

# Consistency of Criminal Sanctions Regulations in Protecting Women Victims of Non-consensual Pornography Content Dissemination

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## ABSTRACT

The law is enacted to protect the rights. Along with technological developments, the scope of legal protection certainly needs to be expanded. Resolution of the Human Rights Council dated July 1, 2016, Number 32/13, concerning the Promotion, Protection, and Enjoyment of Human Rights on the internet, that individual rights must be protected offline and online. At present, there are many cases of electronic-based sexual violence, also known as Online Gender-Based Violence. One of the many forms of action that occurs is the spread of pornographic content without the consent of the person who is the object of the recording or shooting (Non-Consensual Distribution of Intimate Images/NCDII). In Indonesia, Law Number 12 of 2022 concerning Crimes of Sexual Violence has been enacted, but when the NCDII case occurred, women who were victims were not protected legally. Often, women are considered as parties involved in the manufacture of immoral goods, so they are subject to criminal sanctions. This paper is a result of normative juridical research, specifically analytical descriptive research. This research uses statute and conceptual approaches, using legal materials such as regulations and legal theories. This research concludes that there is no common understanding between the public and law enforcers that in cases where pornographic content is spread without consent, women are in the position of victims. Protection for victims is still difficult to obtain because the regulations that are currently in force do not specifically state that disclosing content without the consent of the depicted person is a crime.

**Keywords:** Crime, non-consensual, pornography, women.


## 1. INTRODUCTION

The law serves as more than a means of regulating human conduct. Its presence is expected to fulfill the demands of justice, legal certainty, and legal protection. In accordance with the classification of legal protection by Hadjon (1987), there are two types of legal protection: preventive legal protection and repressive legal protection. Preventive protection constitutes efforts aimed at prevention prior to the occurrence of a violation, while repressive protection is provided for the purpose of resolving and addressing disputes.

Violations of rights can arise not only from the actions of others but also from the existence of inconsistent legal rules. Changing societal conditions and situations necessitate adjustments and updates to legal regulations. The concept of legal protection also needs to be developed, encompassing legal protection in the interactions of individuals in the cyber world. United Nations Human Rights Council Resolution No. 32/13 of 2016 on the Promotion, Protection, and Enjoyment of Human Rights on the Internet asserts that human rights protection extends not only to the physical world but also to the virtual realm (UNHRC, 2016). The prevalence of sexual crimes in cyberspace has led to numerous

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women becoming victims, prompting the government to revise regulations related to the protection of women.

Indonesia's commitment to providing protection to its citizens, especially women, has been proven through the enactment of Law Number 12 of 2022 concerning Sexual Violence Crimes (hereinafter referred to as the SVC Law). Prior to the SVC Law coming into effect, many acts of sexual violence were not adequately addressed within the legal framework. A kind of violence that currently demands attention is Gender-Based Online Violence (GBOV). According to the Association for Progressive Communications (APC), GBOV encompasses gender-based violence facilitated by information and communication technology, such as mobile phones, internet networks, social media platforms, and email.

GBOV constitutes a form of violence rooted in gender relations, occurring in the virtual realm, as noted by Nenden Sekar Arum of SAFEnet. It involves acts of violence where the perpetrators employ or are facilitated by technology, targeting victims based on their gender and sexual identity. Factors contributing to the proliferation of GBOV include the increasing use of the internet, social media, and other information technologies. Recognizable manifestations of GBOV include online sexual harassment through comments, image sharing, or solicitations for indecent acts, love scams or romance-based fraud, hacking, threats of disseminating personal photos or videos with sexual content, commonly referred to as revenge porn, impersonation, defamation, and so forth.

In its evolution, different terms have been used, and GBOV is also referred to as Gender-Based Cyber Violence. Data obtained by the National Commission on Violence Against Women (Komnas Perempuan) indicated the reporting of cases of gender-based cyber violence (GBCV). Among 821 reported cases, a majority involved sexual violence committed by former boyfriends (549 cases; [National Commission on Violence Against Women, 2023](#)) and current boyfriends (230 cases). Cases of cyber violence in the public domain were predominantly perpetrated by "social media acquaintances," accounting for 383 cases. Only 112 cases were reported through service institutions. Perpetrators were identified as unknown individuals, boyfriends, or former boyfriends ([Fundrika, 2023](#)).

