

## CRIMINAL LAW POLICY MODEL IN THE ATTEMPT OF COPING WITH CYBER PORN IN INDONESIA

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This research aims to determine the factors causes the outbreak of cyber porn and efforts to combat cyber porn's over Indonesia Viewed from the Perspective of Law and Socio Cultural. This study uses empirical juridical approach that aimed to obtain secondary data and primary data sourced from library materials and the implementation of the laws. Viewed from its nature, the research is qualitative descriptive. The approach used is interactional approach / micro analysis of qualitative and quantitative methods. Conclusion: 1) Globalization technology bring some parts of the community to switch from conventional trade into online commerce; 2) The government could make regulations requiring owners of Internet use the filtering to block the forbidden sites and cyber patrol. The prevention efforts in terms of the culture of law to restrain acts of cyber porn through a social approach include the internet educational curriculum and parent's control to their children in Internet usage.

**Keywords:** Criminal Law Policy, Model, Cyber Porn

### A. RESEARCH BACKGROUND

Utilization of information technology, media, and communications has changed the behavior of both human society and civilization globally. The development of information and communication technology has also leded the world into a seamless relationship and cause social changes, economic, and cultural significantly lasting so fast. One sign of the increasing development of information technology in Indonesia is the increasing number of interconnected networking service users, known as internet.<sup>1</sup>

Technology known as double-faced, one side provide great benefits to people and as a sign of the progress of society, but on the other hand also can provide facilities even expanding global crime. The misuse or negative impact of information technology advances through the computerized system and Internet networks known as "Cyber Crime. As the development of Cyber Crime, the crime's term also develops such as Cyber Sex or Cyber Porn, Cyber Prostitution.

Cyber Porn is an act of using cyberspace to create, display, distribute, and publicize pornography and obscene material. Cyberspace technology that brought

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pornography, giving richer features forms of pornography. The pornography get translational media and being created using multi features.<sup>1</sup>

The rise of pornography on the Internet, has led terms such as *cyberporn*, *seperiti pornography in cyberspace*, *cyber childpornography*, *on-line pornography*, *cyber-sex*, *cyber sexer*, *cyber lover*, *cyber romance*, *cyber affair*, *on-line romance*, *sex on-line*, *cybersexaddicts*, *cyber-sex offender*.

It is not simple to apply the rule of law against the perpetrators involved in cyberporn. This is because the internet is cross boundaries. Many people who intersect with each other and this will complicate the process of investigation in court. Therefore, the solution must be found so that the actors involved in cyberporn are presented to the court. The rise of porn sites actually has "interfere" international morality. In America for instance, there have been several non-governmental organizations (NGO) making an effort to stem the expansion cyberporn. We see that this pornography in contact with the rules (laws) where the porn sites can be accessed.<sup>2</sup>

## **B. RESEARCH METHOD**

This study uses empirical juridical approach that aimed to obtain secondary data and primary data sourced from library materials and the implementation of the laws. Viewed from its nature, the research is qualitative descriptive.

## **C. RESULT AND DISCUSSION**

### **1. Causal factors of spread Cyber Porn**

Modernization is the process of changing the cultural community from traditional matter to modern. Globalization essentially a spreading uniform culture to all communities in the world, the process of globalization appeared as a result of the flow of information and communication which often online at all times which can be reached by a relatively low cost. Consequently the world community is becoming an environment that seems close to each other and having the same interaction and cultural system.<sup>3</sup>

Globalization, in the form of patterns of trade, communication, development, and migration, has compelled once autonomous, sovereign, and more or less homogenous nation states to interact ways. The sort of globalization that these forms of interaction represent has had a tremendous impact on the legal systems of nations states and more generally on law.<sup>4</sup>

Many people are vying for business loopholes through the advancement of internet technology, but proliferation of the online trading is pornography through online internet business. The business had great the pros and cons. This is business controversial, but the business has an invisible penetration layer of moral, ethical and legal. As pornography and prostitution online is magnetic field that brings

attractiveness to some people and the youth, moreover students fallen on it. The allure of pornography and prostitution business online boomed and loved. Internet online pornography and prostitution become global trends which the customers are the community in the world; it caused there is no limit through the online world of the Internet. Cyber porn business generates great earnings because of demand. If there is no demand, there is no business which can be addictive (addictive).

