

The comparative of Regulations About Violation of Decency on Electronic Media Between Indonesia, United States, England, and Canada

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Abstract

Technology is present to provide a more convenient life for people. The online media or social media are one of them. In social media, people can easily interact with each other. This can happen because of the presence of the internet. The internet is a global resource and there is no single country that can control the protocols and features of the internet. The internet is wide; therefore, it is easier for people to take actions that are prohibited by law, one of which is committing indecency against criminal law. A crime of decency is an act or behavior that is against by law, which violates the norms or rules of decency. In other countries, such as America, Britain, and Canada, they don't use the term decency, but use the term obscenity and pornography. Thus, this study will discuss the scope of decency on electronic media and interpret the content of decency. This research will use the normative juridical method, with a comparative approach. As well as using the theory of comparison, protection, and law enforcement. This research discovers that there are two types of decency regulations in Indonesia, broadly, which includes the regulation of decency in the Criminal Code and acts that violate social values, and narrowly, which includes pornography and child pornography. In addition, decency regulations in America, England, and Canada are specifically regulated which includes obscenity and child pornography.

Keywords

Media, Internet, Decency, Pornography, Obscene.

1. Introduction

Technology itself is an application of scientific knowledge which aims to make human life more practical. In addition, technology also presents a development in several aspects, one of which is electronic media. Electronic media is media that uses electronics or electromechanical energy which is used by end users or the public to access content. One of the sources of electronic media that is often used by the public is online content, which often appears in online media or social media (Rahmiyati 2015). Social media is a medium where users can easily interact, participate, share, and create content that includes blogs, social networks, wikis, forums, and virtual worlds (Cahyono 2016).

In running a social media, an internet is needed in it, where the internet is a global resource and there is no single country that can control the protocols and features of the internet (De' et al. 2020). The internet is broad, global, cross border, and there are no boundaries of space and time on the internet, which makes it easier for the wider community to take actions that are prohibited by law, even though there are no regulations that clearly regulate this internet. The

impact of the internet will continue to flow, such as the current impact, namely that people use the internet to open social media, play games, seek knowledge, or just to communicate with other people. The internet has become a mode of communication that all generations, even children, can easily access (Edick 1998). However, the internet does not always present a good impact, but it can also have a bad impact on its users. One of them is immoral acts on social media.

According to Prof. Mr. Roeslan Saleh, the notion of decency should not be limited to the notion of decency in the sexual field, but also includes other things that are included in the mastery of norms of obedience to behave in social interactions. In Indonesia's positive law, it regulates crimes against decency which are regulated in book II (on crime) CHAPTER XIV (on crimes against decency) of the Criminal Code. In addition, the various crimes of decency described in CHAPTER XIV of the Criminal Code are grouped in articles that are directly and indirectly related to decency offenses. Articles that are directly related to moral offenses such as articles 281 to 303, while articles that are not directly related, such as Law Number 44 of 2008 on Pornography, and Law Number 11 of 2008 on Information and Electronic Transactions (hereinafter abbreviated as UU-ITE) (Mudzakkir 2010).

With the existence of online media or social media, it has made access to pornography and violence easier than ever. Video games and simulations go a step further by allowing users to engage in virtual sex and violence. Online media or social media also makes it easy to produce and disseminate adult material (Packard 2010). According to data from the Ministry of Communication and Information (KOMINFO) where internet users in Indonesia reach 62 million people and 80% of users are 15-30 years old. As well as KOMINFO's research on 1200 junior high and high school students in 12 cities in Indonesia, 97% of these students admitted that they had visited and liked to open pornographic sites and 61% of them had had sex (Manurung et al. 2016). It can be seen in the Figure 1 below the number of cases of child pornography and crime in cyberspace as of August 31, 2020.

