

JURNAL CITA HUKUM

Indonesian Law Journal



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Fakultas Syariah dan Hukum UIN Syarif Hidayatullah Jakarta
Jl. Ir. H. Juanda 95 Ciputat Jakarta 15412
Telp. (62-21) 74711537, Faks. (62-21) 7491821

Website: www.fsh-uinjkt.net, E-mail: jurnal.citahukum@uinjkt.ac.id
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The Paradigm of Cyberporn On Legal Culture and Religion Perspective*

Prima Angkupi

Faculty of Law University of Muhammadiyah Metro
Jl. Ki Hajar Dewantara No. 116 Metro City
E-mail: prima.blecbelt@gmail.com

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Abstract:

Indonesia as the largest Muslim country should ideally have a society with good legal culture. Criminal offense or a violation related to cyberporn, does not need to happen. Cyberporn crime is not only a legal issue, but it is more complex. The weakness of the legislation, as well as the technological advances that are supported by the low legal awareness of society, it will difficult to tackle the cyberporn crime. The role of religion is needed as ethical teachings. Indonesia, which recognizes the principle of the Deity as its first principle, mean idealizing the condition of religious society. Awareness of the law will also be easily formed in communities that implement the teachings of their religion well, including public awareness for not accessing the cyberporn.

Key Words: Cyber, cyberporn, legal culture, religion, pornography

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Paradigma Cyberporn Dalam Perspektif Budaya Hukum dan Agama

Abstrak:

Indonesia sebagai Negara umat muslim terbesar idealnya memiliki masyarakat dengan budaya hukum yang baik. Tindak pidana atau bentuk pelanggaran yang berkaitan dengan cyberporn tidak perlu terjadi. Kejahatan cyberporn tidak hanya merupakan permasalahan hukum, tetapi lebih kompleks. Kelemahan peraturan perundang-undangan serta kemajuan teknologi yang didukung dengan kesadaran hukum masyarakat yang sangat rendah mengakibatkan sulitnya penanggulangan kejahatan cyberporn. Peran agama dibutuhkan sebagai sebuah ajaran etika. Indonesia yang mengakui sila Ketuhanan sebagai sila pertamanya, berarti mengidealkan kondisi masyarakat Indonesia yang religius. Kesadaran terhadap hukum pun juga akan mudah dibentuk dalam masyarakat yang mengamalkan ajaran agamanya dengan baik, termasuk kesadaran masyarakat untuk tidak mengakses cyberporn.

Kata Kunci: *Cyber, cyberporn, budaya hukum, agama, Pornografi*

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Introduction

The journey of Indonesian society to the modern community creates complex social problems. Technological developments that provide convenience in the interaction activities of society have a social pathological impact that is not common as a religious society. This is evident from the increasingly widespread practice of cyberporn sites that display pornography on the Internet network. The development of the Internet as a result of advances in information technology resulted in teenagers has seen the content of pornography via the internet.

The problem will not stop because routine consumption of *cyberporn* will cause disturbance of society moral and value, especially to teenage mindset. The distortion of values and morals will set the emergence of a system of society contrary to the law. These conditions will eventually endanger the generation factor of the culture of society.

The Indonesian people who are generally part of religious communities should be able to create a good *legal culture* condition. Forms of deviation that constitute a crime such as *cyberporn*, it is not difficult something to be overcome by our country's law enforcement system. But the fact of the day is that *cyberporn* crimes like boomerang are barely faced by law enforcement.

The spread of thousands of pornographic sites in the world. The internet is of course, a reciprocal effect of the amount of public consumption of pornographic sites through the internet. This is very inversely proportional to the moral values of Indonesia Nation which is labeled as a Religious Country.

The provisions of positive criminal law related to crimes in the field of cyberporn both from the Criminal Code, Law No. 36 of 1999 on Telecommunications, Law No. 40 of 1999 on Press, Act Number 11 of 2008 on Electronic Transactions, until Law No. 44 of 2008 on Pornography as if not move until now.

