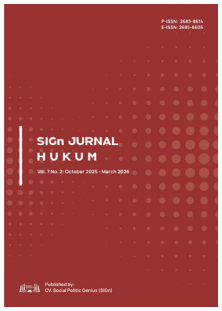

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Article Title

The Principle of Legality vs. Digital Sentencing Innovation: The Dialectics of Revocation of Internet Access Rights as a Criminal Penalty in Cybercrime Cases

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ABSTRACT

The evolution of increasingly sophisticated cybercrimes, such as revenge porn, has triggered a paradigmatic tension within the Indonesian criminal justice system between the need for sentencing innovation and absolute adherence to the principle of legality. This research aims to analyze disparities in legal paradigms across court levels, examine the juridical qualification of the penalty for the digital restriction order, and examine the constitutional implications of the cyber norm vacuum. Through prescriptive doctrinal legal research, this study dissects Decision Number 6069 K/Pid.Sus/2023, which affirms Decision Number 96/Pid.Sus/2023/PT BTN regarding the annulment of the additional penalty of revocation of internet access rights in Decision Number 71/Pid.Sus/2023/PN Pdl. The research results indicate that such annulment constitutes an affirmation of legal positivism, rejecting judicial activism, even though, sociologically, this penalty is crucial for preventing recidivism. Juridically, this penalty lacks a basis of legitimacy in the EIT Law, the Old Penal Code, or the New Penal Code, thereby creating a legal vacuum (rechtsvacuum) that harms victims. The research concludes that formal adherence to the principle of nullum crimen, nulla poena sine lege without accompanying legal reform has injured substantive justice. Therefore, it is recommended that legislators immediately undertake legislative modernization by adopting digital rights restriction penalties as a constitutional sentencing instrument to ensure the justice system's responsiveness in tackling crime in the era of technological disruption.

Keywords: *Principle of Legality; Sentencing Innovation; Cybercrime; Revocation of Access Rights Penalty; Digital Restriction Order.*

INTRODUCTION

The evolution of crime in the digital era has become a far more complex threat than in the era when Law Number 1 of 1946 (Old Penal Code) was enacted. Cybercrime phenomena, particularly those attacking personal sexual integrity and privacy such as revenge porn or technology-facilitated sexual violence, now demand a legal response that is not merely retributive. Such a response must also be protective and future-oriented (Situmeang & Meilan, 2025). However, the acceleration of these criminal modi operandi often clashes with the strict boundaries of the principle that no crime exists without a pre-existing law (*nullum crimen, nulla poena sine lege*), a fundamental principle of Indonesian criminal law.

The tension between the urgent need to punish offenders with technologically relevant penalties and the obligation to adhere to static statutory texts creates distinct law enforcement disparities. This is reflected in the juridical issues of the Alwi Husen Maolana case. In this case, the digital sentencing innovation applied by the first-instance court was overturned at the appellate and cassation levels in the name of legal certainty. This condition confirms that the Indonesian criminal justice system is facing a significant challenge. This challenge involves balancing substantive justice for victims and legal certainty for defendants amid a cybernorm vacuum (Iskandar et al., 2024).

These problems stem from a sharp paradigmatic conflict in the examination and adjudication of cases involving the dissemination of immoral content. The Panel of Judges at the Pandeglang District Court, in Decision Number 71/Pid.Sus/2023/PN Pdl, made a legal breakthrough through judicial activism by imposing an additional penalty of revocation of internet access rights for eight years. This penalty is unrecognized in Law Number 11 of 2008 on Electronic Information and Transactions (EIT Law) and its amendments[1], or in the Old Penal Code applicable at that time (Hariawan et al., 2025). This breakthrough was seen as a progressive step toward breaking the cycle of digital recidivism and protecting victims (Aris & Sitompul, 2024). However, this step failed when examined at higher levels. The Banten High Court, through Decision Number 96/Pid.Sus/2023/PT BTN, annulled the additional penalty due to the absence of a juridical basis. This positivistic stance was subsequently firmly upheld by the Supreme Court in Decision Number 6069 K/Pid.Sus/2023. The Supreme Court stated that the consideration of the fact-finding judges (*Judex Facti*) was correct, without providing a detailed elaboration on the urgency of the legal vacuum (*rechtsvacuum*) that had arisen. This annulment is not merely a technical correction but a strong signal that the Supreme Court still firmly adheres to strict legal positivism. The Supreme Court rejects the creation of new criminal norms through judge-made law, finding it exceeds constitutional authority (Utari & Saputri, 2024).

