniable that technological advances in the field of information and communication, especially in social media, have a very positive impact on all of us, such as ease of communication, because with social media we can communicate anywhere at any time and without time restrictions. But behind the positive impact, the use of social media itself has challenges in terms of law and security. One of the serious problems faced is the emergence of cybercrime. An example is stalking with sexual purposes carried out through social media.

Stalking or what can be called stalking itself is one of the actions of secretly monitoring or following someone, which occurs repeatedly and continuously, with a specific purpose, carried out by individuals or groups. *Stalking* has a definition that can vary depending on the provisions of the laws or regulations that apply in a country. The term stalking in English is known as *stalking*. In some countries, such as Japan, the term is called *Sokan-tsukai*, while in Germany it is known as *Nachstellung*. The three terms refer to a form of stalking that is carried out directly or physically, not through online media.¹

Meanwhile, Stalking with sexual purposes through social media is the action of a person who constantly monitors or follows other people's activities virtually to get sexual satisfaction or harass. Usually, perpetrators act secretly without the victim's permission, often using fake or anonymous accounts to disguise themselves. Perpetrators can share the victim's personal content that is intimate, even threatening to spread it as a form of extortion. In addition, perpetrators also often send obscene messages or communicate with sexual elements. These actions are intrusive, repetitive, and tend to violate the victim's privacy.

The role of social media in stalking cases is huge due to its characteristics of being open and easily accessible to anyone. Many users voluntarily share too much personal information on their accounts, which can unknowingly become a loophole for criminals. In some cases, the perpetrator of stalking actually comes from the victim's closest circle, such as a former spouse or friend, who uses social media to monitor and control the victim subtly or overtly.

¹ Lisnawati, et al., *Formulation of Legal Protection for Victims of Stalking Crimes from a Human Rights Perspective*, Proceedings of the Actual Law Seminar, Vol. 2 No. 4 (2024), p. 38

As quoted from Cindie and Desy, Rulli Nasrullah stated that social media is a means of communication that allows its users to interact with each other, establish cooperation, exchange information, and express themselves. The platform is designed to be easy to use and understand, even by new users. In addition, social media can be accessed without requiring large fees, in fact most services are available for free. Through social media, users gain ease in communicating and disseminating information to a wide audience.² In addition, social media allows for the free delivery of messages without the need to go through intermediaries. Another advantage is the relatively higher speed of message dissemination compared to conventional media.³ So that social media paves the way for perpetrators to obtain the victim's personal information very easily. Data such as location, daily routines, habits, and personal lives are often shared publicly by users without realizing it. Perpetrators can easily follow the victim's account, monitor uploads, send messages repeatedly, and even create fake accounts to continue to monitor or harass the victim. As a result, the victim can feel depressed, uncomfortable, and as if they are constantly being watched, which has an impact on their mental state.

Meanwhile, the factor that causes stalking on social media with sexual purposes, is the existence of a deviant mindset and view from the perpetrator related to sexuality, this is what causes sexual violence through social media. This mindset can be caused by personal experiences, environmental and cultural influences that apply. Meanwhile, another factor is the perpetrator's ignorance of the boundaries of behavior that can be considered sexual violence, as well as a lack of empathy for the victim. This causes the perpetrator to not realize the impact of his actions, and not feel remorse or responsibility for his actions, which ultimately worsens the situation.

Acts of stalking carried out either in direct physical form or through digital means such as social media, constitute a serious violation of a person's right to privacy. The mental state, social life to economic stability of the victim can all be significantly affected by these actions, despite the fact that these

² Cindie Sya'bania Feroza and Desy Misnawati, *The Use of Instagram Social Media on @yhoophii_official Account as a Media of Communication with Customers*, Junal Innovation, Vol. 14 No. 1 (2020), p. 33

³ Ahmad Riyadh. *Telematics Law and Cyber Media Law*, Indomedia Pustaka, Sidoarjo, 2020, p. 23

actions are often considered unimportant by others. As quoted from Nur Padillah, and Sudarto, Jennier E. Storey stated that stalking can have a serious psychological impact on its victims, so the implementation of protection (*Restraining order*) is one of the effective efforts to reduce these impacts. With this legal protection, victims can feel safer, reduce the potential for more severe psychological disorders, and regain personal freedom that had been disrupted.⁴

Legally, various countries already have legal rules that govern stalking, both in physical and digital form. Stalking with sexual intent presents a major challenge in the criminal justice system. Although Indonesia already has several regulations governing these acts, such as the Criminal Code (KUHP), Law Number 1 of 2024 concerning the second amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE), Law Number 12 of 2022 concerning the Crime of Sexual Violence (TPKS), Law Number 44 of 2008 concerning Pornography. It still does not fully encompass new forms of stalking carried out through social media for sexual purposes. One of the main problems is in terms of proof, the difficulty of proving in this criminal act because it is carried out online and anonymously or using false identities and the use of social media platforms that are far from the supervision of the authorities.

