

Application of Corporate Crime Sanctions in Pornography Crimes (Study of the Porn Film Industry and Trade)

Yeti Kurniati¹, Edy Santoso², Antonius Wantri Yulianto³, Eko Susanto Tejo⁴, Verawati Gunawan⁵,
Shinta Intan Sari⁶

^{1,2}Associate Professor at Langlangbuana University, Master of Law,
Jalan Karapitan 116, Bandung, Indonesia

^{3,4,5,6}Master of Law Program at Langlangbuana University, Master of Law,
Jalan Karapitan 116, Bandung, Indonesia

Abstract:

The development of information and communication technology has contributed to the increase in the creation and dissemination of pornography which has had a negative influence on the morals and noble personality of the Indonesian people. In relation to the era of globalization, the existence of a corporation has a big contribution to the interests of the country and its citizens. The existence of corporations is often accompanied by violations, including violations of criminal law, one of which is the case of the pornographic film industry and trade. The authors examine the criteria for criminal acts of pornography which are classified as corporate crimes and how sanctions are applied for criminal acts of pornography as a corporate crime. This research uses normative-empirical juridical methods and analytical descriptive research specifications. Based on the research results, it can be concluded that the criteria for criminal acts of pornography which are classified as corporate crimes are non-violent, corrosive effect, and have a very detrimental impact on society at large. The industry and trade in pornographic films is a form of criminal corporation/organization, and there has never been a court decision regarding sanctions for corporate criminal acts applied to cases of criminal acts of pornography. Efforts that can be made to overcome this problem are to harmonize the definition of a corporation, create clear criteria for corporations as subjects of criminal law, need to hold Focus Group Discussions (FGD) among academics and law enforcement officials, and apply sanctions against perpetrators of criminal acts of pornography which are classified as corporate crimes.

Keywords: Porn Film, Porn Video, Corporate Crime, Cyber Crime, Pornography.

1. Introduction

Indonesia as a rule of law country means that all aspects of life in the territory of the Unitary State of the Republic of Indonesia (NKRI) must be based on law and all legislative products and their derivatives that apply in the territory of the Republic of Indonesia, as written in Article 1 paragraph (3) of the Constitution 1945. As a country of law, Indonesia must be able to enforce laws that apply fairly and equally to all its citizens. The development and use of information technology, media and internet-based communication has changed human behavior and human civilization globally, and made relationships unlimited by space and time.^[1] In addition, the development of information technology has caused changes in human life activities in various fields which have a direct impact on the birth of new forms of legal acts. Therefore, it is necessary to have norms, rules or laws that support orderly relationships in social life as per the adage “*ubi societas ibi ius*”. The existence of law with its various functions, apart from changing people’s behavior or law as a tool of social engineering, is also to control people’s behavior that violates legal provisions or law as a tool of social control.

The development of information and communication technology has had a significant social and cultural impact. The presence of internet technology in the era of globalization has encouraged the proliferation of various acts that cause harm and tend to violate the law, which continues to increase with a developing pattern.^[2] The biggest negative impact of accessing the internet is pornography.^[3] The increasing creation,

distribution and use of pornography has a negative impact on the morals and noble personality of the Indonesian people so that it can threaten the lives and social order of Indonesian society. Pornography cases in Indonesia are very high, based on data from the Directorate General of Information Applications, until September 14, 2023, The Ministry of Communication and Informatics has cut off access to 1,950,794 pornographic contents. Budi Arie, Minister of Communication and Informatics, said there was around 1,211,573 content on websites, then on social media there was 737,146 content, and on file sharing platforms there was 2,075 content.^[4] The development of pornography in society has also resulted in an increase in immoral and obscene acts.

First case, in July 2023 Polda Metro Jaya uncovered a pornographic film industry in the South Jakarta area involving a number of artists, celebrities and photo models. Initially, the police arrested Irwansyah as the director, producer and owner of the pornographic film production house, along with JAAS as the cameraman. The next day, the police arrested AIS who acted as an editor, AT as a sound engineer, and SE as a secretary and actor in pornographic films.^[5] As a result of the search, a number of pieces of evidence used in film production were also found from the arrest location. Meanwhile, the evidence that was secured was a set of filming equipment (camera, tripod, lens and speakers), 5 hard disks, 1 flash disk, 5 cell phones, 2 laptops, 2 PCs and 2 televisions.^[6] There have been 120 pornographic films recorded since 2022 which have been distributed to three paid sites, namely: bossinema.com, kelasbintang.com, and togefilm.com. By utilizing celebrities, artists, and photo models who were recruited directly by Irwansyah as the director and with capital of around 10 to 15 million rupiah for each actor, this illegal business managed to make a profit of up to 500 million rupiah. These funds come from each member who pays a subscription fee of 100 thousand to 700 thousand rupiah per account, as in several posters found by the authors as follows:



Figure 1: Subscription package poster kelasbintang.com



Figure 2: Subscription package poster bossinema.com



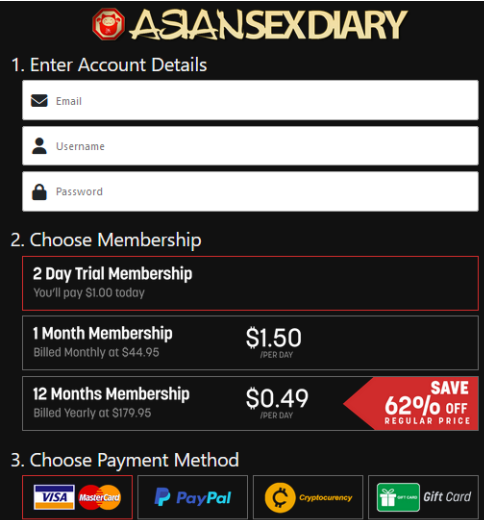
Figure 3: Subscription package poster togefilm.com