The annual records of the National Commission on Violence Against Women (Komnas Perempuan) and the Legal Aid and Human Rights Association of Indonesia (LBH APIK Jakarta) concerning Gender-Based Online Violence (GBOV) highlight the limitations of regulatory instruments in Indonesia pertaining to the protection of GBOV victims. The number of reported cases is relatively low, primarily due to victims' concerns that they may themselves be reported by perpetrators for alleged defamation under the Electronic Information and Transactions Law (EIT Law). Specifically, in cases of revenge porn, victims may be implicated in the creation of explicit content, potentially making them liable under the Pornography Law.

This research specifically focuses on cases of non-consensual dissemination of sexual content, where such content is distributed without the victim's consent. In Indonesia, in cases of sexual content dissemination (photos or videos), women featured in the digital content may not necessarily have consented to its dissemination. Such dissemination can be carried out by former partners or individuals with malicious intent, either for profit or with the deliberate intention of damaging the woman's reputation. Society often struggles to comprehend that these women are, in fact, victims. Many still perceive these women as perpetrators, believing that they were actively involved in the creation of pornography content, and even consider them complicit in making electronically accessible content that violates moral standards.

Several legal provisions that are perceived to potentially ensnare women include:

1. Article 29 of Law Number 44 of 2008 on Pornography: "Any person who produces, creates, duplicates, replicates, disseminates, broadcasts, imports, exports, offers, sells, rents, or provides pornography as referred to in Article 4, paragraph (1), shall be punished with imprisonment for a minimum of 6 (six) months and a maximum of 12 (twelve) years and/or a fine of at least IDR 250,000,000.00 (two hundred and fifty million Indonesian Rupiah) and a maximum of IDR 6,000,000,000.00 (six billion Indonesian Rupiah)."
2. Article 34 of the Pornography Law: "Any person who intentionally or with their consent becomes the object or model containing pornographic content as referred to in Article 8 shall be punished with imprisonment for a maximum of 10 (ten) years and/or a fine of up to IDR 5,000,000,000.00 (five billion Indonesian Rupiah)."
3. Article 27, paragraph (1) of the EIT Law: "Any person who intentionally and without right distributes and/or transmits and/or makes electronically accessible information and/or electronic documents that contain content that violates decency."
4. Article 45, paragraph (1) of the EIT Law: "Any person who fulfills the elements as referred to in Article 27, paragraph (1), paragraph (2), paragraph (3), or paragraph (4) shall be punished with imprisonment for a maximum of 6 (six) years and/or a fine of up to IDR 1,000,000,000.00 (one billion Indonesian Rupiah)."

The application of these regulations must take into consideration the context and purpose of their enforcement. The Electronic Information and Transactions Law (EIT Law) and the Pornography Law in Indonesia are intended to prevent and combat the distribution of pornographic content, where perpetrators intentionally disseminate such content for commercial gain or other purposes contrary to the law. If the distribution of such content occurs without the consent of the individuals depicted in it, the provisions of the Pornography Law and EIT Law should ideally not be applicable. These individuals, particularly women, should not be deemed as intentionally creating and disseminating prohibited sexual content according to law and regulations. The enforcement of these regulations can indeed lead to the potential criminalization of women who are victims.

One notable case that drew the attention of the Indonesian public is the dissemination of explicit videos involving the celebrity with the initials GA. The celebrity was named a suspect at the end of December 2020 (Amidoni, 2023). The designation of GA as a suspect, highlights that law enforcement in Indonesia may not fully comprehend the position of women who are, in fact, victims, as the dissemination of the video occurred without their consent or willingness.

Following the enactment of the SVC Law, there is a need for a study concerning regulations related to Gender-Based Online Violence (GBOV) and the protection of GBOV victims. This study is essential to examine the consistency among these regulations, determine whether there are legal gaps or deficiencies, and investigate whether law enforcement in cases of non-consensual dissemination of sexual content has been carried out while considering victim protection principles.