So, it is important for us to understand in depth the legal protection mechanism for victims and forms of criminal liability for perpetrators of stalking with sexual purposes through social media.

Research Methods

Therefore, the Research Method used is normative juridical, using a problem approach in the form of a Law *approach (Statute Approach)*. This approach is carried out by examining all laws and regulations related to the legal issues being handled. In addition, *a conceptual approach* is also used, this view departs from the views and doctrines that develop in law

Results of Research and Discussion

1. Legal protection for victims of sexual stalking through social media

⁴ Nur Padillah, and Sudarto, *The Urgency of Implementing Restraining Orders for Perpetrators of the Crime of Stalking*, Lex Progressium: Journal of Legal Studies and Development, Vol. 1 No. 1 (2024), p. 90

Legal protection is a fundamental element that must be possessed by every country as a form of government responsibility in creating a sense of security, justice, and ensuring the fulfillment of the rights of every individual and group in society. This protection is realized through the implementation of various applicable regulations. Terminologically, the concept of legal protection comes from the combination of two words, namely "protection" and "law". In the Great Dictionary of Indonesian Language (KBBI), "protection" is defined as an act or effort to maintain or protect someone or something, while "law" refers to a set of rules or customs that are binding and officially recognized by the government or authorized authority.⁵

Based on Article 1 paragraph (16) of Law Number 12 of 2022 concerning the Crime of Sexual Violence (TPKS), namely:

"Victims' rights are the rights to the handling, protection, and restoration obtained, used, and enjoyed by the victim."

As stated in Article 1 paragraph (18) of Law Number 12 of 2022 concerning the Crime of Sexual Violence (TPKS) as follows:

"Protection is all efforts to fulfill rights and provide assistance to provide a sense of security to Witnesses and/or Victims which must be carried out by LPSK or other institutions in accordance with the provisions of laws and regulations."

Based on these articles, it can be concluded that legal protection is interpreted as the fulfillment of rights in the form of handling, protection, restoration and providing a sense of security given to victims that must be implemented. As quoted from Vincent Pane, et al., Moh Kusnardi and Harmaily Ibrahim stated that legal protection is a form of guarantee provided by the state to protect legal subjects, namely individuals and legal entities, so that their rights are not violated by other parties. This protection is provided through applicable laws and regulations and has binding power, where its implementation can be enforced using legal sanctions. In general, legal protection can be divided into two types, namely:⁶

1. Preventive legal protection is a form of protection provided by the government with the aim of anticipating the occurrence of law violations.

⁵ Online law. <https://www.hukumonline.com/berita/a/perlindungan-hukum-lt61a8a59ce8062/?page=all>. Retrieved April 6, 2025

⁶ Vincent Pane, et al., *Legal Protection of Consumer Personal Data Hacked Based on Government Regulation Number 80 of 2019 concerning Trade through Electronic Systems*, Lex Privatum, Vol. 11 No. 2 (2023), p. 3-4

This protection is regulated in laws and regulations with the intention of being a preventive measure, as well as providing clear guidelines or limits in the implementation of obligations by the community.

2. Repressive legal protection is a form of protection that is provided after a violation of the law. This protection is a last resort and is usually realized through law enforcement mechanisms, either through the courts or other law enforcement agencies.

Based on the results of this study, it can be stated that there are a number of legal provisions, especially in certain articles, that can be used as a basis for preventive legal protection for victims of stalking *with* sexual motives or purposes carried out through social media. These articles provide a juridical basis for taking action against perpetrators and provide a sense of security for victims in the digital realm.