Armando in a study published by the Ministry of Women's Empowerment defines pornography as material presented in certain media that can be or is intended to arouse sexual desire or exploit sex audiences. The specific media are printed and electronic media as audio or visual.<sup>5</sup>

American Demographics Magazine had counted the number pages of pornographic sites. In 1997 there were 22,100 porn sites. In 2000 increased to 280,000 and in 2003 increased four times that number, ie to 1.3 million pornographic websites. Meanwhile, porn site pages in the world in 1998 there were 14 million and increased sharply in 2003, to 260 million. In 2008, the last data page of porn sites in the world has reached 420 million.<sup>6</sup>

This fact cannot be inevitable. As stated by Robert Weiss of the Sexual Recovery Institute in Washington Times in 2000. Weiss states that sex is the number one searched topic on the Internet. Another study conducted by MSNBC / Stanford / Duquesne states that 60% of visits to the site is internet sex (porn). This data is enhanced by the publication of The Kaiser Family Foundation, which states that 70% of Internet users are teens who open to pornography sites. Another study released by TopTenReviews.Com actually stated that American dominance of Internet visitors in precisely those aged 35-44 years (26%). According to LIPI researcher, Romi Satria Wahono stated that every second there are 28,258 people see the porn sites, every second of 372 Internet users type in certain keywords in search engines to find pornographic content, and the number of pornography pages sites in the world reached 420 million.<sup>7</sup>

Details can be seen from the table below:

<i>Age</i>	<i>Percentage (%)</i>
18 – 24	13,61 %
25 – 34	19,90 %
35 – 44	25,50 %
45 – 54	20,67 %
55+	20,32 %

The spread of pornography in cyberspace highly associated with the porn industries that cross boundaries between countries. The US is the largest country as a contributor to 89% pornography sites in the world, followed by Germany, Britain, Australia, Japan and the Netherlands following behind. Although American

as the largest contributor porn sites in the world, was only ranked fourth in the number of income (revenue) from the porn industry in the world. The winner is precisely China, followed by South Korea and Japan. Total revenue per year pornography industry in the world is about 97 billion USD, equivalent to the total income of large companies in the United State: Microsoft, Google, Amazon, e-Bay, Yahoo!, Apple, Netflix and EarthLink. This indicates how powerful the porn industry in the world. Superficial connections to this, one post CNET in 1999 states that: Pornography online is e-commerce products which consistently ranked first in business on the Internet. From various data about pornography over the Internet, which quite surprising is that the connoisseurs and got a negative impact on the industry of pornography on the Internet is not the producing countries, but is precisely small countries and developing as consumers. We can see from the trend of the search request with the three key words, ie xxx, porn and sex, all dominated by small or developing countries such as Pakistan, South Africa, India, Bolivia, Turkey, and Indonesia.<sup>8</sup>

Abuse cases related to the internet in japan also not so much different in inonesia. Japanese National Police (National Police Agency-NPA) noted violations of laws and regulations in the field of internet is increasing rapidly, especially concerning dating services on the Internet, such as offering short messages pertaining child prostitution. According to Japanese police, as quoted by the Yomiuri Shimbun in Tokyo, Friday, child prostitution service offerings through short messages on the Internet continues to increase during 2007, to 122 cases, or up 75 cases over the previous year. Out of this number 61 of them involving children themselves who initiated insert the messages offered sexual solicitation date. The amount is also increased, from the previous 43 cases in 2006.<sup>9</sup>

The Republic of Indonesian law Number 11 Year 2008 on Information and Electronic Transactions is one manifestation of the responsibility of the State to regulate the activities in the field of Information Technology.

Chapter 27 paragraph (1) of the Act ITE, reads; Each person intentionally and without right to distribute and / or transmit and / or make accessible Electronic Information and / or Electronic Documents who have a charge in violation of decency. It is also consistent to chapter 23 of Law Number 39 Year 1999 who states that:

- (1) Everyone is free to choose and have their political beliefs.
- (2) Everyone is free to have, issuing and disseminating opinion in accordance of conscience, orally or in writing through the printed and electronic media taking into the values of religion, morality, public order, public interest and the integrity of the state.