Based on the above description, legal issues have been identified concerning the consistency of criminal sanctions in cases of non-consensual dissemination of sexual content. This research is necessary to assess how Indonesian legal regulations can provide protection for GBOV victims, particularly women. Based on the outlined legal issues, this research is focused on the following legal questions: (1) How can Indonesian legal regulations protect women who are victims of Gender-Based Online Violence, specifically in cases of non-consensual dissemination of sexually explicit digital content? (2) How consistent are the regulations across various legal statutes in determining criminal sanctions in cases of non-consensual dissemination of sexually explicit digital content?

## 2. METHOD

This research constitutes a normative legal study aimed at understanding the applicable laws regarding a specific event. The approach used encompasses both a statutory approach, which focuses on legal statutes, and a conceptual approach. Legal research within legal dogmatics or research for the purpose of legal practice cannot separate itself from the statutory approach. In this research, an analysis will be conducted on legal regulations related to the criminal act of non-consensual dissemination of sexual content in connection with policies for the legal protection of women. The data sources utilized in this study include primary legal materials, such as legal statutes, and secondary legal materials, including legal literature and legal journals, which provide insights into legal matters.

### 3. LEGAL PROTECTION FOR WOMEN AS VICTIMS OF NON-CONSENSUAL PORNOGRAPHY IN INDONESIA'S CRIMINAL LAW SYSTEM

The criminal law regulations in force in a country represent the concretization of a criminal policy. This policy is essentially established for the purpose of crime prevention. Lawmakers need to continuously consider the actions carried out by the public and determine whether these actions warrant criminal sanctions. In other words, the government must assess which actions are suitable for criminalization.

Based on the theory proposed by Walker (1972, as cited in Arief, 1998), when criminalizing conduct, the government needs to consider several limitations, including that the conduct subject to criminal sanctions should be harmful. The act of disseminating intimate content is considered a crime worthy of criminal sanctions. From a perspective of public interest, individuals who engage in such dissemination are seen as violating societal norms and disrupting social order. Therefore, the state prohibits such conduct with criminal penalties. Regarding the crime of disseminating intimate content, the regulation of criminal sanctions in Indonesia has also evolved. In the inherited Dutch Criminal Code that is still in effect today, referred to as the "KUHP lama," the crime of disseminating intimate content is included in the section concerning offences against decency.

Article 282 of the "KUHP lama" prohibits the broadcasting, public performance, writing, images, or objects containing indecent content, as well as the creation of images or objects with indecent content intended for public display. In this article, the prohibited object for dissemination is defined as "gambar" (which translates to "image" or "picture" in English). The element of "gambar" (image)

needs to be interpreted in a manner that allows the article to be applied in accordance with the legislator's intended context. The Indonesian Criminal Code (KUHP) does not provide an authentic interpretation of the term "gambar." Based on grammatical interpretation, "gambar" can be understood as a representation of objects (such as people, animals, plants, etc.,) created through pencil sketches and the like on paper or similar surfaces; it can also refer to paintings. Based on this grammatical interpretation, Article 282 of the KUHP prohibits the public distribution of images, which can encompass depictions of individuals, caricatures, or any other form of images as long as their content violates decency. The term "gambar" has a broad meaning and can include both hand-drawn paintings by individuals and photographic or video works. The legal protection provided by the articles in the KUHP is directed towards the public interest. It aims to safeguard the public from the dissemination of indecent content. The articles do not specifically focus on the identity of the person depicted in the indecent image being disseminated to the public.

The dissemination of indecent content is further specified within Law Number 44 of 2008 on Pornography (Pornography Law). Pornography Law criminalizes the production, dissemination, and use of pornography. The primary objective of implementing the pornography law is to maintain societal morality. Article 3, paragraph d of Pornography Law states that one of the aims of enacting this law is to provide legal certainty and protection for citizens from pornography, particularly for children and women. However, in practice, protection for women is limited to preventing the commercialization of women's bodies as objects of commercial pornography.

With the evolution of information technology use, the EIT Law was enacted. Concerning criminal acts regulated within this law, there are provisions regarding electronic information that are prohibited from distribution, including content that violates decency. The focus of this prohibition is on individuals disseminating indecent content through the internet.