From the development of the case, there are 9 female actors who have been named as suspects, namely: Fransisca Candra Novitasari alias Siskae (FCNS alias S), Anisa Tasya Amelia alias Meli 3GP (ATA alias M), Virly Virginia (VV), Putri Lestari alias Jessica (PPL), NL alias Caca Novita (CN), Zafira Sun (ZS), Arella Bellus (ALP alias AB), MS, and SNA. There are 2 male actors who have been named as suspects, namely: Bima Prawira (BP) and AFL.^[7] The perpetrators were charged with Article 27 paragraph (1) in conjunction with Article 45 paragraph (1) and/or Article 34 paragraph (1) in conjunction with Article 50 of

Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Transactions Electronics (Amendments to the ITE Law) and/or Article 4 paragraph (1) in conjunction with Article 29 and/or Article 4 paragraph (2) in conjunction with Article 30 and/or Article 7 in conjunction with Article 33 and/or Article 8 in conjunction with Article 39 and/or Article 9 in conjunction with Article 35 of Law Number 44 of 2008 concerning Pornography (Pornography Law). The authors carried out further searches on several pornographic films produced by Irwansyah and found several titles such as: Keramat Tunggak, Serabi Lempit, Mimi Cucu, Ayam Kampus, Inem, Kucing Liar, Wikwik, Panti Pijat, BDSM, Pepaya Gantung, Hot Moms, Staycation, Salome, Threesome, Serigala Betina, Istri Majikan, Bunga Desa, Sugar Daddy, Rumput Tetangga, and others.

Second case, in March 2021 there was a case of a pornographic film produced by lovers Richard Tommy Mamisala and Patrisya Verniaty Tuuk and sold through porn sites abroad. The two perpetrators have made 26 pornographic films using the account name Felly Angelista (pseudonym), were born in Japan, and live in Osaka (Felli Angelista case). The pornographic films are sold on pay-per view to make a profit, the motive is economic needs and to fulfill daily life.^[8] From the films shown on the adult site Pornhub, they made a profit of 19.5 million rupiah. This income has been since November 2020, through multiples of 1000 views they get 6000 rupiah, it can be multiplied if there are a lot of viewers.^[9] The pornographic films they upload on the site have been viewed millions of times. They were both found guilty of committing a criminal act of intentionally and without having the right to make electronic information accessible that had content that violated morality, and were sentenced to prison for 3 years and 6 months each and a fine of 50 million rupiah, if the fine was not paid it was replaced by imprisonment for 1 month based on decision number ^[10], based on the decision of the Bandung district court number 482/Pid.Sus/2021/PN Bdg, July 17, 2021.

Long before the 2 cases above occurred, there was an international scale industry and trade in pornographic films carried out by a foreign citizen who claimed to be named John Tron. He has produced and traded pornographic films since 2014 until now, through the site asiansexdiary.com (Asian Sex Diary case). Apart from that, John Tron also sells porn videos for a fee through several sites such as Pornhub and Youporn. In his biography, John Tron says “so, I decided to pack my bags, leave the western world and travel the world and fulfill my early-year fantasy of banging as much Asian pussy as I can”. The authors searches the Asian Sex Diary site, there are around 2,208 pornographic films he made in several countries in Asia and around 126 pornographic films of which were made in Indonesia with Indonesian women as actors. The pornographic films were made in Batam, Jakarta, Bandung and Bali and began to be published on the Asian Sex Diary website from 2017 to 2021. Explore detailed information, the website asiansexdiary.com has been registered since 29 November 2012 and is still active until 29 November 2030. In order for customers to be able to watch pornographic films in full, customers must pay a membership fee which ranges from USD 1 to USD 180, can be paid by credit card, PayPal, cryptocurrency, or gift card, can be shown as follows:



The screenshot displays the registration process for Asian Sex Diary. It is divided into three main sections:

- 1. Enter Account Details:** This section contains three input fields: 'Email', 'Username', and 'Password'.
- 2. Choose Membership:** This section offers three membership tiers:
 - 2 Day Trial Membership:** You'll pay \$1.00 today.
 - 1 Month Membership:** \$1.50 PER DAY, Billed Monthly at \$44.95.
 - 12 Months Membership:** \$0.49 PER DAY, Billed Yearly at \$179.95. A red banner indicates a **62% OFF** from the **REGULAR PRICE**.
- 3. Choose Payment Method:** This section provides icons for four payment options: VISA, MasterCard, PayPal, and Cryptocurrency. A 'Gift Card' option is also present.

Figure 4: Screenshot of the Asian Sex Diary registration form

In relation to the era of globalization, the existence of a corporation has a big contribution to the interests of the country and its citizens. Corporations cannot be separated from social life, and are related to meeting

human needs. The existence of corporations is also felt by the country, because corporations have an important role in the national economy, in order to increase a country's economic growth. Etymologically, the word corporation (Dutch language: *corporatie*) derived from the word *corporatio* in Latin. The word *corporation* itself comes from the word "*corpus*", which means providing an entity or to be entity. Therefore, *corporation* it means the result of work makes an entity, in other words, an entity that becomes a person, entities obtained by human action as opposed to human entities, which occur according to nature.^[11]

