

NON-PENAL POLICY ON THE COUNTERMEASURES OF THE TRANSMISSION OF PORNOGRAPHIC CONTENT IN MOVIE BROADCASTING THROUGH VIDEO ON DEMAND (VOD) SUBSCRIPTION

SARI YULIATI¹, SIGID SUSENO² and NELLA SUMIKA PUTRI³

¹Doctoral Program Faculty of Law, Padjadjaran University, Bandung, Indonesia.

^{2,3}Faculty of Law, Padjadjaran University, Bandung, Indonesia.

Email: ¹sariyuliat@gmail.com, ²sigit.suseno@unpad.ac.id, ³nella.sumika.putri@unpad.ac.id

Abstract

Amid the dynamic and massive advanced digitalization, pornographic contents are various and transmitted in different media as well. One of the most popular media applications used today is Video on Demand (VOD). However, this application brings negative impact because of the massive spread of films with pornographic content. This writing is to study deeper about the non-penal policy on the countermeasures of the transmission of pornographic content in movie broadcasting through the subscription of Video on Demand (VOD) application. The findings showed that the transmission of pornography in film broadcasting through VOD application in Indonesia has a negative impact on national identity that is with moral and attitude living among Indonesian. The countermeasure policy on the spread of pornographic content in the film broadcasting through VOD application in Indonesia refers to the various regulations such as Law No. 40, 1999 on Press, Law No. 32, 2002 about Broadcasting, Law No. 11, 2008 concerning Information and Electronic Transaction, Law No. 44, 2008 about Pornography, Law No. 33, 2009 concerning Film and other related laws. The concept of non-penal policy in the countermeasure of the spread of pornography in the film broadcasting through VOD application can be done with methods of: 1) technological prevention on several components such as infrastructure technology; 2) cellular and internet network operator; 3) prevention of frequency; 4) Prevention by not subscribing or not installing the application; 5) Optimizing the monitoring on VOD by the Ministry of Information; 6) making the values, moral, and the law living in the community.

Keywords: Policy, Prevention, Pornography

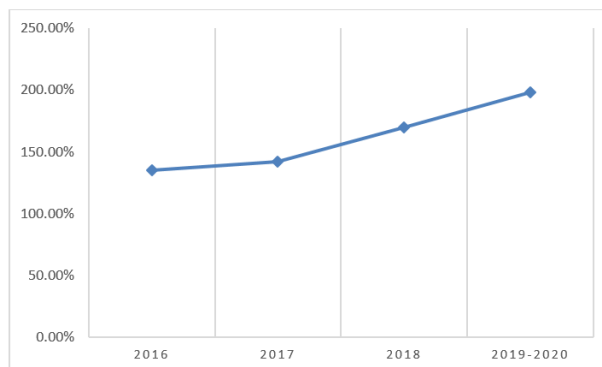
INTRODUCTION

The numbers of internet users in Indonesia is significantly increasing from time to time. According to data published by Association of Indonesian Internet Service Provider, there was 196.71 thousand people or 73% of Indonesian people used internet service in 2019-2020 (Q2).¹

Based on the graphic above, it showed the increasing trend of internet users in 2016 until 2020. Such numerous user is positive on one side, but can be negative on the other. One of the negative impacts are the potential misused of the internet to access pornographic contents. Pornography, in Indonesia, is categorized as one of cyber-crimes. Based on Law No. 44, 2008 concerning Pornography, Pornography is defined as a picture, sketch, illustration, photo, writing, voice, sound, motion picture, animation, cartoon, conversation, body motion, or other text message transmitted through various communication media and/or public display containing obscenity or sexual exploitation that violate norms of decency in the society.² From

the definition above, a conclusion can be drawn that anything meeting the above-definition is deemed a criminal offense and breaching of decency norms applied in the society.

