



RECONSTRUCTION OF PORNOGRAPHY CRIMINAL REGULATIONS BASED ON PANCASILA JUSTICE VALUES

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ABSTRACT

Pornography in positive law in Indonesia has differences with the views of some indigenous people in Indonesia. The purpose of this study is to find and examine the regulation of pornography crimes that have not been accounted for and to formulate a reconstruction of the regulation of pornography crimes based on Pancasila justice. This legal research is a socio-legal legal research. The results of this study are that the legal regulation of pornography reflected in the current positive legal construction does not fully reflect justice based on Pancasila values, because it ignores cultural rights and human rights. Regulations that are open to multiple interpretations in defining pornography have created a gap for the criminalization of the right to express art and culture. The author recommends that the reconstruction of Article 4 paragraph (1) be directed at stricter normative restrictions by adding the element intentionally and with the intention of arousing sexual desire.

A. INTRODUCTION

Indonesia is a rule of law country, Law is a collection of life instructions that regulate order in a society and, therefore, must be obeyed

by members of the society concerned.¹ Indonesia's national goals, stated in paragraph IV of the preamble to the 1945 Constitution, include, among other things, the 1945 Constitution, protecting the entire Indonesian nation and all of Indonesia's blood to create a just and prosperous Indonesian society based on Pancasila.²

One type of crime that is currently on the rise is pornography. The definition of pornography does not only involve erotic and sensual acts.³ Nevertheless, it also includes erotic and sensual acts that are disgusting and embarrassing to people who see them and/or hear them and/or touch them.⁴ This is caused by the awakening of sexual desire in a person who will be different from others if we measure erotic actions or body movements as well as pictures, writings, works of art in the form of statues, sex change tools, voices in songs or sighs, humor and among others. Contained in communication media, both print and electronic, are only measured by actions that arouse sexual desire alone.⁵

The word pornography is a terminology that has only emerged in the modern era. However, the meaning contained in pornography has long been known to the wider community, even since Islam was first revealed as a guide to life for humankind.⁶ According to its origin, the word pornography comes from Greek, namely *porne*, which means prostitute, and *graphein*, which means expression.⁷ Apart from that, the word pornography can also be interpreted as images of prostitutes.⁸ Thus, in simple terms, pornography can be defined as images containing prostitution or words or writings containing prostitution.⁹

The influence of pornography has led to many victims, especially women and children, being used as tools for the pornographic industry. The negative impact caused by pornography and pornographic action is so great

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- 1 Anis Mashdurohatun & Sri Endah Wahyuningsih., Legal Protection for Victims of Domestic Violence Based on the Value of Justice, *Bild Law Journal* 8, No. 2 (2023): 1-8.
 - 2 Sri Endah Wahyuningsih, Anis Mashdurohatun, & Syakur., Protection Against Witnesses in Criminal Justice Proceedings in Indonesia Based on the Humanitarian Value. *International Journal of Innovation, Creativity, And Change* 13, No. 7 (2020): 1785–1801.
 - 3 Michael C Rea., What Is Pornography? *Noûs* 35, No. 1 (2001): 118-145.
 - 4 Helen Hester., *Beyond Explicit: Pornography and the Displacement of Sex*. (New York: Suny Press, 2014): 35
 - 5 Neng Jubaedah., *Pornografi Dan Pornoaksi Ditinjau Dari Hukum Islam*. (Jakarta: Prenada Media, 2003): 4.
 - 6 Brian McNair., *Porno? Chic!: How Pornography Changed The World And Made It A Better Place*. (New York: Routledge, 2013): 53
 - 7 Dedi Andriansyah, Supsilani, Wira Fimansyah, Karina Ita Apulina Bangun, Rahmi Rahmadani., Cyber Child Pornography: Analysis of Porn Culture Consumption of Pornography Children in Medan City, In *Proceedings Of The 4th International Conference On Innovation In Education, Science And Culture, Iciesc 2022*, (11 October 2022): 1-9
 - 8 Susan Gubar., Representing Pornography: Feminism, Criticism, And Depictions Of Female Violation. *Critical Inquiry* 13, Issue. 4 (1987): 712-741.
 - 9 *Ibid*: 144.