A corporation is a *persona ficta* or *legal fiction* which means its existence depends on the law. Satjipto Rahardjo explained that a corporation is a physical legal creation or entity "*corpus*" and into the law insert elements "*animus*" his life depends on the law. Based on this definition, it appears that a corporation is a legal entity whose existence is recognized as a legal subject. Legal entity here means a business entity established with clear arrangements regarding management, distribution of profits/losses and clear accountability.^[12] The definition of a corporation according to civil law is very different from the definition of a corporation according to criminal law. Article 1 paragraph (1) Regulation of the Supreme Court of the Republic of Indonesia Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations (Perma 13/2016) provides a definition of a corporation as an organized collection of people and/or assets, whether a legal entity or non-legal entity. Corporations as legal entities certainly have their own legal identity, the concept of criminal liability by corporations as individuals (corporate criminal liability) until now, it still invites debate.^[13]

All the positive potential mentioned above does not always work as expected. The existence of corporations is often followed by violations or even unlawful acts, including violations of criminal law. Ironically, in business circles there is a culture of anomie of success which means that corporate crime is believed to be rational behavior that can justify any means based on economic principles to develop business profits and if forced to do so, it is deemed to violate the law, so they consider it an unfortunate mistake which they believe will not contain social stigma in their environment.^[14] One example of a criminal act that is often committed by a corporation is for example a corporation that pollutes the environment, carries out unfair business or even commits a criminal act in the economic sector, such as criminal acts of corruption or criminal acts of money laundering (passively or even actively) which not only harm individuals or the wider community, but also have the potential to cause state losses. Corporate crime can also be categorized as organized transnational crime, because corporate crime involves a systematic system and its elements are very conducive. Systemic crime always involves a group of people who are systematic because of the existence of a very solid criminal organization (criminal group) either because of ethnic ties, political interests or other interests. The elements are very conducive, as mentioned above, because in corporate criminal acts there is always a group (protector) which, among others, consists of law enforcement officers and professionals, and community groups who enjoy the proceeds of crimes committed systematically.

The Pornography Law recognizes the existence of corporations as subjects of criminal law, as stated in Article 1 paragraph (3) of the Pornography Law which states "every person is an individual or corporation, whether a legal entity or not a legal entity". In the explanation of the Pornography Law, it is stated that "weights are also given to perpetrators of criminal acts committed by corporations by doubling the basic sanctions and providing additional penalties". Besides that,, Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE) also regulates criminal acts committed by corporations as confirmed in Article 52 paragraph (4) that "In the case of criminal acts as intended in Article 27 to Article 37 committed by a corporation shall be punished with the principal penalty plus two thirds", but the ITE Law does not provide a definition of corporations.

From the background description and several case examples above, it can be seen how rapidly the crime of pornography is developing even though there is already legislation that regulates it. The authors are interested in discussing sanctions for criminal acts of pornography against corporations. The authors try to examine the criteria for criminal acts of pornography which are classified as corporate crimes and how to apply sanctions for criminal acts of pornography as a corporate crime.

2. Research Method

2.1 Approach Method

This research uses a normative-empirical juridical approach. According to Abdulkadir Muhammad, what is meant by normative-empirical legal research (applied law research) is research that uses normative-empirical

legal case studies in the form of legal behavior products.^[15] Normative-empirical (applied) legal research begins with written positive legal provisions that apply to legal events *in concreto* in society, so that in the research there is always a combination of 2 stages of study, namely:

- a. The first stage is a study of the applicable normative law;
- b. The second stage is application to the *in concreto* event in order to achieve the set goals. This implementation can be realized through concrete actions and legal documents. The results of the implementation will create an understanding of the realization that the implementation of the normative legal provisions being studied has been carried out properly or not. Using these two stages requires secondary data and primary data.

2.2 Research Specifications

This research uses descriptive analytical specifications. Descriptive method is a method that serves to describe or give a description of the object under study through data or samples that have been collected as they are without analyzing and making conclusions that are applicable to the public.^[16] In other words, descriptive analytical research takes a problem or focuses on the problems that are found at the time the research is carried out, which is then processed and analyzed to draw conclusions. To describe, find legal facts as a whole, and systematically review regulations relating to criminal acts of pornography and corporate crimes.

2.3 Stages of Research

Stages of research used in this study are:

- a. Literature study to obtain secondary data. Secondary data in legal research is data obtained from the results of a literature review or review of various literature or library materials related to problems or research materials which are often referred to as legal materials, which consists of primary legal materials (ITE Law, Pornography Law, Amendments to the ITE Law, and Perma 13/2016), secondary legal materials (books, scientific papers, and journals), and tertiary legal materials (encyclopedia, news, and internet).
- b. Field studies, namely obtaining primary data carried out by conducting observations or collecting data by direct observation to obtain information that will be processed and studied based on applicable regulations.

2.4 Data Collection Technique

The data collection techniques used in this research is documentation studies and field studies. Documentation study is a method of collecting information by studying documents to obtain information related to the problem being studied. Documentation studies are one way in which qualitative researchers can visualize a subject's perspective through written materials or other documents produced directly by the people involved.^[17] Field studies were carried out by observation to obtain primary data.

2.5 Data Analysis

Analysis of the data used in this study is qualitative normative. Normative legal research is legal research that focuses research on written regulations or legislation (law in books) or research that is based on rules or norms that apply in society. Normative research can be said to be literature review research where most of the data sources are secondary data sources consisting of primary legal materials, secondary legal materials and tertiary legal materials. Most of the data comes from laws or written regulations that apply in society.^[18] Qualitative research is a research method used to examine the condition of natural objects, where the researcher is the key instrument. Based on research procedures that produce descriptive data, which is in the form of written words.