Figure 1: Graphic of Numbers of Internet Users in Indonesia



Source: APJII

Amid the dynamic and massive advanced digitalization, pornographic contents are various transmitting through various media, too. One of popular media today is Video on Demand application (VOD).³ VOD is an interactive system enabling people or consumers to freely select a video or film to watch. Unlike television or cinema that is more conventional where people have to wait and follow the schedule set, VOD makes possible for people to select, download, and enjoy the content whenever, wherever they want to watch through either mobiles, laptop, or PC.

New broadcasting media is a form of broadcasting digitalization in various platform of applications that can be accessed through internet network. VOD service provider in Indonesia deals with some issues. First, the video or film is broadcasted uncensored. On the other hand, the video or film to be broadcasted on TV or cinema (conventional) should pass the censorship from Film Censorship Board (LSF) or Indonesia Broadcasting Commission (KPI) before displayed. Second, VOD application does not have permit to broadcast in Indonesia. It does not have any representative office in Indonesia, and does not pay any Indonesian tax. Third, the locus of activity of VOD is not jurisdiction of Indonesian laws and law enforcement. Locus is the crime scene.

There are some instances of cases of pornography spread through film broadcast on VOD, one of which is Netflix. Several movies on Netflix contain erotic and pornography content, such movies are: American Pie, American Pie 2, American Wedding, American Reunion, The Naked Mile, Beta House, The Book of Love, Girl's Rules, Friends with Benefit. In addition to the contents mentioned earlier, Indonesian Consumer Protection Foundation (YLKI)⁴, some contain Lesbian, Gay, Bisexual, and Transgender (LGBT) contents.

In Article 1 verse (3) of 1945 Constitution, it is stated that Indonesia is a law state. As one, government of Indonesia has promulgated several laws regarding pornography issues starting from the Chapter XIV of the Bill of Criminal Code regulating rimes against decency; Law No.

44, 2008 concerning Pornography; and Law No. 19, 2016 regarding the Amendment of Law No. 11, 2008 on Information and Electronic Transaction. This can be interpreted that the laws applied today are not effective to minimize the spread of pornography or in other words, other acts are needed to complete the existing regulations to be able to effectively and maximal prevent the spread of pornography in Indonesia.

The above three regulations applied to tackle pornography in Indonesia are laws used criminal approach as called penal policy. Barda Nawawi, in fact in his book, argued that prevention and eradication of criminal should be done with integral approach balanced between penal and non-penal approach.⁵ Penal policy is interpreted as mechanism of legal problem or crime solving through criminal law or sanction stressing on post-crime repressive action (assault/eradication/annihilation). While non-penal policy stresses more on preventive action (prevention/controlling/ceasing) pre-crime.⁶

The use of non-penal policy is any efforts to prevent the widespread of pornography and to prevent people of Indonesia to access the content. The scope of non-penal policy is wide in all sectors of policy of social or national development.⁷ Therefore the use of such policy is a part of the preventive action against crimes. Further, non-penal policy is so strategic that it holds key role to be intensified and effective.⁸ Based on above-mentioned and comparing the case with hoax or fake news cases, it can be identified that the use of non-penal policy in crime prevention in Indonesia plays strategic role especially when both penal and non-penal policy can be integrated and harmonized. It, then, is necessary to be applied in the prevention of pornography on VOD.

The use of penal policy in cases of pornography in Indonesia has not been done integral with the non-penal policy measures. It requires a criminal policy to prevent the widespread of pornography on VOD. In addition, information technology-based regulation is necessary to prevent the widespread of pornography as the countermeasure taken by government and the law enforcement since the widespread is done on the basis of information technology such as on VOD or on sites that is easy to access through virtual private network (VPN).

From the above-mentioned, this research is significant considering the application of the law in Indonesia in handling the issue of pornography and the potential of widespread of pornography. In addition to that, the impact of the advanced of information technology in the spread of pornography specifically on VOD. Research on this issue is not many if not limited especially those that are related with criminal policy specifically the non-penal policy on advanced information technology such as VOD.