that it can threaten the continuity of society, and this is a violation of the Pornography Law.¹⁰

Pornography is often considered part of modernization, even though this assumption is not necessarily true. Pornography is more accurately described as a side effect of modernization.¹¹ Modernization is impossible and does not need to be stopped because it has many benefits. The action that should be taken is controlling and directing modernization in the right direction.¹² The direction of modernization is the West, so our nation tends to imitate whatever the West does. Directing and controlling modernization means utilizing technological advances and the positive aspects of Western civilization for the benefit of the Indonesian people.¹³

Anything pornographic aims to stimulate the sexual desires of the reader or viewer.¹⁴ Therefore, the effect felt by people who watch or read pornography is the awakening of sexual urges. If someone consumes pornography occasionally, the impact may not be too big.¹⁵ The problem is if people are encouraged to continuously consume pornography, which results in the urge to channel their sexual desires becoming greater.¹⁶

The legal basis for pornography in the provisions of Law Number 44 of 2008 is debated, especially the Elucidation of Article 4 paragraph (1), which reads: Every person is prohibited from producing, making, multiplying, duplicating, distributing, broadcasting, importing, exporting, offering, buying and selling, renting out, or provides pornography that explicitly contains: (a) sexual intercourse, including deviant sexual intercourse; (b) sexual violence; (c) masturbation or masturbation; (d) nudity or displays of nudity; (e) genitals; (f) or child pornography.¹⁷

This article has explained a fairly perfect formulation of the crime of pornography. However, the problem is that an action will be considered pornographic if the action violates the norms of decency in society, and even though an act is objectively a pornographic act if the act does not conflict with the norms of decency where the act occurs, then it is not considered a

10 Neng Djubaedah., *Undang-Undang Nomor 44 Tahun 2008 Tentang Pornografi (Perspektif Negara Hukum Berdasarkan Pancasila)*. (Jakarta: Sinar Grafika, 2011): 21.

11 Diamond., Pornography, Public Acceptance and Sex Related Crime: A review, *International Journal of Law and Psychiatry* 32, Issue. 5 (2009): 304-314.

12 Whitney Strub., *Perversion For Profit: The Politics of Pornography and the Rise of the New Right*. (Philadelphia: Columbia University Press, 2010): 62

13 Deshaini., Peran Serta Pemerintah Dan Masyarakat Dalam Mencegah Tindak Pidana Pornografi. *Jurnal Justicia* 11, No. 2 (2019): 1-21.

14 Kris Taylor., I've Got To Put One Side Aside If I Want To Enjoy It: Pornography, Perceived Reality, And Pornography Viewers' Negotiated Pleasures, *Sexuality & Culture* 26, No. 4 (2022): 1215-1234.

15 Ryan Thorneycroft, Erika Smith, Lucy Nicholas., Whose Concerns? Young Adults Discussing (Their) Concerns With Pornography, *Sex Education*, (2024): 1-16.

16 Fajaruddin., Perlindungan Hukum Terhadap Anak Korban Pornografim, *Varia Justicia* 10, No. 2 (Oktober 2014): 23-35.

17 Article 4, Paragraph (1), Law No. 44 Of 2008 About Pornography.

pornographic act.¹⁸ For example, suppose a mass media (newspaper) in Papua contains a photo of a woman wearing Koteka clothing (Papuan custom). In that case, the image cannot be said to be pornography because it does not conflict with the norms of decency that exist in the Papua region.

Research conducted by Ardi Bongga¹⁹ With the title Crime of Cyber Pornography According to the Theory of Dignified Justice, research results show that the sentences handed down by the judge to the defendant reflect a Dignified Justice, where the judge only imposed a sentence of 1 year and 7 months imprisonment, far below the demand of the Public Prosecutor and the Article adjudicated by the judge,²⁰ namely Article 37 in conjunction with Article 11 and Article 4 Paragraph (1) of Law Number 44 of 2004 concerning Pornography. Cyber pornography crimes, according to the theory of Dignified Justice, provide legal certainty in achieving justice through the application of Article 27 Paragraph (1) of the ITE Law.²¹ Achieving justice for the defendant aligns with the purpose of sentencing, not as revenge but as a means of providing understanding.²²

This research aims to analyze and identify the shortcomings in current regulations on criminal acts of pornography, demonstrating their lack of fairness. It examines the weaknesses in existing legal frameworks and proposes a reconstruction of these regulations based on Pancasila justice.

