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PORNOGRAPHY REGULATION UNDER INDONESIA'S NEW CRIMINAL CODE: CONTRADICTIONS BETWEEN MORAL RELATIVISM AND THE PRINCIPLE OF UNIVERSAL CRIMINAL JURISDICTION

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Article

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Abstract

This study analyzes the contradiction between the principle of relativity and the principle of criminal universality in the regulation of pornography crimes under the New Criminal Code (Law No. 1 of 2023) (Articles 407-411). The New Criminal Code criminalizes various aspects of pornography, reflecting the protection of public morality and Indonesian cultural/religious values. The principle of relativity emphasizes that the definition of pornography is closely tied to socio-cultural and local standards. The specific provisions of the Criminal Code demonstrate a bias towards these relative moral standards. However, this poses the risk of over-criminalizing content that may be considered normal in other jurisdictions or non-exploitative for adults. Conversely, the principle of criminal universality demands universal criminal law protection, especially for crimes that violate fundamental human rights, such as child pornography and sexual exploitation. In a digital and transnational context, the need for universal standards is increasingly pressing. Contradictions arise when relatively national criminal laws attempt to be applied to a universal cyberspace. Rigid moral standards have the potential to hinder legitimate artistic or sexual expression (relativity) but also risk defocusing on crimes of exploitation that require a global response (universality). This study concludes that the implementation of the New Criminal Code must be balanced with progressive interpretation.

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A. INTRODUCTION

National criminal law reform and the background to the criminalization of pornography in Indonesia are currently on the verge of a new era of criminal law with the enactment of Law Number 1 of 2023 concerning the Criminal Code (New Criminal Code).[1] This regulation, which is scheduled to replace the Dutch colonial legacy of the Criminal Code in 2026, is a manifestation of the decades-long project of decolonization and nationalization of criminal law. The main objective of this reform is to create a codification of criminal law that is in line with the philosophical values of Pancasila, the sociology of Indonesian society, and the demands of modern developments. One group of crimes that has received extensive reformulation is related to Criminal Acts of Morality, with a particular focus on the regulation of pornography as regulated in Articles 407 to 411 of the New Criminal Code. This strict criminalization of the production, distribution, and possession of pornography directly reflects the state's commitment to protecting public morality and upholding the cultural and religious values held dear by the majority of Indonesia's population. In this context, pornography is seen not simply as a legal issue, but as a threat to social order, family integrity, and national ethics.[2]

In the current Criminal Code, the terms pornography and/or pornoaction are no longer used to describe activities that fall into the category of pornography, but rather the term "crime of indecency." Generally, the term "pornography" refers to text, images, or materials that violate morality or can arouse or stimulate lust, while "pornoaction" refers to behavior that violates moral norms or is obscene. Therefore, it can be said that "pornography" and "pornoaction," as often discussed today, are intrinsic components of crimes of indecency.[3] Despite its noble intentions, the regulation of pornography crimes in the New Criminal Code inherently contains complex philosophical tensions and contradictions, particularly between two main pillars of international criminal law theory: the Principle of Criminal Relativity and the Principle of Criminal Universality. This contradiction becomes even more acute when confronted with the realities of global cyberspace.

The Push and Emphasis of the Principle of Criminal Relativity: Local Moral Sovereignty. The Principle of Criminal Relativity argues that there are no absolute standards of criminal law or morality. Rather, the definition of "against the law," including the line between decency and obscenity, is a cultural and social construct that fluctuates across jurisdictions and eras. In this spirit of relativity, the New Criminal Code reflects the nation's moral sovereignty, basing criminalization on prevailing standards of morality in Indonesia. However, overly strong adherence to these relative and conservative moral standards creates a significant risk of widespread criminalization (over-criminalization).[4] The use of vague or ambiguous phrases such as "violating decency" has the potential to be used to prosecute behavior that should remain in the private sphere, such as consensual sexual expression between adults, or even works of art deemed provocative. This threatens the principles of legal certainty and proportionality of punishment and could be misused as an instrument of moral repression.

The Demands of the Principle of Criminal Universality: Protection of Global Victims. In contrast to relativity, the Principle of Criminal Universality demands the recognition that certain crimes are universal in nature and must be combated by the entire international community, without being constrained by national borders or cultural differences. These crimes are usually

[1] Irma Hanifah, "Kejahatan Pornografi Upaya Pencegahan dan Penanggulangannya di Kabupaten Ponorogo," *Justicia Islamica* 10 (2013), https://doi.org/10.21154/justicia.v10i2.152.

