LEGAL PROTECTION OF PORNOGRAPHIC BEHAVIOR THROUGH SOCIAL MEDIA IN INDONESIA

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Abstract

This study aims to analyze and find legal protection against pornographic behavior in the context of divergent legal perspectives and the right to work, particularly via social media, as well as legal certainty and protection regarding the application and behavior of action porn and pornographic activities in Indonesia. This study is a descriptive analytic study. This study takes a normative legal approach through the use of the statutory approach and the conceptual approach. Researchers collect legal materials using the following strategies: Literature Studies, that is data collection techniques including the collection of reading materials, such as laws and regulations, as well as documents pertaining to the aforementioned issues. This technique is used to look for concepts, hypotheses, or viewpoints on a subject. The finding reveals that Criminal acts or pornographic crimes committed via mass/social media are prohibited under several laws, including the Criminal Code, Law No. 8 of 1992 concerning film, Law No. 36 of 1999 concerning telecommunications, Law No. 40 of 1999 concerning the press, Law No. 32 of 2002 concerning broadcasting, Law No. 11 of 2008 concerning information and electronic transactions, and Law No. 44 of 2008 concerning pornography. The existing positive criminal law governing pornography is silent on the principles used to define criminal activities and criminal responsibility. This situation frequently results in disagreements and also divergent approaches to the enforcement of criminal law in Indonesia.

Keywords: *Legal Protection, Pornography, Social Media, Pornographic Crimes*

1. INTRODUCTION

While technological advancements might benefit the community, they can also lead to criminal activity. One of the offenses is connected to immoral behavior. Pornography via social media is a criminal defined in Law No. 19 of 2016 amending Law No. 11 of 2008 on Information and Electronic Transactions. The law controls the prohibition of the dissemination of electronic information and/or electronic documents containing immoral content and is found in Book Two, Chapter XIV of the Criminal Code (also referred to as KUHP) pertaining to Crimes Against Morality. Indeed, the Criminal Code does not accept the phrase sexual act; rather, it refers to obscene activities, which are governed under Articles 289 to 296 of the Criminal Code.

The pornography law is silent on how to broadcast, display, or misuse the internet for the purpose of spreading pornography. According to the author, the internet is a communication medium that can be used to distribute pornographic images and films based on the definition of pornography, which indicates that the media or its facilities are “via various types of communication media and/or public performances”. According to the foregoing, anyone who distributes sexual content violates Article 27 paragraph 1 of the Republic of Indonesia's Law No. 19 of 2016 on Information and Electronic Transactions,

which states: “Any Person willfully and without authority distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that contain immoral content” (Mahendra, 2021).

Controversy arose about whether pornography should be governed by law or not, whether it should be included in the criminal domain or not, whether pornography should be considered private or public, and even whether the definition of pornography and its extent should be defined. Another point of contention is whether it is fair to classify pornography as a crime, whether the ingredients have been included in the criminal element, and what the societal consequences will be if pornography is regulated and classified as a crime.

The pro- and anti-pornography legislative movements are squaring off and growing in intensity. Aside from its destructive force and its ability to assault Indonesian culture, ethics, national values and human character, society sees pornography as a major threat to Indonesia's future. On the other hand, the other side sees pornography as a work of art that should be appreciated, some even believe that pornography is an artistic expression with a high value that can be enjoyed by anyone.

Indeed, another viewpoint holds that the state does not need to intervene to control pornography because doing so would generate new problems, as pornography is viewed as a private affair involving persons and their rights. This view is strengthened by the belief that the moral dilemma cannot be resolved or overcome through the enforcement of formal legislation. A more extreme interpretation holds that the pornography prohibition is a means of transforming Indonesia into a Fundamentalist Islamic State (Chirzin, 2006).

Pornography is not outlawed in several nations and is permitted as a business in certain conditions. Pornographic content is only forbidden at the federal level in the United States if it meets the Miller-test obscenity threshold. Child pornography (under the age of 18) is likewise outlawed, with a potential prison sentence of 15–30 years. Additionally, pornographic materials may not be sold to minors under the age of 18. The restrictions in Canada are nearly identical, in that there is a prohibition on the selling of pornographic items to children under the age of 18, but there is no explicit law regulating the dissemination of pornographic products. Pornographic products are likewise forbidden from being imported under obscenity laws. Adult films are exclusively screened after midnight on certain television stations. Adult films are advertised and sold exclusively on Yonge Street in Toronto. Consequently, individuals under the age of 18 are not permitted to appear in pornographic films. Along these, child pornography is illegal.

During the pandemic, word spread that an Indonesian celebrity with the initials RR (32) was earning up to IDR 50,000,000 (Fifty Million Rupiah) each month via the Mango application. Naturally, there are elements of pornography in this case that can ensnare the perpetrators for their crimes. The top selebgram artist, initials RR during the live of the Mango application, is a live star, and she always exposes her nakedness in every action she performs. The perpetrator uses the Mango and Bigo applications under the nickname of "Kuda Poni" aka Bintang Live to earn money or profit on a daily.

Henceforth, the author observe this through the case of Ariel Peterpan/Noah with Cut Tari and Luna Maya. Whereas ariel is liable to criminal sanctions under the Pornography Law's rules, while Cut Tari and Luna Maya are suspects. However, the case against Luna Maya and Cut Tari has not yet proceeded to trial.

The third case that the author intends to discuss is that of artist Gisel Anastasia, who was charged in relation with pornographic recordings that circulated on social media. Unlike the three artists and celebrities mentioned previously, who may attract criminal elements, actor Anjasmara became an issue about 12 years ago, forcing him to engage with the authorities. But what's interesting about the Anjasmara case is that his activities are regarded as a piece of art solely because he works as an actor in the entertainment sector.

