



## MISUSE OF DIGITAL EVIDENCE IN CHILD SEXUAL CASES: A NORMATIVE LEGAL ANALYSIS

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**Abstract:** *The rapid advancement of digital technology has enabled members of the public to document and disseminate incidents occurring in public spaces, often with the intention of supporting law enforcement. However, this practice has generated serious legal challenges when digital recordings involving child sexual misconduct are publicly distributed under the pretext of social punishment or informal law enforcement. This study aims to examine the legal qualification and criminal liability of third parties who record and disseminate sexually explicit content involving children in Indonesia. The findings demonstrate that the public dissemination of such recordings constitutes a misuse of digital evidence and cannot be justified as lawful public participation in crime reporting. Normatively, these acts fulfill the elements of unlawful distribution of indecent electronic content and qualify as electronic-based sexual violence, even when the underlying conduct occurs in public spaces. Furthermore, the analysis reveals that such dissemination undermines procedural legality, compromises the integrity of digital evidence, and results in severe and lasting digital victimization of child victims. This study emphasizes the necessity of clearly distinguishing between the legitimate right to report criminal acts to authorized authorities and the prohibited act of exposing illegal content in the public digital domain, while underscoring the importance of child-centered legal protection and procedural safeguards to prevent digital vigilantism and ensure that the pursuit of justice does not inflict further harm on children.*

**Keywords:** *Child Sexual Misconduct; Child Privacy Protection; Criminal Liability; Digital Evidence; Digital Vigilantism*

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### I. INTRODUCTION

The rapid advancement of digital technology has transformed ordinary individuals into active public informants through the widespread use of smartphones. This phenomenon has given rise to what is commonly referred to as citizen evidence, where members of the public document and record events occurring in public spaces that are perceived as violations of social norms or criminal law. While this development has the potential to support law enforcement, it is frequently accompanied by a lack of adequate legal and ethical awareness, particularly in cases

involving sexual misconduct against children. In such contexts, public participation often shifts into acts of self-appointed law enforcement, neglecting the legal boundaries of privacy, due process, and child protection.<sup>1,2</sup>

Within the framework of criminal procedural law, video recordings constitute valuable forms of electronic evidence that may assist investigators in uncovering criminal acts. Indonesian criminal procedure recognizes the obligation or right of individuals who witness a crime to report it to authorized law enforcement agencies. Accordingly, recordings of child sexual misconduct occurring in public spaces should be treated as confidential evidence and submitted exclusively to investigators through proper legal channels. This procedural approach is essential to preserve the integrity of evidence and to safeguard the identity and dignity of child victims from public exposure and social stigmatization.<sup>3,4</sup>

However, significant legal issues arise when third parties who record such incidents choose to disseminate the content through social media platforms, either prior to or without reporting it to competent authorities. This practice is often justified as a form of social punishment or as an attempt to accelerate law enforcement through public pressure, a phenomenon widely described as *digital vigilantism*. From a legal perspective, the distribution of content containing sexual elements constitutes a criminal offense under Indonesian electronic information law. Consequently, individuals who initially intend to expose wrongdoing may, in fact, transform into perpetrators of unlawful content dissemination.<sup>5,6</sup>

The dissemination of such recordings also intersects directly with the legal framework governing sexual violence. The act of recording and distributing sexually explicit content without the consent of the subject is classified as electronic-based sexual violence. Even when the underlying act occurs in a public setting, the status

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<sup>1</sup> Hanuring Ayu, 2025. *Digital Vigilantism and Its Compatibility with Criminal Justice Principles in Indonesia*. *The Easta Journal Law and Human Rights* 3, no. 3, p. 190 – 197. <https://doi.org/10.58812/eslhr.v3i03.637>.

<sup>2</sup> Dalibor Doležal, 2024. *Digitalni Vigilantizam: Analiza Internetske Pravde, Etičkih Izazova I Uloge Društvenih Medija*. *Hrvatska Revija Za Rehabilitacijska Istraživanja* 60, no. 2, p. 219 – 245. <https://doi.org/10.31299/hrri.60.2.10>.

<sup>3</sup> Kitab Undang-Undang Hukum Acara Pidana, 2025. Art. 108.

<sup>4</sup> Law No. 1 of 2024 on Electronic Information and Transactions, 2024. Art. 5(1).