[2] A Chazawi dan A Ferdian, *Kejahatan Terhadap Negara Kesatuan Republik Indonesia* (Sinar Grafika, 2022), https://books.google.co.id/books?id=qtxfEAAAQBAJ.

[3] Wayan Santoso, "Pertanggungjawaban Pidana Content Creator pada Konten yang Bernuansa Pornografi di Indonesia," *Jurnal Analisis Hukum* 6, no. 2 (2023), https://doi.org/https://doi.org/10.38043/jah.v6i2.4511.

[4] Shinta Agustina, "Implementasi Asas Lex Specialis Derogat Legi Generali Dalam Sistem Peradilan Pidana," *Masalah-Masalah Hukum* 44, no. 4 (2015): 503–10,https://doi.org/https://doi.org/10.14710/mmh.44.4.2015.503-510.

related to gross violations of Human Rights (HAM).[5] In the context of pornography issues, the focus of universality is on addressing all forms of sexual exploitation, particularly child pornography (Child Sexual Abuse Material/CSAM) and the creation of content by coercion or threats. With the rapid and unlimited distribution of content on the internet (transnational cyber), the criminal law response must be firm, standardized, and able to cooperate across borders. The principle of universality encourages Indonesia to not only protect morals, but more importantly, protect victims of exploitation in accordance with international obligations.[6] The critical point of this contradiction lies in the practical implementation of the New Criminal Code. If law enforcement and the judiciary apply pornography offenses too rigidly based on local moral relativities, they risk losing focus on the true crimes of exploitation (child pornography, revenge porn) and instead becoming trapped in the enforcement of private morality. Conversely, attempts to fully accommodate universal standards without considering cultural context could be accused of undermining national values.

B. RESEARCH METHODS

This research is a normative legal research, namely research that aims to examine the applicable legal norms, especially in the new Criminal Code and the Pornography Law, as well as the relevant principles of criminal law.[7] This research also uses a conceptual approach to analyze the contradiction between the principle of relativity and the principle of universality in the context of law enforcement against pornography.[8] This research uses several approaches: (1) Statute approach: Examining the provisions in the new Criminal Code, the Pornography Law, and other related regulations; (2) Conceptual approach: Analyzing the concept of the principle of relativity and universality in criminal law and its application in pornography cases; (3) Comparative approach: Comparing the regulation and application of criminal law on pornography in Indonesia with several other countries that strictly adhere to the principle of universality. The data sources are primary data in the form of laws and regulations, such as the new Criminal Code, Law No. 44 of 2008 concerning Pornography, and relevant international legal documents. Secondary data: Legal literature, scientific journals, textbooks, previous research results, and academic articles that discuss the principles of relativity and universality, as well as pornography issues. Data collection techniques through library research by tracing and analyzing relevant legal documents and academic literature.

C. ANALYSIS AND DISCUSSION

1. Provision of Pornography Crimes in Indonesia's New Criminal Code

The provision of pornography is part of the state's efforts to regulate morality and protect the public, especially children, from the negative impacts of pornographic content. Indonesia's new Criminal Code reformulates these regulations to be clearer and more in line with technological and social developments. The development of digital technology and the internet has made access, production, and distribution of pornographic content extremely easy and rapid. This presents legal and social challenges, including impacts on morals, child protection, unauthorized misuse of content, and issues of privacy and freedom of expression. The Pornography Law (No. 44 of 2008) and other laws, such as the ITE Law, regulate several aspects of pornography, but are considered inadequate in facing current developments, especially

[5] Siti Miyanti Juniar, "Perlindungan Hukum terhadap Anak Korban Tindak Pidana Pornografi dari Perspektif Undang-Undang Nomor 44 Tahun 2008 tentang Pornografi," *Jurnal Ilmiah Ilmu Hukum* 5, no. 2 (2023),https://doi.org/https://doi.org/10.28946/lexl.v5i2.2017.
[6] Ibid.
[7] Peter Mahmud Marzuki, "Penelitian hukum," *Jakarta: Kencana*, 2010.
[8] Soerjono Soekanto, "Penelitian hukum normatif: Suatu tinjauan singkat," 2007.

regarding online distribution and unclear definitions.[9] The New Criminal Code (Law No. 1 of 2023) is present as part of criminal law reform by codifying various crimes that were previously spread across special laws and sectoral laws, with the aim of clarifying legal norms, standards of application, and creating a more integrated system.[10] The New Criminal Code will be effective from January 2, 2026; during the transition period, there are still aspects that must be passed by law enforcement officers and the public, so that understanding and implementation can run smoothly.[11]

