

## RTBF as an Effort to Establish Legal Protection for Victims of Deepfake Pornography in Indonesia



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**ABSTRACT:** RTBF (Right to be Forgotten) is a legal concept that allows individuals to request a removal or deletion of electronic documents or information about themselves that are inaccurate or no longer relevant. RTBF can be used as a legal basis for addressing cases of Deepfake Pornography, which involves the creation of manipulated pornographic content using Deepfake technology, where someone's face is inserted into another person's body in various media formats, such as images or videos. The current regulation of RTBF in Article 26 (3) of UU ITE is considered to have legal vague, resulting in the failure to achieve legal protection for victims of Deepfake Pornography in Indonesia. This raises the issue of the scope and limitations of the use of the Right to be Forgotten (RTBF), as well as the implementation of an adoption model for RTBF in cases of Deepfake Pornography in Indonesia. Research findings indicate that legal vague regarding the implementation of RTBF in Indonesia can be addressed by conducting a comparative study with other countries that also apply RTBF to cybercrime, including Deepfake Pornography. Indonesia is still lagging behind in detailed and clear regulations regarding the implementation of RTBF in the country, as well as in addressing Deepfake Pornography. Also, there is currently a lack of clear procedures in the UU ITE regarding the use of RTBF, and the ineffectiveness of the authorities handling Deepfake Pornography cases.

**KEYWORDS:** RTBF; Legal Protection; Deepfake Pornography

### INTRODUCTION

The technological advancements that we easily encounter today include the presence of Artificial Intelligence (AI). AI is a part of computer science that studies how machines (computers) can perform activities and tasks like humans. Another example of AI is a form of artificial intelligence called Deepfake. Deepfake itself is a technology used to manipulate subjects in an event, whether it's in the form of images, videos, or audio<sup>1</sup>. In its early days, Deepfake was highly controversial in the field of technology due to its association with manipulated pornographic content. Those phenomenon represents a relatively new form of crime known as Deepfake Pornography. Deepfake Pornography is a form of online gender-based violence that allows perpetrators to "replace and insert" someone's face onto another person's body.<sup>2</sup> This poses a significant threat considering that deepfake media can now be created by anyone and anytime. It is alarming because perpetrators can manipulate someone's face without their consent into explicit content. To address the threats posed by Deepfake Pornography, the concept of RTBF (Right to be Forgotten) comes into play.

RTBF is a legal concept that allows an individual (referred to as an applicant) to request a Digital System Provider to remove electronic information or documents that are considered irrelevant to them.<sup>3</sup> In Indonesia, the concept of RTBF was introduced in 2016 through the UU No. 19 of 2016, also known as the UU ITE, specifically in Article 26 paragraph (3) and paragraph (4). However, the inclusion of the RTBF concept in the UU ITE seemed to be rushed and forced, as it was not part of the academic research during the preparation of the UU ITE amendment bill<sup>4</sup>. Based on the explanations above, it can be concluded that the implementation of RTBF in Article 26 paragraph (3) and paragraph (4) of the UU ITE as a legal measure against Deepfake

<sup>1</sup> Karasavva, Vasileia. "The Real Threat of Deepfake Pornography: A Review of Canadian Policy." *Cyberpsychology, Behavior, and Social Networking Journal* Volume 3 (2020). pg.204

<sup>2</sup> D Maietta, Angelo. "The Right to be Forgotten." *Revista de Estudos Constitucionals Hermeneutica e Teoria do Direito* Journal Volume 2 (2020). pg.213

<sup>3</sup> Mahmud, Bahar Uddin. "Deep Insight of Deepfake Technology: A Journal." *Cornell University Journal* Volume 5 (2020). pg. 17

<sup>4</sup> Christianto, Hwian. "The Concept of the Right to Be Forgotten as Fulfillment of the Rights of Revenge Porn Victims Based on Article 26 of the Electronic Information and Transactions Act." *Mimbar Hukum Journal* Volume 32 (2020). Pg. 181

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Pornography is not yet perfect due to vogue of norm regarding the scope of RTBF in the Indonesian legal system (to establish legal certainty) and the procedures for using RTBF in cases of Deepfake Pornography in Indonesia (to provide legal protection for victims and potential victims of Deepfake Pornography).

### RESEARCH METHODS

In this paper, the used research method is normative with conceptual and statutory approach, this is also often referred to as a research method with a conceptual basis. The technique of searching legal materials used in this paper is literature review technique, while the technique of analyzing legal materials used is prescriptive research.

