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Dates:

Received 15 Maret, 2023

Revised 20 April, 2023

Accepted 29 Mei, 2023

Published 30 June, 2023

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PORNOGRAPHY IN THE PERSPECTIVE OF ISLAMIC CRIMINAL LAW

Abstract: Social media is currently overgrowing, which certainly impacts people's lifestyles. However, these advances are often exploited, with cyberporn being one example. This essay seeks to evaluate and critique pornography from the point of view of Indonesian Islamic criminal law. Examining the application of criminal sanctions for pornography by Islamic criminal law, as well as the reasons why it is created and prohibited, is the aim of this study. This study examines laws and regulations with a normative legal approach. It is the study of normative juridical law. This research data set comes from legal sources. The research findings suggest several behaviors, weaknesses in judgment, constitutive consequences, additional circumstances, additional requirements for a criminal prosecution, and additional requirements for punishment that fall under the category of pornography crimes of Islamic criminal law. Criminal sanctions in Islamic law allow adultery and ta'zir as punishment for pornography offenders. Criminal acts in pornography include various forms, including sounds, moving images, animations, cartoons, conversations, body movements, and public performances containing sexual exploitation or obscene content that violates the norms of social decency.

Keywords: *Pornography, Criminal, Law, Islamic Law*

INTRODUCTION

We are all aware that human civilization is developing all the time. The existence of electronic media, namely television, has a significant influence on how people live their lives. Television education can shape cognitive

patterns, behavior patterns, and character development. This opened the prospect that publicly accessible pornography would be available through electronic media. The Internet

is another widely accessible medium for pornography besides television, but minors can still easily access pornographic websites through the Internet.¹

Recently, we have been surprised by the emergence of illustrated books containing sexual content through print media, such as magazines and pornographic books. If teenagers who do not yet know about the crime consume pornography, this is a concern for the general public. Unfortunately, even though we are aware of the state of our society, all types of pornography are still prohibited by law, tradition, decency, and religion.²

Pornography is illegal and banned by all major religions. The practice of pornography causes adverse consequences, such as increased free-sex behavior, cases of sexual harassment, unnatural sexual behavior, and other negative impacts. This is because pornography does not respect the values of honor of individuals, families, and society. They are acts that defame, desecrate, and drown oneself and others. Due to individual preferences, not everyone is comfortable with drawings, paintings, and photographs with erotic and sexual elements. Therefore, pornography is often associated with erotic images, sending, sighs, and gestures.³

Pornography is a prohibited act (haram) in the eyes of Islamic law. The rule of covering the aurat with the awareness of adultery is strongly tied to the prohibition of pornography. Thus, according to Islamic terminology, all media (images, texts, sounds, etc.) that show, explain, and portray everything about the aurat of men and women without a shari'a-justified purpose, such as for education, medical, law, or study, are considered pornography.⁴ In Islam, anything that can result in adultery is forbidden, as are all immoral and defilement of honor. Based on this context, this paper seeks to examine how the application of Islamic criminal law to the punishment of pornography.

RESEARCH METHODOLOGY

¹ Vivi Ariyanti, "Pornografi dalam Perspektif Hukum Islam dan Hukum Positif", *AlManihij*, 2010.

² L.J. van Apeldoorn, *Pengantar Ilmu Hukum* (Jakarta: Pradnya Paramita, 1990).

³ Neng Djubaedah, *Perzinaan* (Jakarta: Kencana, 2010).

⁴ Book Review, "Pornografi pornoaksi ditinjau dari hukum islam", 2006, 126-29.

The first step in this normative juridical research technique is to review the pertinent legal provisions applicable to the matter. Law is then studied from a normative point of view with evidence from literary and legal sources. This form of research is descriptive, using ideas or concepts to relate or compare one data set to another or explain a data set.⁵

RESULT AND DISCUSSION

Understanding Pornography

The word "pornography" comes from the Greek word "pornographic." A prostitute is described or written in this phrase⁶. The purpose of pornography is to arouse lust (sexual arousal) by overt (explicit) depictions of the human body or human sexual activity. Erotica is different from pornography. Pornography can be considered excessive or gross eroticism. The physical expansion of the concept of eroticism is erotica. Erotica is a term often used by the pornography business for euphemistic purposes, which confuses the general public⁷. According to the Great Dictionary Indonesian, pornography has two meanings: first, the deliberate and exclusive purpose of provoking the reader's sexual arousal through depicting erotic behavior in writing or art⁸.

The phrase originally appeared in English during the reign of Queen Victoria (1837-1901). In southern Italy, near Naples, archaeologists were currently excavating the ancient cities of Pompeii and Herculaneum when they discovered it recently⁹. Therefore, the inhabitants of Europe at that time concluded that these artifacts were related to places of prostitution, giving rise to the term pornography (writings and images about prostitutes).