<sup>5</sup> Lisa Angela, et al., 2024. *“No Viral, No Justice”: Unveiling the Phenomenon of Digital Vigilantism from a Psychological Perspective*. *Buletin Psikologi* 32, no. 2, p. 113. <https://doi.org/10.22146/buletinpsikologi.97562>

<sup>6</sup> Hanuring Ayu, 2025. *Ibid.*

of the subject as a child triggers absolute legal protection that cannot be overridden by claims of public interest or moral enforcement. Public dissemination of such content represents a misuse of digital documentation and violates the principle of the best interests of the child, which remains a cornerstone of child protection law.<sup>7,8</sup>

The consequences of this misuse of digital evidence are profoundly destructive, as the resulting digital footprint is permanent and capable of causing long-term social and psychological harm to the child victim. Digital victimization by third parties may inflict damage that exceeds formal legal sanctions, effectively denying children the right to rehabilitation and a second chance. Despite the growing prevalence of such practices, prior legal studies have largely focused on the criminalization of sexual content or the protection of victims in isolation, leaving limited analysis on the legal boundary between lawful public participation and criminal misuse of digital evidence.<sup>9</sup> Therefore, this study seeks to address this gap by providing a normative legal analysis of the misuse of digital evidence in cases involving child sexual misconduct. The research aims to clarify the legal qualifications and criminal responsibility of third parties who disseminate intimate content under the guise of law enforcement, while emphasizing the importance of procedural legality and child-centered protection. This analysis is significant in reaffirming that public participation in law enforcement must operate within established legal frameworks, ensuring that the pursuit of justice does not itself result in further victimization of children.

## II. RESEARCH METHODS

This study adopts a normative legal research method that focuses on the analysis of legal norms governing the misuse of digital evidence in cases involving child sexual misconduct.<sup>10</sup> The research examines statutory regulations and legal principles relevant to electronic evidence, criminal liability, and child protection in order to understand how the law responds to the dissemination of sexually explicit digital content by third parties. The analysis is conducted through a statutory approach and

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<sup>7</sup> Rahmatiah Irwan, et al., 2026. *Right to Be Forgotten for Child Victims of Electronic Sexual Violence*. Jurnal Ius Constituendum 11, no. 1, p. 66 – 86. <https://doi.org/10.26623/jic.v11i1.12784>

<sup>8</sup> Gevan Naufal Wala, 2025. *Legal Protection for Child Victims of Digital-Based Sexual Crimes*. Imperium Research: Law Science and Politics Journal 1, no. 1, p. 30 – 37.

<sup>9</sup> Per Moum Hellevik, et al., 2025. *Outcomes of image-based sexual abuse among young people: a systematic review*. Frontiers in Psychology 16, 1599087. <https://doi.org/10.3389/fpsyg.2025.1599087>.

<sup>10</sup> Riska Ameliana Dewi, et al., 2025. *The Authority of Judges in The Application of Restorative Justice for Children in Indonesia*. Jurnal Hukum dan Peradilan 14, no. 2, p. 401 – 424. <https://doi.org/10.25216/jhp.14.2.2025.401-424>.

a conceptual approach. The statutory approach involves a systematic review of relevant Indonesian legislation, particularly Law No. 1 of 2024 on Electronic Information and Transactions and Law No. 12 of 2022 on Sexual Violence Crimes. The conceptual approach is used to explore legal doctrines concerning criminal responsibility, digital evidence, and the protection of children's privacy, including the principle of the best interests of the child.<sup>11,12</sup> Legal materials consist of primary sources in the form of binding laws and regulations, as well as secondary sources obtained through library research, including legal literature and scholarly journals. These materials are analyzed descriptively and qualitatively to provide a clear picture of the legal issues discussed. Conclusions are drawn through deductive reasoning, moving from general legal norms on electronic information to specific issues of criminal responsibility for the misuse of digital evidence involving children.<sup>13</sup>

### III. ANALYSIS AND DISCUSSION

#### a. Legal Qualification of Third-Party Actions in the Misuse of Digital Evidence under Indonesian Positive Law

From a normative legal perspective, video recordings that document criminal acts or violations of social norms constitute electronic data that may serve as legally recognized evidence. Indonesian law explicitly acknowledges electronic information and electronic documents as valid forms of evidence within the criminal justice system. In cases involving sexual misconduct against children occurring in public spaces, third parties who record such incidents occupy a legal position as potential witnesses who possess digital evidence. Ideally, these recordings should function as procedural instruments submitted confidentially to law enforcement authorities to support formal investigations and ensure the protection of child victims.<sup>14</sup>

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<sup>11</sup> Wiend Sakti Myharto & Riva Noor Lestari, 2025. *Legal Protection for Children who are Victims of Sexual Violence*. IBLAM Law Review 5, no. 3, p. 77 - 82.. <https://doi.org/10.52249/ilr.v5i3.655>.

<sup>12</sup> Yusuf Saefudin, et al., 2023. *Tindakan Pidana Kekerasan Seksual dan Perlindungan Hukum bagi Korban Kekerasan Seksual di Indonesia*. Jurnal Kosmik Hukum 23, no. 1, p. 24 - 33. <https://doi.org/10.30595/kosmikhukum.v23i1.17320>.