The debate regarding the validity of the revocation of internet access rights cannot be separated from the profound discourse on the substance of the principle of legality of criminal acts. Dogmatically, this principle requires written law (*lex scripta*) and clear formulation (*lex certa*) as absolute conditions for sentencing (Nesi & Umar, 2025). However, the application of the principle of *nullum crimen, nulla poena sine lege* that is too rigid (strict legality) in the context of cybercrime has the potential to create injustice. This considers the characteristics of electronic evidence and victimological impacts that are not limited by space and time (Pribadi, 2018; Oktana et al., 2023). This is where the constitutional dilemma lies. On the one hand, judges are required to explore the legal values that govern society, as mandated by Law Number 48 of 2009 on Judicial Power (Helmi, 2020). On the other hand, judges are limited by the prohibition of analogy and the creation of new types of penalties, which is the domain of the legislature. The absence of regulation regarding digital restriction orders in Indonesian positive law makes every effort by judges to apply such penalties vulnerable to being assessed as an act exceeding authority (*ultra vires*) (Hasibuan, 2016).

This issue has triggered extensive academic discourse. However, the existing literature still leaves significant analytical gaps and is often partial. For instance, the study by Hariawan et al. (2025) supports the first-instance court decision as a form

[1]Law Number 11 of 2008, as amended several times, lastly by Law Number 1 of 2024.

of justice. The study does not criticize the danger of a bad precedent regarding the creation of criminal norms by judges outside the law. Similarly, Setiawan (2024), who focuses on the deterrent effect, ignores the principle that the purpose of sentencing must not justify unconstitutional means. Conversely, victimological studies by Nurdin (2023) and Octora et al. (2024) successfully highlight the urgency of victim protection. However, these studies have not articulated that the Supreme Court's reinforcement of the penalty annulment essentially represents a state failure to provide non-material restitution in the form of security from the potential redissemination of intimate content. This research aims to correct this analytical bias. It positions adherence to the principle of legality and victim protection not as two mutually exclusive poles, but as a dialectic that demands concrete legislative solutions.

The urgency of regulating digital access restriction penalties becomes increasingly unavoidable when observing Indonesia's lag in Law Number 1 of 2023 (New Penal Code) compared to global practices. International references indicate that the European Union (Mania, 2024) and Colombia (Guerrero-Sierra et al., 2025) have advanced with legal instruments tailored to deepfakes and the dissemination of non-consensual content. More specifically, Maskun et al. (2025) emphasize the necessity of revocation of access as a legitimate additional penalty. In this context, it is important to draw a firm distinction between internet shutdowns, which are politically massive as tools of state control (Gregorio & Stremlau, 2020), and digital restriction orders, which are rehabilitative and individual. The absence of a legal umbrella for this second type of penalty in the EIT Law or Law Number 12 of 2022 on Sexual Violence Crimes (SVC Law) leaves judges without the means to impose proportional sentences (Putri & Sanjaya, 2025). Consequently, a *rechtsvacuum* occurs, forcing judges to choose between allowing offenders to retain digital access (risking crime recurrence) or imposing penalties without a legal basis (violating legality). This is reflected in the inconsistent rulings in the aforementioned case.

Therefore, this research offers a deconstruction of the juridical qualification of the revocation of internet access rights within the dichotomy of the Indonesian sentencing system. The question is whether such a penalty falls into the category of a principal penalty, an additional penalty, or a disciplinary measure. Unlike the research of Erwanti (2024), which discusses the shift in sentencing concepts generally in the New Penal Code, or Nasution et al. (2024), who highlight due process of law, this article specifically examines the implications of the Supreme Court's reinforcement of the penalty annulment as a momentum to criticize the relevance of the classical principle of legality. This research fills the analytical void left by previous researchers between dogmatic and constitutional analysis. It argues that rigid adherence to statutory texts without accompanying legislative updates undermines public justice and leaves victims in a state of digital vulnerability.

