

Application of Criminal Law Against Perpetrators of Disseminating Pornographic Content according to Law Number 44 of 2008

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Abstract - This study aims to analyze the regulation of pornography crimes in the statutory provisions in Indonesia and analyze the application of criminal law against perpetrators of spreading pornographic content according to law number 44 of 2008. The type of research used by the author is the type of juridical-normative research. This research was carried out at the Makassar District Court Class I A. The legal materials used were primary legal materials, namely data obtained directly in the form of interviews and secondary legal materials, namely data through library studies. such as literature, books, journals and legislation. The legal materials were analyzed qualitatively and presented descriptively. The results of the research carried out, it was concluded that (1). Regulation of criminal acts of pornography in the Indonesian legal system begins with the regulation of criminal acts, followed by criminal acts of pornography, and ends with the nature of the regulation of criminal acts of pornography. The crime of pornography in the Indonesian criminal law system, among others, is regulated in the Criminal Code (KUHP) as a crime against morality which has been regulated in Article 281 and Article 282. Specifically pornography is regulated in the Pornography Law Number 44 of 2008 which regulates about pornography, which is a criminal offense. (2). the application of criminal law against perpetrators of pornography crimes according to the Pornography Law number 44 of 2008 The process of applying the criminal law of pornography based on Law Number 44 of 2008 concerning Pornography is not very effective, the author connects the factors that hinder the pornography law enforcement process with the theory put forward by Soekanto, among others: (a), Law Number 44 of 2008 concerning Pornography still has weaknesses that need to be seriously studied.

Keywords: - Pornography, Content Disseminator.

INTRODUCTION

Pornography crimes that occur around children are now growing, not to mention the easier access to child pornography. The dark side of the advanced technology of modern life today cannot be separated from sophisticated or advanced technology in the field of information and electronics through the international network (internet) which is one of the easiest places to access pornographic content [1]. Children who are involved in the crime of child pornography are victims of pornography. who get the greatest influence that deserves to be looked at and protected. Children in the crime of pornography are usually used as models or objects that contain pornographic content and are used as shows in front of many people.

Advances in technology and information as well as the characteristics of the free internet have resulted in many children becoming victims of crimes against pornography. In addition, there is a lack of adult intervention around children who do not look after and supervise children in child development and in the child's environment. Many adults are less sensitive to the negative impact of this crucial problem. Whereas Law No. 11 of 2008 states that everyone is obliged to protect children from the influence of pornography and prevent children's access to pornographic information [2]. Another view states that the State does not need to interfere to regulate the issue of pornography because it will cause problems.

This is new because pornography is seen as a private matter for citizens state and citizens' rights. This opinion is reinforced by the assumption that the problem of morality cannot be resolved and handled by enforce formal law. A more extreme assessment judged that the law on pornography is a way to make the State of Indonesia as a Fundamentalist Islamic State [3].

The current development of globalization which has entered into every aspect of Indonesian society's life, thus we can see that this pornographic act can be regarded as a problem that must be immediately addressed and resolved by the Indonesian people considering the negative consequences that will arise in the future. Currently the development of pornography can not only be found and can occur in people's daily social lives, moreover it is currently widely disseminated through social media which we know that social media is not only used by adults but children under the age of many who use it for various purposes [4].

In the developments that occur in society, there are many pros and cons to the existence of the law. The first group is a group of people who reject the existence of the law, various rejections arise in the community, some are related to culture, customs, and some even mention this issue with human rights issues. The second community group is a group of people who ask for a revision of a number of articles of the law, in the sense that this community group can accept the existence of the law that regulates pornography, but revisions must be made to a number of articles contained in it so that later it can be fully accepted by society [5].

METHODS

This research is a type of juridical-normative research using a statutory approach and a conceptual approach. The technique of collecting legal research materials used is interviews (interviews) in connection with the completeness of data and information and library research, so that the legal research materials use primary legal materials, secondary legal materials.

RESULTS AND DISCUSSION

1. Setting the crime of pornography in the provisions of the legislation in Indonesia

Regulation of criminal acts of pornography in Indonesia, which begins with the regulation of criminal acts, followed by criminal acts of pornography, and ends with the nature of the regulation of criminal acts of pornography. The regulation of criminal acts as norms, rules, or laws, which are included as objects of study in the formulation policy in criminal law is always related to one of the basic things caused by what actions should be made into criminal acts through criminalization and decriminalization. where criminalization is a process of determining an act as a criminal act and is threatened with a criminal which ends with the establishment in legislation; while decriminalization is a process of determining an act which completely eliminates the nature of the punishment for that act [6].

Actions that are contrary to the fundamental values in life of the community and is deemed worthy of being punished according to and in line with the existence of the unlawful nature of an act, including the form of the unlawful nature of the material, in addition to being directed at the formulation in the statutory provisions also contradicts values that live in society. Pornography crime as a form of norms, rules, or laws that are formulated in criminal legislation, both provisions in the Criminal Code or provisions in legislation outside the Criminal Code, as in the form of pornography/pornoaction crimes and in their development to become pornography crime.