The Indonesian Criminal Code (KUHP), Pornography Law, and EIT Law serve different purposes and have distinct objectives. None of them have fully focused on protecting women from the non-consensual distribution of intimate content.

In response to the demands of society, particularly women's rights activists, the SVC Law was enacted in 2022. SVC Law primarily focuses on the protection of victims of sexual violence. Within SVC Law, the scope of sexual violence is expanded to encompass not only physical sexual violence but also other forms of sexual violence.

Article 4, paragraph (1) of the SVC Law states that Sexual Violence Crimes consist of (1) non-physical sexual harassment, (2) physical sexual harassment, (3) contraception coercion, (4) sterilization coercion, (5) forced marriage, (6) sexual torture, (7) sexual exploitation, (8) sexual slavery, and (9) electronic-based sexual violence.

SVC Law explicitly recognizes electronic-based sexual violence as an unlawful act. The dissemination of intimate content that occurs without consent is one of the actions regulated under SVC Law. However, this article still has weaknesses in formulating its constituent elements. If we observe the relevant substance in Article 14 of SVC Law, it reads as follows:

1. "Any person who, without right:
  - a. Records and/or captures images or screenshots with sexual content without the consent of the person who is the subject of the recording, image, or screenshot.
  - b. Transmits electronic information and/or electronic documents with sexual content without the consent of the recipient, aimed at sexual desires.
2. In case the acts as referred to in paragraph (1) are carried out with the intent:
  - a. For extortion or threats, coercion.
  - b. Misleading and/or deceiving someone to do, allow, or refrain from doing something shall be punished with imprisonment for a maximum of 6 (six) years and/or a fine of up to IDR 300,000,000 (three hundred million Indonesian Rupiah).

Article 14, paragraph (1) letter a of Law Number 12 of 2022 on Sexual Violence Crimes (SVC Law) prohibits recording without the consent of the person being recorded. In reality, a person may consent to being recorded, including their intimate parts, but may not consent to its dissemination. Article 14, paragraph (1) does not specifically address the dissemination of content.

The dissemination of intimate content is regulated in Article 14, paragraph (1) letter b, where the criminal element emphasized is the transmission occurring against the will of the recipient. This article does not explicitly address the transmission of electronic information that occurs against the will of the subject depicted in the content. (Authors' cursive)

In cases of the dissemination of intimate content without the consent of the subject, the formulation of the offense in Article 14 of SVC Law may not fully align with the factual circumstances that occur.

The strict application of criminal law based entirely on the principle of legality and adhering to written rules can lead to the accused using the defense that the woman depicted in the intimate content

consented to the recording. This consent from the woman is often used by law enforcement as a basis to potentially label her as a perpetrator rather than a victim.

Article 14, paragraph (1) a, and Article 14 (2) of SVC Law are suitable for cases where an individual deceives someone else and then captures images or records with the intent to threaten the person. The threat may involve the dissemination of intimate content. Even if the content has not been disseminated yet, this article can be applied.

If the dissemination of content has already occurred, it is necessary to examine how legal protection is provided for the woman who is the subject of the recording. The term “revenge porn” is used to describe the distribution of someone’s sexual content based on a motive of revenge. This term is more commonly recognized by the public. A more general term is “Non-Consensual Distribution of Intimate Images,” abbreviated as NCDII.

Several definitions below provide an explanation of revenge porn and NCDII:

1. Non-consensual Pornography or non-consensual explicit sexual content refers to images or videos explicitly containing sexual content. The dissemination of this content occurs without consent and without a legitimate purpose. The perpetrator’s intent is to embarrass or control the victim. Photos or videos can be obtained in various ways, such as with hidden cameras, recordings known to the victim, stolen photos, images taken during sexual assault incidents, or even fake images generated by artificial intelligence. These definitions emphasize the absence of consent in the dissemination of content without emphasizing the purpose behind these actions. The definitions mentioned above only state that the actions are carried out without a legitimate purpose.
2. According to Carmen M. Cusack in her book “Pornography and the Criminal Justice System,” *“Revenge pornography is pornography created or disseminated by intimate partners with the intent to embarrass or degrade”* (Cusack, 2017, p. 175). This definition emphasizes the motive of embarrassing or degrading.
3. Some consider revenge porn to be identical or nearly identical to non-consensual pornography, as defined by Mora (2022): *“Non-consensual pornography, also referred to as revenge porn, is the distribution of sexual or pornographic images of individuals without their consent.”*
4. Said and McNealey (2023) state: *“We consider the non-consensual distribution of intimate images (NCDII) to include any act that involves the sharing of an intimate image of someone else without the permission of the photo subject.”*
5. Halder and Jaishankar (2013) state: *“NCDII includes but is not limited to ‘revenge porn,’ a subtype of NCDII that takes place at the dissolution of a romantic or sexual relationship to shame, humiliate, or harm, most often by men against women.”*

