

Juridical Review Of The Prevention and Action Of Pornography in The Virtual World

Erwin Taroreh¹, Dandy Adityah Syafaat²
^{1,2}Fakultas Hukum, Universitas Sintuwu Maroso

ARTICLE INFO

Article history:

Received Nov 25, 2022
Revised Des 05, 2022
Accepted Des 12, 2022

Keywords:

Crime;
Cyberspace;
Pornography.

ABSTRACT

The purpose of this research is to study how Indonesian laws and regulations regulate the prevention and prosecution of pornography crimes in cyberspace. This research uses a normative approach to legal research or library research, namely legal research conducted by looking at library materials. This legal research uses data on primary and secondary legal materials. Primary legal materials are laws and regulations, while secondary legal materials include journals, theses and other works. The inductive method is used to analyze data to produce recommendations or suggestions. This research shows that the Indonesian Pornography Law, the Minister of Communication and Informatics Law, the Criminal Code, the Information and Electronic Transactions Law, the Film Law, the Press Law, the Broadcasting Law, and the Telecommunications Law all clearly cover the prevention and prosecution of pornography crimes.

ABSTRAK

Tujuan dari penelitian ini adalah untuk mempelajari bagaimana peraturan perundang-undangan Indonesia mengatur pencegahan dan penindakan kejahatan pornografi di dunia maya. Penelitian ini menggunakan pendekatan normatif penelitian hukum atau penelitian kepustakaan yaitu penelitian hukum yang dilakukan dengan melihat bahan pustaka. Penelitian hukum ini menggunakan data bahan hukum primer dan sekunder. Bahan hukum primer adalah peraturan perundang-undangan, sedangkan bahan hukum sekunder meliputi jurnal, tesis, dan karya lainnya. Metode induktif digunakan untuk menganalisis data guna menghasilkan rekomendasi atau saran. Penelitian ini menunjukkan bahwa UU Pornografi Indonesia, UU Menteri Komunikasi dan Informatika, KUHP, UU Informasi dan Transaksi Elektronik, UU Perfilman, UU Pers, UU Penyiaran, dan UU Telekomunikasi semuanya secara jelas mencakup pencegahan dan penindakan tindak pidana pornografi.

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Corresponding Author:

Erwin Taroreh,
Fakultas Hukum
Universitas Sintuwu Maroso
Jl. Pulau Timor, Gebang Rejo, Kec. Poso Kota Sel., Kabupaten Poso, Sulawesi Tengah 94612, Indonesia
Email: taroreherwinh@gmail.com

I. INTRODUCTION

The growth of electronic media and information technology is very rapid in the current era of globalization (Ayuninggati et al., 2021). The rapid development of technology makes it easier for humans to carry out and complete all kinds of activities (Putri & Tantimin, 2022). The digital era has made it possible for all humans to communicate with each other even when far apart. Globalization can also be used to describe the digital age. It is this exchange of world views, products, ideas and other cultural aspects that causes globalization, whereby the process of international integration is largely due to advances in internet, transportation and telecommunication infrastructure. We can think of the internet as a double-edged sword, which means it has positive and negative sides. On the one hand, internet technology can make life easier if used properly, but on the other hand it can also become a problem if not used properly (Marpaung, 2018). Every aspect of people's

lives has been influenced by the application of internet technology. As a result, the thinking and behavior of a nation has changed, including changes in people's perceptions of applicable law.

Based on survey findings conducted by the Association of Indonesian Internet Service Providers, there were 143.26 million internet users in Indonesia in 2018, up from 132.7 million in the previous year, out of a total population of 262 million (Anggraeni & Adrinoviarini, 2020).. The number Pornographic content that can still be accessed easily is one of the negative impacts. This of course has a very negative impact on minors who can access it freely. Even though the authorities, in this case Kominfo, have eradicated pornographic content through the Minister of Communication and Information Regulation Number 19 of 2014 concerning Handling Negative Sites. However, the site actually uses a formula similar to geometric and arithmetic series, where blocked 100 will become 1,000, blocked 1,000 will become 10,000, and so on. The internet in our hands often encourages users to create or distribute pornographic content, either intentionally or unintentionally. Currently, pornographic content is freely presented by irresponsible persons (Sinaga et al., 2014).