The New Criminal Code brings significant changes in the regulation of pornography crimes, with more comprehensive norms, clear sanctions, providing important exceptions, and paying attention to aspects of contextual social norms.[12] However, substantive challenges remain regarding definitions that may have multiple interpretations, protection for victims of exploitation/non-consensual acts, the need for interpretation and implementation in the field, as well as harmonization with other laws. Future research needs to look at concrete cases (court decisions) after the New Criminal Code comes into full effect, as well as how society and authorities interpret "community standards" to ensure uniformity and justice.[13]

2. Characteristics of the Indonesian Criminal Law System Based on Civil Law and the Principle of Universality of Law.

The Indonesian criminal law system is primarily characterized as a civil law system that prioritizes legal codification as the primary source, where statutes serve as the primary reference for judges in deciding cases without being bound by precedent or the doctrine of stare decisis. This system is inquisitorial in nature, where judges actively seek and evaluate evidence to obtain a complete factual picture for making decisions. However, in practice, Indonesia also adopts several elements of common law, such as jurisprudence. making its legal system prismatic and flexible in facing modern social and technological dynamics.[14] Meanwhile, the principle of universality of criminal law in the Indonesian legal system means that Indonesian criminal law can apply to certain crimes committed outside Indonesian territory, as long as the act has an impact or is detrimental to the interests of Indonesia or international law recognized by Indonesia. This principle provides jurisdiction for Indonesia to handle perpetrators of international crimes without being limited by the geographical area or nationality of the perpetrator and victim. In the new Criminal Code (Law No. 1 of 2023), this universal principle is regulated in Articles 6 and 7, confirming that Indonesia can carry out criminal prosecutions against perpetrators of international crimes outside its territory based on international agreements or national legal interests.[15] In summary, the main characteristics of the Indonesian criminal law system are:

a. A civil law system with codified law as the primary source of law.
b. Judges are inquisitorial and not bound by precedent.
c. A combination of common law elements in practice.

[9] Dicky Saputra, "Tindak Pidana Pornografi dalam KUHP Nasional yang Baru," *Lex Crimen* 9, no. 1 (2020).
[10] DPR RI, "Kajian Dan Evaluasi Pemantauan Pelaksanaan Undang-Undang Nomor 44 Tahun 2008 Tentang Pornografi," 2022, Https://Puspanlakuu.Dpr.Go.Id/Produk/Detail-Kajian/Id/57.
[11] BPSDM Kementerian Hukum Dan HAM, "Sosialisasi KUHP UU No. 1 Tahun 2023 Tentang Tindak Pidana Kesusilaan," 2024, Https://Bpsdm.Kemenkum.Go.Id/Berita-Utama/Sosialisasi-Kuhp-Uu-No-1-Tahun-2023-Tentang-Tindak-Pidana-Kesusilaan.
[12] S.H. Renata Christha Auli, "Hukumnya Mengunggah Foto Kue Berbentuk Organ Intim Ke Medsos," Hukum Online, 2024, Https://Www.Hukumonline.Com/Klinik/A/Hukumnya-Mengunggah-Foto-Kue-Berbentuk-Organ-Intim-Ke-Medsos-Lt5805d8dba5d0d/.
[13] Diah Wulandari, "Evaluasi Terhadap Putusan Tindak Pidana Pornografi Anak" (Universitas Sriwijaya, 2022), Https://Repository.Unsri.Ac.Id/56132.
[14] Sudikno Mertokusumo, *Penemuan hukum sebuah pengantar* (Liberty Yogyakarta, 2007).
[15] S H Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana* (Prenada Media, 2016).

d. The principle of universality is applied, granting broad jurisdiction over international crime.

This combination reflects Indonesia's unique legal system, which adapts to both national and global contexts.