3. Result and Discussion

3.1 Pornography and Cyber Crime Prevention Policy

Pornography is a social problem currently being faced by the Indonesian people in the era of globalization. Indonesia is a country that has ethnic, cultural and religious diversity. Even though Indonesia does not make any religion the basis of the state, it cannot be separated from religious matters. Long before the creation of the Pornography Law, several religions stated that pornography was a disgraceful act, as stated in:

- a. Fatwa Commission Fatwa of the Indonesian Ulema Council Number 287 of 2001 concerning Pornography and Pornoaction, which states that all forms of pornography and pornographic action are haram. In particular, in paragraph 11 it is emphasized that "obtaining money, benefits and/or facilities from the actions prohibited above is haram";

b. The Catechism of the Catholic Church number 2354 says that “pornography consists in removing real or simulated sexual acts from the intimacy of the partners, in order to display them deliberately to third parties. It offends against chastity because it perverts the conjugal act, the intimate giving of spouses to each other. It does grave injury to the dignity of its participants (actors, vendors, the public), since each one becomes an object of base pleasure and illicit profit for others. It immerses all who are involved in the illusion of a fantasy world. It is a grave offense. Civil authorities should prevent the production and distribution of pornographic materials”.^[19]

The birth of the Pornography Law is a form of the government’s response to the dangers of accessing pornography which is increasingly crazed. Article 1 paragraph (1) of the Pornography Law defines pornography as images, sketches, illustrations, photos, writings, sounds, sounds, moving images, animations, cartoons, conversations, body movements, or other forms of messages through various forms of communication media and/or performances in public, which contains obscenity or sexual exploitation that violates the norms of decency in society. Pornography is the depiction of erotic behavior by means of arousing paintings or writing or reading material which is intentionally and solely designed to arouse sexual desire. To prevent the development of pornography and the commercialization of sex in society, the Pornography Law was enacted.^[20] Acts prohibited in the Pornography Law are as follows:

Table 1: List of prohibited acts in the Pornography Law

Number	General requirements	Prohibited Actions
1	Article 4 paragraph (1)	produce, create, reproduce, duplicate, distribute, broadcast, import, export, offer, sell, rent or otherwise make available pornography
2	Article 4 paragraph (2)	providing pornographic services
3	Article 5	lending or downloading pornography as intended in Article 4 paragraph (1)
4	Article 6	listening to, displaying, utilizing, possessing or storing pornographic products as intended in Article 4 paragraph (1), unless authorized by statutory regulations
5	Article 7	fund or facilitate acts as intended in Article 4
6	Article 8	intentionally or with his/her own consent becomes an object or model containing pornographic content
7	Article 9	making other people as objects or models that contain pornographic content
8	Article 10	exposing oneself or another person in a performance or in public that contains pornography
9	Article 11	involving children in activities and/or as objects of pornography
10	Article 12	inviting, persuading, exploiting, allowing, abusing power or forcing children to use pornographic products or services.

The Pornography Law also regulates the role of the government, regional government and the community in efforts to prevent criminal acts of pornography. It is confirmed in Article 17 which states “the government and regional governments are obliged to prevent the creation, dissemination and use of pornography” and Article 20 which states “the community can participate in preventing the creation, dissemination and use of pornography”.

The development and use of information technology plays an important role in trade and national economic growth. Therefore, the government needs to support the development of information technology through legal and regulatory infrastructure, so that the use of information technology is carried out safely to prevent its misuse by paying attention to the religious and socio-cultural values of the Indonesian people. The crime of pornography committed through electronic systems or cyber space is regulated in Article 27 paragraph (1) of the ITE Law. It is emphasized that “any person intentionally and without right distributes and/or transmits

and/or makes accessible electronic information and/or electronic documents which have content that violates decency”. Article 45 paragraph (1) of the ITE Law states that “every person who meets the elements as intended in Article 27 paragraph (1), paragraph (2), paragraph (3), or paragraph (4) shall be punished with a maximum imprisonment of 6 years and /or a maximum fine of 1 billion rupiah”. However, the ITE Law does not explain in more detail regarding the phrase violating decency. Understanding the phrase decency itself has two different views, related to sexual matters or related to civilized humanity.^[21] The obligation of the government and regional governments to prevent the creation, dissemination and use of pornography based on the mandate of Article 17 of the Pornography Law is still not running optimally. As of the time this article was written, the author could still access and watch the films Keramat Tunggak, Serabi Lempit, and Mimi Cucu freely. Apart from that, the author can still access the Asian Sex Diary website freely.

3.2 Corporations as Subjects of Criminal Law

Talking about corporations as a subject of criminal law, we cannot separate this understanding from the field of civil law. This is because corporation is a terminology that is closely related to legal entities and legal entities themselves are terminology that is closely related to the field of civil law. Utrecht/Moh. Saleh Djindang, stated that a corporation is a combination of people who in legal relations act together as a separate legal subject, a personification. A corporation is a legal entity that has members, but has its own rights and obligations separate from the rights and obligations of its respective members.^[22] The placement of corporations as subjects of criminal law cannot be separated from social modernization, developments in science and technology. Regarding the placement of corporations as the subject of criminal law is still a problem, resulting in attitudes of agreement and disagreement regarding the subject of corporate criminal law. Those who agreed to place corporations as the subject of criminal acts, expressed the opinion that simply convicting the management is not enough to carry out repression of offenses committed by or with a corporation, therefore it is also necessary to be able to punish the corporation, the corporation and the management, or just the management. Meanwhile, those who disagree expressed the opinion that when it comes to crime, intentionality and culpability are only found in natural and criminal persons and actions that take the form of depriving people of their freedom cannot be imposed on corporations.^[23] If this opinion is examined further, then one of the main issues which is also at the heart of the discussion is that the position of corporations as subjects of criminal acts has juridical consequences in that corporations can only be punished or held accountable according to criminal law if they have fulfilled the requirements of a legal subject, one of which is there is a mistake.

