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URGENCY RIGHT TO BE FORGOTTEN AS AN LEGAL PROTECTION FOR DEEPFAKE PORNOGRAPHY VICTIMS BY ARTIFICIAL INTELLIGENCE TECHNOLOGY IN SOCIAL MEDIA

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Abstract:

The emergence of artificial intelligence (AI) gives threat for abuse manipulated pornography called deepfake pornography. Deepfake pornography is a form of online gender-based violence that allows perpetrator to replace and insert someone's face onto another person's body. It can made by anyone and anywhere, so it is vulnerable to cause victims. Deepfake pornography are affected mentally and emotionally for the victims. To support deepfake pornography victims regain control over him, right to be forgotten (RTBF) plays an important role as a protection for the victims. The regulation of RTBF in Indonesia currently in Article 26 (3) UU ITE. Under this RTBF, the victims may request the electronic system organizer to eliminate their images/videos from the platforms. However, RTBF is considered to have legal vague, so resulting in not achievement of legal protection for deepfake pornography victims. The research method is normative qualitative using primary, secondary and tertiary literature data. This study concludes that RTBF is a promising attempt to protect deepfake pornography victims in this digital era, but it is necessary to make efforts by strengthening regulations related to RTBF as a recovery of deepfake pornography victims.

Keywords:

Artificial Intelligence, Cybercrime, Deepfake, Pornography, Right to be Forgotten.

Introduction

The right to be forgotten is implicitly regulated in Article 26 paragraph (3) of Law Number 1 Year 2024 on the Second Amendment to Law Number 11 Year 2008 on Electronic Information and Transactions (ITE Law). The right to be forgotten is closely related to the right to privacy in the use of information technology. When examined from the perspective of the 1945 Constitution, the understanding of the right to be forgotten is closely related to legal protection, personal data, and self-recognition in human rights guaranteed by the 1945 Constitution, namely Article 28G paragraph (1), which provides that, "everyone has the right to protection of personal data, family, honor, dignity, and property under his control, and is entitled to a sense of security and protection from threats of fear to do or not do something that is a human right". Although there are regulations that intend to regulate the right to be forgotten, it cannot be denied that these arrangements are minimal and broad in scope.

The development of science makes it easy for humans to develop technology that is increasingly sophisticated. The development of technology not only requires the global community to be proficient in its use but its users are also required to be wiser in addressing various issues that arise along with the development of technology. Especially at this time we are given the fact that the internet is able to access all information without providing distance and time limits (borderless). The emergence of artificial intelligence (AI) technology that greatly helps human work is evidence of the development of internet technology in this digital era. However, there will always be negative symptoms that follow every technological phenomenon, one of which is criminal activity.[1] The form of crime will automatically follow in order to then adapt to the level of technological development.[2] One of the biggest examples that occurs today is cybercrime. One form of misuse of AI technology is deepfake pornography.

Deepfake pornography is defined by legal scholars as a criminal act of invasion of sexual privacy.[3] Experts also include deepfake pornography as a form of non-consensual pornography and image-based sexual violence.[4] Based on these definitions, it can be understood that the act of deepfake pornography is clearly a criminal act. The perpetrator commits several crimes at once when making deepfake pornography, namely sexual violence, stealing personal data, spreading false information, and also manipulation. Deepfake pornography is a form of gender-based violence that allows perpetrators to "replace and insert" a person's face into another person's body in the form of photos or videos that contain pornography the knowledge and consent of the victim.[5] Deepfake pornography, although made using audio-visual engineering using AI technology, does not mean that deepfake pornography can be easily seen by the naked eye. On the contrary, deepfakes can appear very real and original depending on the amount of data used. The more data in the form of voice and face samples used, the more real deepfake pornography will appear.

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[1] Yurizal, Penegakan Hukum Tindak Pidana Cyber Crime Di Indonesia, (2018).

[2] Yurizal.

[3] Sophie Maddocks, "A Deepfake Porn Plot Intended to Silence Me": exploring continuities between pornographic and political deep fakes", Porn Studies, Volume 7 Nomor 4, 2020.

[4] Sophie Maddocks.

[5] Chidera Okolie, *Artificial Intelligence-Altered Videos (Deepfakes), Image-Based Sexual Abuse, and Data Privacy Concerns*, *Journal of International Women's Studies*, 2023, xxv.