In this condition, the role of religion is required as an ethical teaching. Indonesia who recognizes the precepts of the Godhead as its first precepts means idealizing the condition of a religious Indonesian society. Awareness of the law will also be easily established in a society that practices its religious teachings well, including public awareness not to access *cyberporn*.

Thus, the study of *cyberporn* criminal law enforcement through a religious approach becomes important to be studied further as an instrument for forming a law-abiding legal culture. Legal thought needs to return to its

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basic philosophy of values and ethics.¹ The prevention of deviations by the community in the context of *cyberporn* through social norms and values that prevail in society as early as possible will avoid the possibility of irregularities. Such control efforts can be done through informal moral and religious education in the community.

Preventive control through moral and religious education will create a civil society-aware civil society order. Improving the quality of humanity with a religious approach also provides a way out for efforts to eliminate the development of *cyberporn* in Indonesia. Therefore, religious approach is a proper and effective form of law enforcement construction in preventing the prevention of *cyberporn* crime.

The Weakness of Cultural Law

Legal culture is a concrete of the values adopted (mostly) society. Thus the legal culture is closely related to the mindset and inner mood of society. When good law is said to be a law incarnated in the value and life of the society (*volkgeist*), the center of the law does not lie in legislation or law, but on the society itself.² Therefore, in dealing with the crime related to morality, especially *cyberporn*, it is necessary to have a cultural construction related to the mindset of the people.

The need to change the ideological mindset of society towards law is necessary because perceptions of the law itself are related to civilization and technology. The legal culture shows an acceptance or rejection of a legal event brought into society. The nature of the government's social controls lagging behind the technology and civilization of society results in the disorientation of personal behavior regarding the judgment of a legal matter. In addition, in a

¹ Yayan Sopyan, "Menyoal Kebebasan Beragama Dan Penodaan Agama Di Indonesia (Study on MK's decision No.140/PUU-VII/2009)" in Cita Hukum Journal Vol 3, No 2, 2015, Jakarta: University Syarif Hidayatullah, p. 210

² Toto Tohir, Rekonstruksi Budaya Hukum Nasional Yang Berbasis Nilai-Nilai Budaya Hukum Bangsa Indonesia, accessed on <<http://hukum.unisba.ac.id>>, on 4th April 2016, at 20.22 WIB. Toto Tohir in his writing stated that "Carl von Savigny feels uncomfortable when German make French's codification model goes in to effect. According to Savigny Law doesn't made, but grow and develop along with the society. The feature of this opinion is a mystically conception, and it is Volkgeist or people's soul. According to Savigny Law is value creation which lives in the people's soul. In such a way, a good Law is the suitable one with the people's soul (*volkgeist*). In Indonesian context those thought is relevant because Indonesia formally practice Continental European Law becomes unique. The uniqueness happens as understood that the system of Law contains cultural Law. Cultural Law basically as a reflection of values in the life of society."

legal system should be an integral relationship among people, society, power and rules.

Cyberporn crime is not only a legal matter but more complex. The weakness of legislation and technological advances supported by the very low legal awareness of the community resulted in difficult to cope *cyberporn* crime. Meanwhile, the *cyberporn* crime is a type of offense that is very harmful, especially for children. The importance of shaping a law-abiding culture is due to the costs incurred by the crime. Especially in the prevention of *cyberporn* crime. Economic losses due to the impact of *cyberporn* crime are:

1. Production

Production that is affected by the crime refers to the cost or resources the government must incur to cope with *cyberporn*. The costs include police institutions, prosecutors, courts, prisons, and network security carried out by the minister. Surveillance fees for *cyberporn* crime pornography sites require the high cost. The formation of legislation that is carried out as law enforcement efforts requires a high cost and a relatively long time.

2. Opportunity Cost

Pointing to the victim or the community itself. Accessing *cyberporn* makes the loss of time for people who can actually be exploited by doing more productive activities. This means that people in the context of victims will happen economic losses due to loss of productive time. Meanwhile, the caught or spreading perpetrator will also eliminate his productive time to work in prison and spent the time in planning crimes.