Regulation of Pornography on the Internet in Law Number 44 of 2008 concerning Pornography in Article 1 number 1, Pornography provides a definition of pornography as pictures, sketches, illustrations, photos, writings, sounds, sounds, moving images, animations, cartoons, conversations, motions body, 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. Pornography is also regulated in Law No 19 of 2016 Amendments to Law Number 11 of 2008 concerning Information and Transactions (UU ITE), especially in internet usage. There is no ITE Law and its amendments term pornography, but "content that violates decency".

In legal theory regarding the legal system, Articles 281 and 282 of the KUH Penalties are still effective. The effectiveness of the law in changing the behavior of citizens or sections of society does not entirely depend on the attitudes of citizens in accordance with the law, or on the severity of the sanctions imposed exists to apply the law.

2. Crime violates decency

In the Criminal Code (KUHP) by lawmakers it is often called "strafbaarfeit" to mention what we know as "criminal acts" without providing an explanation of what exactly is meant by "strafbaarfeit" [7]. So the term strafbaarfeit is an event that can be punished for an act that can be punished [8].

Morals in Dutch means Zeden, and in English means Morals. According to the legal dictionary, decency is defined as behavior, the act of conversation that anything is related to the norms of decency that must be or be protected by law for the realization of order and decency in society. Meanwhile, the definition of decency in the Big Indonesian Dictionary of the word "decency" is contained as follows; (1) Good manners, civilized, polite, orderly; (2) good customs, manners, courtesy, civility; (3) Knowledge of customs.

According to R. Soesilo, complaint offenses are divided into 2 (two), namely: (a) Absolute complaint offenses, namely criminal events that can only be prosecuted if there is a complaint as in Articles 284, 287, 293, 310 of the Criminal Code. In the complaint it is necessary to sue the incident; (b) Relative complaint offense, which is a criminal event which is usually a complaint offense but if it is committed by a relative specified in Article 367 of the Criminal Code, then it becomes a complaint offense. A relative complaint offense, in this case a complaint is needed not to prosecute the incident, but to prosecute the people who were guilty of the incident.

The elements in criminal acts of decency in Article 281, 282 paragraph (1), 282 paragraph (2) and 282 paragraph (3) of the Criminal Code have the following elements; (1) Subjective elements: (2) intentionally Objective elements; (a) Whoever; (b) Damaging decency; (c) In public.

The regulation of criminal acts of morality is not only regulated in the Criminal Code, but is also regulated in the ITE Law and Law Number 44 of 2008 concerning Pornography. Article 27 paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions explains that "everyone who knowingly and without rights distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that have contents that violate decency". Article 27 paragraph (1) of the ITE Law contains 2 (two) elements, namely an objective element and a subjective element.

The objective element; (1) "Actions, namely distributing, transmitting and making accessible; (2) Against the law, namely what is meant by "without rights"; (3) The object is Electronic Information and/or Electronic Documents that have a charge of violating decency."

The subjective element in the form of an error referred to "deliberately" In Article 4 paragraph (1) of Law Number 4 of 2008 concerning Pornography explains: "everyone is prohibited from producing, making, reproducing, duplicating, distributing,

broadcasting, importing, exporting, offering, trade, rent, or provide pornography that explicitly contains; (a) Coitus, including deviant intercourse; (b) Sexual violence; (c) Masturbation or masturbation; (d) Nudity or the appearance of nudity; (e) Genitals, or (f) Child pornography.”

3. Crime violates decency

The crime of decency was formed to protect legal interests (Rechtbelang) against a sense of public decency (a sense of decency is included in it). Human social life in association with each other is based on binding legal norms

legally, it is also based on social norms, namely the norms of politeness. The norms of decency are based on the aim of maintaining inner balance in terms of a sense of politeness for every human being in social life.

Crimes of violating decency are basically divided into two, namely crimes of violating serious decency or what are called crimes against immorality (Zedelijkheid) and crimes of minor decency (Zeden). Various members of society, but specifically those that are more or less about the sex (sex) of a human being, while crimes that violate decency (Zeden) are generally about good customs [9]. The crime of violating decency is contained in Chapter XIV of Book II of the Criminal Code, which in Wetboek van Strafrech is also referred to as misdrijven tegen de zeden [10]. Contains the word "tegen" which in Indonesian is interpreted as "violating" because every nature of a criminal act, whether a crime or a violation is a violation of legal norms [11].

However, according to Wirjono Prodjodikoro, the word zeden has a broader meaning than morality. Modesty (zeden) in general is about good customs in relations between various members of society. Meanwhile, decency (zedelijkheid) is also a good habit (zeden) but specifically at least regarding a person's sex (sex) [11].

In the context of the intent of forming the Criminal Code, politeness (zeden) has two areas of regulation substantially, namely politeness in the field of decency (called zedelijkheid) and politeness outside the field of decency (called zeden). The word decency is understood as an understanding of polite manners in matters relating to sexuality or with lust [7].