### RESEARCH RESULTS AND DISCUSSION

#### A. Scope and Limitations of the Right to be Forgotten in Indonesia

Until today, Indonesia (particularly under the Information and Electronic Transactions Law or UU ITE) has not specifically regulated and recognized the Right to be Forgotten (RTBF)<sup>5</sup> as implemented by the European Union through the General Data Protection Regulation 2016 (GDPR). Therefore, RTBF does not yet have specific provisions in the Indonesian Information and Electronic Transactions Law. However, in the context of content removal or blocking under the Information and Electronic Transactions Law, there are several situations where individuals can request the removal of content involving privacy violations, defamation, or the dissemination of harmful information<sup>6</sup>. Some cases or cybercrimes that can utilize the Right to be Forgotten as a consideration include the following:

##### 1). Dissemination of harmful personal information

If there is content or media that disseminates someone's personal information without permission, such as phone numbers, addresses, or other sensitive personal data, individuals who are affected and suffer material or non-material losses can request the removal of such content based on the provisions of the Information and Electronic Transactions Law<sup>7</sup>, which prohibits the dissemination of harmful personal electronic information. This aligns with Article 26, paragraph (1) of the Information and Electronic Transactions Law (UU ITE), which states that individuals are prohibited from intentionally and without rights disseminating electronic information that harms others.

##### 2). Defamation

If someone faces defamation through media involving insults, slander, or attacks on their reputation, they can request the removal of content that violates such rights through the available legal processes under the Information and Electronic Transactions Law<sup>8</sup>. Defamation itself is regulated in Article 27, paragraph (3) of the Information and Electronic Transactions Law, which states that individuals are prohibited from intentionally and without rights disseminating electronic information and/or electronic documents containing defamation or defamation of character.

##### 3). Copyright Infringement

If someone discovers content that infringes their copyright, they can request the removal of such content based on the provisions of the Information and Electronic Transactions Law that regulate copyright. Copyright infringement is regulated in Article 113 of the Information and Electronic Transactions Law, which governs criminal acts related to copyright infringement conducted through information technology.

These three forms of cybercrimes mentioned above are present in the case of Deepfake Pornography. Therefore, RTBF can be applied in a deepfake pornography case. Furthermore, implementing RTBF in cases of Deepfake Pornography, considerations and legal limitations are necessary. The following are some legal considerations and limitations that can be outlined<sup>9</sup>:

##### 1). Privacy Protection

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<sup>5</sup> Adhari, Ade. "Policy Limitations on the Internet in Indonesia: Perspectives of the Rule of Law, Human Rights, and Comparative Studies." *Konstitusi Journal Volume 18* (2021).pg. 271-274

<sup>6</sup> Sukmawati, Agustin. "Impact of Cyberbullying on Adolescents on Social Media." *Alauddin Scientific Journal Volume 1* (2020).pg. 61

<sup>7</sup> Jamaludin, Ahmad. "Reconsidering the Presence of the Right to Be Forgotten: Implementation and Potential Threats." *Indonesian Legislative Journal Volume 17* (2020).pg.871

<sup>8</sup> Putra, Akbar Kurnia. "Harmonizing the Cybercrime Convention in National Law." *Ilmu Hukum Journal Volume 1* (2014).pg.103

<sup>9</sup> Whyte, Christopher. "Deepfake News: AI-enabled Disinformation as a Multilevel Public Policy Challenge." *Journal of Cyber Policy Volume 5* (2020). pg.204

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Privacy protection is a primary consideration in applying RTBF to cases of Deepfake Pornography. Individual privacy rights should be balanced with public interests, freedom of expression, and access to information.

### **2). Balance with Freedom Expression**

RTBF should not be used as a tool to disproportionately restrict freedom of expression. Consideration should be given to strike a balance between an individual's right to be forgotten and the right to freedom of expression, including any involved public interests.

### **3). Identification of Responsible Parties**

Identifying the parties responsible for creating and disseminating deepfake pornographic media is an important consideration that cannot be overlooked. This includes determining whether platform providers or individuals who create and distribute such deepfake content should be held responsible for the removal or blocking of unlawfully infringing information.

### **4). Deletion Criteria**

Consideration is required to determine the criteria for deleting information involving deepfake pornography. Factors such as content authenticity, the harm caused, relevance of the information, and public interest should be carefully considered when determining the eligibility for deletion.

### **5). Jurisdictional Limitations**

RTBF may be limited by the jurisdictional laws between countries. Consideration should be given to the jurisdiction where electronic system providers operate and the laws governing privacy protection and information removal in that jurisdiction.

### **6). International Cooperation**

Last but not least, deepfake pornography can cross national borders, making international cooperation crucial in addressing these cases. Legal considerations should be given to procedures and mechanisms for international cooperation in removing or blocking access to unlawfully infringing deepfake content.