RESEARCH METHOD

This research is legal research which is normative or doctrinal type of research. The approach is selected to solve the problems dealt with. The approach used is statute approach, conceptual approach and comparative approach and also technological approach.⁹ Data collecting technique and analysis are conducted through literature study and field study. Referring to the approach applied, data obtained are analyzed qualitatively and descriptive done by categorizing

the data based on the problems or the use of each datum. Interpretation then is used to give comprehension and explanation about the data obtained. Finally, analysis and interpretation are done on the whole categorized data with inductive method to produce comprehensive data.¹⁰

RESULT AND DISCUSSION

A. The Widespread Of Pornography through Movie Broadcasting On Video on Demand (VOD) Subscription in Indonesia

Before we discuss about the widespread pornography through movie broadcasting on VOD subscription, it is necessary to understand the relation between VOD and OTT (Over the Top). OTT can be defined as service of content containing data, information or as multimedia operating on internet owned by a telecommunication operator. The service by OTT can be divided into at least 3 categories: (i) application such as WhatsApp, Line, Telegram, Skype, Facebook, Twitter, Instagram and many more; (ii) content/video on demand/streaming such as Youtube, HOOQ, Iflix, Netflix, Viu and many more); or (iii) service such as Go-Jek, Grab, Uber, and others.

Internet based transmission is a broadcasting done on internet through bandwidth or spectrum. SVoD is the combination of VOD and OTT. VOD is a broadcasting system offering facilities to the customer to select what they want to watch. SVoD is a paid-VOD for all time-limited shows where customer can unsubscribe anytime [for instance, Netflix, Hulu Plus, and HBO Go].¹¹

International Telecommunication Union (ITU) defined OTT as a service or application which is provided to a user over the internet (Global Partner Digital, 2017). While Urgelles (2017) described OTT as an audio-visual content transmitted on existing TV receiver such as cable TV, parabola dish or set top box. The European Parliament and the Council of the European Union (2010), in addition, understands OTT as a non-linear media of audio visual (or on-demand) or simply VOD.

It can be concluded that OTT is internet based; its content is audiovisual; OTT is non-linear or VOD. This limitation is vital because OTT has several services as noticed by Jayakar and Park (2014).

However, in the perspective of content in broadcasting industry, OTT is an audiovisual transmitted on internet and received on the basis of VOD. This means that the receiver of the content determines when, where, and what video to access. This understanding confirms that OTT is part of broadcasting content. The characteristic difference of OTT and TV content is due to different technology used which forms so different user's and content creator's interaction culture that OTT is hybrid in character because it combines television's passive consumption mode and the web of the active consumer's choice (Tryon, 2011). Therefore, the definition of OTT as explained earlier can be included into broadcasting activity category.

Referring to the research conducted by Valentine (2018), Indonesia needs regulation related to OTT service. The research shows that best option of regulation on OTT service in Indonesia

through encourage local OTT service. On the other hand, for the foreign OTT service, it needs to establish representative in Indonesia and to apply for Permanent Business Enterprise. With this, the foreign OTT service operator can redistribute tax to Indonesian government.

In Indonesian context, it may be vital because up until today, Indonesia is yet to have a special organ to monitor the internet content particularly VOD content broadcasted through OTT service. Meanwhile, the internet-based communication activity can accommodate the aggressive, progressive, and impressive character of the new media. This is the transformation era from mass or media mass communication to internet-based or new media communication (Khang, Ki dan Ye, 2012).

Essentially, any internet-based or new media activity is meant to limit the freedom of the citizen in expressing ideas and opinion as the human fundamental rights. The law is certainly to protect the citizen of Indonesia mainly to protect the country (from various threats especially from the threat of moral decadence) from various negative content on internet or new media.