Different types of pornography are separated into two categories: by media and by content¹⁰. There are several types of pornography depending on the media presented, including violent sexual material (violent pornography), nonviolent material depicting

⁵ I. Ibrahim, *Teori & Metode Penelitian Hukum Normatif* (Malang: Bayu Media, 2012).

⁶ Azimah Soebagijo, *Pornografi Dilarang Tapi Dicari* (Jakarta: Gema Insani, 2008).

⁷ Wikipedia, "Pornografi", 2023, <https://id.wikipedia.org/wiki/Pornografi>.

⁸ Kamus Besar Bahasa Indonesia, "Kamus Besar Bahasa Indonesia", n.d., <https://www.kbbi.web.id/>.

⁹ Azimah Soebagijo, *Pornografi Dilarang Tapi Dicari*.

¹⁰ Ahmad Hanafi, *Asas-asas Hukum Pidana Islam* (Jakarta: Bulan Bintang, 1967).

degradation, dominance, subordination, or humiliation, nonviolent and non-degrading material (media products depicting nonviolent sexual relations or harassment of women), nudity (sexual material featuring nude models), and child pornography. Pornography can be found in print, outdoor, and electronic media¹¹.

Pornography in the Perspective of Islamic Law

Islamic law is a set of rules that Allah Almighty gives His followers so they can believe in it, follow it, and live a moral life. The plural form of the term "jinayah," which indicates sin, evil, or transgression, is "jinayat"¹². Therefore, if the consequences of jinayat can affect religion, soul, reason, honor, and wealth, then all these acts are prohibited by Sharia (Islamic law)¹³.

Jinayat eventually became known as Islamic penal law during its infancy. As for jarimah, it is a sinful deed attributed to the type of deed committed before. "jarimah" means an act against the law or a violation of positive law. Violations of social order, trust, the life of members of society, property, reputation, emotions, or other requirements that must be respected and obeyed are examples of behavior considered a "Zainab."

Islam essentially forbids everything harmful and unbeneficial. Pornography is said to have a higher tendency for harmful things. For example, many people immediately fantasize after watching something pornographic. This is extremely dangerous for the perpetrator and others around him and can result in rape, murder, sexual abuse, and other consequences.

Any perpetrator of pornography can face the sanctions mentioned above because of the severity of the harm it causes. The basic principle of Ta'zir law, "Ta'zir depends heavily on the demands of benefit," became the basis for this¹⁴. Therefore, even in situations

¹¹ Ahmad Hanafi.

¹² Ahmad Azhar Basyir, *lkhnsar Fikih Jinayat* (Yogyakarta: UII Press, 2001).

¹³ Rahmad Hakim, *Hukum Pidana Islam* (Bandung: Pustaka Setia, 2000).

¹⁴ A. Djazuli, *Fiqh Jinayat* (Jakarta: Raja Grafindo Persada, 2000).

involving pornography, ta'zir punishment can and should be used to uphold and advance the public interest.

Pornography In The Perspective Of Islamic Criminal Law

Restrictions on Pornography in Islam

From an Islamic perspective, questions about dress, tabarruj (presenting oneself indecently), and personal boundaries are inseparable from conversations about pornography. The concept of the most critical component of pornography is that it offends morality and arouses sexual interest. On the contrary, this problem is strongly related to clothing and genitals in Islamic terminology. It is advisable to maintain modesty and avoid exposing body parts not generally seen by others to prevent individuals from being aroused by people who are not legally allowed to them. This is done in an effort to prevent adultery or unlawful sexual activity. Restrictions on showing off body parts not generally shown to others and appeals to maintain modesty protects against temptation and defend moral ideals¹⁵.

The law serves as a legal foundation for tackling pornography and cyberporn, where individuals can flaunt their bodies to the public and cast their eyes on other people's body parts that are not their legal partners. These regulations were created to establish limits and restrictions on graphic displays that could potentially lead to the objectification or exploitation of individuals. By setting these standards, the law aims to protect the dignity, privacy, and well-being of individuals in society. This is the first step towards adultery, rape, obscenity, and other sexual offenses. In addition, viewing pornographic movies, images, or videos online can lead to "cyber adultery," which is when someone commits adultery online¹⁶.

While in QS.al-Nur (24): 31 explained, means:¹⁷

¹⁵ Neng Djubaedah, *Perzinaan*.

¹⁶ Any Ismayawati, "Positivisasi Hukum Islam di Indonesia dalam Penanggulangan Cyberporn Melalui Pendekatan Religius", *Unisia* 26, no 48 (2014): 214-17.