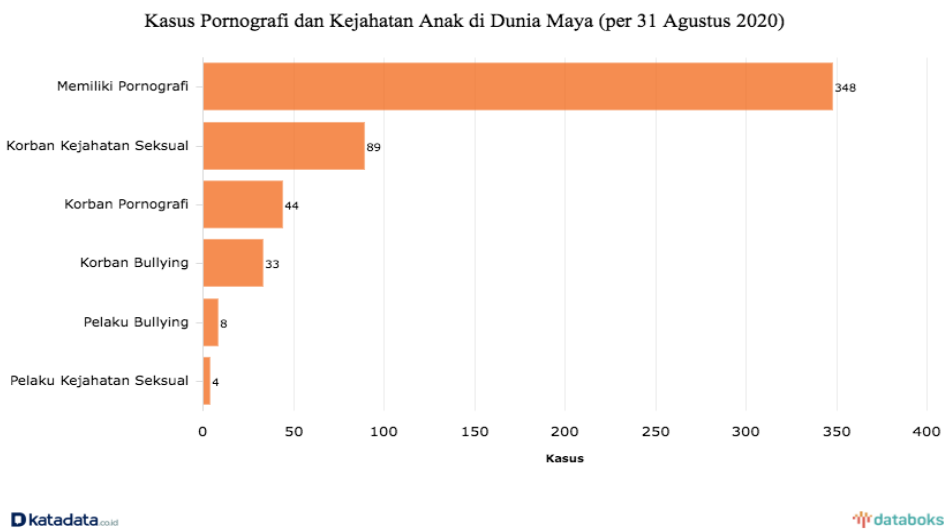


Figure 1. Data on Child Pornography and Crime Cases in Cyberspace

It can be seen in the data for 2020, which has pornographic content is the highest number of cases.

Not only in Indonesia, but pornographic content also occurs in the United States, where, by the mid-1980s, cases of trafficking in child pornography were almost completely eliminated. However, it reappeared when the internet came. The Internet has essentially made matters worse regarding child pornography with the increasing amount of material available, the efficiency of distribution, and the ease with which the content can be accessed. In recent decades, the amount of child pornography transmitted and stored over the internet has been staggering. One study estimate that 20% of all pornographic activity on the Internet involves children (Preston 2008).

In America itself, it does not explicitly discuss regulations regarding online pornography, but uses terminology or other types of pornography, namely sexual abuse and exploitation and abuse of children, which are regulated in 18 U.S. Code Chapter 71—Obscenity and Chapter 110 – Sexual Exploitation and Other Abuse of Children. Then, England also regulates obscenity, namely, Obscene Publications Act 1959 Chapter 66 7 and 8 Eliz 2; Obscene Publications Act 1964 Chapter 74; Telecommunications Act 1984 Chapter 12, Broadcasting Act 1990 Chapter 42. However, the UK has regulated online pornography, namely the Digital Economy Act 2017 Chapter 30. In part 3, it is explained about Internet pornography: requirements to prevent access by persons under 18 years. Meanwhile, in Canada, the production or distribution of obscene material, especially child pornography, is prohibited. It is regulated in The Criminal Code R.S.C., 1985, c. C-46.

The three countries were chosen because of the many cases that occurred regarding criminal acts of decency, especially in terms of pornography, including child pornography. In addition, the three countries have an important role in the passage of technology, and online media or social media, including the internet, are increasingly useful. Then, from the explanation above, legal issues and issues that want to be discussed regarding regulations or regulations regarding immoral content are more focused on social media or online media, due to the occurrence of immoral cases that are not only adults but involve children as well. With the problems that occur, the existing regulations in Indonesia will be compared with regulations from other countries. It is hoped that by comparing these regulations, it is possible to see whether the regulations in Indonesia are sufficient or not in regulating decency crimes.

Based on the explanation above, the formulation of the problem in this study was formed, namely:

- 1) Is the scope of immoral content through electronic media in America, England, and Canada limited to pornography or can it be interpreted more broadly?
- 2) How to interpret the immoral content contained in Article 27 paragraph (1) UU-ITE?

