Article 485 Bill in Positive Law and Islamic Law on Cyber Sex Respect

Yusnani, Rinaldi, Magfirah

Abstract - The interesting thing with criminalization is watching video of sex scenes impacting adultery destroying morals, is a social reality but the rules have not been touched by the positive law and Islamic law of the Criminal Code Draft, article 485 on adultery. Also proposed closure of pornographic access. Using empirical normative legal research methods, ie interview to the bill team, socialization to local leaders, customary leaders, police officers and legislation, parents and academics. The study results show that local governments support the anti-pornography bill, namely article 485, the authority of total access termination depends on the central Kominfo. Anticipating the emergency of adultery is expected to enforce the Criminal Code Draft, article 485 for the perpetrators of single zina shall be sentenced to 1 year imprisonment or a fine of Rp.50 million, the regional government is responsible for covering the access of pornography. Revision of additional hours of religious learning for students from grade 4-6 Primary to Higher Education, male students must at least 1 night every week to study the Qur'an fiqh, tradition traditions served as muezzin and Imam prayer. Students study in the daytime certified. For class increase requirements in public schools.

Keywords: Policy, Draft of the Criminal Code, article 485, Positive law, Islamic Law

A. Introduction

In general, computers can be classified as digital and analog computers. The digital computer is essentially a counting device and operates with discrete numeric quantities expressed by a limited sequence of numbers. An analog computer operates by measuring the quantity of a quantity in an electric circuit specified in parallel (or analogue) with the equation of the phenomenon under investigation (Robert H. Hammond, cs 1990, terj). The results of analog computers are often shown in the form of a curve on a cathode ray tube without showing discrete numerical values.

Digital computers from the beginning have a small capacity but have a large size, some of which occupy the entire room. (1) The first utility computer consumes a vacuum tube in the circuit, increasing the knowledge of the circuit, the computer decreases in size but increases in capacity. (2) Large-size mainframe computers are now able to accommodate input devices and work significantly on a number of programs simultaneously (Ibid).

The development of today's technology gives birth to a network system that can connect one computer to another (Jogiyanto Hartono, 1999). One of the most sophisticated networks is the internet. The term internet began to be used in 1982, but the history of its formation has begun much earlier. As the forerunner of the Internet is the ARPANET, a computer network established by the US Department of Defense in 1969. The goal is for military purposes, that is, information is not centered in one place so easily destroyed in the event of a nuclear attack. Initially ARPANET only connected the three sites of institutes and universities (Haer Talib, 2010).

In today's Internet has changed the pattern of human thinking and freely related to any country in the world, with the freedom of human expression will be easily controlled by lust and emerged dangerous crimes such as cyber sex. This is marked by the rapidly growing porn sites in various displays that are seductive and misleading. Sources from various data indicate that the largest trade transactions on the internet are business fornography (Edmon Makarim, 2003).

Cyber sex has been treated as a way to impinge physical pleasure. By violating religious and moral values, sex is used as a commodity involving commercial values; media to gain worldly advantage with political orientation and social status, a tool for creating irregularities on the strata and civilization of society and destroying the life order constructed by sex itself.

The living conditions of the world during the era of globalization and information turned out the values of morality have been abandoned, making sex as something that is easy and cheap through access from the internet or mobile phone submissions can easily watch pornographic videos ranging from elementary school children to college and also the parents. According to reports from some junior high school students in the city of Padang, on average almost every day students watch pornographic VCDs at school, they are certainly not interested anymore by listening to the explanation of his teacher. (Interview February 2, 2015).
The result of univariate analysis showed that 58 people (16.6%) of high school students in Padang were risky sexual behavior, among them 15 people (4.3%) had sexual intercourse. Although the proportions are small but religiously, culturally and normatively show there has been a deviation of sexual behavior in adolescents because of having sexual intercourse that may be done by a married person. There is a possibility that underestimate teenagers are afraid or embarrassed to admit their sexual behavior.

The most common reason is to express affection (80%), the most common place is recreation (53.3%) and home (46.7%). All respondents had sexual intercourse with their girlfriend (100%). Almost half of respondents said sexual intercourse was started by both (46.7%). (Dien G.A Nursal, 2008). This is very dangerous for the survival of the younger generation and the sovereignty of a sovereign State.

