

**CYBERPORN ANALYSIS IN THE PERSPECTIVE OF THE IUS  
CONSTITUTUM IN INDONESIA**

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**Abstract**

Technology and the internet continue to experience extraordinary developments. The progress of the internet has brought a lot of positive progress towards a country. However, the internet can also negatively affect a nation. Many new crimes arise with the development of technology and the internet, one of which is cyberporn crime. In simple terms, cyberporn is also called the sin of pornography by using the internet as a crime tool. Based on the facts that we have found to date, cyberporn crimes continue to increase. This is a result of technological and internet developments that are not used well. The research in this paper uses a normative juridical approach. The research in this paper uses a prescriptive legal approach. The formulation of the problem is how is the regulation of cyberporn crimes a positive law in Indonesia? This research concludes that a constitutional renewal is needed with this cyberporn crime. Because the existing legislation cannot punish the perpetrators of cyber porn crimes. Then, the suggestions in this research include the House of Representatives (DPR) to formulate a law that explicitly regulates the problem of cyberporn crime.

Keywords: crime, cyberporn, ius constitutum

**INTRODUCTION**

The development of technology in the 21st century is increasingly out of control and is at a very extraordinary point of development. Technology continues to develop rapidly, such as computers, which were initially only used as fast calculating machines, now have become a new dimension that supports all human activities (Jakti, 2014; Jogiyanto, 1999). With the development of this increasingly rapid era, one's knowledge of computers is increasing, especially information and communication technology (Van Reenen, 2011).

This technology has indeed had a significant impact on human life today. With the sophistication of communication tools, information from around the world can be immediately accessed or obtained (Kaku, 2012; Tapscott & Tapscott, 2016). Advances in technology have changed people's lives with new cultures. Society is no longer obstructed by territorial boundaries between countries and the perfect freedom of activity and creation. One of the results

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of advances in information technology that was created at the end of the 20th century and which significantly affects human life is the internet.(Febriansyah, 2017; Ismawati, 2016)

In this millennial era, everyone can easily access the internet through a smartphone whose prices are also relatively affordable for all groups. Making the internet very easy to access without a hitch, someone can contact anyone in a very long distance, and everyone can also send files wherever he wants, without any time and space limits so that it makes human dependence on smartphones very high. Now even the internet has entered the small towns and villages in Indonesia.

The internet is developing so rapidly as a culture of modern society. It is said to be culture because, through the internet, various activities of the cyber community such as thinking, creating, and acting can be expressed in it, anytime and anywhere. For some people, the emergence of this phenomenon has changed human behavior in interacting with other humans, both individually and as a group. Also, technological advances will, of course, coincide with the emergence of changes in the social sector.

Indonesia, as part of globalization, is also a country that currently has high-speed internet development (Samadikun, 2000). This is motivated by the rapid growth of technology that encourages the presence of a multi-functional internet. The internet is an information and communication space that promises to penetrate boundaries between countries and accelerate the spread and exchange of knowledge and scholars around the world, and the internet has also brought us to space or a "new world" that was created called cyberspace (Raharjo, 2002).

In its development, technological advances and the internet have had an impact on various aspects of life, so that one's dependence on the internet is increasingly inseparable. A country will be able to develop rapidly if that country can process and utilize the internet wisely and responsibly. And vice versa, if a state cannot use and handle the web carefully and responsibly. So the internet can have a negative influence on a country. This happens when the country cannot process and utilize it properly (Bunga & Widiatedja, 2012).

Before we get into our discussion, which is related to cyberporn, there are many things we can understand from this internet development. If we look at the growth from year to year,

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in addition to having a positive impact as the authors have mentioned above, the internet has also brought a new color to a crime or crime. Many new crimes have emerged with the development of internet-based technology, including cybercrime. This is as explained by Barda Nawawi Arief said cybercrime is a new form or dimension of current crime that has received full attention from the international community. Cybercrime is one of the dark sides or the wrong side of technological advancement, which in turn has a significant negative impact on all areas of modern life today (Arief, 2006).

If we analyze more specifically with regard to cybercrime, cybercrime also includes various forms of crime, such as hacking, crackers, illegal content, cyber terrorism, carding, and one of the other types is Cyberporn. Call it Cyberporn is also called a pornographic crime using internet media. There are examples of Cyberporn that the author means in this case, such as accessing pornographic videos via the internet, video call sex, online prostitution, or also spreading or sharing sexual content using the internet.