The Internet was created as a result of a technological revolution that brought together computers and information technology in a complementary manner. From agriculture to industry, industry to information, the structure of society has changed rapidly due to the development of the internet. The use of internet technology undoubtedly has negative impacts that are no less important than the benefits. This crime was previously conventional. Through the internet media, threats, theft, defamation, pornography, gambling and fraud can now be carried out online by individuals or groups with very little risk of being caught causing greater harm to society and the state.

The development of electronic media and information technology is expected to have a beneficial impact on human life which will ultimately have an impact on improving human welfare (Ngafifi, 2014). However, these developments were also accompanied by negative impacts that threatened economic progress throughout the world. The development of communication technology adds broad insight but also has a negative impact, which makes relations between humans shift to relations between machines so that relations between humans fade away (Martini, 2021). In the Unitary State of the Republic of Indonesia, pornography crimes are clearly contrary to the values adopted by Indonesian society. The main objective of Pancasila, which is the basic norm of the Republic of Indonesia, is to protect the entire nation, educate the nation's life, and contribute to maintaining world order.

In fact, the current reality is contrary to the direction and goals. According to data from the Ministry of Communication and Informatics (KOMINFO), Indonesia has 62 million internet users, with 80% of these users aged between 15 and 30 years. According to KOMINFO's research on 1,200 junior and senior high school students in 12 cities in Indonesia, 61% of students said they had had sex and 97% said they had visited and opened porn sites.

Individual pornography (cyberporn) crimes include distributing pornographic videos of ex-spouses or videos of other people so that internet users can watch them (Rahayu & Fadlian, 2022). Massive pornography industry. In cyberspace, many child predators use webcams to sexually exploit children. Of course, it is possible that additional means and purposes for committing pornography crimes will emerge in the future. A study on Juridical Review on the Prevention and Enforcement of Pornographic Crimes in Cyberspace needs to be carried out considering the background of the previous description.

II. RESEARCH METHODS

This research uses a normative juridical research method called library research or legal research which is carried out by looking at library materials. This study uses a Statutory Approach, in which all relevant laws are examined in relation to the above issues. The author also uses a conceptual approach (Conceptual Approach), namely the view or doctrine of law science. The author finds ideas that give birth to legal concepts that are relevant to the legal issues raised in this study, particularly regarding the prevention and prosecution of criminal acts of pornography in cyberspace. This legal research relies on data from primary and secondary legal sources. Legislation is an example of primary legal material. Meanwhile, journals, theses and other works are examples of secondary legal materials. The inductive method is used to analyze data to produce recommendations or suggestions.

III. RESULT AND DISCUSSION

According to Article 3 of Law Number 44 of 2008 concerning Pornography, efforts to prevent the dangers of internet use are:

- a. realizing and maintaining a social order of life that is ethical, has noble personality, upholds the values of Belief in the One and Only God, and respects human dignity.
- b. respect, protect and preserve artistic and cultural values, customs and religious rituals of the diverse Indonesian society.
- c. provide guidance and education on the morals and morals of society.
- d. provide legal certainty and protection for citizens from pornography, especially for children and women.
- e. preventing the development of pornography and the commercialization of sex in society.

The scope of Permenkoinfo Number 19 of 2014 Concerning Handling of Negatively Loaded Sites in article 3, namely:

- a. determination of negatively charged internet sites that need to be addressed.
- b. the role of the government and society in handling negatively charged internet sites.
- c. the role of Internet Access Service Providers in handling negatively charged sites, the procedures for blocking and normalizing the blocking in handling negatively charged internet sites

Permenkoinfo Number 19 of 2014 Concerning Handling of Negatively Loaded Sites provides several definitions regarding the notion of negatively charged sites in article 4, namely:

1. The types of negatively charged internet sites handled are:
 - a. Pornography
 - b. Other illegal activities based on statutory provisions.
2. Other illegal activities are illegal activities whose reporting comes from the authorized Ministry or Government Institution in accordance with statutory provisions.

Sexual violence against children also includes online pornography crimes committed against children. Article 29 of Law Number 44 of 2008 concerning Pornography, and Article 27 paragraph 1 juncto Article 52 of the Information and Electronic Transaction Law are brought against the perpetrators.