<sup>13</sup> Karina Hasiyanni Manurung & Beniharmoni Harefa, 2024. *The Validity of Electronic Evidence and Its Relation to Personal Data Protection*. Jurnal Daulat Hukum 7, no. 4, p. 455 - 472. <https://doi.org/10.30659/jdh.v7i4.41815>.

<sup>14</sup> Nurini Aprilianda, et al., 2024. *Strengthening the Position of Child Victims as Witnesses Through Video Recordings in Sexual Violence Crimes (A Comparison Between Indonesia and Malaysia)*. Brawijaya Law Journal: Journal of Legal Studies 11, no. 2, p. 196 - 214. <https://doi.org/10.21776/ub.blj.2024.011.02.02>.

However, the legal qualification of such recordings undergoes a fundamental shift when content that should remain confidential as evidence is instead disseminated publicly through digital platforms. At this point, the legal status of the recorder transforms from a cooperative witness into a perpetrator of unlawful content distribution. The deliberate dissemination of content containing elements of sexual misconduct fulfills the legal elements of prohibited electronic distribution, regardless of the recorder's claimed intention to enforce social morality. This finding underscores that public dissemination to an unrestricted audience satisfies the element of making prohibited content accessible, thereby constituting an independent criminal act.<sup>15</sup>

This qualification is further reinforced by the legal framework governing sexual violence. The act of recording and distributing sexually explicit material without the consent of the subject is legally classified as electronic-based sexual violence. Importantly, even when the underlying conduct occurs in a public setting, the legal protection afforded to children remains absolute. The public nature of the incident does not extinguish a child's right to privacy over their bodily image. Consequently, third parties lack any legal authority to assume judicial functions by exposing a child's sexual identity in the public domain. Such actions represent a misuse of digital documentation that undermines the integrity of the criminal justice system.<sup>16,17</sup>

The misuse of digital evidence also generates significant anomalies in evidentiary law. Evidence obtained or disseminated through unlawful means risks losing its procedural legitimacy, particularly when it has been exposed to public circulation prior to formal submission to law enforcement authorities. Public dissemination may contaminate the evidentiary value of digital recordings, compromise the rights of the recorded subject, and jeopardize objective adjudication. This finding differentiates the present analysis from earlier studies that primarily focus on the

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<sup>15</sup> Helmalia Verena Putri Kanci, et al., 2023. *Criminal Liability of Disseminator's Pornographic Content on Social Media*. Journal of Digital Law and Policy 2, no. 3, p. 119 - 128. <https://doi.org/10.58982/jdlp.v2i3.384>.

<sup>16</sup> Muhammad Deckri Algamar & Aliya Ilysia Irfana Ampri, 2022. *Hak untuk Dilupakan: Penghapusan Jejak Digital Sebagai Perlindungan Selebriti Anak dari Bahaya Deepfake*. Jurnal Yustika: Media Hukum dan Keadilan 25, no. 1, p. 25 - 39. <https://doi.org/10.24123/yustika.v25i01.5091>.

<sup>17</sup> Wiend Sakti Myharto & Riva Noor Lestari, 2025. *Ibid*.

evidentiary value of electronic data without critically addressing the procedural consequences of unlawful dissemination by private individuals.<sup>18</sup>

Moreover, the dissemination of child sexual content by third parties constitutes a form of digital victimization with profoundly destructive effects. The principle of the best interests of the child obliges all parties to protect children from exploitation and digital harm. Transforming sensitive recordings into public content is not merely a procedural error in reporting but constitutes a form of societal malpractice in law enforcement that inflicts lasting psychological and social damage on child victims. This study highlights that Indonesian positive law clearly distinguishes between the lawful right to report crimes and the prohibited act of distributing illegal content, thereby ensuring that moral enforcement does not occur at the expense of children's digital privacy.

**b. Criminal Liability of Recorders and Distributors of Child Sexual Content in the Perspective of Privacy Protection and the Best Interests of the Child.**

Criminal liability for third parties who disseminate recordings of child sexual misconduct is grounded in the fundamental principle that no criminal punishment may be imposed without fault. Although perpetrators may claim benevolent intentions, such as imposing social sanctions or accelerating justice, good faith cannot serve as a justification or excuse when the chosen means violate prohibitive legal norms. The act of uploading sexually explicit content to digital platforms satisfies the legal elements of intentional distribution and public accessibility, rendering the perpetrator criminally liable regardless of the location in which the recording was made.<sup>19</sup>

The enactment of the legal framework on sexual violence significantly strengthens the construction of criminal responsibility in such cases. Electronic-based sexual violence provisions explicitly criminalize the recording and dissemination of sexual content without consent, with enhanced protection afforded when the victim is a child. From the perspective of child protection law, the dissemination of such recordings constitutes both exploitation and psychological violence that directly undermines a child's dignity. Accordingly, perpetrators bear responsibility not only

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<sup>18</sup> Alongifor Godwin, 2024. *Appraising the Test of Admissibility of Electronic Records under Cameroonian Criminal Trials*. *Scholars International Journal of Law, Crime and Justice* 7, no. 10, p. 495 – 505. <https://doi.org/10.36348/sijlci.2024.v07i10.010>.

