



Criminal Control for the Distribution of Pornographic Content on the Internet: An Indonesian Experience

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Abstract

The unlimited use of Information Technology (IT) has made cybercrime accessible to everyone. Technology can be very useful for daily needs, but on the other hand it can also be used irresponsibly by certain parties such as the distribution of pornographic content. The purpose of this article is to find out the regulations regarding pornography in Indonesia, to analyze the spreaders of pornographic content based on Indonesian positive law and to analyze the penalties for spreading pornographic content based on positive law in Indonesia. This research uses 'doctrinal legal research'. Sources of legal information use primary legal materials (regulations and relevant documents) for further qualitative analysis. The approach used is 'statutory and conceptual' to help solve the problem in this research. The results showed that law enforcement officials such as the police and prosecutors prefer to use Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions and Law Number 44 of 2008 concerning Pornography to ensnare perpetrators. spreading pornographic content on the Internet which is considered more obvious and appropriate to be used as a legal basis to ensnare

spreaders of pornographic content on the internet. Perpetrators can be sentenced to punishment is imprisonment and/or a fine as regulated in the law.

Kata kunci:

Pengenaan Kejahatan;
Konten Pornografi;
Hukum Positif

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Abstrak

Penggunaan Teknologi Informasi (TI) yang tidak terbatas telah membuat kejahatan dunia maya dapat diakses oleh semua orang. Teknologi bisa sangat bermanfaat untuk kebutuhan sehari-hari, namun di sisi lain juga bisa dimanfaatkan secara tidak bertanggung jawab oleh pihak-pihak tertentu seperti penyebaran konten pornografi. Tujuan dari artikel ini adalah untuk mengetahui peraturan tentang pornografi di Indonesia, untuk menganalisis para penyebar konten pornografi berdasarkan hukum positif Indonesia dan untuk menganalisis hukuman bagi penyebar konten pornografi berdasarkan hukum positif di Indonesia. Penelitian ini menggunakan 'penelitian hukum doktrinal'. Sumber informasi hukum menggunakan bahan hukum primer (peraturan dan dokumen terkait) untuk analisis kualitatif lebih lanjut. Pendekatan yang digunakan adalah 'statutory dan konseptual' untuk membantu memecahkan masalah dalam penelitian ini. Hasil penelitian menunjukkan bahwa aparat penegak hukum seperti kepolisian dan kejaksaan lebih memilih menggunakan Undang-Undang Nomor 19 Tahun 2016 tentang Perubahan atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik dan Undang-Undang Nomor 44 Tahun 2008 tentang Pornografi untuk menjerat pelaku. penyebarluasan konten pornografi di Internet yang dianggap lebih jelas dan layak digunakan sebagai landasan hukum untuk menjerat penyebar konten pornografi di internet. Pelaku dapat dipidana dengan pidana penjara dan/atau denda sebagaimana diatur dalam undang-undang.

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A. Introduction

Today, the circulation of information in cyberspace (internet) continues to increase. The high circulation of information on the internet is also balanced by the increasing number of internet users in Indonesia (Subroto, 2015). Based on the report from Global Digital 2020 published by the internet research institute from the UK "We Are Social and Hootsuite" in 2018, there were 132.7 million people, or around 50% of the total population of Indonesia who are internet users (Anisa & Rachmaniar, 2019). The internet penetration (the entry of the internet) in Indonesia is also quite fast, as indicated by the results of a survey by the Indonesian Internet Service Providers Association or *Asosiasi Penyelenggara Jasa Internet Indonesia* (APJII) in 2017 which showed internet penetration reached 143.26 million people or around 54.68% of the total population of Indonesia (Saputra, 2019). These data indicate that the number of internet users is directly proportional to the ease with which internet penetration is made to Indonesia. Therefore, the longer the circulation of information through the internet is getting more and more and the internet becomes easier to access.