Anjasmara Prasetya's and model Izabel Jahja's naked shot in a contemporary art exhibition caused such a controversy. The Islamic Defenders Front (FPI) then reported them to Polda Metro Jaya, along with the team engaged. Both of them are in violation of Criminal Code Article 282 paragraphs 1 and 2, which prohibits broadcasting, exhibiting, and pasting images or objects in public that violate one's sense of decency. Apart from Anjasmara and Isabel, the police examined the event's organizers, although they were not identified as suspects. What's intriguing about this case is that expert witnesses were called in to ensure that they were not exposed to the pornographic piece and were instead evaluated solely on the basis of their professionalism as artists.

From the point of study, an analysis of Islamic law regarding the protection of children from pornography in Article 15 of Law No. 44 of 2008 on Pornography is conducted. Because the purpose of *maqid al-syariah* is to protect the child's benefit, specifically in preserving the *dharuriat al-khamsh*, particularly in the field of religion, with its diverse foundations of problems, this study aims to analyze and find legal protection against pornographic behavior in the context of divergent legal perspectives and the right to work, particularly via social media, as well as legal certainty and protection regarding the application and behavior of action porn and pornographic activities in Indonesia.

2. THEORETICAL BASIS

2.1. Pornography

Pornography has a variety of definitions; the term "pornographic" originates in Greek, specifically *pornographos* (*porne* means prostitute and *graphein* means writing or painting); so, pornography refers to writing or painting about prostitutes or a description of their deeds. Pornography, as defined by Andi Hamzah, is a disclosure in the form of stories about prostitutes or prostitution, or a disclosure in the form of writing or artwork about erotic life, with the intention of eliciting sexual stimulation in those who read or see it.

2.2. Social Media

Social media is an online medium that is used for long-distance communication requirements, the process of interaction between users with one another, as well as the acquisition of information through particular application devices that connect to the internet network. The objective of social media in and of itself is to serve as a means of communication to link individuals across a wide range of locations.

2.3. Criminal Law Policy

According to Marc Ancel, criminal policy (penal policy) is both a science and an art with the ultimate goal of improving the formulation of positive legal rules and providing guidance not only to lawmakers, but also to courts that administer the law and to the executor

of court decisions (Arief, 2008). Further, in the space between the study of criminological factors on the one hand and that of legislative techniques on the other, there is a place for science that observes and investigates legislative phenomena, as well as for a rational art in which scholars and practitioners, criminogen experts and legal scholars can work together not as opposing parties or in conflict with one another, but as co-workers who are bound in a common task, which is primarily to produce a criminal policy that is realistic, humanist, and forward-thinking (progressive) and healthy (Arief, 2008).

2.4. The Application of Criminal Sanctions

The application of criminal sanctions is the application of sanctions or punishments to perpetrators of criminal acts that aim to provide sorrow or suffering to someone who is guilty of committing an act that is prohibited by criminal law, with such sanctions it is hoped that people will not commit a crime (Ali, 2012).

2.5. Criminal Act

Strafbar feit is an act that is prohibited by law or which is threatened by law (Adami, 2002). A criminal act is an act that is prohibited by a prohibition law which is accompanied by threats (sanctions) in the form of certain crimes for anyone who violates certain prohibitions (Hamzah, 2004).

2.6. Criminal Liability

Liability for a criminal conduct is defined as the continuing of objective reproach that exists as a result of the crime and the subjective fulfillment of the requirements to be punished as a result of the act.

2.7. Mass Media

Messages are sent from sources to audiences using communication tools such as newspapers, films, radio, and television. Mass media is a medium utilized in the delivery of messages from sources to audiences (Cangara, 2007).

2.8. Online Media

Information is collected, prepared, stored, and processed through the use of online media. It is also announced, analyzed, and disseminated through the use of online media (Tobing & Tobing, 2012).

2.9. Grand Theory:Legal protection

According to Philipud M Hadjon, legal protection in Dutch is known as *rechtbescherming van de burgers* (Philipus, 1987). Protection means that there is an effort to give rights to the protected party in accordance with the obligations that have been carried out. According to Philipus M. Hadjon, legal protection is protection related to dignity and respect for human rights that exist in legal subjects according to legal provisions from arbitrariness (Philipus, 1987).

2.10. Criminal Liability Theory

According to Van Hamel, criminal liability is a natural state and stage of psychological

maturity that entails three distinct abilities: (a) Understanding the meaning and consequences of one's own actions; (b) Recognizing that one's actions are not justified or prohibited by society; and (c) Determining the ability to act (Adji, 1991). Additionally, the concept of legality serves as the foundation for the existence of a crime, whereas the principle of error serves as the foundation for penalizing the perpetrator. This indicates that the manufacturer or perpetrator of a crime can be punished only if he committed the crime in error. When someone is said to have made a mistake, criminal responsibility is involved.

3. RESEARCH METHOD

This study was conducted in a methodical manner and provided in a descriptive analytic format. This study takes a normative legal approach through the use of the statutory approach and the conceptual approach. Researchers collect legal materials using the following strategies: Literature Studies, that is data collection techniques including the collection of reading materials, such as laws and regulations, as well as documents pertaining to the aforementioned issues. This technique is used to look for concepts, hypotheses, or viewpoints on a subject (Soekanto, 2007).

Analysis of legal materials is carried out with grammatical interpretations to find answers that can be scientifically justified, namely by analyzing the Act regarding pornographic behavior and pornographic behavior through social media which is linked to Law Number 44 of 2008 concerning Pornography, the Criminal Code. Law Number 8 of 1992 concerning Film, Law Number 36 of 1999 concerning Telecommunications, Law Number 40 of 1999 concerning the Press, Law Number 32 of 2002 concerning Broadcasting, Law Number 11 of 2008 concerning Information and Electronic Transactions.