B. Discussion

Anticipations are donated to the field of Science

Because sex position in Islam is something sacred honorable and special information must be in line with the guidance of the Qur’an and hadith. Sex is something of a sacred dimension then to live it must begin with the provision of religion instead of enjoying sex freely for anyone. The specific requirements relating to sexual activity in its presentation have certain restrictions:

1. Sex information is generally provided for those who have been considered adults, for men who have experienced wet dreams (ihtilam) while for women who have menstruation: 2. To show how great the position and role of sex in human life, giving rise to encouragement to respect and preserve as well as possible. (Muhammad S.Djarot S.Sensa, 1993).

The achievement of the success of sex education is supported by three components that work together. First, family. The family is the first environment for adolescents to get nurturing and cultivating moral values. The role of a very strategic family, currently experiencing a shift due to the busyness of parents, parental ignorance of adolescent development, and parenting patterns that tend to permissive parents. The impact of this shift, a home that should be a safe place for teenagers, becomes a comfortable place for some teenagers to channel their biological needs. The phenomenon is revealed in researcher searches and Okezone data in various cities in Indonesia. The data revealed show that sexual intercourse is not uncommon at home without the knowledge of parents, (Mutimmah, Dissertation in Doctorate program 2010).

This fact necessitates the restoration of family functions as a place of youth education and care. Both schools. Sex education can be given in the process of teaching and learning in the classroom by integrating in the PAI. The three communities, community awareness of deviant behavior of children, youth and youth / youth can be a social control of all elements of society, both religious leaders who act as cultural catalysts and community leaders and policy makers namely the government. (Ibid)

A character education expert from the United States said the characteristics of the destruction of a country is marked by the imbalance of society itself.


There is a presumption of pornography is already a public secret, which is feared rampant sex free if this is not addressed by all parties such as parents at home teachers / lecturers at school / campus and local government threat of God will come soon. This research is expected to be a contribution of thought or input to the conceptual developer of clear and decisive legal aspects in terms of cyber sex crimes. The Fundamental contribution to Science:

This idea is expected to result in a consensus of new methods / theories especially those related to the policy of positive law formulation and Islamic law on the prevention of cyber sex case studies of the people of west sumatera. Apparently the use of the Internet and the freedom to create accounts on windows, computer users can customize the look of the desktop, menus and other things according to their tastes and preferences. Each user has a document storage like my documents, my pictures, my videos and so forth. Every free computer user in cyberspace especially cyber sex problem. Some people feel restless in using the internet because there is always the look of porn sites with different styles to attract cyber sex lovers, while people still need the internet for the purposes of science or employment relationship.

Today the internet has shaped the society with a new culture. Society is no longer blocked by territorial cross-border territory. A new society with the most perfect freedom of activity and creativity. But behind the glitter of internet life also gave birth to
new unrest, including more sophisticated crime that is cybersex is characterized by rapidly growing porn sites. In some sources the data says the largest trade deals are obtained from the pornography business (Edmon Makarim, 2003).

Cyber sex uses communication and computer media for this crime, it turns out the video files contained in the internet by downloading low quality standard video, the flv format (flash Video). To play video with flv format simply download for free vicmedia player at address http://vic-media-player.en.softonic.com/. After getting the vic media player, take the steps to get the desired video file (Erlina, 2009).

The services available on the internet are very diverse, ranging from www (world wide web), FTP (File Transper Protocol), Email, Chat, IM (Instant Messaging), and so on. These services are becoming increasingly developed to include services outside the internet itself, such as sending SMS to mobile phones and so on (Haer Talib, 2010).

If you want to save files that are on the internet can be stored through a hard disk or flash disk. Download can be done easily by clicking hyperlink (generally there are words "Download" or click here (Ibid.) Increasing cyber sex activity in cyberspace has its own problem for the Indonesian nation In 2011 Minister of State of Communication and Information Indonesia Tifatul Sembiring, stated that Indonesia is the third largest internet accessor, as well as accessing pornography.

Internet in addition to providing benefits for improving the welfare and advancement of human civilization, it can make the means to commit acts against the law, including criminal acts (crimes) such as crimes in the form of information espionage, data theft, credit card fraud (credit card), the spread of computer viruses, adult and child pornography, the spread of troubled e-mails to anti-tribal, religious, racial, terrorism, and extremism campaigns via the internet. These crimes are known as cybercrime (Haryono, 2012).