As stated in Article 14 paragraph (1) letters b and c of Law Number 12 of 2022 concerning the Crime of Sexual Violence (TPKS) as follows:

Article 14 paragraph (1) b

"transmitting electronic information and/or electronic documents with a sexual content beyond the will of the recipient aimed at sexual desire; and/or"

Article 14 paragraph (1) letter c

"Stalking and/or tracking using electronic systems against persons who are the object of information/electronic documents for sexual purposes"

In this stalking case, there are also several other laws outside of Law Number 12 of 2022 concerning the Crime of Sexual Violence (TPKS) that can be used as a complement in handling cases, namely Law Number 1 of 2024 concerning the second amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE) and Law Number 44 of 2008 concerning Pornography.

As stated in Article 27 paragraph (1) and 29 of Law Number 1 of 2024 concerning Information and Electronic Transactions as follows:

Article 27 paragraph (1)

"Every Person intentionally and without the right broadcasts, performs, distributes, transmits, and/or makes accessible Electronic Information and/or Electronic Documents that have content that violates morality to be known to the public"

Article 29

"Every Person deliberately and without rights sends Electronic Information and/or Electronic Documents directly to the victim that contains threats of violence and/or intimidation"

As Article 29 of Law Number 44 of 2008 reads as follows:

"Every person who produces, makes, reproduces, duplicates, disseminates, broadcasts, imports, exports, offers, sells, rents, or provides pornography as referred to in Article 4 paragraph (1) shall be sentenced to imprisonment for a minimum of 6 (six) months and a maximum of 12 (twelve) years and/or a fine of at least Rp250,000,000.00 (two hundred and fifty million rupiah) and a maximum of Rp6, 000,000,000, 00 (six billion rupiah)."

Meanwhile, repressive legal protection for victims of sexual harassment through social media, includes various actions taken after the crime has occurred, with the aim of upholding justice for the victim and providing a deterrent effect to the perpetrator. One form of this protection is through the application of criminal law which includes the stages of investigation, prosecution, and sentencing to perpetrators in accordance with applicable laws and regulations. The purpose of this law enforcement is to stop stalking acts, ensure a sense of security for victims, and show that the act is a serious violation of the law. In addition, victims also have the right to other forms of protection, such as restitution, which is compensation from the perpetrator for the losses suffered. If the perpetrator is unable to pay the compensation, the state can provide compensation as a form of responsibility in guaranteeing the rights of its citizens.

As stated in Article 30 paragraphs (1) and (2) of Law Number 12 of 2022 as follows:

- (1) Victims of Sexual Violence are entitled to Restitution and Recovery services.
- (2) Restitution as intended in paragraph (1) is in the form of:
 - a. compensation for loss of wealth or income;
 - b. compensation caused by suffering directly related to the Crime of Sexual Violence;
 - c. reimbursement of medical and/or psychological treatment; and/or
 - d. compensation for other losses suffered by the Victim as a result of the Crime of Sexual Violence

2. Criminal law accountability of sexual stalking perpetrators through social media

Criminal liability, which in foreign terms is known as *teorekenbaardheid* in Dutch or *criminal responsibility* in English, is a fundamental concept in criminal law that is closely related to the imposition of sanctions against the perpetrators of crimes. This principle aims to determine whether a suspect or defendant can be held legally accountable for the criminal acts he committed.⁷ As quoted from Mahrus Ali, Hanafi stated that in criminal law, the concept of "accountability" is the main principle known as the doctrine of error, or in Latin called *mens rea*. The doctrine of *mens rea* holds that a person cannot be held guilty simply for committing a certain act, unless there is evil intent in the person's mind. In English, this doctrine is formulated as "*an act does not make a person guilty, unless the mind is legally blameworthy*". Based on this principle, there are two elements that must be met to impose a criminal sentence on a person, namely the existence of prohibited acts or criminal acts (*actus reus*) and the existence of malicious intentions or reprehensible mental attitudes (*mens rea*).⁸ Therefore, criminal liability is a form of responsibility that a person must take for the criminal acts he committed.