Any VOD activity without clear and comprehensive law will tend toward the vision of liberal democracy (Jiang, 2013). It is because the internet usage without any provision from the law and social support and the resulting impact describes the vision of that liberal democracy (Bessiere, et.al. 2008). The vision of liberal democracy, for example, can be viewed and accessed easily by anyone on the internet through various content of porn video. With the logic and thinking of the algorithm, anybody just needs to find the key word of anything they want to search on the internet. They, then, look up on the internet and find what they look for. Anyone, anytime and anywhere who can access the internet can watch the porn on VOD such as Iflix, HOOQ, Catchplay, Genflix, Netflix and Viu free of charge.

Recently, people have been talking about the blocking of one of VOD which is Netflix. It is because Netflix has been controversial since its first operation in Indonesia in 2016. One of the reasons is that the content available displaying porn. In addition, various contents transmitted on VOD also showing violence, disregarding the religious values and human dignity of Indonesian Pancasila. Everyone whose access to internet can watch or download and save the movies free of charge and even can share them. Any other negative contents can stimulate the viewer to mimic what they watch.

The content transmitted by Netflix containing porn certainly is against the laws in Indonesia leading to the blocking of Netflix by Telkom in 2016 until 2020. In addition, Netflix did not have broadcasting permit and it did not have representative office in Indonesia, and it did not pay any Indonesian tax.¹² Netflix also operates in several countries and has some similar issues with ones in Indonesia.¹³

Some movies on Netflix raising some controversy are Cuties showing on 9 September 2020 displaying sex content involving children; 13 Reason Why aired on 31 March 2017 depicting suicide, 365 Days showing on 11 March 2017 displaying gamble and many more Netflix movies triggering controversy because they are against Indonesian laws. Under the Broadcasting Act, Netflix movies showing pornography, violence, sex, and gamble are against the prohibition in the content as stated in Article 36 (5) of Law no. 32, 2002 concerning

Broadcasting; against the Behavioral Standard of Broadcasting, and Standard of Broadcasting Program.

Under the Law No. 33, 2009 on Film (Film Act), Netflix movies are categorized into movies under the Film Act. However, the movies showing in and transmitted in Indonesia do not go through process of censorship by Film Censorship Board (LSF) mandated by the Article 57 of Film Act). It, therefore, contains violence, gamble, and pornography as prohibited by Article 6 of Film Act. While under the Law No. 44, 2008 on Pornography (Pornography Act), Netflix movies are against the Article 44 verse (1) of Pornography Act because it produces, transmits, hires, or provides ones with porn content and are against Article 11 of Pornography Act because the movies involve minors as the object as in Article 4 of Porn Act. In addition, Netflix can be deemed liable for violating Article 27 verse (1) and (2) of Law No. 11, 2008 concerning Information and Electronic Transaction for distributing its movies, as electronic information, containing sexuality and gamble.

Communication operator that collapse with Netflix is a telecommunication operator as mentioned in Article 11 figure 12 of Law No. 36, 1999 concerning Telecommunication (Telecommunication Act). The Act prohibits operator to run a telecommunication business violating the public interest, public order, decency, or security.¹⁴

B. Existing Prevention Policy On The Transmission Of Pornography Content On Video On Demand Subscription

The prevention policy on the transmission of pornography through VOD subscription in Indonesia still refers to regulations applied considering that the transmission of pornography has always been using the advanced technology. The laws applied are:

1. Law No. 40, 1999 concerning Press

The enactment of the Press Act was to regulate the proper way of sharing of information which in reality, is not always in line with the theory. The Act is supposed to facilitate the freedom of press and the autonomy to share information (right to know) and the right to express¹⁵, which is often misunderstood.

The term autonomy is often interpreted as full freedom in managing the institution of the press. They tend to ignore the obligations that actually are attached to the rights. Moreover, the press is also a business that the investors try to get profit as much as possible even though they have to shift from its main function. Many of them display pornography on all kinds of media, printed or electronic.¹⁶

2. Law No. 32, 2002 concerning Broadcasting

Development of technology and information has brought up implication towards broadcasting in Indonesia. Broadcasting as the information channel and the generator of public opinion has a very strategic role especially in developing democracy. Broadcasting has been one of the media of communication for people, broadcasting institution, business enterprise, and government.¹⁷

Unfortunately, broadcasting world does not only inform positive news but also the negative news, one of which is pornography. Some media today even do worse. Those media are such hot tabloid, internet, porn VCD or DVD. Without realizing it, other media both printed or electronic take part in the transmission. Those media are newspaper, magazine, television, cinema or even radio. Therefore, government established Indonesia Broadcasting Commission (KPI) consisting of 9 members as mandated by the Broadcasting Act.