Based on the background description, this research formulates three specific objectives. First, to analyze the paradigm disparity between Decision Number 71/Pid. Sus/2023/PN Pdl, characterized by judicial activism, and Decision Number 96/Pid. Sus/2023/PT BTN as well as Decision Number 6069 K/Pid.Sus/2023, which adheres to legal positivism regarding the urgency of the revocation of the penalty for internet access rights. Second, to examine the juridical qualification of digital restriction orders within the current Indonesian sentencing system. Third, to examine the constitutional limits of judicial power in performing legal discovery (*rechtsvinding*) amidst the cyber norm vacuum and its implications for national legal certainty. This research is expected to make a theoretical contribution by reconstructing a more adaptive understanding of the principle of legality and to provide practical guidance for legislators in formulating additional penalties responsive to technological developments.

METHOD

This research is a prescriptive doctrinal legal research designed to address legal issues regarding the vacuum of digital criminal norms and the conflict in the application of the principle of legality in court decisions (Qamar & Rezah, 2020). The approach used is the statute approach to examine the consistency of norms within the EIT Law, the Old Penal Code, and the New Penal Code. Additionally, a case approach is utilized to examine the legal reasoning (*ratio decidendi*) of judges in applying or annulling the penalty of revocation of internet access rights. The research also employs a conceptual approach to analyze legal doctrines related to judicial activism and digital sentencing to construct a theoretical argument regarding the position of such penalties within the Indonesian sentencing system.

The legal materials used in this research consist of primary and secondary legal materials (Sampara & Husen, 2016). Primary legal materials include relevant laws, namely the Old Penal Code, EIT Law, SVC Law, and the New Penal Code. Furthermore, the primary legal materials include three court decisions, which serve as the main objects of study: Decision Number 71/Pid.Sus/2023/PN Pdl, Decision Number 96/ Pid.Sus/2023/PT BTN, and Decision Number 6069 K/Pid.Sus/2023. Secondary legal materials are sourced from reputable journal articles published between 2016 and 2025. These articles discuss issues of revenge porn, the principle of legality, protection of cybercrime victims, and relevant legal literature. Legal material is collected through library research, using documentation techniques and digital searches of the Supreme Court decision directory and scientific journal databases.

The legal material analysis technique is carried out qualitatively using deductive logic through legal syllogism (Irwansyah, 2020). The analysis begins by inventorying and systematizing primary and secondary legal materials. Subsequently, grammatical, systematic, and teleological interpretations are applied to determine the legal meaning

of the judges' considerations. Primary legal materials in the form of court decisions are analyzed by comparing the legal reasoning of the first-instance court (which imposed the additional penalty) and the appellate and cassation courts (which annulled it). The objective is to identify the legal paradigm disparity. Furthermore, these findings are examined dialectically against the views of experts from secondary legal materials to assess the juridical implications and constitutionality of the decisions. This process produces a prescriptive conclusion as the answer to the research objectives.

RESULTS AND DISCUSSION

A. Disparity of Law Enforcement Paradigms: Between Judicial Activism and Legal Positivism

The dynamics of law enforcement in the dissemination of immoral content case involving defendant Alwi Husen Maolana demonstrate a sharp conflict of legal paradigms. This conflict occurred between the first-instance court and the appellate and cassation courts. The Panel of Judges at the Pandeglang District Court, in Decision Number 71/Pid.Sus/2023/PN Pdl, chose the path of judicial activism by imposing an additional penalty of revocation of internet access rights for eight years. This step unequivocally represented the judges' effort to perform progressive legal discovery (*rechtsvinding*) amidst the absence of specific cyber norms. In their consideration, the first-instance judges argued that imprisonment and fines alone were insufficient to deter digital offenders with high recidivism rates (Hariawan et al., 2025). The judges consciously transcended the statutory text to achieve substantive justice for victims suffering prolonged psychological harm due to permanent digital footprints. This approach aligns with the view of Setiawan (2024), who appreciates the judges' courage in breaking through the rigidity of positive law to protect revenge porn victims from potential revictimization.

However, such judicial boldness was curtailed by the strict boundaries of legal positivism at the appellate level. The Banten High Court, through Decision Number 96/Pid.Sus/2023/PT BTN, overturned the additional penalty of revocation of internet access rights based on highly legalistic considerations. The appellate panel reaffirmed the supremacy of the principle of *nullum crimen, nulla poena sine lege* as enshrined in Article 1 section (1) of the Old Penal Code. The key argument was that the EIT Law is a special provision (*lex specialis*) with its own sentencing regime, in which no article addresses the additional penalty of access rights revocation (Nesi & Umar, 2025). The absence of this explicit regulation was interpreted by the appellate judges as an absolute prohibition on judges creating new types of penalties. This stance reflects full adherence to the law in books and rejects the notion that judges may act as legislators (judge-made law) in criminal law, which requires strict legal certainty (Utari & Saputri, 2024).