Chapter 73 of Law No. 39 Year 1999 regarding Human Rights, which states that:

“The rights and freedoms set forth in this Law can only be limited by and under the law, solely to ensure recognition and respect for human rights and fundamental freedoms of others, morality, public order and the interests of the nation”

So it is not incorrect if the ITE Law contained the provision of content (content regulation) that is against the law, that basically is the restriction on freedom of expression, informed and communicate in order to protect the human rights of others which includes the violation of decency laid down in article 27 paragraph 1 ITE Act. The Violation of decency is includes cyberporn by using electronic devices or the Internet.

Law of ITE has a range of jurisdictions do not solely for the legal acts applicable in the Indonesia and / or performed Indonesian citizens, but also apply for legal acts conducted outside the jurisdiction (jurisdiction) of Indonesia either by Indonesian citizens and foreigners who have legal consequences in Indonesia, considering utilization of Information Technology for Electronics and Electronic Transactions information which can be cross territorial or universal.<sup>10</sup>

Comprehension of the definition of “prejudicial to the interests Indonesia” is include but is not limited to detriment of the interests of national economy, strategic data protection, dignity of the nation, state defense and security, sovereignty of the state, citizens and Indonesian legal entities.<sup>11</sup>

In Indonesia cyberporn be one part of the crimes that are difficult to eradicate. This is motivated because of lack of law enforcement officials who understand the ins and outs of information technology (internet). So that when the perpetrators were arrested, law enforcement officials have difficulty come across evidence that could be used to ensnare offenders, especially when crimes have a very complicated operating system. In addition, law enforcement officers in the region are not yet ready in anticipation of the rise of this crime because there are many police institution in the region had not equipped with internet network.<sup>12</sup>

## **2. The regulation of Cyber Porn in Indonesia**

Indonesia has some rules related to cyberporn. For example: Penal Code (*KUHP*), Telecommunication Law, Information and Electronic Transaction Law.

### **a) Penal Code (*KUHP*)**

The penal code used in Indonesia today is the translation of *Wetboek van Strafrecht (WvS)* enacted based on Law Number 1 of 1946 about Criminal Law Regulation for all of Republic of Indonesia's area. Considering the provision included in Penal Code related to prostitution, there are stipulations as follows:

The form of pornographic crime in Penal Code is divided into three categories:

- 1) Pornoaction crime
- 2) Pornography crime

## 3) Pornographic crime as livelihood.

Perhaps, *cyber pornography* can be defined as the dissemination of pornographic content through internet. The dissemination pornographic content through internet is not governed specifically in Penal Code (*KUHP*). In *KUHP*, there is not term pornographic crime. However, there is an article that can be imposed to this crime, Article 282 of Penal Code concerning the crime against decency.

*“Whoever broadcasting, showing or posting writing, picture or object the content of which has been known as breaking morality (decency) in public place or whoever making the writing, picture or object intended to be broadcasted, shown or posted in public place, including it into home, forwarding it, and sending it abroad or having supply, or whoever frankly or by circulating letter without being asked, offering it or showing it, can be threatened with punishment of maximally one year and six months imprisonment or fine of maximally four thousands and five hundreds rupiah.*

## b) Law Number 36 of 1999 about Telecommunication

Law Number 36 of 1999 about Telecommunication was released on September 8, 1999. Sociological background and foundation of this law is that the very rapid effect of globalization and telecommunication technology development has led to fundamental change in the organization of and the perspective on telecommunication. Article 21 of this law reads “The organization of telecommunication is prohibited through an activity or attempt of organizing telecommunication in contradiction with public interest, morality, security and public orderliness”.

## c) Law Number 19 of 2016 about the Amendment to Law Number 11 of 2008 about Information and Electronic Transaction.

Article 27 clause 1 of Information and Electronic Transaction Law states “Everyone who deliberately and without right distributes and/or transmits and/or makes the Electronic Information and/or Electronic Document with immoral content accessible”

The explanation of such the article is as follows:

## Clause (1)

The word “distributes” is defined as sending and/or disseminating Electronic Information and/or Electronic Document to many people or many parties through Electronic System.