In the authors’ view, the most accurate and logical understanding of the concept, based on its scope, is that revenge porn is just one form of NCDII. Therefore, legislative regulations should formulate rules for the dissemination of intimate content without consent, without restricting the motive or purpose behind such dissemination.

The crime of NCDII encompasses various dimensions. The production of content, whether in the form of photos or videos, can occur in various situations. The production process may not always be a result of coercion by the perpetrator against the victim. The perpetrator may deceive the victim into agreeing to be recorded or photographed. In other situations, due to an intimate relationship between the perpetrator and the victim, the victim may agree to be recorded or photographed, but not with the intention of dissemination.

Recording for personal purposes is not illegal as long as it is done solely for personal use. Article 4 of Law Number 44 of 2008 concerning Pornography explains that creating content for personal purposes is not a criminal act. Legal issues arise when the content is disseminated. Dissemination can occur with or without prior threats. There are various methods or tactics that perpetrators can use to disseminate explicit content, such as hacking email accounts, social media, or cloud storage.

The act of disseminating explicit content is clearly unlawful, placing the subject (often a woman) as the victim. Arif Gosita defines a victim as a party who experiences physical and mental suffering as a result of the actions of others that violate the fundamental rights of the injured party (Gosita, 1993).

The dissemination of non-consensual pornography inflicts numerous damages upon the victim. The victim experiences violations of their privacy rights, damage to their image or reputation, and the potential for harassment, both in the social environment and the online world. These consequences affect the victim physically, psychologically, and socially.

Legal protection for women who are victims of non-consensual pornography can be achieved if criminal law policies are not rooted in patriarchal or misogynistic thinking. Women need protection from sexual offenses, not limited to physical harassment. Protection for women in cyberspace also requires attention from lawmakers.

If the government consistently applies legal policies to protect women, then women who are victims of non-consensual pornography dissemination can receive legal protection under the provisions of Law Number 13 of 2006, as amended by Law Number 31 of 2014 on the Protection of Witnesses and Victims.

According to Article 1 number 2 of the Law on the Protection of Witnesses and Victims, a victim is defined as someone who experiences physical, mental, and/or economic harm caused by a criminal act. Therefore, considering the mental suffering experienced by women who are victims of non-consensual pornography dissemination, the Law on the Protection of Witnesses and Victims should be applicable. Victims must be ensured to be free from any pressure and threats they may face during the case resolution process.

With the enactment of the Law on Sexual Violence Crimes (Law 12/2022), protection for victims of sexual violence crimes should be facilitated. The protection provided by the law includes legal and psychological assistance (Article 26), restitution, and recovery (Article 30).

#### 4. THE CONSISTENCY OF CRIMINAL SANCTION IN NON-CONSENSUAL PORNOGRAPHY IN THE INDONESIAN CRIMINAL LAW SYSTEM

Law constitutes a system. Likewise, various legislations within a country should be seen as interconnected parts of a system. Legal norms stated in regulations can take the form of prohibitions, commands, exemptions, or permissions. The formulation of legal norms should always consider legal principles (*rechtsbeginsel*) that provide the general purpose (*ratio legis*) of a statutory provision. The drafting of legal rules also considers the consistency of characteristics and substance between legal regulations and the certainty of a determination.

In a rule-of-law state, legal certainty can be achieved when existing rules, in substance, do not contradict each other. The substance of legal rules in a legislative product must not contradict higher-ranking rules. This is referred to as vertical consistency. Moreover, the substance of rules among various regulations of equal standing should also not contradict each other.