## **B. The Use of the Adoption Model of RTBF in Deepfake Pornography Cases in Indonesia**

RTBF concept was born in the European Union in 2014 after being used by Mario Costeja Gonzales to fight against Google Spain in a trial that took place from May 27, 2012, to May 13, 2014. Two years later, RTBF was officially regulated in Article 17 of the General Data Protection Regulation (GDPR) in 2016 and automatically adopted by EU member states. In Indonesia itself, Article 26 of the ITE Law, particularly paragraphs three and four, has a similar concept to RTBF found in Article 17 of the GDPR 2016.

Next, we will discuss the legal approaches of other countries that have adopted the concept of RTBF. Countries that have used the RTBF concept in combating Deepfake Pornography and providing protection to victims of deepfake pornography include<sup>10</sup>:

### **1). Belgium**

In addition to adopting the GDPR 2016, Belgium has two other legal regulations governing the use of RTBF in their country, namely the Belgian Data Protection Act 2018 and the Belgian Data Protection Executive Regulation 2019. The Belgian Data Protection Act 2018 is the national implementation of the GDPR 2016, which establishes a framework and detailed provisions regarding the protection of personal data in Belgium, including individual rights such as RTBF. On the other hand, the Belgian Data Protection Executive Regulation 2019 provides technical and practical guidelines supporting the implementation of personal data protection in Belgium<sup>11</sup>, including guidelines on the procedures for submitting RTBF requests and actions to be taken by service providers or platforms. Belgium also has clear procedures for RTBF requests stated in Article 21 of the Belgian Data Protection Executive Regulation 2019. Belgium also has a Data Protection Authority/Belgian DPA, which is the supervisory authority responsible for personal data protection in Belgium.

### **2). France**

In addition to the GDPR 2016, France has national regulations regarding RTBF that can be used to protect victims in cases of Deepfake Pornography, namely the Loi Informatique et Libertés 2018<sup>12</sup>, which regulates the legal basis for implementing RTBF in France. The procedures for implementing RTBF in France are also explained in Article 9 of the Loi Informatique et Libertés

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<sup>10</sup> Sonata, Depri Liber. "Methods of Normative and Empirical Legal Research: Distinctive Characteristics of Legal Research Methods." *Fiat Justicia Ilmu Hukum Journal* Volume 8 (2014).pg. 25

<sup>11</sup> Mania, Karolina. "Legal Protection of Revenge and Deepfake Porn Victims in the European Union: Findings From a Comparative Legal Study." *Sage Journal* Volume 1 (2022).pg. 28

<sup>12</sup> Ferraro, Matthew. "Deepfake Legislation: A Nationwide Survey—State and Federal Lawmakers Consider Legislation to Regulate Manipulated Media." *Wilmerhale Journal* Volume 1 (2019).pg. 6

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2018. They also have the Commission Nationale de l'Informatique et des Libertés (CNIL), which is the local enforcement authority empowered to handle cases of Deepfake Pornography.

### 3). China

In early 2023, precisely on January 10, 2023, a regulation named "The People's Republic of China's Regulations on the Administration of Deep Synthesis of Internet Information Services 2023" was officially enacted and adopted by the Ministry of Industry and Information Technology of China<sup>13</sup>. Article 17 of this regulation "strengthens" the applications used for creating deepfake content by imposing mandatory rules that all deepfake media applications in China must comply with. Through this regulation, the procedure for requesting RTBF in a case of Deepfake Pornography in China becomes clearer and easier, where individuals only need to report the media to an authority called MPS if the deepfake crime is within the scope of an international level, or they can report it to an authority named PSB if the deepfake crime is at the local level.

### 4). United Kingdom

After the United Kingdom chose to separate from the European Union, they eventually adopted the Data Protection Act 2018. This law regulates the protection of personal data in the UK, including protecting individuals from the misuse of their personal data<sup>14</sup>, including deepfake pornography. The provision regarding RTBF is found in Article 17 of the Data Protection Act 2018, which also explains how RTBF is implemented in the country.

### 5). South Korea

South Korea has two regulations related to the implementation of RTBF in cases of Deepfake Pornography<sup>15</sup>, namely the ICNA 2020 and the PIPA 2011. The provision for using RTBF itself is found in Article 35 of the PIPA 2011. They also have a specialized authority called the KCC that is empowered to handle such matters. In fact, currently, reports of deepfake pornography cases can be submitted to the KCC through their website, [privacy.go.kr](http://privacy.go.kr).