The use of internet-based technology in committing criminal acts has also experienced developments and is increasingly modified, especially in the field of immorality or pornography. This is because many new social media applications offer updated features that provide sexual content. The form contains facilities used to make it easier for humans to interact via social media. Various communication media giants offer several live streaming video services, but in Indonesia live streaming video only has applications such as Instagram, Twitter via Periscope, Facebook live features, Cliponyu application, #Fame application, Ishow application, Siaranku application, Camfrog, Bigolive, and Nonolive. The above forms can be used for live streaming videos or sharing content; sexual content is no exception.

Surely we have heard about all the crimes that writers often see and witness, especially in the fast-growing world of the internet. Cyber pornographic crimes are commonplace in our daily lives. We take one example, namely accessing and watching pornographic videos via the internet. This has become a habit and is no longer taboo for people in Indonesia. In fact, most people actually consider this as part of maturity, or also as part of sex education. Many people think that watching pornographic videos or sharing sexual content among their friends is not

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a crime. Hence, very many of us find teens sharing sexual content with each other and even watching sexual content together. This is inseparable from their curiosity about sexual content.

However, if we look again at the impact of accessing pornographic videos or watching pornographic videos online, this has a very negative effect on a person, especially on children and adolescents who have a very high sense of curiosity. Not a few of them have sex outside of marriage because they are aroused by the videos and sexual content they watch. Some of them even committed rape, sexual harassment, and got pregnant outside of marriage. This is because these children and adolescents are watching sexual content, which raises the desire to do what they have seen in the video.

Lots of cases of sexual immorality have occurred as a result of watching pornographic videos, for example, the case in Batam. Cases of sexual immorality have increased, allegedly because of the influence of watching pornographic films that are increasingly accessible, which concerns the perpetrators are generally minors. Two scavengers, T (24) and MS (29), have to languish in the Batam City Police Prison, Riau Islands Province (Kepri). T (24) admitted that the act was the result of frequently watching pornographic videos. Another case occurred in Garut, the perpetrator with the name F (14) was motivated to commit sexual immorality against 15 elementary school age (SD) children, this was done by F (14) due to the influence of adult promiscuity, including the habit of watching porn videos.

From the case example, the writer has described above; according to the author's analysis, there has been a new phenomenon, namely the use of the internet, which is used for harmful activities, and this is undoubtedly a legal problem. The internet should be used for positive things such as being used for communication media, data exchange media, information-seeking media, learning media and many more positive benefits of the development of internet technology if the internet is used for positive things and is used wisely by its users.

As the authors have mentioned above, the development of technology and science, especially regarding electronic technology, has influenced almost all aspects of human life and activities in society, including legal issues. The use of technology as a means of communication (relationship) globally has created positive challenges for the progress of science itself both in

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regional, national, and even international community relations. In addition to having a positive effect, it also has a dark side (stuttering) when the impact of this progress is not followed by the ability to operationalize and the unavailability of regulations (legal instruments) to limit the use (function) of the technology itself.

The development of the internet is like two sides of a coin. On the one hand, it has a positive impact, which serves to make it easier for humans to interact, exchange information in various activities, and increase the trend of technological development with all forms of human creativity. At the same time, adverse effects are inevitable. It is possible that in the future, there will also be many sophisticated modes of criminals to carry out criminal acts. Because without realizing it, the development of technology in the global world is very fast from year to year. As the authors have explained above, many pornographic contents and immoral behavior use internet media. Not a few internet users use the internet as a medium of crime, one of which is cyberporn.

Based on the description above, in this research, the following problems are formulated: how is the regulation of cyberporn crime in the *Ius Constitum* / positive law in Indonesia?

### **METHODOLOGY**

This study uses a normative juridical approach. The point is that this research focuses more on literature study or documentary studies on the provisions of the legislation, in terms of the Law used is Law No. 11 of 2008, in conjunction with Law No. 19 of 2016 concerning information and electronic transactions. The research specification in this study is descriptive-analytical, where the analysis is done critically by using various theories related to the problems discussed. (Oliver et al., 2014; Owen, 2014)

The analytical method used in this research is qualitative. Namely, the correctness of the data / final premise is determined by the researcher himself. At the same time, the form of research results will be presented in a prescriptive-analytical way. (Punch, 2013)

## RESULT AND DISCUSSION

### **Cyber porn is in the *ius constitutum* in Indonesia**

As we all know, current crimes are no longer using the physical directly, but criminals can also use their sins non-physically, and among them is cyberporn. Accessing pornographic videos and distributing them to other people is certainly not a crime that involves physical, but non-physical, and the internet is the perfect medium that can be used to commit crimes.