4. RESULT AND DISCUSSION

4.1. Criminal Liability for Pornography on Social Media

Essentially, the definition of pornography varies from place to place. This differences is attributable to the fact that the people of each region have varying perspectives on what constitutes pornography. The passage of time has also changed people's perceptions of content classified as pornography. If the Criminal Code is seen as a general statute of criminal law, the definition of pornography is omitted entirely. Without a definition of pornography in the Criminal Code, numerous pornographic cases go unprosecuted due to the Criminal Code's multiple interpretations or ambiguity. Thus, with the passage of Law 44 of 2008 on Pornography, the concept of pornography was clarified, as follows: : Article 1 number 1

"*Pornography is pictures, sketches, illustrations, photographs, writings, sounds, sounds, moving images, 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*."

Even though the concept of pornography is still broad and abstract, its essence remains the same, namely that something depicting sexuality or sensuality, whether in writing, pictures, or various forms of communication media, can cause anyone who sees it to feel

lust, and that this is in violation of the existing morals in the community because it can harm those morals and degrade human dignity.

One of the government's efforts to prevent pornographic acts that could jeopardize the nation's generation's survival is the promulgation of the Pornography Law, namely the Law of the Republic of Indonesia No. 44 of 2008, with the hope that this law will enable the prevention of pornography to be addressed effectively and, most importantly, that the Act. Pornography is defined by three characteristics: (1) its content comprises obscenity, (2) it involves sexual exploitation, and (3) it violates decency standards. The most fundamental concept of criminal law is responsibility, often known as the principle of no crime without error (geen straf zonder sculd), which states that an offender is condemned to a criminal offense if the crime committed can be blamed on him. Criminal responsibility entails holding the creator (legal subject) accountable for the crime committed. As a sense, criminal responsibility is subject to both objective and subjective scrutiny. That is, objectively, the creator did a criminal act (a banned act/against the law that is punishable under applicable legislation), and subjectively, the maker should be reproached or blamed/accountable for the crime he committed in order to earn the right to be punished.

Regarding criminal responsibility for perpetrators who contain pornographic content, so that they can be punished, the perpetrators must fulfill the elements of criminal responsibility, namely: 1) Committing a criminal act/criminal act; 2) able to be responsible; 3) there is an error; 4) there is no excuse for forgiveness.

For people who have websites that present pornographic stories, nude photos, pornographic films, and various other information containing pornography, the perpetrators may be subject to criminal liability in the form of imprisonment and/or fines under the Pornography Law and the ITE Law. Article 4 paragraph (1) of the Pornography Law states:

"*Everyone is prohibited from producing, making, reproducing, duplicating, distributing, broadcasting, importing, exporting, offering, trading, renting, or providing pornography that explicitly contains: intercourse, including deviant intercourse; sexual violence; masturbating or masturbating; nudity or an impressive display of nudity; genitals; or child pornography*."

The criminal threat for violating the provisions of Article 4 paragraph (1) cannot be called light, in accordance with Article 29 of the Pornography Law, and will be punished with imprisonment for a minimum of 6 (six) months and a maximum of 12 (twelve) years and/or a minimum fine of Rp. 250,000,000.00 (two hundred and fifty million rupiah) and a maximum of Rp. 6,000,000,000.00 (six billion rupiah). Whereas in the ITE Law which is a lex specilis in cybersex crime, the owner of an Instagram account containing pornographic content may be subject to Article 27 paragraph (1) which states: "Everyone intentionally and without rights distributes and/or transmits and/or makes information accessible. Electronic and/or Electronic Documents that have contents that violate decency".

In terms of criminal liability, the legal responsibility that must be imposed on the perpetrators of violations of criminal law relates to the basis for imposing criminal sanctions. Judging from the point of view of the occurrence of a prohibited action (required), a person will be responsible for criminalizing these actions if the action is against the law (and there is no nullification of unlawful nature or rechtvaardigingsgrond or justification) for that.

Viewed from the point of view of the ability to be responsible, only someone who is "capable of being responsible" can be held accountable for criminalization.

According to Hoffman, the elements of criminal liability are as follows: a. Someone must do something b. The act must be against the law c. The act must cause harm to others d. The act was due to an error that was inflicted on him. Accountability is a form of determining whether a person will be released or convicted of a crime that has occurred, in this case to say that a person has an aspect of criminal responsibility, in that case there are several elements that must be fulfilled to state that someone can be held accountable.

When considering cyber crime in general, it may be divided into two categories: crimes that use information technology as a way of committing the crime and crimes that use technology as the means of committing the crime, the latter of which includes Facebook, Whatsapp, and YouTube. Pornography is defined as a crime in Articles 4 to 14 of Chapter II, and criminal punishments are defined in Articles 29 to 41 of Chapter VII. Article 4 paragraph 1 states that it is unlawful for anyone to produce, make, reproduce, duplicate, distribute, broadcast, import, export, offer, trade, rent, or provide pornography that explicitly contains: intercourse, including deviant intercourse; sexual violence; masturbating or masturbating; nudity or an impressive display of nudity; genitals; or child pornography. According to the article's explanation, it is very obvious that pornographic information is expressly prohibited from being published or generated, including on social media platforms such as Instagram. Articles 282 and 283 of Indonesian criminal law, which is based on the Criminal Code, regulate the issue of pornography. From a historical perspective, it appears as though our Criminal Code was not written to anticipate the internet's current state of development. The Criminal Code was drafted in the late 1950s and early 1960s, far before the internet was formed.