2. Literature Review

2.1 Basis of Comparative Law Theory, Legal Protection Theory, and Law Enforcement Theory

In this study, three theories are used to help this research run, namely Comparative Law Theory, Legal Protection Theory, and Law Enforcement Theory. Comparative Theory of Law is a theory that studies various foreign legal systems with a view to comparing them. W. Ewald argues that comparative law is essentially a philosophical activity (Arief 2020). This study uses comparative law theory because regulations in Indonesia that explain morality will be compared with regulations from other countries.

In addition to the theory of comparative law, the theory of legal protection is also used in this study. According to Satjipto Rahardjo, legal protection is to provide protection for human rights that are harmed by others and that protection is given to the community so that they can enjoy all the rights granted by law (Rahardjo 2000). This theory is used because in the context of decency, legal protection is needed for victims who experience it. Then also, so that victims feel a sense of legal protection itself.

Next, the theory of law enforcement. Law enforcement is an attempt to make the ideas of justice, legal certainty, and social benefits a reality (Rahardjo 1987). By using this law enforcement theory, in the context of decency, it provides a deterrent effect to the perpetrators and gives a sense of justice to the parties concerned.

2.2 Definition of Crime of Decency

Before explaining the crime of decency, it can be known what is meant by a crime. According to Lamintang's book, in Dutch "strafbaar feit" or in Indonesian legislators, it is known as a "criminal act". If in Dutch, "feit" is "part of a reality". Meanwhile, for "strafbaar" is "can be punished". So, overall, that "criminal acts" are part of a reality that can be punished. The reality referred to in this case is humans as individuals (Lamintang 2019). Then, decency itself is an appropriate and moral attitude in a community group that is in accordance with the habits of the community concerned, where in a community group there are provisions for behavior in relationships between fellow human beings (Kanter 2018).

If the crime described previously is associated with immoral acts, then the definition of a crime of decency is an act or behavior that is against the law, which deviates from the norms or rules of decency. An action can be said to be violating decency if someone feels aggrieved or there is an element of coercion (Mansyur 2016). According to Kamus

Besar Bahasa Indonesia (KBBI), immorality is immoral or bad behavior. So immoral itself is an antonym of the word immoral.

Criminal acts of decency are regulated in the Criminal Code (KUHP) book II chapter XIV regarding crimes against decency, from article 281 to article 303. In these articles, criminal acts of decency are not only pornographic, sexual, or violating one's honor. However, according to Prof. Oemar Seno Adji, stated that there is part of a universal decency crime which will become a universal provision or a provision that reaches all countries. According to Prof. Oemar, a crime of decency becomes a universal provision if the following conditions are met (Sjawie 1996):

1. If the offense is committed with violence, such as rape
2. The victims of the offense are minors
3. If the offense is committed in public
4. If the victim is in a state of helplessness, fainting, and so on
5. There is a certain relationship between the perpetrator and the object of the offense, for example a superior to his subordinates.

2.3 Types of Crime of Decency

The types of decency crimes are regulated in the Criminal Code book II chapter XIV regarding crimes against decency, from article 281 to article 303. The types of criminal acts of decency include: (Table 1)