This conflict became even more evident when the Supreme Court, in Decision Number 6069 K/Pid.Sus/2023, rejected the cassation appeal. Implicitly, the Supreme Court affirmed the annulment of the additional penalty by the High Court. The Supreme Court's lack of deep elaboration in its legal considerations demonstrates the dominance of positivism at the apex of the Indonesian judiciary. In this instance, the Supreme Court merely stated that the decision of the *Judex Facti* was correct. The Supreme Court appeared reluctant to take the risk of legitimizing a new criminal precedent unregulated by the legislature, even though the sociological urgency was palpable. This confirms the concern of Iskandar et al. (2024) that the development of the theory of the principle of legality in Indonesia is still progressing slowly. Such development has not fully accommodated the flexibility needed to respond to modern crimes. The Supreme Court preferred to maintain the consistency of formal legality rather than to make breakthroughs that might be deemed *ultra vires* or exceeding judicial authority (Hasibuan, 2016).

A critical analysis of this disparity reveals fundamental weaknesses in prior literature, which tends to view this issue partially. For example, studies conducted by Setiawan (2024) and Hariawan et al. (2025) focused too heavily on praising the morality and victim-centric aspects of the first-instance decision. However, these studies failed to address the potential danger of a precedent in which judges create their own criminal norms. If the logic of the Pandeglang District Court judges were left uncorrected, it would create legal uncertainty. Every judge throughout Indonesia would feel entitled to create new types of penalties based on their subjective preferences in the name of "justice." Ultimately, this would undermine legal certainty itself (Nasution et al., 2024). Conversely, criticism of the High Court and Supreme Court decisions must also be directed at their inability to offer alternative solutions to fill the *rechtsvacuum* that harms victims.

Furthermore, this debate touches on the philosophical question of the nature of punishment itself. The revocation of internet access rights imposed by the Pandeglang District Court essentially possesses confusing hybrid characteristics. On one hand, this penalty resembles the "revocation of certain rights" in Article 10 letter b of the Old Penal Code. On the other hand, it is more akin to a disciplinary measure (*maatregel*) than a punishment (*straf*). This lack of clarity in the juridical qualification became a gap that the High Court exploited to annul it. From the perspective of legal constructivism, judges should not merely be fixated on the formal label of "additional penalty" (Helmi, 2020). Judges should have explored the sociological construction that internet access for cyber offenders is an instrument of crime (*instrumentum sceleris*) legitimate for restriction. Unfortunately, this dialectic did not appear in the judges' considerations at any level. Judges were trapped in a binary dichotomy: either it exists in the law (valid) or it does not (void).

This condition is exacerbated by the absence of references to international legal instruments that have already adopted similar sanctions. As noted by Maskun et al. (2025), the concept of revocation of access is not foreign to the global discourse on combating technology-facilitated sexual violence. However, the Indonesian legal system, which is still characterized by classical Civil Law, tends to be resistant to adopting foreign norms without explicit ratification or national legislation. Consequently, Indonesia experiences a significant regulatory lag compared to European Union countries. These countries already possess more adaptive protection frameworks for deepfake and revenge porn victims (Mania, 2024; Guerrero-Sierra et al., 2025). This lag leaves Indonesian judges working in a regulatory vacuum. This forces them to choose between being rigid "mouthpieces of the law" or "rebels" risking violation of the principle of legality (Firmansyah et al., 2025; Irwan et al., 2025).

Theoretically, the Supreme Court's reinforcement of the additional penalty annulment can be read as an affirmation that the principle of *lex certa* (offenses and penalties must be clearly formulated) must not be sacrificed for the sake of strict interpretation (*lex stricta*). Aris and Sitompul (2024) highlight that victim protection is indeed crucial. However, such protection must not be achieved by violating the defendant's human right not to be punished with a penalty they did not know existed. The principle of a fair trial requires that a person may only be punished based on pre-existing law. A person must not be punished based on rules created post-factum by judges in the courtroom. This is the constitutional limit strictly guarded by the Supreme Court (Basri, 2021). Although this impacts the sense of injustice for victims who feel that imprisonment and fines alone are insufficient to atone for their suffering (Nurdin, 2023; Octora et al., 2024).