The word “transmits” means sending electronic information and/or electronic document intended to other parties through Electronic System. The word “making accessible” means any action other than distributing and transmitting

through Electronic system leading Electronic Information and/or Electronic Document to be known by others or public.

d) Law Number 44 of 2008 about Pornography

The law firmly governing pornography is Law No. 44 of 2008 about Pornography (Pornography Law). The definition of Pornography according to Article 1 number 1 of Pornography Law is:

*“...picture, sketch, illustration, photograph, writing, voice, sound, motion picture, animation, cartoon, conversation, body language, or other message form through a variety of communication media and/or performance before the public, containing pornography or sexual exploitation breaking the morality norm in society”.*

The prohibition against the dissemination of pornographic content, including through internet, is governed in Article 4 clause (1) of Pornographic Law is as follows:

*“Everyone is prohibited from producing, making, reproducing, duplicating, disseminating, broadcasting, importing, exporting, offering, trading, leasing, or providing pornography explicitly containing:*

- a) Sexual intercourse including deviating sexual intercourse
- b) Sexual abuse
- c) Masturbation or onanism;
- d) Nude or appearance giving nude impression
- e) Genitals; or
- f) *Child pornography.*

The infringement of Article 4 clause (1) of Pornography Law is threatened with imprisonment at least six month and maximally 12 years and/or fine at least IDR 250 millions and maximally IDR 6 billions (article 29 of Pornography Law).

Article 10 of Law Number 4 of 2008 about Pornography states that “Everyone is prohibited from showing off him/herself or others in a show (performance) or before the public representing nude, sexual exploitation, sexual intercourse or other pornographic contents”.

Article 44 of Pornography law states that when this Law begins to be enacted, all of legislations governing or related to pornography crime remains to be enacted as long as it is not in contradiction with this Law.

### **3. Efforts Combating Cyber Porn in Indonesia Viewed from the Perspective of Law and Socio Cultural**

From a sociological perspective the life of cyber community among other things can be identified in terms of social relations, or more specifically can be seen

Networking which is precipitated in community life cyberspace. Networking creates the stimulus, response and collective actions are framed by norms, values and social sanctions.

The law does not work in dealing with cyberporn, one reasons is the limitation our view to look at cyberporn phenomenon. The approaches taken so far are still technical and sectorial. When it should be not the case. It is time cyberporn is evaluated from three perspectives, namely, technology (technic), business (business), and society (socio). If we just looked at in terms of technology and business, law on forever will not be able to work effectively in overcoming the symptoms that arise in society. Enacting a provision in the law, regardless of the circumstances of local society (social state). More again the existence of written law does not cause crime on the Internet, including pornography, couldn't "touched" by the law.

It must be remembered that the law not always reflected in the decision of the authorities (regulation), but can be arrangements made during the Internet connection takes place. The obstacles, indeed "deal" had not had the power to force and includes criminal sanctions. For offenders or perpetrators, is difficult to charged criminal liability if only based on mere norm. Law is a history frozen (Carl Friedrich). Every legal provision has its own history. The sound of legal provisions is that appear on top of its foundations, there is like a mountain ice has already frozen centuries and even millennia old. there is a provision is easy to modified, there is a difficult, and even very tough.<sup>13</sup>

Theoretically and practically the law as a discipline should have the model variance of analysis and able to resolve the issues. One thing that felt quite disturbing is too narrow the scope of the legal restrictions suggested by conventional theorists.<sup>14</sup> Legal and social changes are closely related. People often said that the law is always left behind with the social changes that occur in society. According to Satjipto the lagging of law behind the subject matter of the new law will be an issue when the lag distance was realized. Because of that conspicuous problems make the proper adjustments to reduce the tension not being successful.<sup>15</sup> So that we can see where there been a lot of crime of cybercrime and cyberporn before law no.11 year 2008 about information and electronic transaction made, but the fact is in year 2008 Indonesia endorse the law.