B. RESEARCH METHODS

Sociolegal research examines law conceptualized as actual behavior,²³ an unwritten social phenomenon that everyone experiences in social life. Therefore, empirical legal research is also called sociological legal research.²⁴ Sociolegal research concentrates on real law (law in action).²⁵

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- 18 Hanugrah Titi Habsari, Ladito Risang Bagaskoro., Pornography In Indonesian Criminal Regulation: A Disharmony Of Rules. In *12th Uum International Legal Conference 2023 (Uumilc 2023)* : 250-258.
 - 19 Ardi Bongga., Tindak Pidana Pornografi Siber Menurut Teori Keadilan Bermartabat, *JSIM: Jurnal Ilmu Sosial dan Pendidikan* 5, No.1, Maret 2024, page.68-81
 - 20 Yaris Adhial Fajrin, Ade Sathya Sanathana Ishwara., Ethical Problematics and Political Corruption in Indonesian Elections: A Review of Dignified Justice Theory. *The International Journal of Politics and Sociology Research* 12, No. 3 (2024), page.200-209.
 - 21 Wardana., The Plea Bargaining System As A Criminalization Model Under The Law Number 19 Year Of 2016 On Electronic Information And Transaction Act And The Dignified Justice. *Global Legal Review* 1, No. 2 (2021): 157-177.
 - 22 John B. Meixner Jr, Modern Sentencing Mitigation., *Northwestern University Law Review* 116, Issue. 6 (2022): 1395-1480
 - 23 Yogesh K. Dwivedi (etc)., Metaverse Beyond The Hype: Multidisciplinary Perspectives On Emerging Challenges, Opportunities, and Agenda for Research, Practice And Policy, *International Journal of Information Management* 66, (October 2022): 102542.
 - 24 Andri Winjaya Laksana, Hartiwiningsih, Hari Purwadi, Anis Mashdurohatun., The Sufism Healing As An Alternative Rehabilitation For Drug Addicts And Abusers, *Qudus International Journal of Islamic Studies (QIJIS)* 11, No. 1 (2023): 149–176.
 - 25 Andri Winjaya Laksana., The Legal Position Of Islamic Boarding School (Pesantren) As A Rehabilitation Effort For Narcotics Abuse, *IJLR: International Journal Of Law Reconstruction* 5, No. 2 (2021): 317–328.

Sociolegal research, namely legal research, uses legal principles to review, view, and analyze research problems and examine the implementation of law in practice.²⁶ Meanwhile, sociological legal research, better known as sociolegal research, emphasizes the importance of empirical observation and analytical steps.²⁷

C. RESULTS AND DISCUSSION

1. Regulations on the Crime of Pornography Are Not Based on Pancasila Justice Values

Laws and sanctions can be likened to two sides of money, one of which complements the other.²⁸ Law without sanctions is very difficult to enforce. Social norms without sanctions are only moral, not legal. On the contrary, sanctions without law in the sense of rules will result in arbitrariness by the authorities. Sanctions are always related to legal norms or legal rules with other norms, such as moral norms, religious or belief norms, and polite norms. It is with sanctions that legal norms can be differentiated from other norms.²⁹

In this case, law becomes a tool for renewing a society that upholds moral values, ethics, noble character, and the noble personality of the nation, has faith and devotion to God Almighty, respects diversity in social, national, and state life, and protects the dignity of every citizen. This approach to law is a path toward social goals and a tool in social development.³⁰

The development of pornography is increasingly advancing along with advances in science and technology so that the level of distribution of pornography is becoming easier and wider and freely entering private spaces that should be sterile from pornography.³¹ The destructive power of pornography is becoming more passive. The pornography business is increasingly mushrooming by taking advantage of technological advances.³² Pornography attacks It is felt that the value of decency is increasingly endangering the social order of society. The damage to the nation's future generations is becoming more widespread, especially the

26 Ronny Hanitijo Soemitro., *Metodologi Penelitian Hukum Dan Jurimetri*. (Jakarta: Ghalia Indonesia, 1990): 33.

27 Sabian Utsman., *Dasar-Dasar Sosiologi Hukum: Dilengkapi Proposal Penelitian Hukum (Legal Research)* (Cet. 3). (Yogyakarta: Pustaka Pelajar, 2016): 310.