There are two opinions regarding what is meant by a corporation, the first opinion says that what is meant by a corporation or corporation is a trade group that has a legal entity. So, in this case it is only limited that the corporation that can be held criminally responsible is a corporation that has a legal entity. The reason stated by this first opinion is that by becoming a legal entity, the composition of the management and the extent of the rights and obligations of the corporation are clear. The second opinion is one that defines corporations broadly, where it is said that a corporation that can be held criminally responsible does not need to be a legal entity, in this case every group of people, whether in relation to a trading business or other business, can be held personally responsible.^[24]

The Criminal Code only recognizes individuals as subjects of criminal law, while corporations are not yet seen as subjects of criminal law. However, in subsequent developments there were several laws that recognized corporations as subjects of criminal law. According to Jan Remmelink, initially the legislators were of the view that only humans (individuals) could be the subject of criminal law, while corporations could not be the subject of criminal law. The existence of such a view can be traced from the history of the formulation of the provisions of Article 51 Sr. (Article 59 of the Criminal Code) especially from the way the offense is formulated which always starts with a phrase *hij die* (whoever).^[25] Because there are different views regarding the definition of a corporation, the Supreme Court issued Perma 13/2016, the aim and purpose of establishing this Perma is to:

- a. To serve as a guide for law enforcers in handling criminal cases with corporate actors and/or administrators;
- b. Filling legal gaps, especially criminal procedural law in handling criminal cases with corporate actors and/or management;
- c. Encourage the effectiveness and optimization of the handling of criminal cases with corporate actors and/or management.

The ITE Law and the Pornography Law recognize corporations as subjects of criminal law, but there are differences in characteristics as in the table below:

Table 2: Comparison of corporate crimes between the ITE Law and the Pornography Law

Corporate Crime	ITE Law	Pornography Law
Definition	Not defined	Article 40 paragraph (2): these criminal acts are committed by people, either based on work relationships or other relationships, acting within the corporate environment, either alone or together.
Subject	Explanation of Article 52 paragraph (4): corporation (corporate crime) and/or by management and/or staff who have the capacity to: represent the corporation; making decisions within the corporation; carry out supervision and control within the corporation; carrying out activities for the benefit of the corporation	Corporation (legal entity or non-legal entity)
Criminal sanctions	Article 52 paragraph (4): the basic penalty is increased by two thirds	Article 40 paragraph (7): imprisonment, fines and penalties for corporations are a maximum of 3 times
Additional penalties	None	Article 41: suspension of business permits; revocation of business license; confiscation of wealth resulting from criminal acts; and revocation of legal entity status.

The difference between criminal acts of pornography by individuals and criminal acts of pornography committed by corporations in the Pornography Law is as follows:

Table 3: Comparison between individual and corporate perpetrators in the Pornography Law

Pornography Law	Individual crime	Corporate crime
Subject	Individual person	Corporation (legal entity or non-legal entity)
Criminal sanctions	Imprisonment and fines	Article 40 paragraph (7): imprisonment, fines and penalties for corporations are a maximum of 3 times
Additional penalties	None	Article 41: suspension of business permits; revocation of business license; confiscation of wealth resulting from criminal acts; and revocation of legal entity status.

Article 3 of Perma 13/2016 states that criminal acts by corporations are criminal acts committed by people based on work relationships, or based on other relationships, either individually or collectively acting for and on behalf of the corporation inside or outside the corporate environment. In fact, corporate crime has been known for a long time in criminology. In criminological studies, corporate crime is part of white collar crime.^[26]

Corporate crime consists of violations committed by corporations or their employees for the benefit of the corporation.^[27] Corporate crime is not inspired by some evil impulse, but by something that does not feel moral. This crime deeply hurts people's feelings about justice, honesty, solidarity and social responsibility.^[28] Corporate crime often contains elements of fraud (deceit), misrepresentation, concealment of facts, manipulation, breach of trust, subterfuge or circumvention of regulations (illegal circumvention) so that it is very detrimental to society at large.^[29]

At least, corporate crime has 2 main characteristics, namely non violent (without violence) and corrosive effect (damaging moral standards). The first characteristic is a sign of the difference between corporate crimes compared to other crimes. The damage experienced by the victim is not just at the time of the crime, but continues to occur depending on the level of damage experienced. For example, a corporation pollutes the environment by dumping waste into a river, so that the impact is very large on the river ecosystem, including the people who live in the river basin and the living creatures in the river. The damage caused is not easy to repair because it requires enormous effort and funds. The second characteristic, corrosive effect, will damage moral standards in society. From an economic perspective, corporations increasingly justify any means because the actions they carry out, even though they violate the law, are seen as bringing in large profits. The social aspect also experiences damage in terms of society's code of ethics which is disturbed due to the actions of corporations committing crimes.