In this digital era, it cannot be denied that the internet has a vital role in the distribution of information (Rofiq, Pujiyono & Arief, 2021). The many conveniences offered often make people prefer looking for information via the internet rather than reading printed newspapers or other similar literature (Maksum & Prawati, 2008). In its development, the ease of internet access has made the information dissemination and certain content, both positive and negative ones, become more widespread and out of control (Khakim, 2016; Daud & Awaluddin, 2021). This triggers cybercrime (Renata, 2017). Cybercrime is a crime that is born with a negative impact on the development of applications and the internet (Rahmawati, 2017). One form of often encountered cybercrime that is the dissemination of pornographic content by several groups. This is known as a pornographic crime or cyberporn. Cyberporn, in general, can be defined as the illegal use of computers to commit pornographic crimes (Rahmawati, 2017). Based on the provisions in Article 1 number 1 of Law Number 44 of 2008 concerning Pornography (Pornography Law), "it is stated that what is meant by pornography is pictures, sketches, illustrations, photos, writing, sounds, sounds, moving pictures, animation, cartoons, conversation, gestures or other forms of messages through various forms of communication media and/or public performances, which contain obscenity or sexual exploitation that violates the norms of decency in society."

In its development, cyberporn continues to receive attention from the public (Jayadi, 2011). The broad and dangerous negative impact where this crime is related to morality makes the issue of cyberporn always seem to attract the public's interest to pay attention and discuss it. This issue has returned to the attention of the public along with the emergence of case related to cyberporn such as the porn video case involving former vocalist Peterpan Band, Ariel and the case is currently underway, namely the spread of pornographic videos of artists with the initials GA and MYD (Herudin, 2021). Since their videos spread on the internet until this article was written, the media in Indonesia have never stopped reporting on the progress of

handling the case. From a legal point of view, it is interesting to discuss the issue of criminal threats for the perpetrators of the distribution of pornographic videos because the origin of this problem arose from the spread of pornographic videos on the internet.

Previous legal research regarding the distribution of pornographic content was carried out by Alexander Nicko Hermawan in 2020. This research focuses on the case approach related to the distribution of pornographic content on social media accounts in the perspective of Law Number 19 of 2016 concerning Electronic Information and Transactions (Information and Electronic Transactions Law) (Hermawan, 2020). Another research has also been conducted by Ikram Kalam Firdaus Rusli in 2019. This legal research examines the legal consequences of spreading advertisements in electronic media containing pornographic content (Rusli, 2019). Based on this research and based on previous explanations, this research has novelty compared to previous research, this is because the current research focuses on examining criminal control for the distribution of pornographic content on the internet reviewed from positive law in Indonesia. From a legal point of view, it is interesting to discuss the issue of criminal threats for the perpetrators of the distribution of pornographic videos because the origin of this problem arose from the spread of pornographic videos on the internet.

B. Research Method

This research uses 'doctrinal legal research'. Sources of legal information use primary legal materials (regulations and relevant documents) for further qualitative analysis (Fransisco, 2020). The approach used is statutory and conceptual in helping solve the problem formulation. The data source of this research consists of primary legal materials, secondary legal materials to be continued by analyzing as a whole, the laws and regulations, literature, data, and several related documents, as well as tertiary legal materials to explain and assist in analyzing primary legal materials or secondary legal materials.

C. Result and Discussion

1. Regulation about Pornography in Indonesia

The development of information technology and technology brings many benefits in terms of the use of business transactions, but sometimes the "virtual world" is only used as a place for netizens to interact like the real world (Saputra, 2019). The virtual world also has problems that arise as a result of the misuse of technology itself which eventually creates legal problems. People who are aware of the abuse of internet technology ultimately want a clear arrangement for this virtual world (Renata, 2017). Moral problems that were initially felt to only exist in the real world eventually began to more or less carry over to the virtual world.