In relation to efforts to tackle crime through penal means, Indonesia has several provisions of the law that if applicable to cybersex, such as Law no. 36 of 1999 on Telecommunications, Law no. 32 of 2002 on Broadcasting, Law no. 11 of 2008 on Electronic Transaction Information (ITE), Law No. 40 of 1999 on the press, Law No. 44 of 2008 and Law No. 33 of 2009 on cinema. But the law still has flaws and weaknesses and is considered inadequate to offset the development of cybercrime (cyber sex).

Basically a law is static while cyber sex acts in cyberspace continues to grow rapidly, along with technological developments, This situation should be supported by crime prevention policies with clear and binding legal provisions.

Cyberspace and its development

The increasing number of cases related to activities in the cyber world which came to be known as cyber crime or cybercrime shows that this crime is a serious crime that should be paid more attention than law enforcement officials. Even because of the seriousness that poses a threat across territorial borders, cybercrime is categorized as one of transnational crimes in addition to drug trafficking, human trafficking, piracy and piracy at sea, arms smuggling, terrorism, money laundering and international economic crime. The seriousness of other threats, the internet becomes a powerful tool used by bad people to commit anonymous offenses. (Septa candra, 2012)

Knowledge of cyberspace is an imaginary place that is not a form of residence in physical form and geographic location. Cyber space is a sovereign electronic place where individual communities, corporations, or governments can exist together without state restrictions (Ibid.,).

One thing that is a contribution to the social sciences, especially anthropology, psychology and sociology has noticed how the human body is used to support the struggle through power and power, as a dominant group records a system of domination which is taboo and punishment. But if this is true of a woman's body in general, then the whole will be much more correct in the body of a woman who appears to be in a state of primacy with symbolic strength and written in the order of hierarchy, domination, and exploitation. The female body is the arena of writing, domination and exploitation, an aspect that is always present in people's lives regardless of the degree of development of production facilities used (H. Lukman Saksono, 1982)

Sexual crimes committed by teenagers and underage children and even more mature adults occur today. Adverse effects of watching pornographic movies for minors are mental and moral damage that affects sexual crimes such as rape, pregnancy out of wedlock, venereal disease such as syphilis is a systemic infection caused by Treponema pallidum which can affect all organs of the body, skin, mucosa, heart to central nervous system and also can be without the manifestation of the lesion in the body, syphilis is generally transmitted through sexual contact can also be vertical during pregnancy. (Sarwono Prawirohardjo, 2008). There is another dangerous disease that is HIV and AIDS infection, acquired immune deficiency syndrome (AIDS) is a...
syndrome with symptoms of opportunistic infections or certain cancers due to decreased immune system by infection Human Immunodeficiency Virus (HIV). Most (75%) of transmission through sexual intercourse (Ibid).

One form of pornography that received a sharp spotlight and is considered a criminal offense from almost all countries in the world is pornography that involves children as the object (child pornography). Several international forums have sought to combat child pornography, among others by holding the "The World Congress Against Commercial Sexual Exploitation of Children" on 27-31 August 1996 in Stockholm (Sweden) and "International Conference on Combatting Child Pornography on the Internet", on 29 September-1 October 1999 in Vienna, Hofburg (Haryono, master's thesis, 2012)

The deviant behavior of teenagers raises a variety of views. First, the materialist-liberalist life culminates in the hedonic lifestyle that Western countries bring to the rest of the world. West managed to make its civilization as a mecca for the world, including some Indonesian teenagers (Dissertation on program doctorate, Mutimmatul Faidah, 2010).

Several groups and institutions are calling for immediate eradication of the most disturbing cases of society. The anti-pornography and porno-action laws have not yet been passed and are still in the form of draft laws. Whereas according to the principle of law in general dynamic, developed following the law, while the law will change according to the development of society, so affected the time and place: "historisch bestman" (Sudikno Mertokusumo, 1996)

The wisdom of the Indonesian nation to combat cybercrime has been realized by the Indonesian Ulema Council (MUI). MUI through its fatwa No. 287 of 2001 on pornography and pornoksi, al-Qur'an 'al-Isra' (17): 32.