3. Law No. 11, 2008 regarding Information and Electronic Transaction

The advanced computer technology, telecommunication and information has been done in such a way and has encouraged the rapid growth of business. Therefore, some information has been presented sophisticatedly and easy to obtain even though remotely accessed by utilizing telecommunication technology¹⁸.

In fact, the advanced information technology has been followed by things that violates decency. The prevention of pornography is regulated in Information and Electronic Transaction in Chapter VII, Article 27 verse (1) jo. Article 45 verse (1). Under the stipulations above, the prevention of pornography in Information and Electronic Transaction Act is done through penal approach (criminal sanction).

4. Law No. 44, 2008 on Pornography

The prohibition of pornography is also regulated with the promulgation of Law No, 44, 2008 stating¹⁹:

- a. Prohibition and restriction the making, transmission and the use of pornography.
- b. Child protection from the influence of pornography.
- c. Prevention of the making, transmission, and the use of pornography including public participation in the prevention measures.

Law No. 44, 2008 strictly stipulates the sanction against the making, transmission and the use of pornography adjusted to the severity of the action that is gross, medium, light and imposes aggravation of punishment when involving minors. In addition, this aggravation of sanction is imposed upon perpetrator that is corporation by doubling the main sanction and imposing extra punishment. To protect the victim of pornography, this Act mandates all parties involved, in this case, the state, social institution, educational institution, family, and/or people to facilitate education, advocacy, social restoration, physical and mental health for any minor victim or offender of pornography.

The role of government in the pornography prevention is stated in Chapter IV Article 17 saying²⁰: “Central and Regional Government should take measures to prevent the making, transmission, and the use of pornography.”

While public participation in the prevention, widespread, and the use of pornography as stated in Article 21 (1) can be done through²¹:

- a. Reporting the violation of the law;

- b. Filing class action;
- c. Conducting socialization of the law regulating pornography; and
- d. Educating community about the danger and impact of pornography.

5. Law No. 33, 2009 concerning Film

Several things related to the film includes either commercial or non-commercial activities done by business actor. All of this involves film makers, central and regional government, and people whose function and role stipulated in the law. Indonesian movies exported mainly are to introduce Indonesian culture internationally. Any film to distribute and show in Indonesia should pass the censorship and get the permit letter from the film censorship board. Censorship basically is necessary to protect public from the negative influence from the movie that may trigger violence, gambling, drug abuse, and pornography, blasphemy or from foreign culture negative influence.

In addition to protect people from negative influence of movie, people are encouraged to participate in the movie either individually or collectively. Public participation is institutionalized and can be facilitated by the government. This institution holds main task to improve the appreciation and promotion of the film.

In the process of law enforcement to tackle pornography, some institutions are with huge influence. First, formal institutions as the law enforcement bodies such as police force, attorney office, advocates, judge, and correctional service. Second, other institutions such as Film Censorship Board (LSF), Indonesia Broadcasting Commission (KPI), and Indonesia Ulema Council (MUI) and Indonesia Church Council (DGI). LSF bears responsibility to run censor and to determine the age category of the viewer for a film, while KPI has duty to monitor whether the show is aired on allowed time as decided by LSF. KPI has power to impose administrative sanction upon broadcaster violating the rules

Technologically, the internet setting for pornographic material can, in fact, be done with some software's enabling users to get no access to the porn sites. In addition, the sites can be blocked with the aid from Internet Service Provider (ISP). However, with the so many ISPs and alternative lines, national restriction can be a problem. If the front line is blocked, pornography can enter through the back line. With media social such as blog or any other social networks, the restriction can be more challenging. If one blog or social network account is containing porn material, it impossible to block other blogs, for instance wordpress.com, blogger.com, or the whole Facebook.