The disparity in decisions between the District Court and the High Court/ Supreme Court is not merely a technical interpretation difference, but a reflection of the clash between two poles of legal philosophy: Legal Realism, intuitively embraced by first-instance judges, versus Legal Positivism, firmly held by appellate and cassation judges. The victory of positivism in this final and binding cassation decision sends a firm message that sentencing innovation must not precede legislation to guarantee legal certainty. However, this message also serves as a serious warning to legislators that the burden to create relevant penalties has now fully shifted to their shoulders and can no longer be placed on the judge's gavel (Putri & Sanjaya, 2025).

These dynamics confirm that, without concrete legislative reform, the Indonesian criminal justice system will remain trapped in a cycle of "annulled innovations." The absence of political will to immediately normalize this penalty amounts to allowing law enforcement to operate without adequate tools to combat

cybercrime (Pribadi, 2018; Situmeang & Meilan, 2025). Furthermore, the Supreme Court's rejection of the breakthrough leaves a serious dogmatic residue, namely the unclear status of the penalty's existence itself, complicating its placement within the rigid national sentencing taxonomy.

B. Juridical Qualification of Digital Restriction Order within the Sentencing System

One of the root problems in the Alwi Husen Maolana case is the ambiguity of the juridical qualification of the additional penalty imposed by the Pandeglang District Court. The penalty in the form of "revocation of the right to use or utilize internet-based electronic communication devices" is essentially a legal entity that is difficult to classify within the rigid dichotomy of the Indonesian sentencing system. Dogmatically, Article 10 of the Old Penal Code divides penalties into principal penalties and additional penalties in a limitative manner (*numerus clausus*). In the category of additional penalties, Article 35 section (1) of the Old Penal Code details the rights that can be revoked, including the right to hold office, the right to serve in the armed forces, and the right to vote and be elected. The right to internet access is not included in that list at all. Therefore, the Pandeglang District Court Judge's attempt to classify the revocation of internet access as an "additional penalty" constitutes an extensive interpretation that exceeds the boundaries of the statutory text. This step is vulnerable to being assessed as legally flawed in the Civil Law tradition, which glorifies codification (Iskandar et al., 2024).

The absence of a proper legal classification for this penalty becomes even more evident when examined in light of the EIT Law and its amendments. Although the EIT Law regulates various types of cybercrimes, it does not provide a special sentencing regime (additional penalty) that deviates from the Old Penal Code, except for the maximum terms of imprisonment and fines. Nesi and Umar (2025) emphasize that the phrase "without rights" in Article 27 section (1) of the EIT Law refers to the element of the offense, not the type of penalty that can be imposed. This means that when a person is found to have committed an ITE crime, the judge is authorized to impose only the penalties listed in the Old Penal Code. The absence of regulation on digital restriction orders in the EIT Law, as *lex specialis*, was the main argument for the Banten High Court and the Supreme Court to annul the additional penalty in Decision Number 71/Pid.Sus/2023/PN Pdl. In formal legal logic, if the special law does not regulate it, then it reverts to the general law (Old Penal Code), which also does not recognize it. Consequently, the penalty becomes null and void.

This discourse becomes more interesting when linked to the SVC Law, considering that revenge porn cases closely intersect with technology-facilitated sexual violence. Putri and Sanjaya (2025) highlight that although the SVC Law possesses a progressive spirit in victim protection, Article 14, which governs electronic-based sexual violence, has not explicitly included the revocation of internet access rights as an additional penalty. The SVC Law indeed recognizes additional penalties, including "revocation of custody rights" or "announcement of the perpetrator's identity," but has not addressed the issue of digital access restriction. This indicates a legislative gap or a systemic norm vacuum. Legislators have not fully integrated the digital dimension into the criminal sanction structure, whereas the *locus delicti* of this crime occurs entirely in cyberspace.

From the perspective of modern sentencing theory, this revocation of internet access is closer to the characteristics of a "measure" (*maatregel*) than to those of a "punishment" (*straf*). Erwanti (2024) explains that the shift in sentencing concepts in the New Penal Code has begun to accommodate rehabilitative and protective sanctions. In this context, restricting internet access serves not to inflict pain on the offender (as with imprisonment), but to protect society by limiting the offender's ability to repeat the crime (incapacitation). Maskun et al. (2025) even specifically use the term "revocation of access" as a crucial preventive instrument. However, the problem is that Indonesia's current positive legal system does not yet have a regulatory framework for digital *maatregel*. As a result, even visionary judges will be constrained by the lack of a juridical basis to impose this technology-based disciplinary measure.