As a result of the misuse of AI technology as a medium for making deepfake pornography, problems arise for every individual who has the right to determine and enjoy their personal life without being stigmatization or disturbed by anything, including past events related to themselves that are not relevant. Every individual has the right to protect irrelevant information about themselves so that it does not become the basis for others to attack or put them down. Especially considering that something that has been published on the internet will be permanent due to digital traces that cannot be erased, so the spread of deepfake pornography is certainly very detrimental to victims in the present and in the future. To overcome the threat posed by deepfake pornography, the right to be forgotten plays an important role as a recovery effort for victims to regain their honor.

In this research, the author examines laws and regulations that can provide legal certainty regarding deepfake pornography. Then the author will analyze how legal protection for victims of deepfake pornography is viewed from the right to be forgotten which is implicitly mandated in the ITE Law. The importance of this research to be studied in depth is to realize the public's awareness of the dangers of deepfake pornography, as well as the State's obligation to protect all its citizens of the importance presence right to be forgotten in order to protect society.

Based on the background description above, this research analyzes the regulation of deepfake pornography in the Indonesian legal system and the position rights of victims of deepfake pornography in terms of the right to be forgotten.

Research Methods
The type of research used in this research is normative juridical with secondary data as the main data.[6] Secondary data is sourced from primary legal materials consisting of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence and Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions. Secondary legal materials in the form of legal literature related to the issues to be discussed.[7] All data that has been collected will be processed and analyzed using qualitative data analysis which is then presented descriptively analytically.

Analysis And Discussion
Before discussing the criminal law provisions for deepfake pornography, it is necessary to first understand the form of the act. Deepfake pornography is a form of online gender-based violence that allows the perpetrator to "replace and insert" a person's face into another person's body in the form of photos or videos containing pornography without the knowledge and consent of the victim.[8] Deepfake pornography cannot be separated from cybercrime because its spread results from deepfake photo/video edits made on social media using the internet in its operation, so deepfake pornography can be classified as a form of cybercrime.

It starts with the perpetrator stealing the victim's body authority on social media by editing, combining, and pairing the image of the victim's face on the background of another person's body in a pornographic video source, and producing a new pornography video in the form of a fabricated or fake pornography video with the victim's face that looks very convincing as

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[6] Soerjono Soekanto, 'Pengantar Penelitian Hukum, Hal.93.36', Jakarta: UI Pres, (2007).
[7] Beni Ahmad Saebani, "*Metode Penelitian Hukum*", Pustaka Setia, Bandung, 2009, hlm. 57.
[8] Okolie, xxv.

the original video. As a result, the victim appears to be performing the indecent act as the perpetrator wants without the victim's permission and knowledge. The perpetrator acts as if they have full control over the victim's body on social media. Legal experts also include deepfake pornography as a form of non-consensual pornography and electronic-based sexual violence.[9] Based on some of these definitions, it can be understood that the act of deepfake pornography is clearly a criminal act. The perpetrator commits several crimes at once when making deepfake pornography, namely sexual violence, stealing personal data, spreading false information, and also manipulation.

One of the platforms that has spread deepfake pornography the most and become a platform for deepfake pornography to develop quickly is the Twitter application or what is now renamed the X application.[10] The perpetrators of deepfake pornography have varied motives. One of the most common motives is to get sexual gratification. In addition to these personal motives, here are some of the most common motives, namely:

a) Defaming Someone

An example of a *deepfake* pornography case involving the public figure Syahrini, where her face was fitted into someone else's pornographic video. When the pornographic video circulated on social media and became very viral in Indonesia at the time, the celebrity was immediately bombarded by questions that cornered her. Not even a few are *bullying* and expressing hatred for them. The incident was then reported for defamation with report number TBL/2779/V/YAN 2.5/2020/SPT.PMJ which contained that the victim suffered immaterial losses. It is known that the reason the perpetrator did this was because the perpetrator was a fan of another celebrity and wanted to make Syahrini's name bad so that everyone hated the public figure.

b) Oppression and Extortion

Deepfake pornography is also commonly used by perpetrators to control victims to get what they want. This motive is usually related to *sextortion*. *Sextortion* is blackmail by threatening to abuse the victim's sexual content with the aim of obtaining money or engaging in sex with the victim through coercion.[11] In the act of *sextortion* alone, it is not until the dissemination of the victim's *deepfake* pornography video, but it is not uncommon for the perpetrator to fail to get what they want and end up disseminating the victim's *deepfake* pornography video. However, it is also not uncommon for the perpetrator to succeed in getting what they want but the perpetrator does not care about what the victim is fulfilling and still disseminates the victim's *deepfake* pornography video. With the circumstances Thus, the act of *sextortion* ultimately results in the perpetrator disseminating the victim's *deepfake* pornography video.