Government, in this case is the Ministry of Communication and Information are aware that the blocking cannot fully filter the content since the main thing is the human factor.²² Therefore, public participation to reduce the negative influence of the sites is vital.

It is important to understand that some VOD provider companies in South East Asia such as ASTRO, Dimsum, Fox+, HOOQ, Iflix, Netflix, Tonton, TVB, and The Walt Disney South East Asia Company, announced the Code of Ethic on Subscribed VOD Industrial Content. This Code is self-regulatory to protect consumer's interest. The Code regulates the principles to

ensure the content served by the VOD platform is authentic, free from hate speech, hate crime, pornography, and so on. Through the Code, VOD providers make commitment to provide features and mechanism to control security. It is prepared to ensure the content showed is suitable for the group age of the viewer of the VOD platform.²³

The idea to promulgate the code of ethic for the VOD provider company is the follow up of the ASEAN Telecom Regulators Council commitment held in Bangkok, Thailand in September 2017. Not only is the VOD provider company, this initiative also supported by the association of regional industry, CASBAA. The Code deemed as an endeavour done by the industry to distinguish themselves as the official provider from the pirated content provider.²⁴

C. The Concept Of Non-Penal Policy In The Eradication Of The Transmission Of Pornography Through Movie Broadcast On Vod Subscription

The concept of the non-penal policy is defined as follows:

1. Prevention Through Information Technology

The prevention of pornography through movie broadcast on VOD can be done against some components of information technology such as:

- a) Infrastructure of Technology
- b) Cellular Operator
- c) Networking/ Interconnected Network

From the components of information technology above, these prevention measures of pornography transmission on VOD can be taken by the government, in this case the Ministry of Communication and Information to control the information technology. Even though the policy on 'positive internet' has been applied by blocking the website or forbidden sites, the users can still work the way out of the blocking of the porn site by activating the VPN (Virtual Private Network). Next, it is necessary to improve a significant cooperation between the Ministry of Communication and Information and the ISP service provider and cellular operator to prevent the transmission of pornography in Indonesia.

2. Prevention through Frequency

Frequency is a number of happening on a continuous signal. As the prevention measures of the transmission of pornography on VOD in Indonesia, the Ministry of Communication and Information and the Frequency Monitoring Board can monitor the ISP about the seriousness to prevent the transmission of pornography in Indonesia by imposing threat or warning to the frequency users.

3. Prevention through Subscription

Subscribing VOD such as Netflix, Video, HOOQ, Viu, iFlix, Catchplay and others today is very easy. To subscribe VOD, the customer can just click the subscribe button and buy the subscription through methods of payment available provided by OTT. Even though prior to

subscription, the customer is informed about the subscription terms, it is as if there was no limitation for the customer to access any film available in the catalog

Based on this condition, it demands a serious measures taken by the Ministry or other related parties (LSF) whose power is to impose strict sanction considering that Indonesia applies regulation prohibiting the broadcasting of movie with pornography content. On that ground, the prevention measures of pornography transmission on VOD in Indonesia can be done by the Ministry by imposing warning and commitment declaration upon the OTT companies operating VOD such as Netflix, Video, HOOQ, Viu, Iflix, Catchplay and others to filter or select movies that can be broadcasted in Indonesia referring to the regulations applied.

4. Prevention by unsubscribing the content or uninstalling the VOD application

The prevention measures of pornography on VOD is easy, because it is up to the customers of VOD. These measures, certainly, should be done through education and guidance from parents whose obligation is to educate and monitor their children. By unsubscribe and uninstall the content of VOD, it is remarkable measures considering that the broadcasting of movie on VOD is unrestricted.