¹⁷ Kementerian Agama RI, *Al-Qur'an Tajwid dan Terjemahnya di Lengkapi dengan Asbabun Nuzul dan Hadits Sahih* (Bandung: PT Sygma Examedia Arkanleema, 2007).

وَقُلْ لِلْمُؤْمِنَاتِ يَغْضُضْنَ مِنْ أَبْصَارِهِنَّ وَيَحْفَظْنَ فُرُوجَهُنَّ وَلَا يُبْدِينَ زِينَتَهُنَّ إِلَّا مَا ظَهَرَ مِنْهَا وَلْيَضْرِبْنَ بِخُمُرِهِنَّ عَلَىٰ جُيُوبِهِنَّ وَلَا يُبْدِينَ زِينَتَهُنَّ إِلَّا لِبُعُولَتِهِنَّ أَوْ آبَائِهِنَّ أَوْ آبَاءِ بُعُولَتِهِنَّ أَوْ أَبْنَائِهِنَّ أَوْ أَبْنَاءِ بُعُولَتِهِنَّ أَوْ إِخْوَانِهِنَّ أَوْ بَنِي إِخْوَانِهِنَّ أَوْ بَنِي أَخَوَاتِهِنَّ أَوْ نِسَائِهِنَّ أَوْ مَا مَلَكَتْ أَيْمَانُهُنَّ أَوِ التَّبِيعِينَ غَيْرِ أُولِي الْأَرْبَةِ مِنَ الرِّجَالِ أَوِ الطِّفْلِ الَّذِينَ لَمْ يَظْهَرُوا عَلَىٰ عَوْرَتِ النِّسَاءِ وَلَا يَضْرِبْنَ بِأَرْجُلِهِنَّ لِيُعْلَمَ مَا يُخْفِينَ مِنْ زِينَتِهِنَّ وَتُوبُوا إِلَى اللَّهِ جَمِيعًا أَيُّهُ الْمُؤْمِنُونَ لَعَلَّكُمْ تُفْلِحُونَ

Meaning:

“And tell the believing women to reduce [some] of their vision and guard their private parts and not expose their adornment except that which [necessarily] appears thereof and to wrap [a portion of] their headcovers over their chests and not expose their adornment except to their husbands, their fathers, their husbands' fathers, their sons, their husbands' sons, their brothers, their brothers' sons, their sisters' sons, their women, that which their right hands possess, or those male attendants having no physical desire, or children who are not yet aware of the private aspects of women. And let them not stamp their feet to make known what they conceal of their adornment. And turn to Allah in repentance, all of you, O believers, that you might succeed”.

The above verse also explains why God forbids men and women to avert their eyes: sight is the root of adultery. When used as a justification for restrictions, it is highly relevant whether the injunction relates to pornography. At the same time, pornography is the act of someone indulging his gaze on his face and the whole body while looking at pictures, photos, videos, or films of undressed women that are inappropriate for him¹⁸.

¹⁸ Neng Djubaedah, *Perzinaan*.

Scholars have agreed that a man's aurat starts from the navel to the knees. Therefore, it can expose other body parts, excluding this specific area. The definition of pornography in Islam aligns with the concept of aurat and the limits of modesty outlined in Islamic teachings. The prohibition of pornography is based on maintaining one's decency and preventing the objectification or exploitation of the individual. If so, it does not include blasphemy, and the woman's aurat is limited to her limbs, excluding the face and palms and restrictions on viewpoints that must be adopted to avoid triggering sexual desire¹⁹.

The Sanction of Pornography in Islam

Islamic law strictly forbids pornography because it is an act that results in adultery which Allah Almighty forbids. Therefore, Islam strictly forbids direct contact with pornography. Based on QS al-Isra (17:32):²⁰

وَلَا تَقْرَبُوا الزَّوْجَ إِنَّهُ كَانَ فَاحِشَةً وَسَاءَ سَبِيلًا

Meaning:

“And do not approach unlawful sexual intercourse. Indeed, it is ever an immorality and is evil as a way”.

The passage's phrase "do not approach adultery" refers to behavior that encourages or encourages others to commit adultery. It also conveys the idea that adultery is more forbidden because the act of approaching it is forbidden. In addition, there is a provision in Islamic law that reads: "Every act that brings haram is haram."

Therefore, any activity that will eventually result in adultery is prohibited and punished with Ta'zir²¹. According to this verdict. A hadith also explains this in detail. "Verily, it is recorded for the son of Adam his share of adultery. The Prophet quoted Abu Hurayrah. He knew that "the eyes commit adultery by seeing, the ears commit adultery by

¹⁹ Neng Djubaedah.

²⁰ Kementerian Agama RI, *Al-Qur'an Tajwid dan Terjemahnya di Lengkapi dengan Asbabun Nuzul dan Hadits Sahih*.