According to Nenden Arum,[12] deepfake pornoghraphy can have the following affects:

a. Psychological Harms such as Depression, Anxiety, Fear, and Suicide The victim is the most disadvantaged party because deepfake pornography of her can change the way others see her. This will invite the public to bully the victim. Victims of deepfake pornography have the potential to experience extreme psychological distress such as

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[9] Okolie, xxv.

[10] Mutia Hariati, Raninta Salwa Prilia, "*European Union Cyber Security In Dealing With The Threat Of AI-Cybercrimes: Lesson For Indonesia*", Universitas Muhammadiyah Yogyakarta, Yogyakarta, Jurnal Dinamika Global,Volume 8 Nomor 2, 2023

[11] Agsel Awanisa, "*Regulation of Cyber Gender-Based Violence and Law Enforcement Issues in the Indonesian Legal System*", Thesis, University of Lampung, Bnadar Lampung, 2023, pp. 43.

[12] Ivana Dewi Kasita, "Deepfake Pornografi: Tren Kekerasan Gender Berbasis Online (KGBO) di Era Pandemi Covid-19", Jurnal Wanita Dan Keluarga, Volume 3 Nomor 1, 2022, Universitas Sebelas Maret, Surakarta.

depression, deep fear, anxiety, flashbacks to painful events become difficult to avoid.[13] The deep wounds felt by victims can lead to attempts at self-harm, even suicide. One of the victims of deepfake pornography with the account @qtcinderella who is a popular streamer did a live broadcast while crying to tell that he was a victim of deepfakes pornography.[14] She went live to express her pain and frustration that she was devastated and depressed by her pornographic deepfake video being shared on social media. She also tweeted on social media about suffering from dysmorphia disorder (a mental health disorder in which a person cannot stop thinking about flaws in their appearance) due to the deepfake pornography. Then in the United States in the last one year in 2023, more than 3000 reports related to deepfake pornography resulted in more than 12 victims of deepfake pornography died by suicide.[15]

b. Economic Disadvantage, Social Isolation, and Limited Mobility In an online interview conducted in September 2023 by a feminist activist named Dhyta with a 26-year-old survivor of deepfake pornography.[16] The survivor, called Melati, first learned she was a victim of deepfake pornography when she saw a manipulated photo of herself naked spread in a Facebook group. Some of her personal information was shared, including a phone number that was framed as if she was a victim of deepfake pornography. Melati will open an online booking (BO). Melati received many sexual messages and her photo spread to the office where she worked. But instead of getting support from her friends or superiors in the office, Melati was judged and even threatened with dismissal even though she had stated that it was not her. In the end, Melati felt so embarrassed and stressed because she felt she was not trusted, she decided to resign from her workplace. When a person's reputation is damaged, it will obviously have an impact on the rest of his or her life. The victim may lose his or her right to education, be expelled from school or college, or even if he or she is embarrassed, resign. The victim may also lose the right to a job, as he or she may be fired as a result of being considered a disgrace. It is like life is being forcibly taken away from the victim. The victim will also be ostracized from her immediate environment, making her feel alienated from her social life. The victim's mobility is also limited as they lose the ability to move freely and participate in offline spaces.

c. Self-Censorship Due to Loss of Trust in Digital Space Security
    A 2023 study of 14,000 women from 31 countries found that 19 percent of women who had been victimized by deepfake pornography said they were rarely using social media platforms and 12 percent said that they stopped using social media altogether.[17] They self-censor to avoid potentially falling victim to deepfake pornography again. Based on this, it can be seen that victims of deepfake pornography perceive the digital space as something unsafe and scary for them. As a result, victims lose trust in the safety of digital technology. Victims no longer express themselves or express their personal opinions anymore, even at an extreme level victims do not want to move or engage in the digital

[13] RAINN, 'Effects of Sexual Violence', *RAINN*, 2021

[14] Simon Hendery, "Deepfakes of Victims used in Sextortion Attacks Spike, FBI Warns" https://www.scmagazine .com/news/deepfakes-sextortion-pike-fbi. Access date February 09, 2024 at 20.34 WIB.

[15] Loc. Cit.

[16] Jasmine Floretta, "KBGO's Deepfake Threat and Women's Vulnerable Movement", https://magdalene.co/story/deepfake-ai-jadi-ancaman-bagi-perempuan/ Access date February 10, 2024 at 06.17 WIB.