The forecast of economic losses above makes us ask "how much can Indonesia save if we have the quality of a crime-free environment"? These estimates are only a small part of the economic impact, we have not seen the psychological impact and social losses resulting from consumption of *cyberporn*, such as immoral crime that is likely to increase and decrease the quality of life of the community, especially adolescents (deliberation).

The points above lead to the enforcement of *cyberporn* crime will be difficult to overcome, the weak legislation leads to the ease of individuals doing social irregularities. The level of the deviation made by the community is influenced by the loose or illegal norm. The weakness of legislation, technology, legal awareness, limitations of criminal law, economic losses, social, psychological impacts and also the large budgetary usage in solving *cyberporn* make criminal patterns will continue to grow.

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Law enforcement through the judicial system will not be more effective than changing the public's view of the crime. Constructing the culture of society so that society becomes law-abiding will facilitate law enforcement. The criminal law will not be able to reduce crime completely despite having a *deterrence effect*.

The using of criminal law which is only as *ultimum medium* makes it only as a caretaker of crime in society. In addition, the most important is that the perpetrator of the crime itself is part of the community. Therefore society should be changed. Establishing individual behavior in accordance with social norms required the construction of a community legal culture as a strategic effort in overcoming *cyberporn* crime.

The Legalize of Law Education

Higher education law plays a role in preventing all forms of crime, especially *cyberporn*. When crime becomes a sovereign thing, it can be regarded as a failure of the world of legal education. When thousands of students are crowned law graduates every year in Indonesia, the ratio should ultimately restore the various components of the legal system, the understanding of law enforcers to be better and can transmit the value or the soul of justice to the community so as to form a legal awareness.

At this moment we begin to forget that philosophical law education is a moral education. Faculty of law should print law scholars who will continue to be the determinant of the direction of justice on earth. The education in the world of law not only teach the textual chapters but rather gives a morality. So that cannot be separated from religious education which is the science of divinity.

As stated by Moeljatno that science (including the science of law) which is not accompanied by the divinity is incomplete.³ So close is the relationship between law science and theology, so Satjipto Rahardjo also reveals that science is a forum to hunt for truths that will not be fully grasped. Little human brains

³ Ridwan, "Peran Lembaga Pendidikan dalam Memberantas Tindak Pidana Korupsi di Indonesia" on *Dinamika Hukum Journal* Vol. 12 No. 3, September 2012, Jawa Tengah: Universitas Jenderal Sudirman, p. 552

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can only find the pieces of truth, whereas the true truth belongs only to God.⁴ Here science and religion meet.

Legal science is thus a science of norms and values in the viewpoint of religion and culture. The focus of legal education so far only refers to legal practitioners and legal academics. Under these conditions whatever the form, practitioners or academics need to be inserted the science of behavioral norms in the face of social reality so that the role of the higher education law is to start the introduction of the law itself as a form of divinity, humanity, and society. Justifying⁵ Law as a pillar of truth, honesty, and moral behavior is the initial foundation of reconstruction of the legal system that should, because it would be very ironic when we hear law scholars, law students and law enforcement speak textual justice but forget morality and justice based on ' God's guidance.⁶

The application of an interdisciplinary pattern of interdisciplinary legal education must begin with the approach of religious science, anthropology, sociology, politics, psychology, administration, State science, information technology, and economics. So that the resulting scholars will be qualified. The existence of the discourse is needed reorientation and reform in the field of law at universities. Because the essence of the higher education law is an integral part to form human and cultural society law. Implementation in the method of learning the science of law should have to pay attention to three dimensions:

1. The dimensions of morality and personality so as to have the ability to maintain moral integrity, ethics, and the attitude behavior.
2. The Dimensions of quality productivity in implementing and empowering the scholarship.