Understanding the nature of corporate crime according to Steven Box as quoted by Arief Amrullah can be divided into 3 models, namely:^[30]

- a. Crimes for corporation, this first form means that crimes are committed by corporations for the sake of corporate interests (committed for the corporate). The real perpetrator is not only the owner of the corporation but anyone who has certain conditions is seen as representing the corporation. These certain conditions include having a function within the corporation, having the authority to make decisions and having decisions implemented by the corporation. The key to understanding the first form of corporate crime is that the profits or profits resulting from crime will be received by the corporation and are for the benefit of the corporation.
- b. Crimes against corporation (employees crimes), this time, corporate crime is more aimed at corporations. The perpetrators are usually people who have a working relationship with the corporation or have personal interests that are related to the corporation. Here, corporations become victims who suffer losses due to corporate crimes. For example: workers demonstrations against corporations and manipulation within corporations by their employees for personal interests.
- c. Criminal corporations/organization, this third form is quite unique because the existence of corporations is basically illegal. This can be seen from the actions carried out by corporations which are prohibited actions, for example: drug factories, mafia, triads, yakuza and others. With this criminal organization, a dialect or code will be formed which is owned by its members, and this is formed as an identity for a gang, gang, syndicate, cartel. These criminal behavior values will form a criminal culture that is special in nature and is formed by the members themselves based on an agreement.^[31]

In the 3 examples of pornographic film industry and trade cases above, there are characteristics of corporate crime as follows:

- a. Non violent, the damage experienced by the victim is not just at the time of the crime, but occurs continuously, such as addiction to pornographic films so that it can trigger damage to morality, disorders of brain development, and other criminal acts;
- b. Corrosive effect, where there is a breakdown of moral standards in society. The perpetrators prioritize seeking as much profit as possible through an act that violates the law, namely producing and selling pornographic films, without paying attention to the ethical and moral order that applies in society;
- c. If seen from its form, the pornographic film industry and trade in the case example above is a form of criminal corporation/organization. The characteristic is that the existence of the corporation is an illegal organization and carries out activities that violate the law.

A crime will definitely cause victims, in accordance with the adage that “there is no crime without a victim”. According to Muladi, victims are people who, individually or collectively, have suffered losses including physical or mental, emotional, economic losses or substantial interference with their fundamental rights, acts or commissions that violate criminal law in their respective countries, including abuse of power.^[32] The practice of this corporate crime has quite a wide range of victims because it covers all aspects of life. So the existence of this corporate activity is contrary to social values if it has a negative impact. In relation to the pornographic film industry and trade, there are 4 types of victims of corporate crime, namely: victims who are not aware of themselves as victims (unaware victims), victims of corporate crimes who are abstract (not visible as victims), widespread distribution of victims (the diffusion of victimization), and the victim participates in or is related to corporate crime (participative victim).

Every crime will result in loss of property, life or mental health for the victim of the crime. Some of the negative impacts of exposure to pornography, namely:^[33]

- a. From a cognitive perspective, exposure to pornography has an impact on the prefrontal cortex, a part of the human brain that is responsible for thinking and concentration functions. For initial detection, neurologically, there are differences in activity in these areas which are measured using EEG and Multi Layer Perceptron (MLP);
- b. From an emotional perspective, damage to the prefrontal cortex also has an impact on aspects of an individual’s emotions, especially related to emotional control and affective abilities in the brain, which has an impact on teenager’s emotions, such as disrupting emotional control and affection abilities, because the dopamine effect produced when watching pornographic films causes a comfortable and addictive effect. In addition, sexual health and sexual risks are related to their emotional and psychological well-being;
- c. From a social perspective, for example changes in withdrawal behavior which have an impact on social activities;
- d. Triggering risky sexual behavior, such as kissing, sexual relations outside marriage, illegal abortion, and even cases of sexually transmitted diseases. The level of pornography addiction is directly proportional to risky sexual behavior. Other findings show a link between exposure to pornography and the risk of sexual aggressive behavior, but this correlation was only found in men.

In the case of the pornographic film industry carried out by Irwansyah and his team, it is classified as a corporate crime, because: the pornographic film industry is made professionally, the film is sold to the public via the internet with the aim of making a profit for a group of people, there is an employment relationship between the employer (producer) with the recipient of the work (porn film actor), and provide wages/salaries.

In the Felly Angelista case, the two perpetrators deliberately made pornographic films at the hotel with relatively good resolution quality and sold the pornographic films on the Pornhub site with the aim of making a profit. The pornographic films they sell, of course, have the characteristics of non-violent and corrosive effects. However, whether Richard Tommy Mamisala and Patrisya Verniaty Tuuk are corporate legal subjects or not, up to now the regulation of corporate legal subjects in several laws still has differences and is not yet harmonious.

In the Asian Sex Diary case, there is the fact that the production and trade of pornographic films is aimed at making a profit and has a negative impact on global society. Thousands of pornographic films are traded and can be accessed from any country. Trafficking in pornographic films like this is a form of crime that is cross-border and ignores all forms of national sovereignty and borders. Trading pornographic films on the Asian Sex Diary website is a form of transnational crime and corporate crime.

3.3 The Application of Sanctions for Pornography Crimes Linked to Corporate Crimes

The application of sanctions for criminal acts of pornography for corporations is regulated in Article 40 paragraph (7) and Article 41 of the Pornography Law. In line with the Pornography Law, Perma 13/2016 also regulates additional penalties in Article 30 which explicitly states that “additional penalties or disciplinary measures or other actions against corporations are carried out based on court decisions” and Article 31 paragraph (3) confirms that “in the event that there are profits in the form of assets arising from the proceeds of crime, all such profits are confiscated to the state”.