Table 1. Articles and Explanations regarding Types of Crimes of Decency

Types of Crime of Decency	Article and Explanation
Crimes against modesty (decency) – Article 281	that intentionally destroying decency in public, in front of other people.
Dissemination of pornographic content – Article 282	that broadcasts, expands the content of pornography in public places.
Showing content that violates decency – Article 283	that those who offer, permanently or temporarily submit or display writings, pictures, or objects that violate decency, as well as tools to prevent or abort pregnancy, to adults or those who are not yet 17 years old.
Adultery – Article 284	that it is criminalized if a married man or woman commits adultery.
Rape	It is regulated in Article 285 of the Criminal Code, that it is punishable by criminal if you force a woman to have intercourse outside of marriage. In addition, it is regulated in article 286 of the Criminal Code, that it is threatened to be punished if you have intercourse with a woman who is not his wife in a state of unconsciousness or helplessness.
Sexual intercourse with underage women – Article 287	that it is punishable by a criminal offense if you have intercourse with a woman underage and it is done outside of marriage.
Sexual intercourse with a woman who is not yet ripe for marriage	Sexual intercourse with a woman who is not yet ready for marriage is regulated in Article 288 of the Criminal Code.
Obscenity	Obscenity is regulated in Articles 289-296 of the Criminal Code, that it is punishable by a criminal offense if you commit an obscene act (Maulana 2020): <ol style="list-style-type: none"> 1. by forceful coercion. 2. against an unconscious person. 3. against children who are not yet mature/not yet capable of law. 4. against children or people who are under their control; 5. against children of the same sex. 6. against children in exchange for or promising money or goods. 7. against own children (including stepchildren, adopted children); 8. officials to work subordinates or people who are under their control. 9. which is done by their children, stepchildren/adoptive children who are not yet mature/ their students who are still underage or under them by other people;

	10. which is facilitated or intentional by another person with another person.
Trafficking of immature men and women – Article 297	that it is punishable by a criminal offense for trafficking in men and women who are not yet mature.
Abortion	Carrying out an abortion is regulated in article 299 of the Criminal Code.
Gambling	Gambling is regulated in Article 303 of the Criminal Code (Mudzakkir 2010).

Source: adapted from Mudzakkir and Arif Maulana, 2010 and 2020.

In the types of decency crimes, pornography is explained. Pornography itself is regulated in Law Number 44 of 2008 on Pornography, in which pornography is pictures, sketches, illustrations, photos, writings, sounds, sounds, moving images, animations, cartoons, conversations, gestures, or other forms of messages through various forms of communication media and/or performances on social media or public, which contains obscenity or sexual exploitation that violates the norms of decency in society. (table 2)

Table 2. Explanation of the Crime of Pornography

Article	Explanation
Dissemination of pornographic content	Article 4 explains that everyone is prohibited from spreading, producing, pornographic content, including child pornography.
Pornographic payload download	Article 5 explains that it is forbidden to download pornographic content.
Possession of pornographic content	Article 6 explains that it is prohibited to display and contain pornographic content.
Pornography Facilitation	Article 7 explains that it is prohibited to facilitate pornographic acts.
Dissemination of pornographic content	As in Article 282 of the Criminal Code, the Pornography Law is explained in Article 10 that it is prohibited to display or show pornographic content in public.

Source: processed in 2021.

In addition to the Pornography Law, according to the Campaign Against Pornography and Censorship (CPC) in their Policy Statement, pornography is defined as sexually explicit subordination of women through images and/or words, which also includes one or more things, namely: women as sexual object, object, or commodity, enjoy pain or humiliation or rape, be bound, cut, mutilated, injured, or physically harmed, in a posture of sexual submission or bondage or display, reduced to body parts, pierced by objects or animals, or presented in a scenario of degradation, injury, torture, shown as dirty or inferior, bloody, bruised or injured in a context that makes this a sexual condition. Pornography does not fall under erotica and does not include bona fide sex education material, or medical or forensic literature. So, in short that Pornography is a depiction of a combination of sexual objectification and subordination of women, often including violations and violence (Smith 1993). From this definition, expressing a hatred for certain types of sexual material and often, pornography includes scenes that demean women as sexual objects (Rasmussen 2016).

If it is seen that the Pornography Law has the same characteristics as the Criminal Code, only the emphasis on the regulation is different. The Criminal Code regulates decency crimes of a general nature, while the Pornography Law regulates decency crimes that are specifically related to pornography. In other words, the Pornography Law is a lex specialist of the Criminal Code for immoral material to the wider community, not a privacy act (Christianto 2017).