As quoted from Mahrus Ali, Sudarto stated that imposing a criminal sentence on someone cannot necessarily be done just because that person has committed an act that is contrary to the law or is unlawful. Although the act meets the elements of a criminal act as formulated in the law and is not justified by law, it is not enough to impose criminal sanctions. In imposing a penalty, additional conditions are required in the form of an error on the perpetrator. This means that the individual who commits the act must be held accountable for his actions. In other words, if viewed in terms of their actions, the act must be legally accountable by the perpetrator concerned.⁹

So it can be concluded that a person who commits a criminal act can be held criminally liable if there is a mistake. Without fault a person cannot be held accountable. In criminal law, this principle is known as the principle of "no crime without fault" (*geen straf zonder schuld*), which is one of the most fundamental principles in the criminal law system. Because of its important

⁷ Rinaldy Amrullah, et al., *Case Study of Criminal Law*, Suluh Media, Bandar Lampung, 2020, p. 37

⁸ Mahrus Ali, *Basics of Criminal Law*, Sinar Grafika, Yogyakarta, 2011, p. 155-156

⁹ *ibid.* pp. 156-157

nature, this principle is the main foundation of the main teachings in criminal law.¹⁰ Therefore, a person who commits a crime in the form of a crime in a criminal act has the right to be held accountable and sentenced to a criminal sanction. *"Punishment is seen as a mandatory consequence that must exist if crime and guilt have been established"*.¹¹ Except in certain circumstances where a person does not need to be held accountable for his actions, such as suffering from a mental disorder or mental illness, being under duress or threats, acting in self-defense or others, and being a minor. If there is no such situation, a person who commits a criminal crime has the right to be held accountable for the acts he has committed.

As read in Article 44 paragraph (1), Article 45, and Article 49 paragraphs (1) and (2) of the Criminal Code (KUHP) as follows:

Article 44 paragraph (1)

"Whoever commits an act that cannot be accounted for because his soul is deformed in growth or is impaired by illness is not punished."

Article 45

"In the case of criminal prosecution against a minor for committing an act before the age of sixteen, the judge may determine:

order that the guilty person be returned to his parents, guardians or guardians, without any criminal charge;

or order that the guilty person be handed over to the government without any criminal charge, if the act is a crime or one of the violations based on articles 489, 490, 492, 496, 497, 503 - 505, 514, 517 - 519, 526, 531, 532, 536, and 540 and has not passed two years since the conviction of committing the crime or one of the above-mentioned offenses, and his verdict has become fixed; or impose a penalty on the guilty."

Article 49 paragraphs (1) and (2)

(1) Whoever commits an act of forced defense for himself or for others, the honor of morality or property of himself or others, is not punished, because there is an attack or threat of a very close attack at that time that is against the law.

(2) Forced defenses that go beyond the boundary, which are directly caused by severe mental shock due to the attack or threat of attack, are not criminalized.

Meanwhile, various criminal sanctions have been regulated in Article 10 letters a and b of the Criminal Code (KUHP).

As Article 10 letters a and b of the Criminal Code reads as follows:

Criminal charges consist of:

¹⁰ *ibid.* p.157

¹¹ Ayu Dian Ningtias, dkk, *The principle of Restorative Justice in sentencing* In the 2023 *Criminal Code*, Jurnal Independent, Vol. 11 No. 2 (2023), h. 564

- a. Main Crime:
 1. death penalty;
 2. Prison Sentences;
 3. Criminal confinement;
 4. criminal purposes;
 5. Closed Off.
- b. Additional Offences :
 1. revocation of certain rights ;
 2. seizure of certain items ;
 3. Announcement of the judge's decision.

Conclusion

1. Conclusion

Legal protection for victims of sexual stalking carried out through social media can be provided with preventive legal protection, in the form of Law Number 12 of 2022 concerning the Crime of Sexual Violence, Law Number 1 of 2024 concerning Information and Electronic Transactions, and Law Number 44 of 2008 concerning Pornography. Meanwhile, repressive legal protection is carried out through the application of criminal law, which includes the stages of investigation, prosecution, and punishment of perpetrators in accordance with the provisions of applicable laws and regulations. In addition, victims also have the right to other forms of protection, such as restitution, which is compensation from the perpetrator for the losses suffered. Meanwhile, criminal law accountability of stalking perpetrators can be asked for criminal sanctions. However, there are exceptions in certain conditions that cause a person to not be held accountable for his actions.

2. Suggestions

For all victims of sexual stalking carried out through social media, it is recommended to be more courageous to report the act to the authorities. Do not consider such actions as a disgrace or a natural thing, because stalking with sexual intent is a form of violence that violates human rights. By reporting the incident, the victim not only protects himself, but also plays a role in preventing the perpetrator from doing the same to others. The courage of victims to speak out is an important first step towards creating justice and a safer social environment for all. And law enforcement should clarify the criteria and limits that can be considered a form of stalking through social

media with sexual purposes, in order to create legal certainty and avoid different interpretations in its implementation.

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