Enacting a written law (positive law) in case of breaking the internet, especially cyberporn, can be grounded in the rules that exist in the community itself. Nobody denies that cyberporn does not violate moral and ethical. One of five respondents said that pornography on the Internet (cyberporn) breaking sense of decency. After knowing that, we see local regulations (positive law) relating to pornography. Internet makes the world limitless also makes space and time are not obstacles in dealing with each other. From here arises a problem, which law will be enforced for criminal acts on the Internet. Caused, each country has different provisions.



From the substance of legal issues regarding how to direct regulation on criminal acts in the field of information technology has unclear solution and tends to be wider. Furthermore it's still unclear when associated with a legal structure and legal culture, particularly relating to the process of social change in public relations towards cyber community. This means that the prevention of telematics crime need to understand the social reality of the virtual community. Its understanding will provide a complete picture of the telematics crime phenomenon.<sup>16</sup>

The complexities of telematics crime is not fair anticipated with normative juridical approach, such as producing new rules and implemented in the practice of law. Telematics crime prevention strategies require more intact, start from understanding the social reality, sharpen interpretation to the of the philosophy direction , to understand and to consider the context of global transformation, breakthrough creative to do a reconceptualization of the criminal law.<sup>17</sup> *All collective human life is directly or indirectly shaped by law. law is like knowledge, an essential and all pervasive fact of the social condition.*<sup>18</sup> *Many scholars contend that a principal function of law in modern society is social engineering. Its refers to purposive, planned and directed social change initiated, guided, and supported by the law.*<sup>19</sup>

According to Lawrence M. Friedman, there are three elements that affect of law operation, they are: The legal structure, legal substance, and legal culture.<sup>20</sup>

The development of technology-based crime brought the matter in law, when the law (especially positive law - modern law characteristic) farther missed with the rapid social development that is driven by technology. In the end are the inability laws in reaching the advanced crime development.

Theoretically the science and technology are intended as a spur to prosperity and order of human life in the early of modern era. It ultimately would lead an undisciplined indicated by the phenomenon of the modern system of law that is not able to anticipate the development of technology-based crimes. In other words, the technological developments is creating a chaotic in the field of law when the law suddenly became powerless in an effort to enforce order.<sup>21</sup>

Chinese Internet Information Office, as it was called, combines all Chinese Internet regulatory agencies into one institution. The Chinese government through the government's official website said this agency will directly coordinate and supervise the management of online content and handle administrative approval of all businesses related to online news reporting. This Office also basically serves as the central institution for all online communications that occur throughout Chinese. The responsibilities of these institutions are working to implement the policy of internet communication, promoting the construction of legal system and guide the internet information agency in each region. Chinese internet information Office also set up a news site and online publicity work of the Government. If a site considered violating the laws and regulations, the Agency has

the authority to investigate and punish the violators. The telecommunications aspects is also included in this corporate power. China's Internet information office overseeing the efforts of telecommunication companies in developing the management for domain name registration, distribution of IP addresses, as well as site registration and Internet access are be a part of the task of this institution. It contributes to the world of online entertainment, which includes the development of online games, online video, audio businesses and online publication industries.<sup>22</sup>

According to Vice Minister of the State Council Information Office, Wang Gouging, basically all the information can be distributed in Chinese, except for information relating to three things: the overthrow of power, racism and pornography. For porn sites in Chinese, the government is very strict in prohibiting its people, and it is difficult to open a porn site in Chinese because it has been blocked by the government. Although search engines such as Google is still serving a variety of sites related to a lot of English words connected to pornography as the word sex, porn and others, but once the site is opened by Google, a direct link will be disconnected.<sup>23</sup>

It is also necessary created Quit Porn Addiction counseling services for those who want to treat addiction to porn sites such as the England.<sup>24</sup> Man has indeed a tendency to engage in sex and love sex in a certain extent, but pornography is able to raise desire strongly. People, who viewed pornography definitely thinking of sex, thought something surely led to an action; the action is manifested in sexual activity.<sup>25</sup> Excessive additives to pornographic content have an impact on people's behavior as a consumer to try those who peddle themselves through porn sites. So those who have addiction towards porn sites need to get rehab to come out against his addictions. Same as with morphine and similar drugs that will be hard to let go of the fact that addiction dependency will continue to increase with the frequency of accessing pornographic content.