In the first example case, the South Jakarta District Court stated that the perpetrators had been legally and convincingly proven guilty of committing a criminal act “jointly produces, creates, reproduces, duplicates,

distributes, broadcasts, imports, exports, offers, sells, rents or makes available pornography” and imposed criminal sanctions on the 5 perpetrators as follows:^[34]

- a. Irwansyah was sentenced to imprisonment for 3 years and 6 months, and paid a fine of 500 million rupiah, if the fine was not paid it was replaced by imprisonment for 1 month based on decision number 41/Pid.B/2024/PN Jkt.Sel;
- b. Safarina Eksan (aka SE) was sentenced to imprisonment for 1 year and 6 months, and paid a fine of 500 million rupiah, if the fine was not paid it was replaced by imprisonment for 1 month based on decision number 38/Pid.B/2024/PN Jkt.Sel;
- c. Anggi Triadi alias Adi (alia AT) was sentenced to prison for 2 years and paid a fine of 500 million rupiah, if the fine was not paid it was replaced by imprisonment for 1 month based on decision number 37/Pid.B/2024/PN Jkt.Sel;
- d. The other 2 perpetrators (JAAS and AIS) were sentenced to imprisonment for 2 years and paid a fine of 500 million rupiah, if the fine was not paid it was replaced by imprisonment for 1 month based on decision number 39/Pid.B/2024/PN Jkt.Sel and 40/Pid.B/2024/PN Jkt.Sel.

These criminal sanctions declare the perpetrators guilty and violating Article 4 paragraph (1) of the Pornography Law as individual perpetrators. In the second example, the Bandung District Court handed down a decision against Richard Tommy Mamisala and Patrisya Verniaty Tuuk for violating Article 27 paragraph (1) of the ITE Law as individual perpetrators.

If charged with a corporate crime, the punishment imposed on the perpetrators can be heavier than the sentence imposed on individual perpetrators. Referring to the ITE Law, criminal sanctions for corporations are increased by two-thirds of the basic penalty. If we refer to the Pornography Law, the maximum criminal sanction for corporations can be multiplied by 3 of the criminal fine for an individual. Apart from that, perpetrators of corporate crimes can also be given additional penalties, such as confiscation of wealth resulting from criminal acts. This aims to provide a deterrent effect for perpetrators of pornographic crimes which are classified as corporate crimes, to provide protection for citizens from pornography, and to prevent the development of pornography and the commercialization of sex in society.

Criminal sanctions are not just for retaliation against people who have committed a criminal act, but have certain useful purposes. This theory is often also called goal theory (utilitarian theory). The basis for justifying the existence of punishment according to this theory lies in its purpose. According to Seneca, a Roman philosopher who stated “*Nemo Prudens Punit Quia Peccatum Est, Sed Ne Peccetur*” (no normal person is punished for having committed an evil act, but he is punished so that no evil act occurs). Jeremi Bentham, a philosopher from England also has the same view, through one of his very important theories, namely *felicific calculus*. This theory states that humans are rational creatures who will consciously choose pleasure and avoid pain. Therefore, a punishment must be determined or given for each crime in such a way that the anxiety or distress will outweigh the pleasure caused by the crime. This is the basic idea which states that the punishment must be appropriate to the crimes.^[35]

From the 2 examples of cases above, law enforcement officials have not implemented corporate criminal sanctions in cases of criminal acts of pornography. To the author’s knowledge, to date there have never been any corporate criminal sanctions applied to cases of criminal acts of pornography. The author has also searched for cases in the Directory of Decisions of the Supreme Court of the Republic of Indonesia regarding criminal acts of pornography committed by corporations, but the results were nil.

4. Conclusion and Suggestions

From the research and discussion carried out by the author, the criteria for criminal acts of pornography that are classified as corporate crimes include non-violent, corrosive effects, and having a very detrimental impact on society at large. The pornographic film industry and trade is a form of criminal corporation/organization. Even though the ITE Law and the Pornography Law recognize corporations as subjects of criminal law, there has never been a court decision regarding sanctions for corporate criminal acts applied to cases of criminal acts of pornography.

Based on the research that has been carried out, the author has several suggestions as follows: Firstly, legislators need to harmonize the definition of corporations between the ITE Law, the Pornography Law and other laws and create clear criteria for corporations as subjects of criminal law. Second, it is necessary to hold a Focus Group Discussion (FGD) among academics and law enforcement officials to align their views

on the application of sanctions for corporate criminal acts. Third, so that law enforcement officials can apply sanctions against perpetrators of criminal acts of pornography which are classified as corporate crimes as regulated in Article 52 paragraph (4) of the ITE Law, Article 40 paragraph (7) and Article 41 of the Pornography Law, and guided by Perma 13/ 2016 in the trial stage.