At the fourth Muslim congress, the 14th anniversary of the Jakarta Declaration also mentioned the issue of pornography and porno-action there are 4 which states: "Urge the House and Government to immediately discuss and pass the pornography and porn action law"

Cybersex crime phenomenon in Indonesia has exceeded the moral tolerance of the nation, but the settlement of cybercrime crime issues has not yielded maximum results due to weak response from mediators. The importance of a decision from contemporary issues is a necessity. Because until now there has not been a solution or formula to know the limits and solutions in cybersex problem

The main objective of Islamic legal theory is to formalize the laws (ahkam) with regard to cases whose solutions have not been explicitly stated in the first two sources. The formulation of the solution demands the development of the method of interpretation in a way that can determine the collection of laws of the Qur'an and Sunnah. The Qur'an is a book of religion and moral teachings contain elements of legislation. In expressing his messages the Prophet frankly wants to abandon pre-Islamic values and institutions, but only so far as he seeks to build once for all.

Among the many exhortations and teachings of the Qur'an, there are legal and quasi-legal provisions. For example, laws are introduced in certain matters: rituals, zakat taxes, property, behavior toward orphans, inheritance, usury, alcohol use, marriage, divorce, intercourse, theft, murder and others (Hallaq, Wael B, 2000.).

**Criminal Acts Under the Criminal Law Act**

The crime of pornography is regulated in law No. 44 of 2008, pornography is defined as pictures, sketches, illustrations, photographs, writings, sounds, sounds, moving pictures, animations, cartoons, conversations, gestures, or other forms of messages through various forms of media communications and / or public performances, containing obscenity and sexual exploitation that violate the moral norms of society. As for services. pornography is any kind of pornographic services provided by individuals or corporations through live performances, cable television, terrestrial television, radio, telephone, internet, and other electronic communications as well as newspapers, magazines and other printed materials. (Ruslan Renggong, 2016).

The criminal act in Article 27 Paragraph (1) and his criminal threat in Article 45 Paragraph (1) is copied in one manuscript, the complete sound is:

Every person intentionally and without right to distribute and / or transmit and / or make accessible Electronic Information which has a violation of morality shall be liable to a maximum imprisonment of 6 (six) years and / or a maximum fine of Rp 1,000,000,000, 00 (one billion rupiah). (Ade Chazawi, Ardi Ferdian, 2015) The criminal act of crime alone is clear there are criminal sanctions, but the implementation has not worked unless this rule is only written in the book even though the Act has been revised to a more assertive. Meanwhile, when seen in the Criminal Code (KUHP) and (KUHAP) there is no criminal law on violations of single adultery crime.
Islam forbids his people to free sex instinctively uncontrollable because it is forbidden acts of zina and everything associated with it. (Yusuf Qardhawi, 2000). Islam also forbids the tendency against its instinct and curbs Islam for marrying forbidding singleness and castration (QS: 5:87)

Islamic law and positive law differ in views of the problem of adultery. Islamic law sees any marital relationship outside of marriage is adultery and threatens it with punishment, whether the offender is married or has not done likes or not. On the contrary, positive law sees no regard for all sexual relations outside marriage is adultery. On the contrary, the actory is a sexual relationship committed by a married person. Except a rape or breach of honor. Article 284 of the Indonesian Penal Code states:

(1) Sentenced to imprisonment for nine months:
1st a. a man with an adulterous wife is knowing that article 27 of the Book
The Civil Code applies to it;
b. married women who commit adultery. (Ahmad Wardi Muslich, 2005).

Currently Indonesia's criminal law is still influenced by Dutch law for it should be made a change towards the better as the enactment of criminal law for single adulterers in accordance with the existence of the bill of article 485, in the article which reads that "Everyone who do life together as husband and wife in outside the legal marriage, shall be imprisoned for a maximum of 1 year or a maximum fine of Rp 30 million, "(https://krisnaptik.com). Even the authors propose a fine of Rp 50 million.

In the compilation of Islamic law books are not found criminal law in the case of adultery zina if there is adultery adultery in fact they even married. This opens up opportunities for more adultery crimes of adultery.