3. Contradiction Between the Principles of Relativity and Universality in the Application of the Pornography Article in the New Criminal Code in Indonesia

The contradiction between the principles of relativity and universality in the application of the pornography article in the new Criminal Code in Indonesia arises because these two principles have different jurisdictional principles regarding the application of criminal law. The principle of relativity, better known as the principle of territoriality, asserts that Indonesian criminal law only applies to acts occurring within Indonesian jurisdiction. This means that pornography crimes committed outside of Indonesia's territory are generally not subject to Indonesian criminal law unless there is an element linking it to national territory (territorial relations).[16] Meanwhile, the principle of universality allows Indonesia to enforce criminal law against perpetrators of pornography crimes committed outside of Indonesia's territory, as long as the crime is deemed detrimental to the interests of the Indonesian state or constitutes a globally recognized international crime. Articles in the new Criminal Code that adopt the principle of universality allow for the prosecution of pornography perpetrators across borders without being bound by geographic location. This contradiction has the potential to create inconsistencies in law enforcement because:

a. The principle of relativity limits jurisdiction geographically, so perpetrators who commit pornography crimes outside Indonesia may not be able to be tried in Indonesia if they do not meet certain requirements.
b. The principle of universality opens up broader and global jurisdiction, allowing for the prosecution of perpetrators beyond national borders, but may overlap with national and territorial principles.[17]

In the context of pornography, although the principle of universality provides broader law enforcement space, implementation policies must consider the limits of the law's applicability and the principles of international justice to avoid jurisdictional conflicts with other countries.[18] It is also important to clarify the element of "harming the interests of the state" to prevent arbitrary interpretation in transnational pornography cases. In short, the contradiction between the principles of relativity and universality in the application of pornography articles in the new Criminal Code reflects the challenge of harmonizing national criminal law jurisdiction with the needs of law enforcement against transnational crimes, necessitating clear and measurable legal regulations and interpretations.[19] This study concludes that the implementation of the New Criminal Code must be balanced with progressive interpretation. It is important to prioritize universal protection for specific victims or all types of crime victims. In Indonesia, pornography is specifically regulated in Law Number 44 of 2008 concerning Pornography.[20] This law also distinguishes between pornography and pornographic action, where pornographic action is a real act of a sexual nature that occurs in a public place or is accessible to the public. Both are prohibited and carry criminal penalties.[21]

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[16] *Ibid.*, 47.
[17] Arief Muladi dan Barda Nawawi, *Teori-teori dan kebijakan pidana*, *Bandung: Alumni*, 2010, 81–83.
[18] Dicky Saputra, "Tindak Pidana Pornografi dalam KUHP Nasional yang Baru."
[19] Muladi dan Nawawi, *Teori-teori dan kebijakan pidana*.
[20] Maula Silmi Nadhira dan Amelia Muthia Nazwa, "Tindak Pidana Tertentu Erotika (Pornografi)," *Media Hukum Indonesia (MHI)* 3, no. 4 (2025).
[21] *Ibid.*

D. CONCLUSION

The enactment of the new Criminal Code (KUHP) brings significant changes to the Indonesian criminal justice system, including in the regulation of pornography crimes. On the one hand, the new KUHP recognizes the existence of living law through the principle of relativity, which emphasizes the importance of local values, culture, and societal moral norms in determining the limits of criminal acts. On the other hand, the KUHP also adopts the principle of universality, which grants criminal jurisdiction over transnational crimes and emphasizes international legal standards. It is important to prioritize universal protection for specific victims or all types of crime victims. The difficulty of defining pornography was expressed by Judge Stewart, who said he could not define pornography, but he knew something was pornography when he saw it.[22] Two commissions formed in the United States failed to provide a definition of pornography. The Commission on Obscenity and Pornography (1970) avoided a definition and instead used the term "explicit sexual material." The Attorney General's Commission on Pornography also did not provide a definition of pornography.[23]

E. RECOMMENDATION

Harmonization of Moral Norms is Necessary. The government and lawmakers need to formulate clearer interpretative guidelines regarding moral norms in the new Criminal Code, so that the principle of relativity does not create excessive subjectivity in enforcing pornography criminal law. This harmonization is crucial for maintaining consistency between local values and national legal principles.

1. Strengthening Cultural Context Assessment Mechanisms. In cases involving cross-regional digital pornography content, law enforcement officers should be equipped with mechanisms to objectively assess cultural and social context. This is a universality that prioritizes global standards.
2. Drafting Responsive Implementing Regulations. The government needs to immediately draft implementing regulations for the new Criminal Code that explicitly regulate the limitations and scope of criminal penalties for pornography, including in the digital context. These regulations must be responsive to technological developments and differences in interpretation across cultures.
3. Improving Public Legal Literacy. Legal education efforts are needed to educate the public about the influence of the principles of relativity and universality in law.

[22] Susan Easton, *The problem of pornography: Regulation and the right to free speech* (Routledge, 2005).
[23] F Adler dan G O Mueller, "Criminology.: The Shorter Version" (New York McGraw-Hill INC, 1995).

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