⁴ Ridwan, "Peran Lembaga Pendidikan dalam Memberantas Tindak Pidana Korupsi di Indonesia", p. 552

⁵ Notohamidjojo stated firmly that the responsibility of Jurist is spiritualize the Law, and Sciatica Jurisdiction judgment should be deep and on the basis of consscientia (Truth value, justice, honesty, affection among others). And then no secularation in Law education and Law science in Indonesia. See, Barda Nawawi Arief, *Pembangunan Sistem Hukum Nasional (Indonesia)*, (Semarang: Publisher; Pustaka Magister, 2012), p. 32

⁶ See Q.S. An-Nisaa' verse 58 "When you judge with men, judge with justice". An-Nisaa' verse 135

"stand out firmly with justice, as witness to Allah, even tought it be against yourselves, or your parents, or your kin, be He rich or poor, Alah is a better protector to both (than you). So follow not the lusts (of your hearths), lest you avoid justice". Al-Maidah verse 8 "and let not the enmity and hatred of others make you avoid justice", and Q.S Asy-Syuura verse 15 "and I am commanded to justice among you" (justice should be stand for everyone, even towards people who have different religion)

3. The Dimension of creativity and make a positive renewal in the field of law.

The quality of ethical legal scholars and conscience will certainly help to uphold values, culture, behavior and attitudes. The development of mental quality and human quality will greatly influence the rule of law in particular to explore the cultural values of the Indonesian nation. So the ability of legal professionals is not only for the technical resolution of legal cases, but also to have fair and fair conduct in each of those legal cases. At this stage people will begin to recover their belief in the law itself, thus encouraging the birth of legal compliance in society.

The Culture of Law and Religion

Moral and religious approach is an approach through community behavioral education.⁷ The moral and religious approach is a strategic approach because it maximizes the potential for access to pornography, and will be able to raise awareness of everyone to avoid pornography, regardless of its type and medium. If we look at the concept of Islamic culture in shaping the behavioral character of its people, the Prophet's attainment of cultural reform in Hijaz (Mecca, Medina and surrounding areas), followed by later Caliphs, such as Abu Bakar, Umar bin Khattab, Usman bin Affan, Ali bin Abi Thalib, and continued by the Caliphs of Bani Umayyah and Bani Abbasiyah, It is in fact a sufficient reason for us to mention that religion, which in this case is Islam, can be a powerful proponent in a cultural reform. However, it cannot be separated from the struggle of the Prophet who began the process of internalizing these Islamic values in a small community. Starting from family, relatives and close friends until finally formed a large community in Medina.

The problem of cyberporn can be identified with the culture of female placement as the satisfaction of lust or sex slave in the age of ignorance. Moreover, the term ignorance has never been used to describe the age of ignorance, because it turns out that in those days the culture of poetry and pantheon developed rapidly, but rather refers to the conditions of neglect of the truth values. Striving to change the mindset of people to the pornography problems through a religious approach, inevitably have to see what the Prophet has done.

⁷ Cesare Beccaria, *an essay on crime and punishments* translated by Wahmuji, 2011, (*Perihal kejahatan Dan Hukuman*), (Yogyakarta: Publisher Genta Publishing, 1764).

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As the country with the largest Muslim population in the world, Indonesia actually has been a promising potential for the emerging of a religious generation. The proliferation of Islamic educational institutions from primary to university levels should be a more powerful medium of da'wah than what has been achieved in the Prophet period.

The development of the world of information technology is also a promising media to accelerate Islamic da'wah. But why exactly is the decline? Alumni of Islamic educational institutions seem to be no different from non-Islamic educational alumni, from dressing, behaving, even they are often involved in crime. It's a big question for us, why does it happen?

Education is not just a life process that must be completed from one level to the next, without any trace of behavioral change. Education should not be just a process of knowledge transfer, but more than that education is a cultural process, whose target is the birth of intelligent and cultured human beings. An educator often forgotten to instill moral teachings towards his students, because fun to deliver lessons/lectures that are cognitive only. If this pattern is perpetually done massively by other educators, it is natural that this pattern will give birth to train and non-educated students. The process is not even educational but just teaching.