References

1. Tejo, Eko Susanto & Rohayati, Dewi. (2019). The application of Article 26 Section (3) law number 19 of 2016 concerning amendment to law number 11 of 2008 concerning information and electronic transactions on right to be forgotten on personal information of victims of criminal act connected to law number 40 of 1999 concerning press. *International Journal of Law*, 5(5), 150.
2. Raihana, R., Jagat, S. S., & Perdana, R. (2023). Pengaruh Perkembangan Teknologi Terhadap Kemajuan Hukum Di Indonesia. *Jurnal Pendidikan Dan Konseling (JPDK)*, 5(2), 5630–5631.
3. Himawan, Arif & Agung Cahyono, L. (2013). Penanggulangan Pornografi di Internet: Tinjauan Hukum dan Teknologi. *Teknomatika*, 5(2), 83.
4. https://www.kominfo.go.id/content/detail/51630/siaran-pers-no-305hmkominfo092023-tentang-menteri-budi-arie-kominfo-putus-akses-19-juta-konten-pornografi/0/siaran_pers, accessed May 20, 2024.
5. <https://www.liputan6.com/news/read/5396033/kronologi-terbongkarnya-rumah-produksi-film-porno-di-jaksel>, accessed May 20, 2024.
6. <https://news.republika.co.id/berita/s0x2s4436/kronologi-terbongkarnya-rumah-produksi-film-porno-di-jakarta>, accessed May 20, 2024.
7. <https://www.cnnindonesia.com/nasional/20231228165143-12-1042771/siskaeed-dan-10-pemeran-jadi-tersangka-kasus-film-porno-di-jaksel>, accessed May 20, 2024.
8. https://rri.co.id/nasional/sigap/1000385/viral-sepasang-kekasih-jual-konten-video-syur?utm_source=news_main&utm_medium=internal_link&utm_campaign=General%20Campaign, accessed May 20, 2024.
9. <https://fajar.co.id/2021/03/19/videonya-tayang-di-situs-dewasa-pelaku-asusila-di-bogor-raup-keuntungan-rp195-juta/>, accessed May 20, 2024.
10. <https://putusan3.mahkamahagung.go.id/direktori/putusan/zaec613c13879b34b838303932353139.html>, accessed May 20, 2024.
11. Muladi & Dwidja Priyanto. (2010). *Pertanggungjawaban Pidana Korporasi*. Jakarta: Kencana.
12. Suhartati (et. al). (2018). *Buku Ajar Anatomi Kejahatan Korporasi*. Surabaya: PT Revka Petra Media.
13. Alhakim, Abdurrahman & Eko Sopyono. (2019). Kebijakan Pertanggungjawaban Pidana Korporasi Terhadap Pemberantasan Tindak Pidana Korupsi. *Jurnal Pembangunan Hukum Indonesia*, 1 (3), 328.
14. Muladi & Diah Sulistyani RS. (2013). *Pertanggungjawaban Pidana Korporasi (Corporate Criminal Responsibility)*. Bandung: PT Alumni, 6.
15. Muhammad, Abdulkadir. (2004). *Hukum dan Penelitian Hukum Cet-1*. Bandung: PT Citra Aditya Bakti.
16. Sugiyono. (2009). *Metode Penelitian Kuantitatif, Kualitatif dan R&D*. Jakarta: Alfabeta.
17. Haris Herdiansyah, H. (2010). *Metodologi Penelitian Kualitatif untuk Ilmu-ilmu Sosial*. Jakarta: Salemba Empat.
18. Armia, Muhammad Siddiq. (2022). *Penentuan Metode dan Pendekatan Penelitian Hukum*. Aceh: Lembaga Kajian Konstitusi Indonesia.
19. https://www.vatican.va/archive/ENG0015/___P85.HTM, accessed May 23, 2024.
20. Meima & Tejo, Eko Susanto. (2023). Criminological Overview Of Immoral Group In Social Media Connected With Law Number 19 Of 2016 Regarding Amendment To Law Number 11 Of 2008 Concerning Information And Electronic Transactions Juncto Law Number 44 Of 2008 Concerning Pornography. *International Journal of Humanities and Social Science Invention (IJHSSI)*, 12(5), 27.
21. Christianto, Hwian. (2021). Penafsiran Hukum “Melanggar Kesusilaan” Dalam Undang-Undang Informasi dan Transaksi Elektronik. *Jurnal Yudisial*, 14 (1), 52.
22. Situmeang, Sahat Maruli T. (2021). *Buku Ajar Kriminologi*. Depok: PT Rajawali Buana Pusaka.

23. Muladi & Dwidja Priyatno. (2012). *Pertanggungjawaban Pidana Korporasi*. Jakarta: Kencana Prenada Media Group.
24. Loebby Luqman. (2020). *Kapita Selekta Tindak Pidana di Bidang Perekonomian*. Jakarta: Datacom.
25. Remmelink, Jan. Pidana. (2003). *Komentar atas Pasal-pasal Terpenting dari KUHP Belanda dan Padanannya dalam KUHP Indonesia*. Jakarta: Gramedia Pustaka.
26. Sriwidodo, Joko. (2022). *Pertanggungjawaban Kejahatan Korporasi Dalam Sistem Hukum Pidana Di Indonesia*. Yogyakarta: Penerbit Kepel Press.
27. Runturambi, Josias Simon. (2003). Sisi Kriminologi Pembalakan Hutan Ilegal Suatu Telaah Awal. *Jurnal Kriminologi Indonesia*, 3(1), 16.
28. Setiadi, Edi & Rena Yulia. (2010). *Hukum Pidana Ekonomi*. Yogyakarta: Graha Ilmu.
29. Manullang, Herlina & Riki Yanto Pasaribu. (2020). *Pertanggungjawaban Pidana Korporasi*. Medan: LPPM UHN Press.
30. M. Arief Amrullah. Korporasi dan Eksploitasi Sumberdaya Alam. Simposium Nasional tentang Corporate Crime bidang Lingkungan Hidup dan Pelatihan Hukum Pidana dan Kriminologi III. Banjarmasin, Rattan Inn Hotel, 16-19 Mei 2016, 21.
31. Setyono. (2009). *Kejahatan Korporasi, Analisa Viktimologis Dan Pertanggungjawaban Korporasi Dalam Hukum Pidana Indonesia*. Malang: Banyumedia.
32. Muladi. (2009). *Hak Asasi Manusia: Hakekat, Konsep, dan Implikasinya Dalam Perspektif Hukum dan Masyarakat*. Bandung: Refika Aditama, Bandung.
33. Muha Ramdhani, M.S. & Asfari, N.A.B. (2023). Pornografi pada Remaja: Faktor Penyebab dan Dampaknya. *Jurnal Flourishing*, 2(8), 555–556.
34. <https://sipp.pn-jakartaselatan.go.id/>, accessed May 27, 2024.
35. Jainah, Zainab Ompu. (2018). *Kapita Selekta Hukum Pidana*. Bandar Lampung: Tira Smart.