[17] Patricia Robert Haris, "Testimony of Spencer Overton Hearing on 'Advances in Deepfake Technology'", Research Professor of Law, George Washington University, United States, 2023, pp. 6.

world at all. As a result, victims can lose many opportunities such as disconnection from access to information, electronic services, and social and professional communication. Looking at the various impacts of deepfake pornography on the victims above, the author concludes that the problem of deepfake pornography has become a real threat, especially for women. The digital space that should be safe is increasingly limited and risky for all women. Their freedom will be questioned again because the threat has become more real. This immoral act has a negative impact on the psychological, economic, mobility, and self-censorship of the victim. Especially considering that digital traces cannot be erased Due to its permanence, the right to be forgotten is very important as a remedy for victims to regain their right to sustainability.

Before the enactment of the TPKS Law, electronic-based sexual violence was better known as online gender-based violence.[18] Electronic-based sexual violence has been expressly regulated in the TPKS Law in Article 4 paragraph (1) which states that the types of criminal acts included in the category of sexual violence include: a) non-physical sexual harassment; b) physical sexual harassment; c) forced contraception; d) forced sterilization; e) forced marriage; f) sexual torture; g) sexual exploitation; h) sexual slavery; i) electronic-based sexual violence. Article 14 paragraphs (1) and (2) of the TPKS Law states that:

(1) Any person who is without rights:
   a. recording and/or taking pictures or screenshots of sexual content against the will or without the consent of the person who is the object of the recording or picture or screenshot;
   b. transmitting electronic information and/or electronic documents that are sexually charged against the will of the recipient that are directed towards sexual desires;
   c. stalking and/or tracking using an electronic system against a person who is the object of electronic information/documents for sexual purposes, shall be punished for committing electronic-based sexual violence, with a maximum imprisonment of 4 (four) years and/or a maximum fine of Rp200,000,000.00 (two hundred million rupiah).
(2) In the event that the act as referred to in paragraph (1) is committed with intent:
   a. to commit extortion or threaten, coerce; or
   b. mislead and/or deceive someone into doing, allowing to be done, or not doing something, shall be punished with a maximum imprisonment of 6 (six) years and/or a maximum fine of Rp300,000,000.00 (three hundred million rupiah).

Article 14 paragraph (1) point b reads, "transmitting electronic information and / or electronic documents that are sexually charged against the will of the recipient aimed at sexual desire", although the formulation of the article does not explicitly accommodate deepfake pornography, but normally it can be used in ensnaring the perpetrators of deepfake pornography. Continuing to the sound of paragraph (2) points a and b in the article states that the actions carried out as in paragraph (1) must be with the intention of extorting or threatening, forcing and misleading and/ or deceiving, someone to do, let do, or not do something. Furthermore, Article 68 letter g of the TPKS Law states that, "the right to the removal of sexually charged content for cases of sexual violence with electronic media".

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[18] Nur Alfy Syahriana, 'Penanganan Kasus Perempuan Korban Kekerasan Seksual Berbasis Elektronik Di Women's Crisis Center Dian Mutiara Kota Malang', Thesis, Universitas Islam Negeri Maulana Malik Ibrahim, Malang, (2023).

When viewed from the sound of the article, the TPKS Law explicitly recognizes the right to be forgotten as a recovery effort for victims of sexual violence through electronic media.

In addition to the need to take action against the perpetrators of deepfake pornography, it is also important to implement protection for victims because the impact of deepfake pornography itself is very dangerous and prolonged. The position of victims of deepfake pornography is often lacking in favorable attention, especially considering that victims are the ones who are greatly harmed because deepfake pornography can change the way others view them. This will invite the public to bully the victim. Victims of deepfake pornography have the potential to experience extreme psychological distress such as depression, deep fear, anxiety, flashbacks to painful events become difficult to avoid.[19] The deep wounds felt by victims can lead to attempts at self-harm, even suicide. Therefore, protection for victims is very important in order to provide support, and restore the honor of victims who have received negative stigma from society.

The ITE Law has an important meaning in the protection of victims of deepfake pornography, the principle has been stated in Article 26 paragraph (3) of the ITE Law which reads,

> (3) Every Electronic System Operator must delete irrelevant Electronic Information and/or Electronic Documents under its control at the request of the person concerned based on a court order.
> (4) Every Electronic System Operator must provide a mechanism for deleting Electronic Information and/or Electronic Documents that are no longer relevant in accordance with government regulations.