Indonesia's lag becomes very striking when compared to global practices. In the European Union, as outlined by Mania (2024), legal instruments for protecting victims of cyber violence have enabled courts to issue injunctions. These orders prohibit offenders from accessing certain platforms or contacting victims digitally. In Colombia, Guerrero-Sierra et al. (2025) note that regulations regarding deepfakes and non-consensual pornography have evolved towards sanctions limiting the offender's "digital sovereignty" to protect the victim's privacy. Furthermore, the concept of internet shutdown discussed by Gregorio and Stremlau (2020) in the context of state politics can be adopted at the micro level in criminal law as an individual shutdown. This means the state has the legitimacy to cut off an individual's internet access if it is proven that the individual uses the internet as a weapon to attack another person's honor. Unfortunately, these global concepts have not been incorporated into national legislation.

This ambiguity of juridical status is exacerbated by the weak argumentation in domestic literature attempting to justify the Pandeglang District Court's decision. Hariawan et al. (2025) argue that the additional penalty is valid as a

form of "judicial discretion." However, this view is dangerous because it conflates procedural discretion (procedural law) with substantive discretion (substantive law). In criminal law, the principle of legality limits judicial discretion only to selecting the severity of existing penalties, not creating new types of penalties. Utari and Saputri (2024) correctly criticize that the function of *rechtsvinding* must not excessively become law-making (*rechtsvorming*), which usurps the authority of the House of Representatives. Therefore, the penalty for revocation of internet access is currently in limbo. This penalty is sociologically desired but juridically rejected.

A deep analysis of the nature of this penalty also reveals technical dimensions that are often overlooked in purely legal discussions. Situmeang and Meilan (2025) remind that law enforcement in the digital era requires adequate execution infrastructure. If this revocation of rights is considered an additional penalty, who will execute it? Prosecutors do not have control over Internet Service Providers (ISPs). Without a legal mandate requiring ISPs to block specific individuals' access, the judge's verdict will be no more than a non-executable decision. Pribadi (2018) and Oktana et al. (2023) highlights that the legality of electronic evidence alone is complicated, let alone the legality of executing a digital penalty. The absence of technical mechanisms regulated by law renders the Pandeglang District Court's verdict, although noble in intent, utopian and difficult to administer.

This deconstruction emphasizes that digital restriction orders must be recognized as *sui generis* in future revisions to criminal law, rather than merely added to the list of penalties in the New Penal Code. This regulation requires a specific, detailed regime covering the duration, the scope of the blocking (whether a total blackout or partial on specific social media), and the supervision mechanisms. As emphasized by Aris and Sitompul (2024) and Octora et al. (2024), regulatory clarity is necessary to prevent excessive violation of the offender's human right to information (Article 28F of the 1945 Constitution). Without clear rules of the game, this penalty risks becoming a new tool of repression that undermines the principle of proportionality.

Given the prevailing national sentencing system, the revocation of internet access rights is essentially a juridical anomaly. The Supreme Court's decision to affirm the annulment of said penalty is a logical consequence of adherence to formal legality to avoid non-executable decisions. However, the failure of the justice system to accommodate this victim protection must not be reduced merely to a technical legislative defect. Such a norm vacuum possesses far greater destructive power because it directly intersects with citizens' fundamental rights, ultimately leading to a tangible constitutional crisis.

C. Constitutional Implications and the Urgency of Legal Reform Amidst the Cyber Norm Vacuum

The Supreme Court's annulment of the additional penalty of revocation of internet access rights in the Alwi Husen Maolana case not only leaves open a debate at the dogmatic level but also raises serious constitutional implications for the protection of citizens' human rights. From a constitutional perspective, Article 28Dsection (1) of the 1945 Constitution guarantees every person the right to recognition, security, protection, and fair legal certainty. The Supreme Court's decision, which annulled the Pandeglang District Court's judicial activism verdict, is essentially an effort to maintain legal certainty for the defendant. If penalties without a statutory basis are allowed to prevail, the rule of law will be eroded by judicial subjectivity. This has the potential to breed judicial arbitrariness. Nasution et al. (2024) warn that, in the due process of law, a noble objective (protecting victims) must not be achieved by means that violate the law (by creating new penalties). Therefore, from the perspective of protecting the defendant's rights, the Supreme Court's conservative stance has a strong constitutional justification in preventing bad law-enforcement precedents that abuse power.