When we compare this with Indonesia, Indonesia is indeed quite behind in terms of RTBF, which is stipulated in Article 26 paragraphs (3) and (4) of the ITE Law. So far, there hasn't been any specific legal regulation in Indonesia that can be applied to a case of Deepfake Pornography. Instead, it depends on the context of the case, such as defamation, pornography, etc. In Indonesia itself, there is no clear procedure on how an individual can use RTBF in cases of Deepfake Pornography that affect them. Although Indonesia has enacted Law Number 27 of 2022 concerning Personal Data Protection (PDP), the law still refers to Article 17(1) of the GDPR 2016 and has not included limitations on the use of RTBF in Indonesia, as stipulated in Article 17(3) of the GDPR 2016, which is limited to the fields of health, public interest-related archiving activities, research, and statistics. In Indonesia, there is also no specific officer or authority empowered to handle cases of Deepfake Pornography, which creates confusion among individuals who want to report cases of Deepfake Pornography that have affected them.

Currently, the procedure for submitting an RTBF request depends on the information withdrawal rules formulated by an electronic system organizer or specific platforms. Generally, the procedure for requesting the Right to Be Forgotten (RTBF) in Indonesia involves the following steps<sup>16</sup>:

#### 1). Identifying the content to be removed or withdrawn

The victim must first identify the content that violates their privacy and harms them. The victim must also ensure that they have sufficient evidence to demonstrate the violation.

#### 2). Contacting the electronic system organizer

Then the victim contacts the electronic system organizer responsible for the publication and dissemination of the content to be removed.

#### 3). Submitting a deletion request

The victim submits a request for content removal to the electronic system organizer. Usually, each electronic system organizer or online platform has a complaint form or contact address provided on their website. The victim must ensure to provide clear and complete information about the content to be removed, as well as the reasons why the content violates their privacy or harms

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<sup>13</sup> Wachter, Sandra. "A Right to Reasonable Inferences Re-thinking Data Protection Law in the Age of Big Data and AI." *Hein Journal Volume 1* (2019).pg. 13

<sup>14</sup> Maddocks, Sophie. "A Deepfake Porn Plot Intended to Silence Me: exploring continuities between pornographic and 'political' deep fakes." *Taylor and Francis Volume 1* (2020). pg.418

<sup>15</sup> Kusna, Itsna Hidayatul. "Deepfake, New Challenges for Netizen." *Promeda Journal Volume 5* (2019).pg. 19

<sup>16</sup> Rahmadani, Karunia Fitri. "Juridical Analysis of the Regulation of the Right to be Forgotten in Law Number 19 of 2016." *Hukum dan Perundang-Undangan Journal* (2023).pg.24

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them. The victim should also provide supporting evidence for their request, such as links to the content to be removed or withdrawn, or they can provide screenshots as evidence of the violation. Additionally, the victim should provide valid identification for the electronic system organizer to contact them for further processes.

### 4). Review and Evaluation

The victim submits a request for content removal to the electronic system organizer. Usually, each electronic system organizer or online platform has a complaint form or contact address provided on their website. The victim must ensure to provide clear and complete information about the content to be removed, as well as the reasons why the content violates their privacy or harms them. The victim should also provide supporting evidence for their request, such as links to the content to be removed or withdrawn, or they can provide screenshots as evidence of the violation. Additionally, the victim should provide valid identification for the electronic system organizer to contact them for further processes.

### 5). Decision and further action

After reviewing the victim's request, the electronic system organizer will make a decision on whether they will remove the related content or not. If the content is removed, they will take further action to delete the content from their system.

## CONCLUSIONS

The Right to Be Forgotten (RTBF), which is the right to withdraw irrelevant electronic information or documents, is a legal concept first introduced in the General Data Protection Regulation (GDPR) of 2016, which automatically applies to all European Union countries. A similar provision exists in Article 26 paragraph (3) of the Information and Electronic Transactions Act (UU ITE), which serves as the legal basis for implementing RTBF in Indonesia. Unfortunately, this article still contains legal ambiguities that do not provide a detailed explanation of what is meant by "irrelevant information," and there are no specific procedures on how RTBF can be used in cases of Deepfake Pornography. However, after comparing the laws of several countries that have also used RTBF as a legal basis for addressing Deepfake Pornography cases (such as Belgium, France, China, the United Kingdom, and South Korea), the implementation of RTBF in Indonesia can be considered relatively lagging. Other countries already have legislation that can be used as a legal basis for Deepfake Pornography crimes, clear formulations and procedures for applying RTBF, specialized authorities outside the police force that can receive complaints and address Deepfake Pornography crimes to make the investigation process more effective, and dedicated websites for victims to report complaints regarding Deepfake Pornography crimes they have experienced, which is undoubtedly a new breakthrough and provides convenience for victims of Deepfake Pornography. Therefore, it is a significant task for the Indonesian government and law enforcement agencies to address the unclear components in the existing regulation of RTBF in the UU ITE.

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