The article gives hope to victims as a way to be able to apply for deletion through a court order due to immaterial losses obtained due to deepfake pornography. Furthermore, it is regulated that every Electronic System Operator has the obligation to provide a mechanism for deleting irrelevant electronic information and/or documents as in paragraph (4). However, until now it has not been re-regulated the delition mechanism by electronic system organizer, so a clear regulation regarding the mechanism is needed in the implementing regulations of the ITE law.

The mechanism for deleting Electronic Information and/or Documents is closely related to irrelevant content, so the scope is very broad and has the potential for conflicts of interest. The regulation on the right to do also needs to be implemented only in certain cases, such as deepfake pornography, and does not apply to cases of corruption or those that cause state losses.[20] Therefore, regulations regarding the right to be forgotten need to be given confirmation regarding the types of data that can be requested for deletion along with restrictions/exclusions on the types of data that cannot be requested for the right to be forgotten. In addition, explicitly mentioning sexual violence, especially deepfake pornography as a prohibited element in data processing, so that the right to be forgotten becomes an inherent right for victims.

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[19] RAINN, 'Effects of Sexual Violence', RAINN, (2021).
[20] Arini Ferya Putri, 'Tinjauan Yuridis Tindak Pidana Pornografi Dan Penerapan Prinsip Right to Be Forgotten Di Indonesia', *Jurnal Justisia : Jurnal Ilmu Hukum, Perundang-Undangan Dan Pranata Sosial*, 7.1 (2022) <https://doi.org/10.22373/justisia.v7i1.12772>.

McGlynn et al. state that support systems for victims to regain control and respect for themselves are essential, including ways to remove their personal non-consensual doctored sexual images and videos from social media.[21] Hao Li states that deepfakes created for malicious use, especially those related to pornography, will be more harmful if no steps are taken to protect victims.[22] The author agrees and argues that it is important for victims of deepfake pornography to regain control of themselves, including the means to delete their non-consensually disseminated fabricated sexual images/videos on social media, so the right to be forgotten should be attached to victims of deepfake pornography as a remedy for victims for several reasons:

1) The right to be forgotten can further limit the harmful effects of deepfake pornography in real life, especially due to reputational damage. The right to be forgotten is an important answer to prevent career damage or discrimination based on something that is not even the victim's fault.

2) The right to be forgotten protects the victim's privacy and autonomy. Someone without permission takes photos, videos or personal data of the victim which are then disseminated online. As a result, the internet has taken away a person's privacy and autonomy which means that the right to expression on social media and the right to security in social media have been lost. When deepfake pornography of a person is disseminated without consent, it is disastrous for that person. Moreover, deepfake pornography has a lethal effect as online harassment is more prone to cause significant mental suffering. In this context, the right to be forgotten not only restores power to the victim, but also protects the victim's privacy and autonomy online.

3) The right to be forgotten can be a legal tool to protect victims from violence and provide them with the means to fight back against their abusers. Especially in the context of deepfake pornography, which is particularly egregious because victims cannot escape sexual harassment due to the immediate nature of the photos shared online on social media. However, this is no longer the case with the enactment of the right to be forgotten which allows Electronic System Operators to remove deepfake pornography photos/videos of themselves from their platforms.

Conclusion

Deepfake pornography is a form of online gender-based violence that allows perpetrators to "replace and insert" a person's face into another person's body in the form of pornographic photos or videos without the knowledge and consent of the victim.[23] Perpetrators commit several crimes at once when creating deepfake pornography, namely sexual violence, stealing personal data, spreading false information, and also manipulation. Legal experts also include deepfake pornography as a form of non-consensual pornography and electronic-based sexual violence.[24] Electronic-based sexual violence is explicitly regulated in the TPKS Law in Article 4 paragraph (1) letter i. In addition to the need to take action against the perpetrators of deepfake pornography, it is equally important to implement protection for victims because the impact caused by deepfake pornography itself is very dangerous and prolonged. Through the right to be forgotten, which is implicitly regulated in Article 26 paragraph (3) of the ITE

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[21] Mutia Hariati Hussin, Raninta Salwa, and Prilia Ginano, 'EUROPEAN UNION CYBER SECURITY IN DEALING WITH THE THREAT OF AI-CYBERCRIMES: LESSONS FOR INDONESIA', *Jurnal Dinamika Global*, 8.2 (2023).
[22] Hussin, Salwa, and Ginano.
[23] Okolie, XXV.
[24] Okolie, XXV.

Law, it gives hope to victims as a way to be able to apply for the removal of deepfake pornography through a court order due to immaterial losses caused by deepfake pornography.

Acknowledgement

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