The victims of immoral acts in this virtual world can be minors and even teenagers (Disemadi, Al-Fatih & Yusro, 2020). Porn sites that are scattered in the virtual world make many parties who should not be eligible to access them instead browse the site. The problems that arise due to the presence of both Indonesia and abroad pornographic sites, make people need to be aware of the behavior of children and

adolescents in their families so as not to see these porn sites. However, it is not only the community that has the role to prevent cyberporn crimes, but law enforcers also have the role.

The government continues to innovate in its efforts to prevent and overcome criminal acts related to pornography. One of the innovations is the implementation of legal policies (Cawidu, 2011). So far, the positive laws in Indonesia governing pornography are as follows:

a) Indonesian Criminal Code (KUHP/*Kitap Undang-Undang Hukum Pidana*)

As one of the legacies of the Dutch Criminal Code which was enforced in Indonesia through Law Number 1 of 1946 concerning the Indonesian Criminal Code in general regarding pornographic crimes wherein the Indonesian Criminal Code the crime is interpreted as a crime related to decency. In the articles of the Criminal Code that regulate it is in the provisions of Article 282 paragraphs (1) and (2) where the principal of the formulation of the offense is to ensnare people who broadcast, show, or post in public writing, images or objects whose contents are known to violate decency or a person who with the intention of broadcasting, showing or affixing it in public, makes the writing, image or object import it into the country, or has supplies, or person who openly or by circulating the letter without being asked, offers it or show it as obtainable (Wiryawan & Wagiman, 2007).

b) Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions

Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions (Electronic Information and Transactions Law) “made with due observance of the use of information technology, media and communication have changed both public behavior and human civilization globally, the development of information and communication technology has also caused world relations to be borderless and causing significant social, economic and cultural changes to take place so rapidly. Information technology is currently a double-edged sword because in addition to contributing to the improvement of human welfare, progress, and civilization (Melani, Disemadi & Jaya, 2020).

Currently, a new legal regime has been born, known as cyberlaw or telematics law (Wahyudi, 2020). Cyberlaw is internationally used for legal terms related to the use of information and communication technology while telematics law is the embodiment of the convergence of telecommunications law, media law, and informatics law. Other terms that are also used are the law of information technology and virtual world law. Seeing the considerations of these legal developments, it is necessary to formulate regulations that can accommodate any illegal acts and criminal acts that can occur on the internet. Therefore, Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions exists as a rule that specifically regulates crimes that can occur in cyberspace (the internet). Regulations regarding

pornography can also be found in the provisions of article 27 paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions. The regulations are intended to ensnare anyone who knowingly and without rights distributes and/or transmits and/or makes electronic information and/or electronic documents that have contents violating decency accessible (Maulana & Rahmawati, 2018).

c) Law Number 44 of 2008 concerning Pornography

Pornography in Indonesia is not a new phenomenon. Pornography in Indonesia may be in line with the development of pornography in the world in general. Like grass, although it is often stepped on, plucked, or even chopped, pornography continues to flourish. According to the records of the Press and Public Opinion Institute (*Lembaga Pers dan Pendapat Umum*) in Jakarta (currently disbanded), in 1953 it was recorded that obscene books and readings containing naked Western women entered Indonesia freely. Since then, the government has tried hard to eradicate fornication by bringing the person in charge of publishing to court. The government's movement to fight pornography and fornication has never stopped. This movement is an answer to the increasingly prolific distribution of pornographic materials. The circulation of such materials was more and more striking during the New Order era. On October 2, 1967, the Ministry of Information together with the Daily Executive of the Central Indonesian Journalists Association (*Persatuan Wartawan Indonesia Pusat*), the Indonesian Jaya Journalists Association (*Persatuan Wartawan Indonesia Jaya*), and the Newspaper Publishers Association (*Serikat Penerbit Surat kabar*), the Ministry of Home Affairs, and the Department of Foreign Affairs held a joint meeting to discuss the issue of pornography in the press in Indonesia. In 1970, the Attorney General's Office formed a team called the "Attorney General's Porn Research Team" under the leadership of the Junior Attorney General for Intel. Even so, pornography in Indonesia continues to flourish. The war against pornography continues to be declared by the government. In 1984, pornography reached its peak with the circulation of Sexindo's Happy New Year 1984 calendar. This calendar is the first in Indonesia that features naked women without any clothes. Entering 1988, pornography in Indonesia began to go crazy again. The film, entitled "*Pembalasan Ratu Laut Selatan*", shocked the public. The Indonesian Ulema Council (*Majelis Ulama Indonesia*) has strongly protested the production and distribution of the film. Some people think that the film is included in the softcore pornography category. At the same time, the Film Censorship Board (BSF) also withdrew the circulation of the film "*Akibat terlalu Genit*". The problem of pornography does not only occur in Indonesia. In the 1980s and even the 1990s, the pornography issue became a heated debate among feminists in the United States. At that time, there were pros and cons regarding censorship of pornographic material. There are two groups for and against censorship. The anti-censorship group formed a feminist coalition called Feminist Anti Censorship (FACT) which was in opposition to the group fronted by Catharine MacKinnon and Andrea Dworkin. FACT argues that pornography is an expression of women's freedom in terms of their sexuality, while MacKinnon (et al) views pornography as violence and exploitation of women (Nadine, 1995).

