

**PERUMUSAN PERBUATAN PORNOGRAFI MELALUI INTERNET
BERDASARKAN SIFAT MELAWAN HUKUM MATERIIL**

Hwian Christianto¹, Eddy O.S.Hiariej², Marcus Priyo Gunarto³

INTISARI

Rumusan larangan Perbuatan Pornografi melalui Internet dalam ketentuan hukum pidana memiliki dua variasi, *pertama* Pasal 282 ayat (1) KUHP dan Pasal 27 ayat (1) jo Pasal 45 ayat (1) UU ITE merumuskan unsur perbuatan dan mencantumkan norma kesusilaan, *kedua* Pasal 4 ayat (1) jo Pasal 29 ayat (1) UU Pornografi merumuskan unsur perbuatan tanpa mencantumkan norma kesusilaan. Suatu rumusan perbuatan pidana yang mencantumkan norma kesusilaan dan tidak mencantumkan norma kesusilaan menimbulkan dampak berbeda dalam penerapan hukum.

Penelitian ini memiliki tujuan untuk *pertama* mempelajari pemahaman pembentuk undang-undang akan pentingnya sifat melawan hukum materiil dalam pertimbangan pembentukan undang-undang baik terhadap arti penting pemberlakuan Undang-Undang secara keseluruhan maupun perumusan perbuatan pidana terkait pornografi melalui internet; *kedua*, pemahaman dan metode penerapan sifat melawan hukum materiil oleh hakim; *ketiga*, perumusan perbuatan pidana pornografi untuk memberikan kontribusi bagi model rumusan ketentuan hukum pidana yang tepat bagi perbuatan pornografi internet.

Hasil penelitian menunjukkan *pertama*, pembentuk undang-undang telah mempertimbangkan sifat melawan hukum materiil dalam landasan filosofis, yuridis dan sosiologis serta perumusan perbuatan yang dilarang. Hanya saja pemahaman akan sifat melawan hukum materiil pada UU Pornografi dirumuskan secara berbeda pada perbuatan yang dilarang dengan lebih merinci unsur-unsur perbuatan pidana secara deskriptif; *kedua*, hakim telah memandang penting norma kesusilaan sebagai pertimbangan utama disamping pemahaman ketentuan hukum. Hakim memandang penting pemberlakuan sifat melawan hukum materiil wajib di rumuskan dalam perbuatan pidana karena menunjukkan pemberlakuan hukum yang hidup sekaligus perlindungan kesusilaan masyarakat Indonesia. *ketiga*, perumusan perbuatan pidana pornografi melalui internet perlu didasarkan pada pemberlakuan sifat melawan hukum materiil yaitu norma kesusilaan dengan ukuran sosial, budaya dan struktural sebagai bagian dari pembaruan hukum pidana nasional berdasarkan keberadaban.

Kata Kunci : pornografi melalui internet, pembentukan undang-undang, norma kesusilaan, putusan hakim, perumusan perbuatan pidana

¹ Dosen Fakultas Hukum Universitas Surabaya, hwall4jc@yahoo.co.id

²Promotor, Guru Besar Fakultas Hukum Universitas Gadjah Mada

³ Ko-Promotor, Guru Besar Fakultas Hukum Universitas Gadjah Mada

INTERNET PORNOGRAPHY FORMULATION BASED ON NATURE AGAINST MATERIAL LAW

Hwian Christianto⁴, Eddy O.S. Hiariej⁵, Marcus Priyo Gunarto⁶

ABSTRACT

The Formula of Prohibition of Pornography Actions through the Internet in the criminal law provisions has two variations. First, it formulates the elements of the act and includes decency norms as regulated in Article 282 paragraph (1) of the Criminal Code and Article 27 paragraph (1) jo Article 45 paragraph (1) of the ITE Law. Secondly, it formulates the elements of the act without mentioning the decency norms as stipulated in Article 4 paragraph (1) jo Article 29 paragraph (1) of the Pornography Law. A formulation of a criminal act that includes decency norms and does not include the norm of decency has a different impact on the application of the law.

This study aimed to first study the understanding of the legislators about the importance of the nature against material law in the consideration of the formulation of laws both on the importance of the enactment of the Act as a whole and the formulation of pornography criminal acts through the internet. Second, it aimed to study the understanding and method of applying the nature against material law by the judge. Third, it studied the formulation of criminal acts of pornography to contribute to the formulation model of criminal law provisions that were appropriate for the acts of internet pornography.

The results of the study showed: First, the legislators had considered the nature against the material law in a philosophical, juridical and sociological basis and the formulation of prohibited acts. However, the understanding of the nature against the material law in the Pornography Law was formulated differently in the prohibited acts by giving more details in the elements of criminal acts descriptively. Secondly, judges had considered the importance of moral norms as the main consideration in addition to understanding the legal provisions. The judge considered the importance of the application of the nature against the material law to be formulated in a criminal act because it showed the application of the living law as well as the protection of the morality of the Indonesian people. Third, the formulation of criminal acts of pornography through the internet needed to be based on the application of the nature of the material law against morality, social, cultural and structural norms as part of national criminal law reform based on civilization.

Keywords: Internet pornography, Formulation of the Law, Norms of Decency, Judge's Decision, Formulation of Criminal Act

⁴ Lecturer Faculty of Law University of Surabaya, . Surabaya, hwall4jc@yahoo.co.id

⁵ Promotor, Professor of Criminal Law Faculty of Law Gadjah Mada University

⁶ Co-Promotor, Professor of Criminal Law Faculty of Law Gadjah Mada University