In addition to the law, decency crimes are also regulated in a regulation that regulates the activities of Indonesian people on the Internet, namely Law Number 11 of 2008 on Information and Electronic Transactions (UU-ITE). In UU-ITE, it expressly regulates all legal protections that occur because of using the internet as a medium. Furthermore, the ITE Law does not only regulate information and electronic transactions, but also regulates prohibited acts, one of which is the prohibition of immoral content being intentionally distributed and/or accessed on the internet. This refers to the negative impact of internet use. The prohibition of immoral content being spread on the internet refers to article 27 paragraph (1) of the ITE Law which states that "Everyone intentionally and without rights distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that have charge that violates

decency”. Article 27 paragraph (1) of the UU-ITE has the aim of providing a protection to the public from criminal acts related to pornography. This pornographic crime often occurs on the internet, where the spread of pornographic crime is very fast, considering the nature of the internet which is wide and easy to access by the public (Sujamawardi 2018).

Moral offenses committed on social media are divided into two types of decency, including (Mudzakkir 2010):

Table 3. Explanation of the forms of decency

Forms	Description
Directly	Moral offenses are carried out in such a way that they fulfill the elements mentioned in the Criminal Code, as can be seen in Article 281 to Article 283 of the Criminal Code.
Indirectly	A decency offense is carried out in such a way that the act can cause an effect on others, in the form of an act of decency, so it can be said that the act of decency is a chain. This can be seen in articles 284 to 293 of the Criminal Code.

Furthermore, offenses related to pornography include acts: Produce scenes containing pornographic content with the aim of being distributed through a computer system; Offer through a computer system; Distribute or send through a computer system; Obtaining through a computer system; and has in the computer system or in storage media (Mudzakkir 2010). (Table 3)

3. Methods

The research method used in this study is normative juridical, with a comparative approach. Normative juridical research is research conducted by examining library materials or secondary data. Normative Juridical Research is known as library law research. In this study, the library material sought is basic data which in (science) research is classified as secondary data (Soekanto and Mamudji 2021). In normative legal research, it consists of (Amiruddin and Asikin 2020):

- 1) Positive legal inventory research
- 2) Research on legal principles
- 3) Clinical legal research
- 4) Legal research that examines the systematics of statutory regulations
- 5) Research that wants to study the synchronization of a statutory regulation
- 6) Comparative law research
- 7) Legal history research

In this study, using a comparative approach or comparative law approach. The comparative approach is carried out by comparing the laws of a country, with the laws of one or more other countries on the same matter. In addition, it is also possible to compare Court decisions in several countries for similar cases (Amiruddin and Asikin 2020).

4. Data Collection

By using normative juridical research, the type of data used is secondary data. Secondary data includes official documents, books, research results in the form of reports, diaries, and so on. In secondary data, it consists of (Soekanto 2020):

- 1) Primary Legal Materials, namely legal materials that are binding and consist of:
 - a. Criminal Code
 - b. Law No. 44 of 2008 concerning Pornography
 - c. Law No. 11 of 2008 concerning Information and Electronic Transactions
 - d. Law No. 23 of 2002 concerning Child Protection
 - e. 18 U.S. Code CHAPTER 71—Obscenity
 - f. 18 U.S. Code Chapter 110 – Sexual Exploitation and Other Abuse of Children
 - g. Obscene Publications Act 1959 CHAPTER 66 7 and 8 Eliz 2

- h. Obscene Publications Act 1964 CHAPTER 74
 - i. Telecommunications Act 1984 CHAPTER 12
 - j. Broadcasting Act 1990 CHAPTER 42
 - k. Digital Economy Act 2017 CHAPTER 30
 - l. The Criminal Code R.S.C., 1985, c. C-46
- 2) Secondary Legal Materials, which provide explanations on primary legal materials, such as, for example, draft laws, research results, works from legal circles, and so on.
 - 3) Tertiary Legal Materials, namely materials that provide instructions and explanations of primary and secondary legal materials, such as the Big Indonesian Dictionary, encyclopedias, and so on.

With this secondary data, a researcher does not need to conduct his own research and directly to the factors that become the background of his own research. Although the researcher uses secondary data, they must also be critical of secondary data (Soekanto and Mamudji 2021).