The guidance of Islamic teachings is very noble

The Islamic religion of Allah revealed to the Prophet Muhammad, the mission that brought the qur'an fiqih, hadith and customs and served as a muezzin as well as a prayer Imam. While the students are required to take part in the day-ending ceremony ends on each semester there is proof of certificate. One of the conditions for the increase of classes in public schools is in accordance with the ideology of Islamic teachings.

C. Closing

Emergency pornography needs special attention because it is very dangerous for human survival and more dangerous than drug addicts. Sex crime cases in the city of Padang are not revealed in transparency only very few report to the police unless there is a crime underage such as cases of rape of minors. In the event of a peace between the two parties, the police did not forward the case to the Court because the complainant never returned. (Interview, 18-7-2016)

If the kebo case happens to adolescents, it is rare to report to the Police and both parents seek a peaceful way, for shame reasons. The author assumes humans are no longer afraid of God but more fearful and shameful to humans, the control of parents and society about deviation of behavior negative has greatly decreased.

Obtained data is the policy of determinants jdh Pemko Padang trying to make as much as possible perda about the closure of access to pornography, because there are some countries that can close access such as Malaysia and other Islamic countries. The authority to close access to pornography is the central government in Jakarta (interview result of Pemko city of Padang dated 15-06-2016).

There are other factors that influence the crime of adultery one of them because the adulterers are triggered by the use of drugs and alcohol that the real regulations should not be sold freely, in fact the goods are always circulating both drugs and alcoholic sellers although there is always a raid from Satpol PP. It also applies to fines for the sellers but there are certain parties who disagree with this prohibition on the grounds of their livelihood, while mudharatnya more of the benefits. (the results of the interview Pemko Padang city)

Meanwhile, if there is good faith from the DPRD section of the Criminal Code Draft to determine the closure of pornographic content, this matter can be forwarded to Pemko Padang regulation. Likewise with the policy of enactment of RUU KUHP article 485 about kebo gathering for adolescents, this
can only be entered into the local regulation if found youth and girl caught by adultery handed lightly penalty (plate), (result of interview of Pemko of Padang on 15-06-2016).

Input from the Director of PNP Padang with religious activities on campus such as in mosque or on porsipol, and activities of mapala, karate, arts, etc. at least will reduce their activities to watch pornography. (Interview with Director of PNP Padang, 2016)

However, this can not be measured by how many students are active in non-academic activities that are positive, of course, will be seen pornographic content user data on the cyber crime PNP Padang. The author has not found a policy what is taken by the State Polytechnic Padang to close access to this pornography

D. Conclusions

Basically efforts to overcome cyber sex especially related to pornographic content and adultery for teenagers, has been tried by local government, effort to close the access of pornography has not been done because constrained by the polemic until now there has been no understanding especially point of application technically implementation of filtration which is effective between industry actors who are subject to obligations with governments who want this to materialize immediately, given the growing impact that society has, as well as the implementation of the policy of Draft Law 485. The realization of a criminal law for single and married individuals is imprisoned for at least one (1) year or a fine of Rp.50,000,000.00. (Fifty Million Rupiah).

Government parties, industry players and the internet community such as alternative media activists (bloggers / citizen journalism) and sometimes mainstream media journalists (especially online) are still ambiguous to put filtering as a sensor.

E. References

1. Religion, Department, 2008, Qur'an and Translation, Jakarta
2. Abbas, Kararah, 1373H, Speaking with women, Gema Insani Pres Jakarta
5. Ahmad Wardi, Muslich, 2005. Islamic Criminal Law, Sinar Grafika, Jkarta
12. Lukman Saksono. Sex and Muslim Women cet.3 1982, PN Erlangga
15. Ruslan Renggong, Special Criminal Law Understanding the Offenses outside the Criminal Code, 2016. PN Kencana Jakarta
17. Act no.1 Year 1994, 2015, on marriage and compilation Islamic Law, Sinar Sindo Utama
18. Law on RI About Pornography & Information and Electronic Transactions RI Law no.44 of 2008 on pornography, Law of the Republic of Indonesia number 11 of 2008 on Information and Electronic Transactions
19. Agung prasetyo, 2012, a picture of adolescent attitudes toward the dangers of free sex in school, paramadina northstar fellow