McConnell and Keith Campbell describes in five stages of addiction, they are:

1. **Early eksposur/ first sight.** People who are addicted to pornography begin by looking at pornographic content.
2. **Addictio/addiction.** Activity access pornographic content being a hard habit stopped because they let themselves captivated by him.
3. **Escalation / addiction increased.** Addicted People do not fell sufficient and satisfied just by looking at usual contents; they are looking for an unusual pornographic content being the experience of fantasizing.
4. **Desensitizatio/numbness.** They went through a period where pornography is no longer exerting influence anything like a has-been. They are no longer sexually aroused and feel the vibration though seeing various other pornographic contents.

- 5. Action / sexual acts.** At this point, people began to realize the obsessions and fantasies; they would make the realization in the real world.<sup>26</sup>

Prevention efforts viewed from legal culture by preventing acts of cyberporn through social approaches includes:

a) School

Teaching standards ought to include curriculum about the effective use of the Internet. Internet education in schools includes the subject about an effective use of the internet, especially in the fields of science. Preferably prepared curriculum subjects that emphasize:

1) The concrete cognitive moral education

Teens need cognitive moral education that indirectly emphasized that teens to retrieve values for moral reasoning they are formed. The aim of this program study is that children have early awareness of the Internet.

2) Positive use of the internet

The content of the curriculum emphasizing the positive potential of the internet are not just chatting and exchanging greetings with other users. It would be better if children know the process of making a blog, website or online shop so that children can be motivated to develop themselves both in terms of writing as well as be an entrepreneur.

b) Family

Excessive surveillance seems not the right answers because it even makes children become increasingly rebellious. In accordance with the general conditions of mental teenagers who do not like restrained, he would act against the will of his parents. It was done in order he can feel himself without being affected of others.

Parents are a significant other who is closest to the child. Unfortunately in the struggles of modern life, slowly position it has been superseded by the maid, a baby sitter or a friend. However, nothing more has the right to direct the child's behavior other than the parents themselves. Parents are responsible for justifying a wrong action.

Therefore parents should act as:

1. Give an example. Parents are responsible to inform children about the behavior expected of him.
2. Regulator that restrict the behavior of the children in accordance with religious and social norms.

c) Society

In the view of Durkheim on social control of sexuality is necessary, because of morality or social norms are created so that people could live orderly and create solidity of the groups / communities.

Morality contains three elements, namely:

1. The discipline formed by a the consistency / regularity of behavior and authority (power to force community members to act in certain ways);
2. The attachment to the group / community;
3. Autonomy; every individual entitled to make his choice, but he must have the courage to face the risks, including social sanctions if the violation of existing norms.<sup>27</sup>

From a sociological perspective, the law can only be run through human intervention, a group that organizes the law, as well as those who run the mandatory provisions of law.<sup>28</sup> Thus legal awareness of the public to obey the applicable rules and norms as well be living in the community as an effective prevention efforts to avert the increasingly prostitution apprehensive. The active role of the community is needed to combat pornography sites because it is not easy to eradicate pornography sites and the sites that offer the online prostitution. There is always a way used by makers of pornography websites to trick the Government so as not to be blocked.

Through a comprehensive understanding of cyberporn, the role of the community is very important in the effort to control, because when having lack of information, the role of the community will be barren.<sup>29</sup> So it is necessary for learning to the public related to the use of the Internet, because the people in the era of globalization indeed faced with the necessity to adapt and follow developments.

Indeed law enforcement comes from the community and aimed at achieving peace and harmony within the community itself. Therefore it can affect not only the community but largely determine the enforcement of the rule of law.<sup>30</sup> So it need collaboration with various institutions and communities to eradicate cyber porn.

#### **D. Conclusion**

1. Globalization bring some people switch technology trade of conventional trade into online trading. Neither the business development in conventional pornography previously now is enjoyed easily with the system online through an internet connection.
2. The Government may create regulations requiring the owner of Internet to use filtering tools to block forbidden sites. While prevention efforts in terms of the legal culture that is by on cyberporn prevention through social approach among others to include the Internet in the educational curriculum and parents control to their children in the use of the Internet.

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