28 Andri Winjaya Laksana., The Protection of Human Rights in the Case of Non-Criminal Narcotics Users, *SASI* 29, Issue. 4 (December 2023): 790-801

29 Enik Isnaini., Penanggulangan Tindak Pidana Pornografi Dalam Media Internet, *Jurnal Independent* 1, No. 2 (2019): 24–32.

30 Anif Istianah (etc)., Integrasi Nilai-Nilai Pancasila Untuk Membangun Karakter Pelajar Pancasila Di Lingkungan Kampus, *Gatra Nusantara* 19, No. 1 (2021): 62-70

31 Vi Nguyen., The Photoshopping Felon: How Technological Advancements Morphed Child Pornography Law. *Geo. Mason Uclrlj* 32, (2022): 393.

32 Rio Hendra., Initiation Of Child Protection From Sexual Exploitation Crimes By Financial Service Providers. In *Acosec: Asean Conference On Sexual Exploitation Of Children (ACOSEC 2024)*: page. 85-91

younger generation.³³ Pornography is part of one of society's problems that must be addressed and resolved because pornography has quite a large negative impact on society, especially in the development of the younger generation.³⁴ Acts of pornography are considered a threat to the social order of Indonesian society, especially in the formation of moral values, ethics, noble character, and the noble personality of the nation.³⁵

The existence of Law No. 44 of 2008, which regulates pornography, still raises much debate about the pros and cons of social life. The Pornography Law is considered to have not provided justice for society,³⁶ so the government must immediately act so that the legal product that has been established can carry out the function and objectives of the law itself absolutely in regulating people's lives.

The birth of the pornography law, especially Article 4 paragraph (1), has led to different interpretations, so the problem of pornography has not been resolved.³⁷ This law also contradicts the principle of legal certainty, especially the explanation of Article 4, paragraph (1) of the Pornography Law.³⁸ This provision has multiple interpretations that contradict the principle of non-discrimination, as it fails to consider Indonesia's patriarchal culture, leading to the potential criminalization of women.³⁹ Additionally, it lacks inclusivity by prioritizing religious morals as the primary basis for legal considerations.⁴⁰ This contention triggers disintegration and proves the denial of the reality of diversity.

The explanation of Article 4, paragraph (1) of Law No. 44 of 2008 concerning pornography has the potential to lead to multiple interpretations regarding what constitutes a pornographic act, thus

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- 33 N Rees., The Climate Crisis Is A Child Rights Crisis: Introducing The Children's Climate Risk Index. *Unicef*. (2021)
- 34 Tomomi Yamane, & Shinji Kaneko., Is the younger generation a driving force toward achieving the sustainable development goals? Survey experiments, *Journal of Cleaner Production* 292, No. 10 (April 2021): 125932.
- 35 Aris Wahab, Machmud Ramia, & Elsa Nurida Tangke., Pengaruh Peredaran Video Porno Terhadap Anak di Masyarakat (Tinjauan Kriminologi). *Horizon: Indonesian Journal Of Multidisciplinary* 1, No. 1 (2023): 19–30.
- 36 Max Waltman, M., *Pornography: The Politics Of Legal Challenges*. (Oxford : Oxford University Press. 2021)
- 37 Lusia Sulastri, & Rowela Cartin-Pecson., Dynamics Of The Electronic Transaction Information Law In Tackling Cybercrime In Indonesia. *Hermeneutika: Jurnal Ilmu Hukum* 8, No. 2 (2024): 136-149.
- 38 Suratman, & Andri Winjaya Laksana., Analisis Yuridis Penyidikan Tindak Pidana Pornografi Berdasarkan Undang-Undang Nomor 44 Tahun 2008 Di Era Digitalisasi. *Jurnal Pembaharuan Hukum* 1, No. 2 (2014): 169–178.
- 39 Fani Dwi Lestari, Ni Luh Feby Riveranika, Fuji Riag Prastowo., Digital Voyeurism: Netizen Reactions To The Objectification Of Women In Celebrity Porn Leaks In Indonesia. *Journal Communication Spectrum: Capturing New Perspectives In Communication* 13, No. 2 (2023): 96-105.
- 40 Gemma Mestre-Bach, Gretchen R. Blycker, Carlos Chiclana Actis, Matthias Brand & Marc N. Potenza., Religion, Morality, Ethics, And Problematic Pornography Use. *Current Addiction Reports* 8, (2021): 568-577.