4. The application of criminal law against perpetrators of spreading pornographic content according to law number 44 of 2008

Technological developments in the electronic world have brought new forms of pornography, which some experts have identified as action porn, porn media, text porn and sound porn. Pornoaction is a depiction of the action of body movements or protrusion of the dominant body part that stimulates sexual desire, up to the act of showing breasts and genitals that are unintentional or intentional to arouse sexual desire for those who watch. Media porn is the actions of sexual subjects and objects that are shown directly from one person to another so as to stimulate sexual desire for someone [12].

The application of criminal law against perpetrators of spreading pornographic content must be integrated between structure and culture, as well as a balance between preventive and repressive measures. In this case, it can be implemented if a social policy is created as a rational effort to achieve public welfare and at the same time includes community protection. So, in terms of social policy, it also includes social welfare policy and social defense policy. Currently, efforts to prevent the spread or acts of pornography are more focused on efforts with a criminal law approach carried out by the Police, Prosecutors, Courts and Corrections by processing perpetrators of pornographic crimes and imposing criminal sanctions against the perpetrators.

One example of a case that was hot in the community was the case of the spread of pornographic videos on social media that occurred in 2014 namely Karywan Faturrahman who was snared under Article 29 of Law No. 44 of 2008 concerning Pornography which threatened a minimum of six months in prison and a maximum of 12 years. . While the fine imposed is a minimum of IDR 250 million and a maximum of IDR 6 billion. Based on the case file, instructions and evidence, the perpetrator is the person who financed, ordered and carried out the distribution of the pornographic video.

5. Criminal Liability Against Perpetrators of Disseminating Pornographic Content

In the Criminal Code, it refers to Article 282 of the Criminal Code regarding pornography transactions. And According to the Pornography Act. In this Law, apart from describing transactions or buying and selling, there are prohibitions and restrictions on other matters as well as those related to the crime of pornography transactions, for example downloading, displaying, distributing and so on.

According to Law Number 44 of 2008 concerning Pornography, the sanctions imposed for perpetrators are contained in Article 29, Article 31 and Article 32, due to the perpetrator's intentional distribution and use of pornographic content so that the perpetrator intentionally spreads pornographic videos or photos through internet media. The perpetrator is also subject to Article 31 because the perpetrator downloads pornographic content before distributing it or using it for personal interests that are detrimental to the community.

Criminal law has the aim of providing security and equality of justice for the community. Criminal law also has control of a criminal act, because in criminal law a person who commits a crime will be educated and given sanctions in accordance with the criminal act he has committed so that someone who commits a crime it has a deterrent feeling not to act a second time, along with the rules in the legislation can put pressure on people who have bad intentions and want to commit criminal acts.

The modus operandi of pornography at this time is very diverse, namely the circulation of pornographic videos via cellphones and the internet as well as singing performances that sway their hips with movements as if intercourse. All of that is a reality that we can see in society and is very contrary to the norms of decency.

The most important principle in criminal law is the principle of culpability or known as the principle of no crime without error (geen straf zonder schuld) which means that an offender is sentenced to a criminal offense if the crime committed can be blamed on him. Criminal liability essentially means reproaching the maker (legal subject) for the crime he has committed.

Therefore, criminal liability contains both objective and subjective criticism. That is, objectively the maker has committed a criminal act (a prohibited act/against the law and is punishable by criminal law according to applicable law) and subjectively the maker should be reproached or blamed/accounted for for the crime he committed so that he deserves to be punished.

6. Factors Inhibiting law enforcement against perpetrators of spreading pornographic content

In the life of the nation and state, there is a rule of law that applies in a country, where a rule has a specific purpose and purpose in order to achieve a safe and peaceful situation, such as the criminal law that applies in Indonesia which was made with the aim of providing a form of legal protection. , but in practice there are still many shortcomings. Law enforcement does not merely mean the implementation of legislation, although in reality in Indonesia the trend is so. It is undeniable that the legal approach to information technology will always lag behind other disciplines. Even so, the legal reaction to technological developments should be appreciated because with these legal efforts, efforts to resolve the impact and influence of technology on people's lives have emerged.

The problem of law enforcement actually lies in the factors that might influence it. These factors have a neutral meaning, so that the positive or negative impact lies in the content of these factors. These factors, are as follows [13]; (1) the legal factor; (2) law enforcement factors; (3) Factors of facilities and facilities; (4) community factors; (5) Cultural factors.

CONCLUSION

According to the Law of the Republic of Indonesia Number 44 of 2008 concerning Pornography in Chapter I General Provisions Article I Paragraph I, what is meant by the definition of pornography are pictures, sketches, illustrations, photos, 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. The process of law enforcement against pornography based on Law Number 44 of 2008 concerning Pornography is not running very effectively, the author connects the factors that hinder the process of law enforcement of pornography with the theories put forward by Soekanto, among others: (a), Law Number 44 of 2008 regarding Pornography still has weaknesses that need to be seriously studied. The Pornography Law in the formulation of the crime of pornography is vague (uncertain) so it has the potential to be misinterpreted. (b), The number of officers is still limited compared to the size of the area under their jurisdiction. In addition, because of the lack of understanding of the apparatus about information technology. (c), Public legal awareness of pornography is still low. Often people are not wise in using technology, so they fall into pornography crimes.

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