5. Optimalization of VOD Monitoring by Ministry of Communication and Information

The content of OTT includes in public domain category. Even though the content is private (such as content of pornography, however when the private content can be access freely by the public, it goes through publicity process of private content (Syahputra, 2018). Without the closed monitoring of VOD category of OTT content, it certainly can threat the national integration.

Without good monitoring over VOD content, nation integration is jeopardized. It can destroy the character and identity of a nation with faith. In the softest scale, without any monitoring over the negative OTT content on VOD can create moral panic.

Referring to the consideration of Court of Constitution in the Case No. 39/PUU-XVIII/2020 point [3.13.2] ruling that mechanism of monitoring over the OTT content on VOD to be in line with the philosophy and the fundament of the nation: Pancasila and 1945 Constitution is stated in the Information and Electronic Transaction Act. The government, in case Minister of Communication and Information has the power to terminate the access of electronic information and/or electronic document (internet content) that violates the law. It is done by government to protect the public interest extensively against the misuse of electronic information and electronic transaction disturbing the public order (vide Article 40 verse (2), verse (2a), verse (2b) of Law No. 19, 2016)

Starting from those provisions, the law enforcement against the OTT content violation does not only about the repressive aspect but rather the prevention measures since the stipulation in the Article 40 of Law No. 19, 2016 as the amendment of Law No. 11, 2008 is in fact laying the basis of the prevention measures in order to protect the larger public interest to ensure the respect and honor to the rights and freedom of other people and to fulfill the just demand in

accordance with the security and public order ground in a democratic community under the law state principles as stated in Article 1 verse (3) of 1945 Constitution.

6. The effectiveness of values, moral and law living in the society.

The life of human cannot be separated from values, moral and law. Even the problems in human's life take place when there is no value, moral, and law in their life. Values that become the important foundation regulating human behavior. Values become the source of power in enforcing order and social regularity. Therefore, moral as the foundation of man's behavior that runs life within the humanistic-religious life. The power of law becomes the control in regulating the justice of the rights and obligation of each man in running the human's life. The role of the values, moral or the law is the significant part for the construction process of a nation's character. Based on that reason, in the context to find the breakthrough to do more prevention, prevention should be put forward over the phenomenon of the widespread of the pornography by using the non-penal policy through the put in effect the social, cultural, decent, and religious values living in the society.

CONCLUSION

The transmission of pornography through film broadcasting on Video on Demand (VOD) subscription in Indonesia initially occurred and become the public fuss was when Telkom blocked Netflix in 2016 up to July 2020 without any order from the Ministry of the Communication and Information under the ground that Telkom considered that Netflix should get a business permit. In addition, the content broadcasted by Netflix violated the Article 57 of Law No. 33, 2009 concerning Film obligating the provider to get Censorship Pass because the content was against other laws. The problem after Telkom unblocked it was that Netflix was requested to move the server placed in Singapore to Indonesia because the network pipe was dominated by the traffic of Netflix. Similar statement was brought up by the Indonesia Consumer Body (YLKI) requesting the Ministry to take down Netflix content showing racial discrimination, pornography, and ones violating norms of decency and urge the government to educate people by stressing the parenting guideline. In addition, Netflix should establish Permanent Business Enterprise in Indonesia so that customer can press charges whenever problems occur.

The prevention policy on the pornography transmission on film through VOD in Indonesia still refers to the Law No. 40, 18 1999 concerning Press, Law No. 32, 2002 on Broadcasting, Law No. 11, 2008 regarding Information and Electronic Transaction, Law No. 44, 2008 on Pornography and other related laws. The prevention measures taken by the Ministry of Communication and Information to impede the transmission of pornography was done through some software's causing the customer unable to visit the porn sites. In addition, the Ministry has blocked and filter words as one of alternative ways to limit the access to the porn sites with the help from the Internet Service Provider (ISP). However, it is important to understand that in its development, some VOD provider in South East Asia such as ASTRO, dimsum, Fox+, HOOQ, iflix, Netflix, tonton, TVB, and The Walt Disney Company South East Asia, have enacted Code of Ethic of VOD Industrial content. The Code is self-regulatory to secure the

consumer's interest. The Code regulates the principles to ensure the content showed by the VOD platform is authentic, clean from hate speech, hate crimes, pornography and so on. Through the code of ethic, the VOD provider has committed to provide features and mechanism of security control. It is prepared to ensure content broadcasted is suitable with the age of the VOD users.