The disparity in time and philosophy between its authors and the current condition of affairs complicates the application of the Criminal Code to cyberporn concerns. In April 2008, the government enacted Law No. 11 of 2008 on Information and Electronic Transactions (hereinafter referred to as ITE Law), which defines criminal offences involving pornography. According to Article 27 paragraph (1) of the ITE Law, illegal acts include purposefully and without authorization disseminating, transmitting, and making accessible Electronic Information and/or Electronic Documents that contain indecent content. The government then governs cyberporn problems more specifically under Law No. 44 of 2008 Concerning Pornography (hereafter referred to as the Pornography Law), Article 4 Paragraph (2), which states that offering pornographic services is forbidden for anyone. Pornographic services encompass all forms of pornographic entertainment offered by individuals or businesses via live shows, cable television, terrestrial television, radio, telephone, internet, and other electronic communications, as well as newspapers, magazines, and other printed publications. Criminal Sanctions for Cyberporn Perpetrators in Pornography Law No. 44 of 2008.

The criminal act of disseminating pornographic material in cyberspace / on the Internet is synonymous with the activity of uploading pornographic material files from one computer network to another via internet intermediaries, as stated in Article 29 of Law No. 44 of 2008: "Every individual who creates, fabricates, reproduces, duplicates, distributes, broadcasts, imports, exports, offers, sells, rents, or provides pornography in violation of Article 4 paragraph 4 paragraphs. (1) shall be sentenced to a minimum of 6 (six) months in jail and a

maximum of 12 (twelve) years in prison, as well as a fine of at least Rp. 250,000,000.00 (two hundred and fifty million rupiah) and no more than Rp. 6,000,000,000.00 (six billion rupiah)". Law Enforcement Officials have the jurisdiction to restrict and destroy the dissemination of pornographic materials in order to enforce the Pornography Act. The Apparatus's authority is affirmed in Article 25 of the Pornography Law, which authorizes investigators to open access to and review computer files, internet networks, optical media, and other types of electronic data storage. The data owner, data store, or electronic service provider is required to submit or open the Investigator's request for electoral data.

As an illustration, the crime of pornography contained in the Criminal Code, Law Number 8 of 1992 concerning Film, Law Number 36 of 1999 concerning Telecommunications, Law Number 40 of 1999 concerning the Press, Law Number 32 of 2002 concerning Broadcasting, Law Number 11 of 2008 concerning Information and Electronic Transactions, Law Number 44 of 2008 concerning Pornography.

Indonesia's positive legal arrangements are still inadequate or inappropriate when it comes to the current development of pornography on the internet (cyberporn), including: Provision of unclear limits on pornography, authorized parties to take certain actions in dealing with pornography problems, threats of punishments that are too light, unclear parties who are considered appropriate to be responsible for a material categorized as pornography, inconsistent law enforcement. The problems of pornography in positive law in Indonesia are:

1. Provision of unclear limits on pornography

   Although several parties have tried to provide a definition of the term pornography, there has not been found a specific formula that can meet the criteria desired by all parties. The articles in the laws and regulations that regulate the issue of pornography only generally explain the problem of pornography in the words "violating decency". Violating this decency is interpreted differently by many groups. This interpretation ranges from an extreme rejection of all forms of pornography, to a very permissive interpretation of pornography.

   Restrictions on actions that are categorized as violating decency (*aanstotelijk van de eerbaarheid*) are important, considering that criminal law must be implemented objectively. The objectivity of criminal law enforcement means that the articles contained in the criminal law do not give rise to various interpretations. Meanwhile, the term "violating decency" (*aanstotelijk van de eerbaarheid)* used in the Criminal Code is in fact very relative, depending on space and time and can objectively lead to various interpretations.

   From a legal point of view, the Pornography Law is considered to have crossed the line between the public law space and the private legal space. This is reflected in the castration of individual rights of citizens which should be protected by the state itself. The problems regulated by this law should be problems that really threaten the public interest, such as commercialization and sexual exploitation of women and children, irresponsible abuse of pornographic materials, or the use of sexuality materials in public spaces. In addition to the absence of boundaries between public and private legal spaces, the Pornography Law is vague (uncertain) so that it has the potential for multiple interpretations. Article 1 number 1 states: "... to arouse sexual desire". The content of this article is contrary to the principle of lex certa where the law must be firm.

One of the differences in interpretation that often arises is whether an image or display is a form of pornography or a form of art and constitutes freedom of expression. This difference in interpretation is often used as an excuse by law enforcement officials to be hesitant in taking action against pornography cases.

2. Which party is authorized to take certain actions in addressing the problem of pornography

   Law enforcement officials can actually take immediate action against each agent to the lowest level (who is directly in the field) and withdraw or create distribution channels to the source. However, this was not implemented on the grounds that there was no clear legal instrument providing such authority. The press council itself which functions as social control, before taking certain actions they experience obstacles in categorizing which parties are the press so that against them they have the authority to take any action.

3. Threat of punishment is too light

   Criminal threats for pornographic cases (criminal acts of decency) are considered too light. The sanctions imposed only ranged from 9 months to 2 years and 8 months. Whereas in the Criminal Code the fines are only around Rp. 75,000, -. This is suspected as one of the causes of the perpetrators not being deterred and repeating their actions. It can be seen that pornography is a very lucrative illegal business without serious risks. This is different from narcotics crime, the sanctions are very heavy (eg: death penalty, life sentence, 20 years imprisonment). More or less provide a deterrent for anyone who violates it.

   As an illustration, criminal acts regarding pornography are contained in the Criminal Code, Law Number 8 of 1992 concerning Film, Law Number 36 of 1999 concerning Telecommunications, Law Number 40 of 1999 concerning the Press, Law Number 32 2002 concerning Broadcasting, Law Number 11 Year 2008 concerning Information and Electronic Transactions, Law Number 44 Year 2008 concerning Pornography has different sanctions.