arising from the fact that not all moral values in society can be universally applied without taking into account aspects of justice and cultural uniqueness. The problem in interpreting whether an action violates moral norms is that the appreciation of moral norms varies greatly for certain society groups.⁴¹ For example, for the Papuan people, their traditional koteka clothing cannot be considered a violation of decency norms in the same way as traditional clothing in Java or Kalimantan, as cultural differences shape the perception of moral values and decency.⁴²

Indonesian people who live in Sabang wear traditional clothing that is very close. As is known, the further east the traditional clothes of Indonesian people are, the more open they are.⁴³ So, it is natural that Indonesian people's perceptions differ regarding the body's boundaries that must be covered.⁴⁴ The controversy over the Pornography Law cannot be separated from the local cultural context or customs of Indonesian society, and to avoid conflict between one tribe and another, a legal formulation that is fair to all Indonesian society is needed.⁴⁵

2. Weaknesses in the Construction of Current Pornography Crime Regulations

a) Weakness of Legal Substance

The legal substance is written and unwritten arrangements used as guidelines for resolving a legal violation.⁴⁶ In the legal substance itself, there are material and formal legal components. The material legal component is in the form of regulations that regulate actions categorized as crimes or violations, the elements of the offense, and the sanctions given.⁴⁷ The formal legal component is the regulations used to regulate the method of confirming material law, starting from the process of investigation and investigation examination to the imposition of sanctions for law violators. In other

41 Jonathan Baron & Geoffrey P. Goodwin., Consequences, Norms, And Inaction: Response To Gawronski Et Al. *Judgment And Decision Making* 16, No. 2 (2021): 566-595.

42 Sanusi, M. Irpan & Syahrial Shaddiq., Badamai Culture Communication: Character Development Of National Law. *Journal Of Humanities And Social Sciences Studies* 5, No. 6 (2023): 15-31.

43 Ruth Barnes., *Ikat Textiles Of Lamalera: A Study Of An Eastern Indonesian Weaving Tradition* 14, (2024)

44 Terje Toomistu., Thinking Through The S (K) In: Indonesian Waria And Bodily Negotiations Of Belonging Across Religious Sensitivities. *Indonesia And The Malay World* 50, No. 146 (2022): 73-95.

45 Monika Arnez., Gender, Islam And Sexuality In Contemporary Indonesia: An Overview. *Gender, Islam And Sexuality In Contemporary Indonesia*, (2024): 1-18.

46 Michael Bayles., Principles For Legal Procedure. *Law And Philosophy* (1986): 33-57.

47 Jonathan Herring., *Criminal Law: The Basics*. Routledge. 2021,

words, formal law is the regulations used to enforce formal law (procedural law).⁴⁸

The Pornography Law is a very controversial legal product that received protests from the discussion process until it was promulgated.⁴⁹ There are pro and con groups. The ideal legal product is a regulation that can accommodate the norms and values that exist in society because these are needed in social life.⁵⁰ This law does not accommodate all parties in terms of formulation. The Pornography Law does not explicitly regulate the scope of decency norms as pornography crimes because morality offenses are still vague.⁵¹ The Pornography Law does not provide exceptions, as the Constitutional Court decision states explicitly that art, literature, and customs do not include pornography.⁵² Therefore, in its implementation, it is sanctioned that there are many obstacles because it gives rise to multiple interpretations of this moral offense, making it very dangerous.⁵³

The many articles of law with multiple interpretations do not give citizens proper justice and legal certainty, so further revision is necessary.

b) Weaknesses in The Legal Structure

The legal structure, in its role both as the implementer of statutory regulations and as the law enforcer responsible for delivering decisions (legal substance derived from the judicial process), should not be founded solely on statutory regulations. The hope is that in enforcing the law, the legal structure or law enforcers will see justice in society.⁵⁴

Criminal procedural law, which is the implementing rules of material criminal law, aims and functions to seek and obtain material truth, hand down a judge's decision, and implement the judge's

48 Wahyu Krisnanto, & Martika Dini Syaputri., Kelemahan Perlindungan Hukum Terhadap Perempuan Dari Kekerasan Seksual Di Ruang Publik. *Jurnal Ilmiah Universitas Batanghari Jambi* 20, No. 2 (2020): 519–528.