Many new crimes arise from the rapid development of the internet. The internet should be used for learning media, exchanging information, and so on. However, it is widely used for new crime modes. This is unavoidable because technological developments have entered all levels of society so that reasonable safeguards are needed so that crime after crime through the internet media can be minimized or reduced in number.

Without proper security, the development of information technology will not provide maximum benefits to society. However, it has a negative impact, especially for children and adolescents who frequently access, watch, and distribute pornographic videos via the internet. Therefore a security system is essential to prevent misuse of the internet for the crime. So, according to the author, there is a need for a rule in positive law in Indonesia that regulates cyberporn, and criminal law can be used as one solution.

Prior to the existence of the Information and Electronic Transactions Law No.11 of 2008, the legal basis used to ensnare perpetrators of immoral crimes was the Criminal Code, the Law on Telecommunications, the Law on the Press, the Law on Broadcasting, and the Law on Movies. However, with the development of technology and information tools, it becomes a new model for actors. This also demands reforms in the legal system in Indonesia so that criminals can still be charged with the applicable law. Because if there is no legal rule and there is a legal vacuum, it will be contrary to the principle of legality, meaning that the perpetrator of a crime cannot be convicted because before the act was committed there was no legal basis regulating it.

According to the author, legal reform is needed because the more sophisticated the mode of cyber-porn crime perpetrators, the more victims will appear along with the increasingly rapid

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development of technology. Starting from this shortcoming, try to cover it up with the latest law, namely the Law on Information and Electronic Transactions. Related to immoral crimes regulated in the ITE Law article 27 paragraph (1) in conjunction with section 45 paragraph (1). If the criminal act in Article 27 paragraph (1), the full sound is:

Anyone knowingly and without right distributes and transmits and makes accessible Electronic Information and Electronic Documents that have content that violates immorality.

And the threat of punishment in article 45 paragraph (1) explains that:

Every person who fulfills the elements as referred to in Article 27 paragraph (1), subsection (2), paragraph (3), or paragraph (4) shall be punished with imprisonment for a maximum of 6 (six) years and a maximum fine of IDR 1,000,000. .000.00 (one billion rupiahs).

When viewed from a technical point of view / the formulation of the formula, this crime is a criminal offense in the ITE field. Because the object of the act, which is also the object of the crime, is in the form of Electronic information and/or Electronic Documents. Meanwhile, from the point of view of the location/location of the nature of the prohibition (against the law), or from the point of view of the legal interest that is to be protected, it can be classified into a criminal act of decency.

The act of distributing, transmitting, and making accessible Electronic Information can only be punished, or the nature of it will be against the law if the contents and information and Electronic Documents contain substances that violate decency. The legal interests which Article 27 paragraph (1) intends to protect are the public interest regarding the upholding and maintenance of the moral values of society. The main criminal act is decency, while the means are using or utilizing or using Information technology systems/networks and Electronic Transactions. From this last reason, the criminal law of Article 27 paragraph (1), in conjunction with Article 45 paragraph (1), can be called a *lex specialist* from the forms of decency crime in Chapter XIV book II of the Criminal Code.

To provide a clearer picture, the author will describe the actions prohibited in article 27 paragraph (1). In Article 27 paragraph (1), there are 3 (three) elements of prohibited activities. Even though the three actions are separated by the phrase "and," it does not mean that the three



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works have the same meaning. The logic of the inclusion of the words "and," that between the three behaviors can coincide in an event, one can also occur. If an element is not explained, either in Article 1, the general explanation or explanation of the article, first, it must be interpreted based on language (grammatical). If, according to word, the appropriate thing is not found, then see what the legislators mean. If they are not found, then use other interpreting methods.

So, to find out the meaning of the article, interpretation is needed so that what is meant by the Law can be understood, especially by law enforcers, when facing a case. One type of analysis that can be used is grammatical interpretation. As we know that language interpretation (grammatical) is interpreting the provisions contained in the statutory regulations interpreted based on the meaning of words according to grammar or according to custom. In this case, an excellent grammatical understanding is needed because if it does not understand well, and especially the law enforcers are not able to interpret this article correctly, it will result in adverse legal consequences in the law enforcement system.

Distributing comes from the word "distribution," which means "distribution" (distribution, delivery) to several people or to several places "to be a verb" to distribute, "which means to distribute or share or send something to several (many) people or several locations. When connected with object elements, the act of distributing is transferring or sharing or submitting Electronic Information whose contents violate immorality.