   In Article 21 of Law Number 36 of 1999, according to the legislators, it is not a criminal act, because the sanctions imposed are not criminal sanctions, but administrative sanctions, namely in the form of revocation of permits. Whereas Article 21 of Law Number 36 of 1999 contains matters that are contrary to the public interest, morality, security, or public order. In this case the excess of the act can be dangerous. In addition, according to a criminal expert, Pompe, who is dualistic, defines a criminal act as a violation of the norm, which is committed because of the violator's fault and is threatened with punishment in order to maintain the legal order and save the general welfare. Thus, it should be in Article 21 of Law Number 36 of 1999 concerning Telecommunications, including criminal acts.

   There is no discernible ambiguity in the language used in Article 1 paragraph (1) of Law Number 36 of 1999 concerning Telecommunications, which indicates that this law is meant to cover the electronic transmission and reception of information via the internet. When we read the requirements of Article 1 paragraph (1), which deals with the definition of telecommunications, it becomes evident that sending and receiving information electronically via the internet is also included in the term (Sjahdeini, 2009).

   In these regulations, the most relevant criminal penalties are those included in Law Number 32 of 2002 concerning Broadcasting, Law Number 11 of 2008 concerning

Information and Electronic Transactions and Law Number 44 of 2008 concerning Pornography. In the Criminal Code, the threat of penalty is not suitable, because it is too light.

4. It is unclear which party is considered appropriate to account for crimes categorized as pornography

   It is easy to find tabloids without a clear editorial address selling articles or fun photos, of course, it makes it difficult for law enforcement to drag these irresponsible parties. In addition, the question arises whether only the parties who create and distribute the media are held accountable or whether those who are published in the media who consciously pose in such an obscene manner can also be brought to justice. If we are guided by the current positive law of Indonesia, namely the Criminal Code, all of these parties can be held accountable. This is because the regulation of pornography in the Criminal Code is not only a limitation but a complete prohibition. The concept of criminal responsibility in the current Criminal Code tends to be closer to the flow of monism. It is as if the crime includes the objective element of an act that is integrated into the subjective element attached to the perpetrator of the offense. Between the act and the maker are united. Thus, the postulate of adherents of monism, if there is a crime, it is certain that the perpetrator can be punished. The concept of criminal responsibility as such is the focus of criminal law reform in the Criminal Code Bill which will be discussed in the future Criminal Code Bill.

5. Inconsistent law enforcement

   Without trying to overlook the controversy of defining or categorizing what is meant by pornography or something that violates decency, law enforcers can genuinely make active efforts in overcoming the problem of pornography. In the Criminal Code, notably Article 282, both the police, the prosecutor's office and the judge can prosecute people who are actually recognized by most members of the public as having transmitted pornography. The activities of the police who regularly perform sweeps in various areas that freely sell VCDs or pornographic publications undoubtedly deserve applause. Unfortunately this behavior looks unsystematic and well-coordinated such that it can happen where a place is clean from pornographic media, but in other areas anyone can simply access it, even underage minors or television shows for adults during prime time. implies that the regulation of the distribution is weak. We can also witness some big cases in the public, such as the case of Ariel Petepan with Cut Tari and Luna Maya. Ariel was punished, but until now Cut Tari and Luna Maya case is still stuck in the police. Another case is the Gisel case, which until now has not been known to what extent the process was even though both of them have been listed as suspects, which is different from the "RR" a celebgram which instantly received the investigation in the process and was detained by the Police.

4.2. Legal Protection Against Pornography Actors

Protection against pornography perpetrators is given not only to perpetrators of pornographic crimes but also to victims that can be realized in various forms, such as through the provision of restitution, compensation, medical services, and legal assistance. So that the provision of legal protection can be given holistically not only to the perpetrators of pornographic crimes but also to victims or even potential victims.

According to the Big Indonesian Dictionary (KBBI), legal protection is a place of refuge, actions (things and so on) to protect. The linguistic meaning of the word protection has similar elements, namely the element of protecting actions, elements of ways to protect. Thus, the word protects from certain parties by using certain methods.

Furthermore, Fitzgerald explains Salmond's theory of legal protection that the law aims to integrate and coordinate various interests in society because in a traffic of interests, protection of certain interests can only be done by limiting various interests for the parties. The interest of the law is to take care of human rights and interests, so that the law has the highest authority to determine how human interests need to be regulated and protected (Sjahdeini, 2009).

In line with Fitzgerald's view, which explains the theory of legal protection from salmond in an effort to integrate and coordinate various interests in society, aspects of legal protection in cross-pornography must also be comprehensively covered. The interested parties must work together to be able to formulate forms of legal protection that are acceptable to the community. Values, culture, interests collaborate with each other to gain community supremacy in order to create an orderly and orderly society.

Pound classifies the interests protected by law into 3 (three) main categories, including public interests, social interests and private interests. In terms of resolving pornography problems, aligning the public interest, the public and the private sector must be protected in a synergy. Freedom of expression, customs, culture are things that sometimes intersect with pornography. So that in order to protect the legal interests above, the formulation of pornography legislation must be able to protect all parties.

Legal protection due to the distribution of pornography on the internet and social media is a problem that needs attention. With regard to morals, at this time we have entered a new era, namely the era of globalization and modernization, with the passage of this new era there have actually been changes in society both in economic, social and cultural terms. These changes are caused by the process of globalization as an unavoidable effect of the development of information technology, so that it can damage a person's morale, especially people who have not been able to filter the correct information. Misuse of mass media to commit crimes such as selling pornographic sites and pornographic actions that can lead to crimes such as rape, sexual harassment. In the form of computer crime, the crime that is closely related to the use of technology based on computers and telecommunications networks, called illegal content is a crime by entering data or information into the internet about something that is not true, unethical and can be considered unlawful or disturbing public order.