49 Karen Maschke., (Ed.) *Pornography, Sex Work, And Hate Speech*. Taylor & Francis. (2024)

50 Neng Djubaedah, Pornografi Dan Pornoaksi Ditinjau Dari Hukum Islam. (Jakarta: *Kencana*, 2003): 140.

51 Arjun Punaji., The Obscenity Tightrope: Legal Analysis Of Judicial Standards, Legal Moralism And Social Debate. *Legal Moralism And Social Debate*, (May 20, 2024).

52 Hendri Yulius Wijaya., Privacy, Porn, And Gay Sex Parties: The Carceral Governance Of Homosexuality In Indonesia. *Laws* 10, No. 4 (2021): 87.

53 Eka N.A.M Sihombing, & Chyntia Hadita., Pornography In Universalism Perspective: A Freedom Expression? *Jurnal Ham* 13, (2022)581.

54 Achmad Ali. *Menguak Teori Hukum (Legal Theory) Dan Teori Peradilan (Judicialprudence) Termasuk Interpretasi Undang-Undang (Legisprudence)*. (Kencana Prenada Group, 2012): 44.

decision so that the implementation of criminal procedural law will avoid the occurrence of vigilantism by victims or the public.⁵⁵

The regulation of criminal laws outside the Criminal Code influences investigators, as expressly determined in the Criminal Procedure Code.⁵⁶ Hence, it relates to the handling of special offenses outside the Criminal Code that require special expertise according to their field. This is the case in narcotics crimes, which have special investigators in narcotics investigations, in this case, BNN investigators. However, currently, there are no investigators who specifically handle pornography crimes.⁵⁷

c) Weakness of Legal Culture

Blankenburg stated that legal culture is the totality of attitudes, beliefs, and values related to law.⁵⁸ Legal culture is a subculture related to the appreciation and attitude of human actions toward law as a social reality.⁵⁹

Technological developments have brought new forms of pornography, which Burhan Bungin identifies as pornoaction, pornomedia, pornotext, and pornovoice. Pornoaction is a depiction of bodily movements, the protrusion of dominant body parts to provide sexual stimulation, to the act of exposing breasts and vital organs unintentionally or deliberately, to arouse sexual desire in those who see it.⁶⁰ Pornomedia is the actions of sexual subjects and objects that are shown directly from one person to another, thereby causing stimulation for someone.⁶¹ Pornomedia is a pornographic reality created by the media, such as pornographic images and texts published in print media, pornographic films (either in the form of VCDs, DVDs, or films that can be downloaded on mobile phones),

55 Yulies Tiena Masriani., *Pengantar Hukum Indonesia*. (Jakarta: Sinar Grafika, 2008): 82-83

56 Zul Khaidir Kadir & Nadiyah Khaeriah Kadir., Examining Of The Concept Of Standard Of Proof In The Indonesian Criminal Procedure Code. *International Journal Of Global Community* 7, No. 2 (July 2024): 149-160.

57 Sindi Ayu Andira, & Muh Endriyo Susila., Overcoming Deepfake Porn Crimes In Indonesia. *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 23, No. 3 (2024): 2393-2407.

58 Tb. Ronny Rahman Nitibaskara., *Perangkap Penyimpangan Dan Kejahatan*. (Ypkik, 2009): 50.

59 Denny Suwondo, Andri Winjaya Laksana, Arpangi., Building A Legal Culture Of Awareness In Nitikan Village, Magetan District. *International Journal Of Law Society Services* 3, No. 1 (2023): 20-31.

60 Wahyu Mustajab, & Teo Swanson Sitohang., Legal Protection For Victims Of The Crime Of Dissemination Of Porn Videos. *El-Hekam* 8, No. 2 (2023): 263-277.