<sup>19</sup> Aurelia Charenitha & Hery Firmansyah, 2025. *A Juridical Analysis of The Criminal Liability of Perpetrators of Online Child Sexual Exploitation*. *Awang Long Law Review* 8, no. 1, p. 275 – 281. <https://doi.org/10.56301/awl.v8i1.1910>.

for violations of electronic content regulations but also for the secondary victimization inflicted upon the child.<sup>20,21</sup>

This analysis further demonstrates that criminal liability is inseparable from the protection of children's privacy rights under both domestic and international legal instruments. Even when children are involved in conduct deemed socially deviant, the state remains obligated to protect their personal data and bodily images. Third parties who engage in digital punishment practices effectively commit extrajudicial enforcement, violating the principle of the best interests of the child and prioritizing public shaming over rehabilitation and legal due process. This finding departs from prior studies that emphasize deterrence through punishment while insufficiently addressing the long-term harm of digital exposure on child victims.<sup>22</sup> In addition to imprisonment, criminal liability in such cases may include substantial financial penalties and restitution to compensate for immaterial harm suffered by victims. This reflects a broader shift in Indonesian criminal law, which no longer treats the dissemination of sexually explicit content as an abstract moral offense but as a concrete crime that causes tangible harm. The imposition of restitution reinforces the recognition of children as rights-bearing subjects rather than passive objects of protection.<sup>23</sup>

Finally, the imposition of criminal liability serves to reaffirm that private individuals possess no authority to act simultaneously as investigators, prosecutors, and judges outside the formal criminal justice system. The lawful function of digital recordings is to support procedural justice, not to facilitate viral punishment. By prioritizing rehabilitation, identity protection, and procedural legality, this analysis contributes to a more child-centered and rights-based approach to digital evidence within the Indonesian criminal justice system, distinguishing it from earlier research that has not fully addressed the intersection between digital vigilantism, evidentiary misuse, and child protection.

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<sup>20</sup> Aurelia Charenitha & Hery Firmansyah, 2025. *Ibid.*

<sup>21</sup> Kornelius Yohan Dachi, 2024. *Perlindungan Hukum Terhadap Korban Kekerasan Seksual Berbasis Elektronik*. *Legalitas: Jurnal Hukum* 16, no. 2, p. 114 - 121. <http://dx.doi.org/10.33087/legalitas.v16i2.533>.

<sup>22</sup> Vedanshi Verma & Anugya Mishra, 2024. *Children's Rights Perspective on Privacy and Data Protection in the Digital Age*. *International Journal For Multidisciplinary Research* 6, no. 5, p. 1 - 6. <https://doi.org/10.36948/ijfmr.2024.v06i05.29000>.

<sup>23</sup> Irfan Syauqi Madani & Hery Firmansyah, 2025. *Revenge Porn in Indonesian Law: An Analysis of Criminal Liability and Victim Protection Based on The Electronic Information and Transactions Law and The Sexual Violence Crime Law*. *Awang Long Law Review* 7, no. 2, p. 472 - 480. <https://doi.org/10.56301/awl.v7i2.1580>.

#### **IV. CONCLUSION**

This study concludes that the dissemination of sexually explicit recordings involving children by third parties under the pretext of law enforcement constitutes a misuse of digital evidence that gives rise to criminal liability under Indonesian positive law. Normatively, such conduct cannot be justified as lawful public participation in crime reporting. Instead, it fulfills the elements of unlawful distribution of indecent electronic content and qualifies as electronic-based sexual violence, thereby placing responsibility on individuals who disseminate such material outside formal legal procedures. Criminal liability in these cases is essential to uphold the protection of children's digital privacy and to ensure the consistent application of the principle of the best interests of the child. The permanent nature of digital footprints generated through public dissemination creates long-term social and psychological harm that far outweighs any claimed benefit of social punishment or informal law enforcement. Accordingly, Indonesian law draws a clear boundary between the legitimate right of citizens to report criminal acts to authorized authorities and the prohibited act of exposing illegal content in the public digital sphere. From a practical perspective, the findings of this study emphasize the need for stronger public awareness regarding the proper handling of digital evidence involving children. Law enforcement agencies should reinforce procedural guidelines for evidence submission and enhance public education to prevent digital vigilantism. Future research may further explore preventive legal mechanisms and policy frameworks that balance community participation with child-centered protection in the digital era.

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