5. Results and Discussion

5.1 Regulation of Decency Offenses in Electronic Media in the United States, United Kingdom, and Canada

In addition to explanations regarding decency in Indonesia, criminal acts of decency are also regulated in several countries, one of which is the United States, England, and Canada. The following is an explanation of the regulation of criminal acts of decency in America, England, and Canada:

Table 4. Criminal Crime Arrangements in the US, England, Canada

Country	Regulation	Explanation
United States	18 U.S. Code Chapter 71—Obscenity and Chapter 110 – Sexual Exploitation and Other Abuse of Children	Describes: Possession with intent to sell, obscene material in Federal property; Sending things that are obscene or inciting crime; Import or transport of obscene goods; Sending obscene things on wrappers or envelopes; Broadcasting obscene language; Transport of obscene goods for sale or distribution; Engage in the business of selling or transferring obscene things; Obscene visual representations of child sexual abuse; Criminal confiscation; Distribute obscene material via cable or subscription television; Presumption; Transfer of obscene material to minors.
England	Obscene Publications Act 1959 Chapter 66 7 and 8 Eliz 2; Obscene Publications Act 1964 Chapter 74; Telecommunications Act 1984 Chapter 12, Broadcasting Act 1990 Chapter 42, Digital Economy Act 2017 Chapter 30	In England, it is not specifically explained what a crime of decency is, but in England it is explained about the prohibition of obscene acts. In addition, he also explained about the misuse of the telecommunications system, such as sending obscene material, and explained about online pornography, which also includes child pornography.
Canada	The Criminal Code R.S.C., 1985, c. C-46	Explain the prohibition of distributing, transmitting child pornography; create content containing child pornography; the existence of sexually explicit material created by electronic or mechanical means.

Based on the Table 4 above, the regulation in the United States regarding criminal acts of decency is more directed to acts of obscenity, which in the regulation is more specific in determining what actions are prohibited, such as

possession, selling, transmitting, broadcasting, distributing, and representation lewd visuals. Then, in England it does not specifically regulate decency crimes, but regulations in England explain the misuse of telecommunications, and explain online pornography. Furthermore, Canada specifically explains the prohibition on distributing, transmitting, and creating content that contains child pornography and sexually explicit material.

5.2 Interpretation of the content of decency in article 27 paragraph 1

According to the Joint Decree of the Minister of Communication and Information Technology of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, and the Head of the State Police of the Republic of Indonesia Number 229 of 2021, Number 154 of 2021, Number KB/2/VI/2021 concerning Guidelines for the Implementation of Certain Articles in the Law Number 11 of 2008 concerning Information and Electronic Transactions as Amended by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, explains the implementation guidelines of article 27 paragraph (1), which states that the meaning of the phrase "the charge of violating decency" has two meanings, including:

a. Specifically

Content that violates decency in a narrow sense is defined as pornographic content as regulated in Law no. 44 of 2008 concerning Pornography and/or acts related to decency as regulated in Article 281 and Article 282 of the Criminal Code. In this case, pornography is divided into two, namely general pornography and child pornography.

b. In General

Content that violates decency in a broad sense is interpreted as content (content) that contains something that the community considers violating the social rules agreed in a society, where the rules can be written or unwritten and have been agreed for a long time.

6. Conclusion

After an explanation of decency along with the regulations that govern it, not only in Indonesia, but also in America, England, and Canada, the scope of decency is very broad. In the perspective of Indonesian law, the regulation of decency can be seen in the Criminal Code and is divided into two types, namely broad and narrow decency, which broadly covers decency in the Criminal Code and acts that violate social values. In addition, decency is narrow, which includes pornography, including child pornography. In addition, in the legal perspective of other countries, namely America, England, and Canada, that the regulation of morality is regulated more specifically than Indonesia. It can be seen in America, which regulates the prohibition of obscenity, in the England regulates the misuse of telecommunications and child pornography, and in Canada regulates the prohibition of child pornography content.

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Biography

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