The ease of access to pornographic material makes almost no one escape from the dangers of pornography. Legal protection for the wider community from negative access on social media related to pornography is something that cannot be denied in this 4.0 era. Therefore, implementing a criminal law policy is in order to provide legal protection for the community itself. Legal protection from accessing pornography on social media is expected to provide a balance between legal protection for victims and "perpetrators". And it is very important to be able to categorize or have a benchmark for the application of criminal sanctions for so-called perpetrators. Therefore, the measure of pornography perpetrators in taking responsibility (criminal) can be done in a statutory mechanism.

The relationship between the perpetrator and the victim in a crime cannot be separated. Hans von Hentig in "Remark on the Interaction of Perpetrator and Victim" said that victims also have an important role so that criminal acts occur and cause suffering to them. Furthermore, Hentig said, victims can also be the trigger for criminal acts, for example: someone who triggers a fight and he loses the fight, then his opponent is reported on charges of molestation. Meanwhile, according to Benjamin Mendelsohn, the occurrence of criminal acts is not solely caused by the victim himself. Mendelsohn classifies victims based on the degree of error into: First, victims who have no faults at all; Second, the victim because of his negligence or inadvertently placing himself in a state of danger; Third, the victim and the perpetrator have the same degree of guilt, in other words, the victim has a stake in the occurrence of the crime; Fourth, the victim has a greater fault than the perpetrator, in this case similar to what was stated by Hentig; and Fifth, an imaginary victim or victim as the only guilty person or a person pretending to be a victim.

In Indonesia, there is an emerging case regarding cyberpornography, namely the case between Gisella Anastasia (GA) and Michael Yokinobu Defretes (MYD). In early November there was an immoral video circulating on Twitter and was in the spotlight. Many netizens suspect that the female lead in the scene is GA. However, GA did not give a rebuttal and instead admitted that he was lazy to respond to the news about the immoral video which allegedly resembled him. Then on Tuesday, November 17, 2020, GA answered the call from the police. After the examination, GA did not deny that he was called the female actor. At that time, GA was still a witness in the immoral video case. On December 29, 2020 GA was named a suspect, with MYD, who is also a suspect, the Head of Public Relations of the Polda Metro Jaya Kombes Yusri Yunus, said that GA and MYD were named suspects because they recorded adult scenes directly with cellphones that were carried out at a hotel in the Medan area. GA and MYD are subject to Article 4 paragraph 1 in conjunction with Article 29 of Law Number 44 of 2008 concerning pornography.

Article 4 paragraph (1) of the Pornography Law explains that, "Everyone is prohibited from producing, making, reproducing, duplicating, distributing, broadcasting, importing, exporting, offering, trading, renting, or providing pornography which explicitly contains: a) Sexual intercourse , including deviant intercourse; b) Sexual violence; c) Masturbation or masturbation; d) Nudity or an impressive display of nudity; e) genitals; or f) Child pornography." The article is related to criminal provisions with imprisonment for a minimum of 6 (six) months and a maximum of 12 (twelve) years and/or a fine of Rp. 250,000,000 (two hundred and fifty million rupiah) and a maximum of Rp. 6,000,000,000, - (six billion rupiah). However, The explanation of Article 4 paragraph (1) excludes those who create pornographic content for their own interests. Meanwhile, Article 8 of the Pornography Law prohibits anyone knowingly or with his consent from being the object or model of pornographic content. Everyone who is included in Article 8 of the Pornography Law is given a maximum imprisonment of 10 (ten) years and/or a maximum fine of Rp. 5,000,000,000, - (five billion rupiah). The explanation of the article explicitly states that the provision is intended for perpetrators who are coerced by threats or threats, under the power or pressure of others, persuaded or deceived, or deceived by other people or perpetrators of criminal acts

A criminal act only refers to the prohibition and threat of action with a crime. Whether the person who commits the act is then sentenced to a crime, depends on whether the act

contains an error. Because the principle in criminal law accountability is “not being punished if there is no mistake (*Geen straf zonder schuld; Actus non facit reum nisi mens sis rea*) which means that the assessment of criminal responsibility is aimed at the inner attitude of the perpetrator, not an assessment of his actions”. The exception to the principle of *actus reus* and *mens rea* is only for offenses that are strict liability (absolute responsibility), where in such a crime there is an element of error or mens rea does not need to be proven (Sjawie, 2015).

Adherents of the monistic view of strafbaar feit or criminal acti argue that the elements of criminal responsibility concerning the maker of the offense include:(Sjawie, 2015); First, the ability to be responsible, namely being able to truly understand the consequences that are contrary to public order, Second, being able to realize that the act is contrary to public order and being able to determine the will to act. These three abilities are cumulative. This means that only one of the responsible capabilities is not fulfilled, then a person is considered irresponsible (Hiariej, 2013).

In the case of pornographic acts carried out without the knowledge of the creator, the pornographic content is spread so that it can be seen by many people? This is also the case with GA, the recording of sexual activity which was initially only to be kept for themselves, a few years later it was uploaded and spread on several social media. In the case of revenge pornography (privately owned pornographic content distributed without consent) the victim still has a fault in this case being responsible for the spread of the pornographic content, even though the burden of responsibility given is only part of the perpetrator (spreader), because it is something that should be known consequences of his own actions (Sjawie, 2015).