With the problems and dynamics that occur, Indonesia has finally specifically regulated the provisions on how to prevent and handle pornography crimes through Law Number 44 of 2008 concerning Pornography. This law is also a hope for the community at large to eradicate pornography that can damage the morals of the nation's children. In the provisions of articles 29-38 of Law Number 44 of 2008 concerning Pornography, the actions that can be ensnared by Law Number 44 of 2008 concerning Pornography are intended to ensnare everyone who produces, makes, reproduce, duplicate, distribute, broadcast, import, export, offer, trade, rent, or provide pornography, anyone who provides pornographic services, anyone who lends or downloads pornography, anyone who listens, displays, uses, owns, or stores pornographic products, any person who funds or facilitates acts related to pornography, any person who deliberately or with their consent becomes an object or model containing pornographic content, any person who makes other people an object or model containing pornographic content, any person that displaying oneself or others in performances or in public depicting nudity, sexual exploitation, intercourse, or pornographic content, any person who involves children in activities and/or as objects in pornography, and anyone who invites, persuades, exploits, allow, abuse power, or force children to use pornographic products or services (Saputra, 2017).

2. Distribution of Pornographic Content Based on Positive Laws in Indonesia

Before discussing what is meant by the distribution of pornographic content, we must first know what is meant by pornography itself. Referring to the provisions in "Article 1 number 1 of Law Number 44 Year 2008 concerning pornography, it is stated that what is meant by pornography is pictures, sketches, illustrations, photos, writings, sounds, sounds, moving pictures, animations, cartoons, conversations, gestures or other forms of messages through various forms of communication media and/or public performances, which contain obscenity or sexual exploitation that violates the norms of decency in society." Etymologically, pornography comes from the word's pornos and graphics. Pornos means an immoral act (in matters related to sex), or an act of an obscene nature, while graphics are images or writings which in a broad sense include sculptural objects, whose content or meaning shows or depicts something immoral or attack the morality of society (Chazawi, 2005). Then the Ministry of Information defines pornography as the presentation of writing or images that highlight the problem of sex, immorality and contradicts moral principles, obeying morality, decency, journalistic code of ethics, religious teachings which are prima causa in Indonesia, fair and civilized humanity. In short, pornography is the presentation of writings or images that arouses lust and offends the moral sense of society (Hamzah, 1987). Based on this understanding, it can be seen that pornography is an act in all forms and ways related to images, photos, animations, or other forms that violate the norms of decency in society.