²¹ Ahmad Mawardi Muslich, *Hukum Pidana Islam* (Jakarta: Sinar Grafika, 2005).

hearing, the tongue commits adultery, the hands commit adultery by touching, the feet commit adultery by walking, and the heart desires and deceives itself. into adultery, which is justified and denied by the genitals." (Bukhari and Muslims both narrate this²²).

This statement highlights the understanding in Islam that adultery or forbidden sexual activity is not limited to physical acts. It emphasizes that engaging in such an activity involves the senses, thoughts, and intentions. Islam attaches great importance to guarding itself against all aspects that can lead to immorality or sinful behavior, both internally and externally.

From the above postulates, it can be concluded that in Islam, about two categories of adultery. That is²³:

1. Adultery that results in punishment (hadd).
2. In particular, sexual adultery, gay or lesbian behavior, relationships with animals, and contact with corpses.
3. Zina's eyes, ears, words, feet, and thoughts about it, adultery does not result in punishment but makes the perpetrator sin cause the perpetrator to sin.

According to Islamic Law, pornography belongs to the second category of adultery, which is still considered sinful even though it is not immediately punished (hadd). The most potent stimulants for a person's desire to have sex while viewing cyberporn are their eyes, followed by their ears.

Anyone who offers printed or handwritten jewelry, sexual images, photographs, or other items that may cause moral damage, or prints them for the purpose of selling or distributing them, shall be punished with ta'zir²⁴.

In Arabic, the word ta'zir means "to prevent." Ta'zir is an Arabic word meaning coercion and instruction. The definition of ta'zir in shari'a comes from texts that describe educational punishment and specific sanctions for jarimah, whose punishment has yet to

²² A. Djazuli, *Fiqh Jinayat*.

²³ A. Djazuli.

²⁴ Abdurrahmman al-Maliki, *Sistem Sanksi dalam Islam* (Bogor: Pustaka Thariqul Izzah, 2002).

be established by shara'. Immoral acts that are not punishable by hadd or kaffarah are known as jarimah ta'zir²⁵.

The sanctions under Ta'zir are based on the severity of the crime. Severe sanctions must be imposed against major offenses to fulfill the intended purpose of the sanctions, namely deterrence. Similarly, misdemeanors will be subject to penalties that may deter future offenders from committing the same offense²⁶. Ta'zir should not be larger than hudd, according to some fuqaha'. They argue that the level of hadd punishment for various forms of defiance should be maximum for ta'zir.

The following types of ta'zir are used by sharia as punishment: death penalty, binding, imprisonment, exile, al-hijr, cross, gharamah, removing property, changing the form of goods, tahdid al-Sadiq, wa' dh, hirman, taubikh, and tasyhir. The competent authorities may not use it as a sanction other than those mentioned above, even if no law or rule prohibits it. Since the sanction is an act, it is necessary to prove its validity²⁷.

Suppose it is determined that a person has committed a pornography offense. In that case, the hadqadhi will be given the authority to determine the type and severity of punishment, which may be tasyhir (appearance), imprisonment, caning, or any other punishment by Shariah. Of course, the type and severity of sanctions can be increased in proportion to the level of harm inflicted on society when pornographic material is disseminated and poses a threat to it.

He seemed to be invested in sin, whose guilt continued to flow to him even after he died. Whoever sets a lousy example for Muslims to follow, the Prophet said, "As many people will follow their sins as many as they follow without diminishing the slightest sin they have committed." Muslim (HR).

²⁵ Abdurrahmman al-Maliki.

²⁶ Abdurrahmman al-Maliki.

²⁷ Abdurrahmman al-Maliki.

Thus, according to the Islamic penal code, the punishment for pornography is called ta'zir, and the Caliph has the authority to decide the severity of the punishment based on the severity of the offense committed.

CONCLUSION

- a. From some of the reasons above, several things can be drawn as follows:
- b. Pornography overtly represents human sexual behavior or the human body intending to inflame lust. Cyberporn is pornographic content that circulates online. Consuming pornography has a detrimental influence on a person's psychological and biological development.
- c. In Islamic criminal law, various categories and criteria can be used to classify behavior considered a pornography offense, including the form of activity, unlawful nature, culpability, constitutive consequences, circumstances, additional grounds for a criminal prosecution, and conditions for further criminal offenses. Criminal prosecution. Zina, ta'zir, and other punishments are available as punishments for the use of pornography criminal sanctions. Because improper pornography, sexual crimes against children, and brain damage adversely affect the child's mindset. By Islamic law, Zina is considered pornography even if the perpetrator is not punished (hadd). The punishment for pornography offenders is ta'zir, and the state administrator has the authority to decide the severity of the punishment based on the severity of the offense committed.

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