Furthermore, the element of action prohibited in article 27 paragraph (1) is "transmitting," the root word transmits transmission (English: transmit), which means sending (forwarding), carrying, spreading messages, and so on from one person to another (object). Meanwhile, "transmitting" is throwing or forwarding messages from one person (object) to another (another object). This term was later used widely in the ITE field.

Unlike the case with the act of distributing and transmitting, which is formulated in a more concrete form. The third action: "making accessible," is formulated abstractly. Because of its nature, the meaning of distributing and transmitting includes it. All activities, regardless of their form, if the information is distributed using a computer device, that action includes making it accessible. Suppose the act of distributing and transmitting describes a formal crime. I see



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from the form of his works. However, the act of making it accessible represents a material crime.

The word access means to access, or canal. The word access indicates that an action is an action contained in the use of computer-based information technology. Making it accessible is to make electronic information with a computer-based automated system acceptable to (means) receiving Electronic Information.

However, it should be noted that the Law on Electronic Information and Transactions also has several weaknesses that also need to be considered in its implementation. At least several things need to be found in this article, including the first, in this case, the determination of the perpetrator (legal subject). The perpetrators who can be trapped by this provision are parties who distribute, transmit and make accessible Electronic Information and Electronic Documents that have contents that violate decency, while the parties who produce and receive such distribution and transmission cannot be ensnared by this article.

This includes this if the perpetrator watches pornographic videos alone or together, but neither party feels aggrieved in this case, it cannot be charged under Article 27 paragraph 1 jo 45 paragraph 1. This includes parties who access electronic information and Electronic Documents that have contents that violate decency and cannot be penalized by this article.

In this case, it seems that law enforcement implementing this law needs to be careful and pay close attention to the categories of parties so that there are no mistakes in the arrest and imposition of the articles being charged. Inaccuracy in applying this article to the parties desired by this article (for example, those who access it) will lead to errors in arrest and prosecution if charged under this article. Therefore, understanding this matter is very important.

Also, in the case of electronic information content and electronic documents. This article regulates the prohibition against the dissemination of electronic information and electronic documents that have materials that violate decency. It should be emphasized that this content contains a meaning bias. The meaning bias is the meaning of virtue, is civility or politeness as the meaning of the term decency is pornography which is identified with sexual immorality or eroticism? In this case, the ITE law does not provide instructions in the explanatory material.

This is also the note of the author. According to the author, in law enforcement, law

enforcement officers must be careful and understand what the purpose of the law is, especially Article 27 paragraph (1) in conjunction with Article 45 paragraph (1) because the interpretation of the article is needed, including using language interpretation in interpreting the section. The same is the case with cyberporn because the problem of cyberporn is not explicitly explained in article 27 paragraph (1) in conjunction with section 45 paragraph (1).

## **CONCLUSION**

Legal reform is needed because the more sophisticated the mode of cyber-porn crime perpetrators, the more victims will appear along with the increasingly rapid development of technology. The perpetrator who can be charged under article 27 paragraph (1) in conjunction with article 45 section (1) of Law No. 11 of 2008 concerning Electronic Information and Transactions is the party who distributes, transmits, and makes electronic information and electronic documents accessible. Those who have contents that violate decency, while the parties who produce and receive such distribution and transmission cannot be trapped by this article.

This includes this if the perpetrator watches pornographic videos alone or together, but neither party feels aggrieved in this case, it cannot be charged under Article 27 paragraph 1 jo 45 paragraph 1. This includes parties who access electronic information and Electronic Documents that have contents that violate decency and cannot be penalized by this article.

The author's suggestions here for the phenomenon of cyberporn are as follows:

1. To the Legislative Body of the House of Representatives (DPR) to be able to compile a form of legislation that explicitly regulates the problem of cyberporn crimes because the influence of cyberporn crimes is extraordinary and can damage the morale of the nation, especially the younger generation.
2. There is a cooperation between educational institutions, non-governmental organizations (NGOs), and law enforcement officials, in this case, the Police. The collaboration carried out by providing moral education as well as religious education, as well as sexual education for the younger generation, is also accompanied by the socialization of the dangers of cyberporn.

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3. To the Police to carry out regular monitoring and prevention so that cyberporn crimes can be minimized. This repressive effort by giving strict sanctions to the perpetrators of cyberporn crimes can be used as a solution to reduce the increasing number of cyberporn crimes. This firm action by the Police against cyberporn perpetrators has resulted in a deterrent effect on the perpetrators so that they no longer commit cyberporn crimes.

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