Furthermore, regarding what is meant as a spreader of pornographic content, we can find out through the formulation of articles in Law Number 19 of 2016

concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions and Pornography Law. In the article formulation as follows:

a) Article 27 paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions

In the provisions of "Article 27 paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions (Electronic Information and Transactions Law), it is primarily intended to ensnare everyone deliberately and without the right to distribute and/or transmit and/or make accessible to electronic information and/or electronic documents that have contents that violate decency. Based on the explanation in Article 27 paragraph (1) of Electronic Information and Transactions Law, it is stated that what is meant by "distributing" is sending and/or spreading electronic information and/or electronic documents to many people or various parties through an electronic system, then transmitting is sending electronic information and/or electronic documents addressed to one another through an electronic system, then what is meant by making accessible is all other actions besides distributing and transmitting via an electronic system cause electronic information and/or electronic documents to be known by other parties or the public (Sujamawardi, 2018).

Then regarding criminal liability for offenses as referred to in the provisions of article 27 paragraph (1) of Electronic Information and Transactions Law, lies with everyone who is a legal subject. Regarding every person in the law, it is included in Article 1 point 21, namely that the legal subject in question is an individual, either a foreign citizen or a legal entity. So that immoral actors who use electronic media must be accountable for their actions because actions are carried out deliberately and against the law (Chazawi, 2009).

b) Article 29 of Law Number 44 Year 2008 concerning Pornography

The provisions of Article 29 of Pornography Law are primarily intended to ensnare anyone who produces, creates, reproduces, copies, disseminates, broadcasts, imports, exports, offers, trades, rents, or provides pornography. What is meant by everyone in the formulation of the second article of the laws and regulations above refers to the legal subject of individuals and corporations. Therefore, the distributor of pornographic content can be interpreted as an individual or corporation that deliberately and without rights makes efforts to disseminate or share pornographic content or is contrary to immorality.

3. Criminal Control for The Distribution of Pornographic Content Based on Positive Law in Indonesia

Imposing punishment in Indonesian law is a method or process to impose sanctions or penalties on someone who has committed a criminal act or violation. Criminal or in another sense is a punishment. Prof. Soedarto said that punishment (*penghukuman*) comes from the root word "law" (*hukum*), so it can be interpreted as "establishing the law" or "deciding about the punishment" (Muladi & Arief, 2014). Criminalization is carried out with the intent and purpose of improving public

dissatisfaction from criminal acts, preventing crimes from occurring, and protecting the community. Paul Anselm Van Feuerbach argued that simply imposing criminal threats alone would not be sufficient, but rather imposing a sentence on the criminal (Efendi, 2011).

Based on the provisions in the Indonesian Criminal Code (KUHP) related to criminal sanctions or types of punishment, there are only 2 types of criminal penalties, namely primary and additional crimes. The types of punishment that include in the provisions of Article 10 of the Indonesian Criminal Code (KUHP), namely the main punishment (death penalty, imprisonment, fines, and imprisonment), and additional crimes (revocation of certain rights, confiscation of certain items, and announcements of judge's decision) (Najih, 2014).

Furthermore, criminal sanctions about convictions of pornographic content distributors on the Internet have been regulated in positive law in Indonesia. As previously described by the author, pornography sanctions have been regulated in several articles in statutory regulations such as the Indonesian Criminal Code (KUHP), Information and Electronic Transactions Law and Pornography Law. The three laws and regulations have stipulated the imposition of punishment for anyone who commits an act that is contrary to immorality and is related to pornography. For the Criminal Code itself, the provisions related to the distribution of pornographic content are considered outdated and not following legal developments, which in the future needs reform to maintain the objectives of law enforcement itself (Hermawan, 2020). Therefore, law enforcement officials such as the police and prosecutors prefer to use Electronic Information and Transactions Law and Pornography Law to ensnare the perpetrators who spread pornographic content on the Internet. The two regulations are considered clearer and more appropriate to be used as a legal basis to ensnare spreaders of pornographic content on the internet (Ananda & Mertha, 2020). This is also in line with the principle of "*lex specialis derogat legi generalis*" (more specific legal provisions overriding legal provisions that govern in general) (Purbacaraka & Soekanto, 1983).