The government should pay more attention to religious education institutions. The statement of "Belief in the One and only" in the first principle of Pancasila shows the importance of religion and religious life in the life of Indonesian society. This precepts also become a belief that with the condition of religious society will make it easier for the achievement of the life of a safe, peaceful, peaceful and prosperous society. Meanwhile, realizing a religious society is not a simple job, but it requires hard work from all parties, including religious education institutions.

Religious Education Institutions in conducting real education also face serious problems, so the process of education is not optimal in the end should impact on quality *output* far from expectations, such as:

1. Human Resource educators who should deliver lessons / lectures of religion, was not enough qualified to deliver it, both in material and method. For example, teaching religion, but he does not understand about the science of tools (Arabic) which is the language of the source of Islamic teachings (Alquran and Sunnah). Moreover, if the educator is just delivering the material without being able to give exemplary in

everyday life. In this context it means that religion which is supposed to arrive at the affective dimension is taught only on the cognitive plain.

2. The Lack of support and concern for parents of their children education. Parents often feel sufficient and fall in their duty in planting religion after entrusting their children to be educated in religious schools. This attitude is certainly wrong because the formal and informal education process will only work well by working with parents in particular and the community at large. Children often feel bored and bored, this is where the role of parents to continue to motivate the child so as to continue the education he is being lived.
3. Perception of Islamic education facilities. The institutions of Islamic Education are often described as shabby and scary places. For example Pesantren is described as an ancient educational institution with old buildings, and a place of nesting diseases. This perception must be changed by seeking a clean and modern look so that people are interested and assess the Pesantren as a picture of the pattern of Islamic life that encourages to live clean and look fun.

Some countries have compulsory military programs for male civilians, such as in the United States and South Korea in order to instill an attitude of love and devotion to the State. What is wrong if the government adopted the mandatory program with another pattern, such as mandatory Pesantren for Muslims as an attempt to doctrine Islamic values?

This offer is worth considering because in reality Muslims in Indonesia are not religiously well founded. Could be due to the lack of attention from the government and the limitations of Islamic social organizations to reach it, or indeed because of the reluctance of people to study their religion intensively Government as the holder of the highest authority in the task of regulating the community can issue policies related to efforts to overcome the crime of pornography with reference to Islamic values contained in the Al-Qur'an and Sunnah, among others:

The Rules on Dressing

Crime does not always start with the intent of the perpetrator, but is very likely to be motivated by chance. Neither is the crime of pornography that could have occurred because it was driven by a style of dress that shows the curves of the body or even show the limbs that provoke the impotence of lust.

How to dress becomes important to govern the government, given the magnitude of the impact that arises, even because of the importance of this problem God says: "tell to devout women: "They should restrain their view, and protect their genital, and they do not show their jewelry, except it is usual and they should cover their chest by wearing veil."⁸

Blocking Sites that contain pornographic content

The crime of pornography is always preceded by the eyes. Allah says: "Say to the believing men:" Let them hold their eyes, and keep their shame, that is holier unto them; actually Allah is Knower of what they do."⁹ Allah also says in the Qudsi hadith: "A vision is like a poison dart that is released from the bow of the Devil arrow." Whoever abandons due to fear of me, then I will give a calm that the sweetness he can feel in his heart.¹⁰

The rapid development of information technology makes it easier for users to obtain positive information that is useful as well as negative information that has the potential to damage. While accessing the website in the interest of finding information, there are often advertisements that have pornographic content, which attracts the attention of internet users to access it further.

Government efforts to block access to pornographic sites should be more serious, given the protection that has been done is still often successfully penetrated by users. Internet users increasingly savvy in penetrating the protection of the government, so it is appropriate for the government to update the protection system. Religious approach in the perspective of Islam cannot be separated from the existence of the Qur'an. The Qur'an does give the rules of life, although the Qur'an cannot be called a law book. However, the Qur'an actually lays down some moral pillars that will be the foundation of social piety.