Horizontal consistency is of utmost importance. When conflicting rules exist regarding a legal event, it has the potential to create confusion among law enforcement agencies. Law enforcement can be colored by various conflicts of interest, political elements, or other objectives beyond the intended purpose of law enforcement. Law enforcement officers may appear to have the opportunity to choose which article to use, the one most suitable for protecting the interests they want to safeguard or the one deemed most aligned with public sentiment or pressure.

Public pressure on a case can lead law enforcement to be trapped in erroneous thinking, resulting in decisions that contradict logic. One form of erroneous thinking is the *argumentum ad populum*. According to John Woods in his book "*The Death of Argument*," (Woods, 2004), *argumentum ad populum* is an emotional fallacy, a bias based on popular knowledge. According to Woods, reference to *ad populum* is evident in reasoning that highlights or emphasizes something widely known without specific evidence to support that reasoning.

In cases of non-consensual pornography dissemination without the victim's consent, the perspective that places women's bodies as sexual objects and triggers immoral acts leads society to believe that women involved in such acts are also guilty. In the enforcement of the law, especially criminal law, public pressure should not serve as the basis for decision-making. Legal sanctions should be imposed on criminal offenders whose actions align with the elements of the alleged offense.

In cases of non-consensual pornography dissemination, the articles of legal regulations that law enforcement can utilize to prosecute perpetrators, sometimes resulting in unintended consequences for the women depicted (as they may also be implicated as suspects). Article 4, paragraph (1) of Law Number 44 of 2008 on Pornography: "Every person is prohibited from producing, creating, reproducing, duplicating, disseminating, broadcasting, importing, exporting, offering, trading, renting, or providing pornography."

Elucidation of Article 4: The term "creating" does not include one's own personal use and interest. This article aims to prevent the spread and circulation of pornography for commercial purposes or public consumption. The sanctions under this article are applicable to producers and distributors of pornography. Production or creation is not prohibited as long as it is intended for personal use.

Application of articles in cases of non-consensual pornography dissemination:

Perpetrators who disseminate pornography are subject to criminal sanctions. Possible deviations:

- Perpetrators who create content without considering the purpose of creating the content may be subject to criminal sanctions.
- Women are considered to participate in the production process, thus fulfilling the elements of Article 55 of the Criminal Code in conjunction with Article 4(1) of the Pornography Law.

- Women are also considered to violate Article 8 of the Pornography Law, which states: “Any person is prohibited from intentionally or with their own consent becoming the object or model that contains pornographic content.”

This indicates that Article 8 is applied without considering whether the purpose of creation is for personal use or not. The interpretation of Article 8 is not integrated with the interpretation of Article 4.

Article 27, paragraph (1) of the ITE Law: “Any person who intentionally and without authority distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that contain content that violates decency.”

Any person who meets the elements as referred to in Article 27, paragraphs (1), (2), (3), or (4) is punishable by imprisonment for a maximum of 6 (six) years and/or a fine of up to IDR 1,000,000,000.00 (one billion Indonesian Rupiahs).

This article aims to make cyberspace a healthy place for interaction, free from negative content, including content that goes against decency. This article captures those who disseminate through electronic information means. In practice, this article is not only applied to those who disseminate but also to those who create content, as their negligence or carelessness in storing files may lead to files changing hands and ultimately spreading.

The above-mentioned articles often place women in the position of perpetrators of criminal acts. Based on the theory of criminal responsibility, criminal sanctions can be imposed when an individual has culpability (*schuld*), which is an inner connection between themselves and the act they have committed. Within themselves, there is intent or negligence that results in the prohibited act under the law. Women do not intend for their intimate content to be spread, so from the perspective of criminal responsibility, it is not appropriate to classify them as suspects. It is a different matter if the woman knew from the outset that the content created was intended for dissemination or commercialization, in which case, as the object of photography or recording, she may be held criminally accountable.