However, the constitutional coin has two sides. On the other hand, the annulment of the additional penalty has indirectly injured the victim's constitutional right to obtain security and protection from the threat of fear. This right is guaranteed in Article 28G section (1) of the 1945 Constitution. Nurdin (2023), in his victimological study, highlights that revenge porn victims experience layered suffering (re-victimization). This occurs when the state fails to guarantee that the offender will not repeat their actions in the digital space. Imprisonment and fines alone have proven insufficient to deter. Consequently, offenders retain internet access, which can be misused at any time to re-disseminate intimate content. By annulling the access revocation without providing other alternative protections, the state appears to allow victims to live in the shadow of eternal digital terror. Octora et al. (2024) strongly criticize this lack of protection as a form of state negligence in fulfilling its constitutional obligations. The state is obliged to protect its citizens' personal integrity from cyberattacks.

This constitutional dilemma stems from one fundamental root problem: the *rechtsvacuum* in cybercrime regulation. The absence of digital restriction orders in the EIT Law, Old Penal Code, and New Penal Code creates a void. In this void, judges are forced to choose between two equally bad options: violating the principle of legality for the sake of substantive justice (as the District Court judges do) or adhering to the principle of legality at the expense of victim protection (as the Supreme Court judges do). Putri and Sanjaya (2025) emphasize that this condition demonstrates legislators' failure to anticipate the acceleration of

criminal modus operandi. This legislative lag cannot be continuously imposed on judges to resolve through legal discovery (*rechtsvinding*). This is because judges have authority limits that must not exceed the legislative function (*rechtsvorming*). Forcing judges to continuously make breakthroughs without a legal umbrella will instead damage the order of the tiered criminal justice system.

The urgency of legal reform becomes increasingly inevitable when observing the escalating threat of increasingly sophisticated cybercrimes, ranging from deepfakes to online child sexual exploitation. Situmeang and Meilan (2025) remind us that the evolution of crime demands an equivalent evolution of sentencing. Indonesia can no longer survive with the conventional sentencing paradigm (prison-fine) designed for physical crimes in the 19th century. Immediate adoption of incapacitative penalties in cyberspace is required. Such penalties include account blocking, internet access restrictions, or prohibitions on the use of specific devices. This concept aligns with what Pribadi (2018) terms as the adaptation of the law of evidence and sentencing to digital reality. Without this reform, the Indonesian criminal justice system will continue to experience dysfunction in responding to cybercrime. The law is only capable of threatening imprisonment, but cannot deprive the offender of their instrument of crime (Rambe et al., 2024).

Aris and Sitompul (2024) add that this legal reform must be conducted through formal legislative channels, not uncontrolled judicial precedents. Future revisions of the EIT Law or New Penal Code must explicitly include "digital rights restriction" as a type of additional penalty or disciplinary measure. This regulation must cover technical execution details, duration, supervision mechanisms, and limitations to ensure it does not excessively infringe on the offender's human rights. Learning from practices in the European Union and Colombia, such legislation must balance the need for offender incapacitation with the right to information. With a clear legal basis (*lex scripta*), future judges need no longer hesitate to impose digital penalties. The Supreme Court would also have no further reason to annul them in the name of legality.

Furthermore, this reform also needs to address decision execution. As alluded to by Maskun et al. (2025), the effectiveness of digital restriction orders depends heavily on the readiness of the technological infrastructure and on cooperation with Electronic System Providers (PSE). The new legislation must provide a clear mandate to the Ministry of Communication and Digital, as well as ISPs, to execute court orders regarding individual access restrictions. Without legal and technical execution infrastructure support, digital penalties will only become non-executable decisions. This demands synergy among substantive criminal law, criminal procedural law, and state administrative law within a single comprehensive regulatory framework.

The policy implications of this analysis are very clear. The House of Representatives and the Government must immediately include the agenda for formulating digital penalties as a national legislative priority. Delaying this reform is tantamount to allowing the legal vacuum to continue claiming victims. The Alwi Husen Maolana case must serve as a significant momentum to realize that our legal system is facing serious problems and requires precise legislative solutions. Reliance on sporadic judicial activism has proven ineffective and vulnerable to annulment. Therefore, the most dignified constitutional path is through the formation of democratic and responsive written law.