The concept of the non-penal policy in the eradication of pornography through movies on VOD can be done through: 1) Prevention through information technology; 2) Prevention through Frequency; 3) Prevention through Subscription; 4) Prevention by unsubscribing the content or uninstalling the VOD application; 5) Optimalization of VOD Monitoring by Ministry of Communication and Information; 6) The effectiveness of values, moral and law living in the society.

References

➤ Books

1. Bagir Manan, Dasar-Dasar Perundang-Undangan Indonesia. Ind Hill Co. Jakarta. 1992.
2. Bahder Johan Nasution, Metodologi Penelitian Ilmu Hukum, Bandung: Mandar Jaya, 2008.
3. Barda Nawawi Arief, Bunga Rampai Kebijakan Hukum Pidana, Cetakan Ketiga Edisi Revisi, Bandung: Citra Aditya Bakti, 2005.
4. Barda Nawawi Arief, Kebijakan Legislatif dalam Penanggulangan Kejahatan dengan Pidana Penjara, 4th Edition, Yogyakarta; Genta, 2010.
5. Barda Nawawi Arief, Masalah Pencegahan Hukum dan Kebijakan Hukum Pidana dalam Penanggulangan Kejahatan, Jakarta: Kencana, 2007.
6. Lutfan Muntaqo, Porno: Definisi dan Kontroversi Yogyakarta: Jagad Pustaka, 2006.
7. Laporan Survei Internet APJII 2019-2020 (Q2).
8. Masduki, Kebebasan Pers dan Kode Etik Jurnalistik Yogyakarta: UII Press, 2003.
9. Peter Mahmud Marzuki, Penelitian Hukum, Cet. IX, Jakarta: Kencana Prenada Media, 2014.
10. Editorial Team Pustaka Yustisia, Hukum Pornografi.

➤ Laws

1. 1945 Constitution, 4th Amendment;
2. Law No. 44, 2008 concerning Pornography;
3. Law No. 11, 2008 on Information and Electronic Transaction;
4. Law No. 19, 2016 regarding The Amendment of Law No. 11, 2008 on Information and Electronic Transaction;
5. Law No. 32, 2002 regarding Broadcasting;
6. Law No. 36, 1999 concerning Telecommunication;
7. Law No. 40, 1999 on Press;
8. Law No. 33, 2009 concerning Film.

➤ **Other Sources**

1. <https://www.cnnindonesia.com/teknologi/20200120141159-185-466983/ylki-pemerintah-harus-blokir-konten-porno-dan-lgbt-netflix> on 30 October 2021.
2. <http://www.cahyanahttp://www.cahyana-ahmadjayadi.web.id/?p=19ahmadjayadi.web.id/?p=19>
3. Ikigai Law, 'online content regulation: how is it done in other parts of the world?' (Ikigai Law, 2019) <<https://www.ikigailaw.com/> > accessed 19 December 2021.
4. Khamila Mulia, 'Netflix's complicated relationship with Indonesia', (Techinasia, 2020) <<https://www.techinasia.com/> > accessed 20 November 2021.
5. N. Nuriman Jayabuana, Platform VoD Asia Tenggara Susun Kode Etik, diakses dari <https://teknologi.bisnis.com/read/20180624/105/808869/platform-vod-asia-tenggara-susun-kode-etik>.
6. Wayne Hickey, 'Next-Gen OTT Video-Services' Massive Impact on Networks' (Ciena, 2017) <<https://www.ciena.com/>> accessed 22 November 2021.