Law Number 44 of 2008 concerning Pornography must be included in this section because based on these principles and objectives it must be spelled out in the articles of Law Number 44 of 2008, which regulates pornography crimes and their sanctions as well as other regulations, such as the role of the central government and regions, the role of the community, child protection, and the destruction of pornographic products.

The principles of the Pornography Law consist of six principles, namely:

- a. The principle of Belief in the One and Only God,
- b. The principle of respect for human dignity
- c. The principle of diversity
- d. The principle of legal certainty
- e. The principle of non-discrimination
- f. The principle of protection of citizens

Government regulations regulate the terms and procedures for licensing the manufacture, distribution and use of pornographic products for education and health services, as well as the implementation of Article 13.

According to Article 5 of Permenkoinfo Number 19 of 2014 concerning Handling of Negatively Charged Sites, the role of the community in preventing negatively charged sites is as follows:

- a. The public can submit a report to request blocking of negative charges to the Director General.
- b. Ministries or Government Agencies can request the blocking of internet sites with negative content in accordance with their authority to the Director General.
- c. Law Enforcement Agencies and or Judiciary Institutions may request the blocking of sites with negative content in accordance with their authority to the Director General.

- d. The public can report negatively charged internet sites to the relevant government ministries or agencies.

As previously stated, the legal provisions contained in the Articles of the Pornography Law and the ITE Law are still considered outdated compared to the mode of operation of criminals who are increasingly creative in committing crimes in cyberspace. As a result, the rule of law in Indonesia still has many limitations, including the fact that today's crimes are becoming more complex and beyond the scope of criminal law. The problem of crime as a very complex humanitarian and social problem cannot be resolved as a socio-psychological, socio-political, socio-economic, and socio-cultural problem, because criminal law is only a small component (subsystem) of social control tools. Criminal law is only used to address existing symptoms, it is not a treatment for the underlying causes of crime, sanctions in criminal law are contradictory or paradoxical solutions and have negative components and side effects, the criminal justice system is not structural or functional but rather separate and individual -personally, regarding the types of criminal sanctions that can be imposed and a firm and essential system for formulating criminal sanctions, the operations and functions of criminal law require various supporting facilities and high costs.

According to Article 7 of Permenkoinfo Number 19 of 2014 concerning Handling of Negatively Loaded Sites, the Director General provides a list of negatively charged website addresses named TRUST+Positive and blocks them:

1. The public can participate in providing blocking services by loading at least sites in TRUST+Positive.
2. Blocking services are performed by Blocking Service Providers.
3. Blocking Service Providers must have at least the following criteria:
 - a. registered as an Electronic System Operator
 - b. Indonesian legal entity
 - c. own and/or use a data center in Indonesia
 - d. have transparent and accountable operating procedures.

Based on Pancasila and the 1945 Constitution of the Republic of Indonesia, the Unitary State of the Republic of Indonesia is a constitutional state that upholds noble moral values, ethics, morals and national personality, believes in and fears God Almighty, upholds diversity in society, nation and state, and protect the dignity of every citizen. In accordance with Article 1 paragraph 3 of the 1945 Constitution which states that Indonesia is a country based on law.

According to Article 18 of Law Number 44 of 2008 concerning Pornography, the Regional Government is obliged to prevent the production, distribution and use of pornography. For this reason, the Regional Government has the authority to:

- a. terminate the network for the manufacture and distribution of pornographic products or pornographic services, including blocking pornography via the internet in its territory
- b. supervise the production, distribution, and use of pornography in its territory
- c. cooperate and coordinate with various parties in preventing the production, distribution, and use of pornography in their territory
- d. develop communication, information, and education systems in the context of preventing pornography in the region.

According to Article 8, the role of internet service providers in blocking sites with harmful content is as follows:

1. Internet Access Service Providers are required to block sites listed in TRUST+Positive.
2. Blocking can be done as follows:
 - a. self blocking
 - b. blocking by using the services of a Blocking Service Provider
3. If the Internet Access Service Provider does not block the Internet Access Service Provider, he will be subject to sanctions in accordance with the provisions of the laws and regulations.