61 Ahmad Hidayat, & Anang Dony Irawan., Law Enforcement For Crime Of Pornography Widespread On Social Media Based On Lex Specialis Derogat Legi Generalis. *Academos Jurnal Hukum Dan Tatahan Sosial* 1, No. 2 (2022): 12-20

pornographic stories through the media, telephone providers or via the internet.⁶²

The public's low level of understanding regarding criminal acts of pornography means that often, the distribution of pornographic videos in the form of threats to victims is considered not as an act of violence or a criminal act but as a mere act of fun or joke.⁶³ Individuals retain personal responsibility and freedom to make decisions about their behavior. However, social factors can be a factor that influences individual perceptions, choices, and behavior regarding pornography.⁶⁴

d) Reconstruction of Regulations on Pornography Crimes Based on Pancasila Justice

Reconstruction means building or restoring something based on the original incident, where reconstruction contains primary values that must be maintained in rebuilding something according to its original condition; legal reconstruction is defined as a process of rebuilding or rearranging legal ideas, notions, or concepts.⁶⁵ The Pornography Law is a legal instrument to tackle pornography, which is increasingly dangerous and which the Criminal Code can no longer afford.⁶⁶ Wirjono Prodjodikoro divides the criminal provisions in Chapter Second,⁶⁷ the criminal act of violating modesty (zeden) in Articles 236-547 of the Criminal Code.⁶⁸ So, the Pornography Law in the Criminal Code is a special provision that applies the *lex specialist derogate legi general* principle. Pornography is a form of development/expansion of the phrase "writings, images or performances containing decency" in Articles 282, 283, and 533 of the Criminal Code. The birth of the Pornography Law is a momentum for the birth of legislation that truly breathes Pancasila as an effort to regulate, improve, and protect decency issues steeped in moral values.⁶⁹

62 Burhan Bungin., *Erotika Media Massa*. (Muhammadiyah University Press, 2001): 6-7.

63 Rebecca Rose Nocella, & Delia Chiaro., *Laughing In The Face Of The Law: Humour As A Thermostat Activating Social Change For Porn Workers*. *Law, Culture And The Humanities*, (2023)

64 Iraklis Grigoropoulos., *Normative Pressure Affects Attitudes Toward Pornography*. *Sexuality & Culture* 27, No. 3 (2023): 739-760.

65 Gunarto, Jainah, & Anis Mashdurohatun., *Legal Reconstruction Of Trafficking Victim Protection Based On Justice Value*. *Scholars International Journal Of Law, Crime And Justice* 6, No. 5 (2023): 301-308.

66 Aparna Singh., *The Rise In Illegal Pornography And The Legal Remedy*. *Jus Corpus Lj* 2, (2021): 218.

67 Wirjono., *Asas-Asas Hukum Pidana Di Indonesia*. *Eresco*. (1986)

68 Supanto., *Pelecehan Seksual Sebagai Kekerasan Gender; Antisipasi Hukum Pidana*. *Mimbar Jurnal Sosial Dan Pembangunan* 20, No. 3 (2004): 288-310.

69 Rinaldo., *Religion And The Politics Of Morality: Muslim Women Activists And The Pornography Debate In Indonesia*. *Encountering Islam: The Politics Of Religious Identities*

The general explanation above places Pancasila as the basis of a state that views humans as creatures created by God Almighty so that humans are attached to two aspects in a balanced way, namely, the individuality (personal) aspect and the sociality (community) aspect, which according to Barda Nawawi Arief is called monodualistic balance.⁷⁰ If the term "independence" is elaborated upon, especially as stated in the third paragraph of the preamble to the 1945 Constitution, then the independence referred to is the right to freedom to live a national life, which is framed in order and in an atmosphere of legal order to realize prosperity and social justice as well as the protection of the entire Indonesian nation.⁷¹ Regarding the issue of pornography in Indonesia, this right to freedom must be in line to overcome pornography, or in other words, the right to freedom; this should not be a means to foster pornography in Indonesia.⁷²

An important factor in humans becoming moral is the existence of a moral awareness of Pancasila, which can be realized in daily behavior. This moral awareness is the awareness to behave well, not only when dealing with other people but also without their presence. This awareness is based on fundamental and very deep values.⁷³ In this way, good behavior is based on the authority of personal consciousness and not on influences from outside the human being.⁷⁴

The provisions in Article 4 of Law No. 44 of 2008 concerning pornography assume that every person who raises sexual issues, issues of sensuality, and nudity has the aim of exploiting sexual pleasures such as in pornography.⁷⁵ In this assumption, all sexual issues and sensuality are seen as reflecting low morals because they seek profit by selling sexual pleasure.⁷⁶ However, not all things related

In Southeast Asia. Edited By H. Yew-Foong. Singapore: Institute Of Southeast Asian Studies, (2013): 247-68.