Victims of revenge pornography still have errors in the form of negligence or culpa. There are at least two forms of negligence, namely: *first*, conscious negligence (*bewuste culpa*), the perpetrator assumes that the action taken will not have the prohibited result, but after being implemented it turns out that the assumption is wrong. This form of neglect is also known as culpa lata or other forms of serious negligence. *Second*, unconscious negligence (*onbewuste culpa*), the victim does not at all think that the actions taken will lead to prohibited consequences, also known as culpa levis or light negligence.

In addition, there is also a division of culpa related to the mention of negligence in the formulation of an offense, among others: actual culpa or consequences that are prohibited from arising due to negligence as in Article 188 of the Criminal Code “whoever due to negligence [...]”; and *culpa* does not actually mean committing an act intentionally, but one of its elements is culpation , for example Article 480 of the 1st KUHP “threatened with imprisonment […] it is known or should be suspected that it was obtained from a crime”. The phrase "it is known" indicates an intentional error, while the phrase "should be suspected" denotes a form of error in the form of negligence. Article 4 paragraph (1) of the Pornography Law states that "Everyone is prohibited from producing, making, reproducing, duplicating, distributing, broadcasting, importing, exporting, offer, selling, renting, or providing pornography […]”. With an explanation: make is not included for its own sake. Article a quo is an article that is suspected of GA and MYD (victims of revenge pornography). The author's assumption is that law enforcement considers that there is an element of negligence on GA and MYD which resulted in their videos being spread to the internet, so there is still responsibility attached to them.

The alleged piece has no evidence of culpa, as can be shown by carefully reading it. To catch GA and MYD, it's crucial to include a culpa aspect in the content. It's important to prevent various interpretations or interpretations that affect legal certainty when defining offenses in criminal law (lex and). This is one of the distinguishing characteristics of criminal law. Similarly, under criminal law, comparisons are not permitted since they could lead to new illegal conduct. On this basis, it is not possible to bring a case against the victim of revenge pornography under Article 4 paragraph (1) of the Pornography Law. In addition, the film has been wiped from the victim's electronic devices and is exclusively for personal use.

Similarly to Article 4 paragraph 1, none of the other articles in Chapter II dealing with the ban and limitation of the Pornography Law contain aspects of negligence. In strict terms, the Pornography Law can be used to prosecute only purposeful errors. In the context of pornography as a crime, the term of "creating" must also provide legal protection for those who should be classified as victims or perpetrators. After all, in the situation of the RR celebgram, where the program is designed with an economic purpose in mind, it is subject to criminal snares; nevertheless, in the case of Gisel and others, it cannot be held accountable for criminal offenses.

The same goes to other laws related to pornography such as Law Number 8 of 1992 concerning Film, Law Number 36 of 1999 concerning Telecommunications, Law Number 40 of 1999 concerning the Press, Law Number 32 of 2002 concerning Broadcasting, Law Number 11 of 2008 concerning Information and Electronic Transactions. At least it must be able to provide legal protection and be able to sort out the categories of perpetrators and victims, so to which legal subjects can be held criminally responsible.

The Draft Criminal Code basically requires "intentional" as a form of criminal responsibility, only in certain cases where the law expressly states that a criminal act can be punished even if it is only done by "negligence".

Adopting the culpability concept, "there is no crime without guilt," as expressed in the Draft Criminal Code is a positive step toward guiding the execution of criminal law. The idea of culpability is highlighted, as is the fact that criminal liability in the form of "omission" will have an effect on the enforcement of criminal actions of corruption only if it is expressly mentioned in the legislation. Articles 2 and 3 of the Anti-Corruption Law, which do not include the word "intentional," shall be interpreted as requiring intentionality. This circumstance is extremely likely to result in the acquittal of multiple corruption suspects due to their effectiveness in establishing the absence of "intentional." This is not to say that punishment is negative, as it was never intended to punish individuals who are not wicked at heart.

The principle of culpability in the Draft Criminal Code has been granted an exception as stated in article 38 of the bill which states: (1) For certain criminal acts, the law can determine that a person can be convicted solely because the elements of the crime have been fulfilled without regard to any errors. (2) If it is determined by law, everyone can be held accountable for criminal acts committed by other people. Strict liability as formulated in Article 38 paragraph (1) and Vicarious Liability as formulated in Article 38 paragraph (2), in their explanations can only be imposed on certain criminal acts which are expressly stated in the law. These two things are not found in corruption,

In this case, it is certain that in the Draft of Criminal Code can at least minimize the problem of criminal liability against perpetrators or victims of pornography. With the

concept of accountability adopted in the Draft of Criminal Code, it can at least provide legal protection to the wider community. Moreover, in the current era, pornography crimes mostly involve the mass media which are in direct contact with the public.

The basis for justification for pornography is used as a criminal act that is subject to criminal sanctions in a law as follows:

1. Theoretically, the criminalization of pornography is justified by moral theory and the principle of harm, as stated by Edwin M. Schurr that to declare a behavior as a crime is because the act is immoral and because the act is detrimental to society or damaging other people (Luthan, 2007). Considering that an act is criminalized because moral considerations alone have a weakness, namely that the intervention of the State is too far on individual freedom, it must be accompanied by an act that is considered a crime because the act is detrimental to the community, according to Greshan M. Sykes (Luthan, 2007). The justification of the moral tori was strengthened by Lord Devlin who stated that general morality has an essential role in maintaining society (Luthan, 2007). The act of pornography is an act that violates the morals of the individual, the morals of the Indonesian people, and also violates the religious norms that are the beliefs of the Indonesian nation. The principle of loss is found in pornographic acts that are destructive to the inner attitude of the Indonesian nation, attacking peace and tranquility in society so that pornographically acts are very detrimental (Chazawi, 2022). The damage caused by pornography is difficult to measure because the damage is both short-term and long-term in terms of mental, intellectual and psychological well-being and human values. Victims of pornography do not know the age and place where pornography can reach, so that is where the victims will fall.
2. Pornography is against National Development. The justification of pornography being included as a criminal act is also justified if it is seen from the criteria for determining whether an act is criminalized both in Sudarto's perspective and the results of the symposium on the reform of the Criminal Law in Semarang in 1980. Sudarto gives signs that before criminalizing an act, national development goals must be considered, viewed from this point of view, pornography is a crime that prevents the Indonesian nation from achieving the national development goals, namely creating a just and prosperous society that is materially and spiritually evenly distributed based on Pancasila (Sudarto, 2007) namely actions that bring material and spiritual losses. Pornography has fulfilled this, namely that people do not want these actions to be in accordance with the beliefs that live in society, both in their religion and culture. The criminalization of pornography, when associated with the results of the symposium on criminal law reform in Semarang in 1986, also fulfilled the criteria, namely that the act was detrimental, brought victims or could bring victims.
3. Pornography is contrary to the direction of Indonesian legal politics. Pornography is included as a pornographic crime justified in terms of the legal politics of the Indonesian nation. The goal of the development of the Indonesian nation is to build the Indonesian nation as a whole, namely physically and mentally (Permana & Rappo, 2007), physically and spiritually, mentally and physically, pornography has clearly damaged the aims and objectives of the Indonesian nation to create a complete human being. Fostering the attitude of self-determination of human beings and the Indonesian people in order to improve the quality of human resources in order to realize physical and

spiritual prosperity that is harmonious, fair and equitable. Inner and outer welfare cannot be separated from all aspects of human life/livelihood, including a sense of security and peace that can be achieved if the public's awareness of obligations and respect for the rights of others has been understood and internalized so that law enforcement and justice based on truth have become a shared need, the needs of all community members.

4. The act of pornography is opposed by all religions adhered to by the Indonesian people and is an act that degrades the dignity and worth of a civilized human being. Religion as one of the sources of law for the Indonesian nation does not justify pornography, so it is natural and the State should take part in maintaining the values that live in society.
5. Pornography is not merely a private moral and not a personal right, but pornography has a wide impact on the formation of the generation of the Indonesian nation and the State has an interest in keeping the next generation healthy physically and spiritually, mentally and spiritually. Pronography has become a public moral because pornography has been in a public space which should be the private area of each person.

The purpose of the pornography law is to become the spirit of the overall regulation as stated in article 3 of the pornography law which reads that this law aims to

a. Realizing and maintaining an ethical community life order, having a noble personality, upholding the values of the One Godhead, and respecting human dignity and worth.
b. Respecting, protecting and preserving the artistic and cultural values, customs, and religious rituals of the pluralistic Indonesian society.
c. Provide guidance and education to the morals and character of the community
d. Provide legal certainty and protection for citizens from pornography, especially for children and women and
e. Prevent the development of pornography and the commercialization of sex in society

Points ‘a’ to ‘e’ clarify the intent and purpose of the promulgation of the Pornography Law, namely that the Indonesian nation with its great culture and noble values must be protected from attempts to damage and destroy it. pornographic content as described in article 4 which contains: intercourse, including deviant intercourse, sexual violence, masturbation or masturbation,nudity or display that suggests nudity, genitalia and child pornography, all of which are private matters that are not appropriate to be shown or described to others. If the related act is carried out inappropriately, it will clearly cause an uncomfortable atmosphere, and be very destructive in the mental realm and mind of the Indonesian nation.

Therefore, it is vital to strike a balance in terms of pornographic control. Pornography's substance in this case is that while breaking decency is a necessary condition for committing a crime, it can be balanced if it is connected with criminal culpability. In essence, this is related to the occurrence of pornographic activities, which are not always punishable if conducted without malice (mesrea/schuld). In practice in Indonesia, which follows the civil law system, it is critical to define the distinction between responsibility and crime so that the criminal law can protect and quantify who the victims should be protected from and who the perpetrators should be sanctioned. Hence the law enforcement officers can understand the

definition of "decency" in pornography in a manner that is consistent with the Indonesian nation's philosophy of life.

5. CONCLUSION

Criminal acts or pornographic crimes committed via mass/social media are prohibited under several laws, including the Criminal Code, Law No. 8 of 1992 concerning film, Law No. 36 of 1999 concerning telecommunications, Law No. 40 of 1999 concerning the press, Law No. 32 of 2002 concerning broadcasting, Law No. 11 of 2008 concerning information and electronic transactions, and Law No. 44 of 2008 concerning pornography. The existing positive criminal law governing pornography is silent on the principles used to define criminal activities and criminal responsibility. This situation frequently results in disagreements and also divergent approaches to the enforcement of criminal law in Indonesia. Although the majority of Dutch criminal legal experts are influenced by a monistic view, which views "responsibility" as a component of a "criminal act." This means that a "crime" in and of itself includes the capacity for responsibility.

The Crime of Pornography posted on Social Media has not yet received an understanding which is basically the concept of pornography, both seen in terms of criminal acts, criminal liability, and punishment. This difference results in assessing whether a material is included in pornography or not being a problem in practice, especially related to the concept of criminal responsibility so that it has not provided legal protection for the public to determine the subject who is the perpetrator and victim of the spread of pornography on social media. related to pornography/moral offenses, the public does not get legal protection, both as perpetrators and victims, where in practice law enforcement related to pornography has various applications. This can be seen in several cases such as the Gisel and Ariel cases where legal experts also have different views on the application of sanctions, in the absence of a separation of criminal acts and criminal liability in the concept of statutory regulations, legal protection does not run optimally to get justice for public.

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