4. The Internet Access Service Providers who have blocked the Internet Access Service Providers have taken actions that prohibit access to prohibited actions related to negatively charged internet sites

Based on Permenkoinfo Number 19 of 2014 concerning Handling of Negatively Loaded Sites, the procedures for receiving reports include blocking, namely:

1. Acceptance of reports in the form of reporting on:
 - a. Internet sites are negatively charged
 - b. request normalization of site blocking.
2. Communities submit reports to the Director General through the reporting reception facility in the form of e-mail complaints and/or website-based reporting provided
3. Reporting from the public can be categorized as urgent reporting when it concerns:
 - a. Privacy
 - b. child pornography
 - c. hardness
 - d. ethnicity, religion, race, and intergroup (SARA)
 - e. other content that has a negative impact which is a concern for the community at large.

Implementation of prevention and prosecution of criminal acts of pornography in cyberspace

The regulation of problems related to pornography in Permenkoinfo Number 19 of 2014 concerning Handling of Negatively Loaded Sites and Law Number 44 of 2008 concerning Pornography has broadened the scope of criminal law so that it includes criminal acts of pornography, which are also linked to the criminal justice system and the purpose of punishment.

Drawings, sketches, illustrations, photographs, writing, sound, moving images, cartoons, conversations, gestures, or other forms of messages through various forms of communication media and/or public performances that contain obscenity or exploitation of sexual activity that violates standard societal decency are considered pornography . Pornography is illegal. Examining the criminal demonstrations of pornography on the internet, setting some rules is fundamental. In Article 24 of the Law on Criminal Procedure, in criminal cases, evidence includes but is not limited to;

1. Goods containing writing or images in printed or non-printed form, whether electronic, optical, or other forms of data storage
2. data stored on the internet network and other communication channels.

The investigator in article 25 is obliged to:

- a. For the purposes of investigation, investigators have the authority to open access, examine, and make copies of electronic data stored in computer files, internet networks, optical media, and other forms of electronic data storage.
- b. For the purposes of investigation, the data owner, data keeper, or electronic service provider is obliged to submit and/or open the electronic data requested by the investigator.
- c. The data owner, data keeper, or electronic service provider after submitting and/or opening the electronic data has the right to receive a receipt for delivery or minutes of opening the electronic data from the investigator.

Regulations in the ITE Law and Criminal Code Regulations

Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE) specifically regulates internet pornography in accordance with the provisions of Article 27 paragraph (1) of the ITE Law, which reads as follows: everyone who distributes, transmits, and/or makes electronically accessible information and/or documents whose contents violate decency intentionally and without rights. Therefore, violating Article 27 paragraph (1) of the ITE Law, is punishable by a fine and/or imprisonment. Maximum imprisonment of six years and/or a fine of one billion rupiah.

In Article 29 it is stated that uploading content with negative content in cyberspace is against the law. Article 4 paragraph (1) states that anyone who reproduces, distributes, broadcasts, imports, exports, offers, trades, rents, or provides pornography shall be punished with imprisonment for a minimum of six months and a maximum of twelve years, as well as a fine. a minimum of IDR 250

million and a maximum of IDR 6 billion. Article 5 stipulates that anyone who lends or downloads pornography is punishable by four years in prison and a maximum fine of Rp. 2 billion.

In addition to the ITE Law, it is also regulated in Article 282 paragraph (1) and (2) of the Criminal Code, Law Number 8 of 1992 concerning Film, Law Number 36 of 1999 concerning Telecommunications, and Law Number 40 of 1999 concerning the Press , and Law Number 32 of 2002 concerning Broadcasting.

IV. CONCLUSION

The Pornography Law, the Permenkoinfo, the Criminal Code, the Electronic Information and Transactions Law, the Film Law, the Press Law, the Broadcasting Law, and the Telecommunications Law contain legal guidelines in Indonesia for the prevention and pornography crime. Governments have policies or regulations that people must follow to avoid opening pornographic websites. However, despite the fact that there are times when we ignore the rules that are already known. The general public can understand and comply with government regulations from time to time and remember some examples of cases that have occurred. Even though we don't have a law on gateways yet, by coordinating and cooperating with satellite operators and APJI to close and lock up unknown and misleading ISPs that often enter Indonesia, it will further reduce and minimize the entry of pornographic sites.

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