70 Barda Nawawi Arief., Bunga Rampai Kebijakan Hukum Pidana: (Perkembangan Penyusunan Konsep KUHP Baru), (2011): 94

71 *Ibid*

72 Dian Pertiwi Suprpto, Muhamad Faslukil, & Yohanes Triyana., Indonesia's Role In Preventing Transnational Cyber Pornography Of Children In The Southeast Asian Region Viewed From A Political Law Approach. *International Journal Of Social Science And Human Research* 6, No. 06 (2023): 3871-3877.

73 Efendi, Anis Mashdurohatun, & Sri Endah Wahyuningsih., The Reconstruction Of Values In Handling Terrorism Based On Pancasila. *Ijlr: International Journal Of Law Reconstruction* 6, No. 1 (2022): 29-41.

74 Abdul Ghofur Anshori., *Filsafat Hukum*. (Yogyakarta: Gadjah Mada University Press. 2009): 73.

75 T S Sathyanarayana Rao, Debanjan Banerjee, Neena S Sawant, Choudhary Laxmi Narayan, Abhinav Tandon, Shivanand Manohar, Suman S Rao, Forensic And Legal Aspects Of Sexuality, Sexual Offences, Sexual Dysfunctions, And Disorders. *Indian Journal Of Psychiatry* 64, Suppl. 1(2022): S108-S129.

76 Ronen., Gendered Morality In The Sex Toy Market: Entitlements, Reversals, And The Irony Of Heterosexuality. *Sexualities* 24, No. 4 (2021): 614-635.

to sexuality, sensuality, or nudity contained in,⁷⁷ for example, anatomy lecture materials, works of art, marriage seminar papers, and sex education are aimed at degrading dignity and violating decency as intended to be protected in this provision. Therefore, the author recommends reconstructing the article as follows: Pornography is a person's actions to arouse sexual desire explicitly. In some cases, for example, the public still sees the eroticism side as the same as pornography because the presentation shown is related to content that has sexual references. Therefore, the reconstruction in Article 4, paragraph 1 must be clear so that it does not become subject to multiple interpretations in its application.

When the diversity of cultural values is regulated in law, It is natural that the issuance of the Pornography Law will cause clashes with values and norms. Resistance occurs on the one hand, while the desire to "purify" the culture also occurs on the other hand. The two domains will be busy defining the definition of action pornography, which basically will not be easy (not to say never possible) because of different foundations. Whether or not there is a Pornography Law, sexual misconduct in any form will remain and will continue to occur or never occur, depending on the individual's values, norms, and understanding.

D. CONCLUSION

The current regulation of criminal acts of pornography is not yet based on the value of justice because the pornography law, especially Article 4 paragraph (1), has led to different interpretations, so the problem of pornography cannot yet be addressed. The author proposes to reconstruct the regulations for criminal acts of pornography in Article 4 (1) of Law No. 44 of 2008 to read: Every person who intentionally and to arouse sexual desire by producing, creating, multiplying, duplicating, disseminating, broadcasting, importing, exporting, offer, sell, rent, or provide pornography that explicitly contains: a. sexual intercourse, including deviant sexual intercourse; b. sexual violence; c. masturbation or masturbation; d. nudity or display of nudity, e., genitals; or f. child pornography. The Pornography Law should also be used to form human beings who have complete Pancasila justice, namely Indonesian people who understand the meaning of Pancasila and realize it in their daily behavior as a moral awareness.

77 Mukherjee., Dh Lawrence's Travel Writing: Concept Of Nudity And Sexuality With A Difference. *Rupkatha Journal On Interdisciplinary Studies In Humanities* 13, No. 4 (2021): 1-13.

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