Ultimately, resolving the tension between the principle of legality and sentencing innovation demands firm legal-political intervention, given that courtroom dynamics have reached their constitutional limits. The Supreme Court's reinforcement of the decision to annul it must be interpreted as an imperative signal that the responsibility for victim protection has now shifted entirely to the legislature. This case reveals a paradox in which the principle of legality, which essentially serves as a shield, becomes an impediment to justice amid a norm vacuum. Therefore, the solution is not to injure the principle, but to update the substance of the law to accommodate digital penalties. This legislative step is the only way to harmonize legal certainty for the defendant with substantive justice for the victim, while simultaneously saving the future of Indonesian criminal law from civilizational backwardness.

CONCLUSIONS AND SUGGESTIONS

A comprehensive analysis of the dynamics of court decisions in this case of dissemination of immoral content concludes that the Indonesian criminal justice system is experiencing a sharp paradigmatic clash. This clash occurs between judicial activism at the first instance and legal positivism at the appellate and cassation levels. This disparity is not merely a technical difference in legal application, but a reflection of the national legal infrastructure's unpreparedness to face the evolution of cybercrime. The courage of the Pandeglang District Court judges to perform *rechtsvinding* by imposing the additional penalty of revocation of internet access rights was essentially an appropriate sociological response. This response aligned with the need for a deterrent effect and victim protection. However, this progressive step was forced to be annulled by the Banten High Court and the Supreme Court because it contravened the strict boundaries of the principle of *nullum crimen, nulla poena sine lege* formally, which prohibits the creation of new types of penalties outside the law. The victory of positivism in this final decision confirms that, in the current Indonesian legal order, legal certainty for the defendant remains above substantive justice for the victim. This is an ironic condition amidst the massive threat of digital victimization.

Furthermore, a legal analysis of the digital restriction order reveals that this penalty is a legal entity that does not yet have clear standing within the Indonesian sentencing system. It does not meet the criteria for the additional penalty of "revocation of certain rights" as regulated in a limitative manner (*numerus clausus*) in Article 35 of the Old Penal Code. This penalty is also not recognized as a disciplinary measure under the EIT Law or the SVC Law. The absence of a firm juridical classification renders this penalty a form of legal deviation. This penalty is criminologically intended to prevent recidivism, yet it is dogmatically flawed for lacking a legislative basis. Consequently, every effort by judges to apply it will always lead to annulment by law or become a non-executable decision due to the absence of a technical mechanism for individual access blocking. This *rechtsvacuum* condition places judges in a dilemmatic position and leaves society without adequate protection from potential repeated crimes in cyberspace.

The constitutional implications of this norm vacuum are severe. The state has failed to balance the defendant's right to legal certainty (Article 28D of the 1945 Constitution) and the victim's right to security (Article 28G of the 1945 Constitution). The Supreme Court's reinforcement of the additional penalty annulment, although constitutional from a legality standpoint, has factually injured the victim's sense of justice demanding guaranteed protection from digital terror. Therefore, the solution to this problem cannot be entrusted to casuistic judicial breakthroughs, which are subject to correction. Legal political intervention through concrete legislative reform is required. The Government and the House of Representatives must immediately revise the EIT Law or the New Penal Code to explicitly regulate additional penalties or measures, including digital rights restrictions. This regulation must cover duration, supervision mechanisms, and technical obligations for internet service providers to execute court orders. Thus, digital penalties will possess strong and operational juridical legitimacy.

As a short-term tactical recommendation, the Supreme Court is advised to issue a regulation on Sentencing Guidelines for Cybercrime Cases. These guidelines provide judges with measurable guidance on imposing proportional penalties while remaining within statutory corridors, pending legislative revision. Meanwhile, for the long term, legislators are encouraged to adopt the model of digital bans or incapacitation orders as applied in several European Union countries. The adoption of this instrument is an integral part of modernizing national criminal law. Through progressive legislative reform, the principle of legality can be revitalized from a mere formal obstacle into a protective instrument adaptable to contemporary dynamics. This transformation ensures that the Indonesian criminal justice system is adequately responsive to the complexity of crime in the era of technological disruption.

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