3. The Prohibition of shirk

The connection of this principle is Allah chooses to use the editor "*wala tusyriku bihi syai'a*" (And do not associate it with anything).¹¹ This verse gives a

⁸ Alquran. An- Nuur (24): 31

⁹ Al-Quran. An- Nuur (24): 30

¹⁰ Ath-Thabrani, *Al-Mu'jam al-Kabir*, juz. VI (Kairo: Maktabah Ibn Taymiyyah), no:8018. Also See; Imam Ahmad ibn Hanbal, *Musnad Ahmad Ibn Hanbal*, juz.2, (Kairo: Dar al-Hadits, 1995), p. 255.

¹¹ Al-Quran. An-Nisa' (4): 36

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strict statement that there are no absolute and remains in the pillars of Islam other than the creed "There is no God besides Allah and Muhammad the messenger sent by Allah". This is the strongest and comprehensive pillar that covers all the principles of development the progress and justice at the same time.

Based on this principle, then some regulations made by human beings are absent and should not be immutable and anti-change, but must be reviewed for a certain period of time. So the legal principle if applied in a country, it will show the truth of the creed and make the jurists and law drafters always busy and work hard to formulate a new law. At the same time, political parties, government agencies, people's representatives and press agencies will be increasingly empowered and show an important role in managing society.

4. Do Good to Parents

Allah says: "And we oblige human to do good to their parents. And if both are forced to associate me with something that has no knowledge of you, then do not follow both".¹² The testament to doing good to parents emerge in the Qur'an for two reasons, because the foundation of life is many descendants and the basis of life is progress, development and increasing knowledge. Both cannot be separated from the role of parents.

The above verse provides guidance so that in being obedient to parents, children follow the rules of obedience prevailing in their environment. However, children should be smart and critical and have the experience and skills to solve their own problems. Therefore, God stop the process of forcing this intergenerational knowledge system for the future of generations who are built in the advancement of knowledge and different life pattern from their parents.'

5. Go Away from Nefarious Acts

Allah says: "And you do not approach the evil deeds (*al-fawahis*), both visible and hidden."¹³ The abominable acts in the verse above are divided into two kinds.¹⁴ The first type pivots on the sexual instincts of men and women possessed by all living beings, including human beings. This is what is called as a mere biological drive that potentially exists in human. The second kind of nefarious action is not derived from the innate instinct of human, but the

¹² Al-Quran. Al-Ankabut : 8

¹³ Al-Quran. Al-An'am : 151

¹⁴ Muhammad Syahrur, *Prinsip dan Dasar Hermeneutika Hukum Islam*, terj. Sahiron Syamsuddin, (Yogyakarta: eLSAQ Press, 2007), p. 109-110.

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psychic drives possessed consciously and nurtured intentionally through learning or influenced by an unhealthy cultural environment, is sex (homosexual and lesbian) deviate.

The principles above in fact existed for more than fourteen centuries ago. With the current condition of the non-plural society, and also the submission of society to the Prophet, companions, *tabi'in* and *tabi'it tabiin*, these principles do not seem to be necessary to be formulated in the state. But with the increasingly evolving situation of society in all aspects of life, it is important to be considered by the government, to always incorporate religious values in the form of the Qur'an ethical principles in legislation, or even to make specific rules on ethics, which is bind all elements of society within a country.

Conclusion

Attempts to change the mindset of people not to access *cyberpron* is an effective effort to eliminate *cyberporn* sites. The character of the mindset can be organized through a legal culture based on norms and social values that prevail in society. The role of education and religion in internalizing legal compliance as early as possible will avoid the possibility of irregularities. Such control efforts can be done through formal and informal moral and religious education within the community. Preventive control through moral and religious education will create a civil society-aware civil social order. So people have a motivation awareness of behavior. Improving the quality of humanity by religious approach also gives way to enforcement of *cyberporn* crime law. Therefore the religious approach is a proper and effective form of law enforcement construction in the prevention of *cyberporn* crime.

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