To find out criminal liability as an appropriate preventive measure in imposing sanctions (Poenomo, 2012) on perpetrators of spreading pornographic content, we can refer to Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions and Law Number 44 of 2008 concerning Pornography.

a) Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions

Regulations regarding the perpetrators of spreading pornographic content can be found in "Article 27 paragraph (1) of Electronic Information and Transactions Law which are primarily intended to ensnare everyone intentionally and without rights distribute and/or transmit and/or make accessible Electronic Information and/or Electronic Documents which have contents that violate decency. Regarding the criminal threat for acts as regulated in Article 27 paragraph (1), it is regulated in Article 45 paragraph (1) of Information and Electronic Transactions Law which

everyone who fulfilling the elements of the offense as referred to in the provisions of Article 27 paragraph (1) shall be punished with imprisonment for a maximum of 6 (six) years and/or a maximum fine of IDR. 600,000,000.00 (six hundred million rupiah). Based on these provisions, it can be seen that the punishment that can be imposed on the perpetrators of distributing pornographic content is a maximum imprisonment of 6 (six) years and/or a maximum fine of IDR. 600,000,000 (six hundred million rupiah)".

b) Law Number 44 of 2008 concerning Pornography

Regulations regarding criminal threats for the perpetrators of distributing pornographic content can be seen in the provisions of "Article 29 of Pornography Law which regulates that everyone who produces, makes, reproduces, copies, disseminates, broadcasts, imports, exports, offers, trading, renting, or providing pornography as referred to in Article 4 paragraph (1) of Pornography Law 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 rupiahs) and a maximum of IDR. 6,000,000,000.00 (six billion rupiahs)".

The purpose of the provisions in Article 4 paragraph (1) as referred to in Article 29 of Law Number 44 Year 2008 concerning Pornography is to regulate that everyone is prohibited from producing, making, reproducing, duplicating, disseminating, broadcasting, importing, exporting, offering, trading, renting out, or provide pornography that explicitly contains, 1) Intercourse, including sexual relations that are deviant; 2) Sexual violence; 3) Masturbation; 4) Nudity or a display that suggests nudity; 5) genitals; or 5) Child pornography. Referring to the provisions in "Article 29 of Pornography Law, the criminal provisions that can be imposed on the perpetrators of spreading pornographic content are 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 rupiahs) and a maximum of IDR. 6,000,000,000.00 (six billion rupiahs)".

Based on the description, it is clear how the penalties that can be imposed on the perpetrators of distributing pornographic content and what laws and regulations can be applied. Both Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions and Law Number 44 of 2008 concerning Pornography have regulated criminal provisions against perpetrators of spreading pornographic content. However, it is also necessary to pay close attention to the application of these laws and regulations, especially on how the formulation of offenses is related to the actions and the accountability of the perpetrators which are adjusted to the actions committed (Raharjo, 2002).

D. Conclusion

Pornography has been regulated in several regulations in Indonesia, namely articles 282-283 of the Indonesian Criminal Code (KUHP), Article 27 paragraph (1) of Law Number 11 of 2008 concerning Electronic Information and Transactions, as well as

articles 29 Law Number 44 of 2008 concerning Pornography. The meaning of the pornographic content distributors refers to the provisions in Law Number 11 of 2008 concerning Electronic Information and Transactions and Law Number 44 of 2008 concerning Pornography is any person (individual or corporation) who deliberately and without rights makes efforts to distribute or share pornographic content or otherwise contrary to immorality. The penalties that can be imposed on perpetrators of spreading pornographic content on the internet can be known in the provisions of the articles in Law Number 11 of 2008 concerning Electronic Information and Transactions and Law Number 44 of 2008 concerning Pornography in which the penalties that can be imposed are imprisonment and/or fines as provided for in the law. It is hoped that the government and law enforcement officials will continue to make efforts to prevent and eradicate the spread of pornographic content on the internet. Then the community is also expected not to spread pornographic content on the internet and participate in helping the government prevent and eradicate the spread of pornographic content on the internet.

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