When discussing the consistency of criminal sanctions among the various regulations mentioned above, namely the Pornography Law, ITE Law, and TPKS Law, there is no contradiction in the form of differing regulations. What is prohibited by one law is not subsequently allowed by another law. All three laws equally prohibit the dissemination of sexual content. Someone who disseminates pornographic content can be prosecuted under both the Pornography Law and the ITE Law. The Pornography Law is considered *lex specialis* as it specifically regulates pornography, not just violations of decency in the general sense as outlined in the ITE Law.

Manan (2004) has presented guidelines for applying the principle of *lex specialis derogat legi generali*, which are as follows:

1. Provisions in general rules still apply, except those regulated in the special law.
2. The *lex specialis* provisions must be of equal rank with the *lex generalis* provisions (e.g., law with law).
3. The *lex specialis* provisions must be within the same legal framework (regime) as the *lex generalis*.

To ensure legal protection for women who are victims of content dissemination, it is necessary to reexamine whether there are rules that are truly more specific or specialized compared to the Pornography Law. The author believes that the TPKS Law is a more specific rule. The basis for applying the TPKS Law is the principle of *lex specialis systematis*.

Eddy O.S. Eddy O.S. Hiarij states that in the event of a conflict between two laws in a specific legal situation, both of which are specific criminal actions, *lex specialis systematic* principle should be used as a derivative of *lex specialis derogat legi generali*. Systematic Specialization (*systematische specialiteit*) has the power to determine the choice when two regulations exist. The chosen law is based on an examination of systematic specificity related to the criminal event that occurred. Observations can be made regarding the personal subject, the violated act object, the obtained evidence, and so on (Suhandy et al., 2022).

Despite various shortcomings in existing regulations, the TPKS Law is expected to be a rule that can truly protect women who are victims of non-consensual pornography dissemination. However, the formulation of the delict in the TPKS Law also has weaknesses, as discussed in the previous subsection.

The weakness of Article 14 paragraph (1) letter a of the TPKS Law is that the article can only be applied to perpetrators who record without consent. If the subject agrees to be recorded, this article cannot be applied.

The weakness of Article 14 paragraph (1) letter a of the TPKS Law is that it can only be applied if the recipient of sexual content transmission does not consent to the transmission. Here, the protected party is the recipient, not the woman who is the subject of the recording.

In comparison, the formulation of the delict related to non-consensual pornography dissemination in effect in one of the states in the United States, namely Texas, as of 2017, explicitly prohibits “unlawful

disclosure or promotion of intimate visual material.” This rule is regulated in Section 16.21 of The Texas Penal Code and reads as follows ([Unlawful Disclosure or Promotion of Intimate Visual Material, 2023](#)):

“A person violates this statute if:

1. Without the effective consent of the depicted person, the person intentionally discloses visual material depicting another person with the person’s intimate parts exposed or engaged in sexual conduct.
2. The visual material was obtained by the person or created under circumstances in which the depicted person had a reasonable expectation that the visual material would remain private.
3. The disclosure of the visual material causes harm to the depicted person.
4. The disclosure of the visual material reveals the identity of the depicted person in any manner.”

Similarly, in Canada, rules regarding non-consensual pornography dissemination are found in Section 162.1 of the Criminal Code, which states ([Protecting Canadians from Online Crime Act, 2014](#)):

“The law prohibits anyone to knowingly publish, distribute, transmit, sell, make available, or advertise an image of a person knowing that the person depicted in the image did not give consent to that conduct, or being reckless as to whether or not that person gave their consent to that conduct.”

From these two examples above, Indonesia should adapt the formulation of the delict to provide protection for women who are victims of pornography dissemination, namely that sending or transmitting content or disseminating pornographic content without the consent of the person depicted in the content is prohibited.

## 5. CONCLUSION

Based on the discussion presented in this paper, it can be concluded that there is still inconsistency in policy regarding the criminal regulation of non-consensual sexual content dissemination. Policies are still directed towards creating public order, where lawmakers prohibit the circulation and commercialization of pornography content in the public domain. Policies related to this matter must be constantly updated to prioritize the protection of victims so that access to justice can be experienced by the victims. Furthermore, SVC Law has specific jurisdiction (*lex specialis systematic*) compared to the Pornography Law.

## CONFLICT OF INTEREST

The authors declare that they do not have any conflict of interest.

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