



Dr. Hervina Puspitosari, S.H., M.H.

CYBERCRIME **IN THE FIELD** **OF DECENCY**

(INFORMATION TECHNOLOGY AND MORALITY)

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PREFACE

All thanks to God, the Almighty, for His grace, the writing of this book can be completed and published. This book contains descriptions related to the problems of cybercrime in the field of decency. Seeing the phenomenon of social change in society along with technological advances, which in addition to having a positive impact when misused, has negative effects, including the degradation of morality as a result of deviation in information technology with the emergence of the phenomenon of cybercrime in the field of morality, including cyberporn and cyber prostitution, which requires efforts to overcome them both through legal penalties. Criminal or non-penal means. Therefore this book is an excellent read, not only for students of the Faculty of Law but also useful for practitioners, law enforcers, and society in general.

The author is fully aware that this book is far from perfect, both in terms of the technicality of writing and the material being studied. For the shortage, humbly ask for suggestions and criticism from readers.

Finally, to all parties, the authors would like to thank and especially to Prof. Dr. Ir. Akhmad Fauzi, MMT as Rector of The UPN Veteran Jawa Timur, Ir. Hj. Isni Utami, MT. as Mentor, Drs. Muhammad Winarno, MM. As Couch, Falentin Kristian Ningrum, S. Psi., M.Psi., as Examiner, Dr. Sutrisno, SH., M.Hum as Dean of the Faculty of Law UPN Veteran Jawa Timur, Mas Anienda TF., SH., MH., Dra. E. c Nurjanti Takarini, M.Si., Fauzul Aliwarman, S.HI., M.Hum, Eko Wahyudi, SH., MH., as head of the Law Faculty UPN Veteran Jawa Timur, law faculty lecturers UPN Veteran Jawa Timur, Prof. Irfan Idris MA. As Reviewer, Dr. Yovita Arie Mangesti, SH., MH., CLA., Dr. Yuliaty Dwi Nastiti, SH., M.Kn., Dr. Rina Arum Prastianti,

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Surabaya, August 18, 2020
Author,

Dr. Hervina Puspitosari, SH, MH

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BAB I

**INFORMATION
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CRIME**

A. Introduction: Information Technology Problems

The utilization of information technology, media, and collective action has changed both the behavior of society and human civilization globally. The development of information and communication technology also has an impact on world relations to become borderless and spread social change.¹

The development of ICT (Information and Communication Technology), which is increasingly sophisticated and complex. The community has found a new space, living in a network society.

Technology is known to be double-faced. On the one hand, it provides excellent benefits for humans and is a sign of the progress of society, but on the other hand, it can also facilitate and even expand crime globally.

The latest internet technology has created a new world called cyberspace. According to Howard Rheingold, Cyberspace is an imaginary space or virtual space that is artificial. Everyone does what is used in everyday social life in new ways.²

Information technology (IT), or in English known as Information technology (IT), is a general term that describes any technology that helps humans create, change, store, communicate,

¹ Social change that occurs in society includes major changes in the structure of society that affect the joints of life together and changes in cultural values that affect the mind, mentality and spirit. Social change does not only mean changes in the structure and function of society, but also includes changes in the values, attitudes and behavior patterns of society. A change in value is basically a change in the code of conduct in people's lives. Types of value changes can be distinguished in two ways, namely (1) changes in primordial cultural values determined by kinship groups, village communication, to a national cultural system and (2) changes in traditional value systems to modern cultural value systems. In Salman Luthan, *Kebijakan Kriminalisasi Di Bidang Keuangan*, FH UII Perss, Yogyakarta, 2014, p. 10.

² Yasraf Amir Piliang, *Public Space and Public Cyberspace : RuangPublik in the Information Age*, available at <http://www.bogor.net/idkf/idkf-2/public-space-dan-publicyberspaceruanglepublic-in-era.inf>

and / or disseminate information. Information Technology brings together high-speed computing and communication for data, voice, and video. Examples of Information Technology are not only personal computers, but also telephones, TVs, electronic household appliances, and modern handheld devices (such as cell phones).³

One of the developments in information technology in Indonesia is the increasing number of users of interconnected networking services, better known as the Internet.⁴The network of the networks, defined as a global network of computer networks or a computer network on a worldwide scale. This computer network has an international scale that can make each computer communicate with each other. This network forms an interconnected network that is connected via the TCP/IP protocol—developed and tested for the first time in 1969 by the US Department of Defense in the ARPAnet project. Internet (inter-network) is a computer network that connects academic, government, commercial, organizational and individual sites.⁵

Sailing Wen describes the development of information technology into several parts, which are based on the use of information itself and the level of civilization that exists in each era. The first category is the media as a means of interpersonal communication. In this category, we can find 6 (six) media, namely sound, graphics, text, music, animation, and video. The second category is storage media, where 6 (six) media are found, namely books and paper, cameras, recording devices, film cameras and projectors, video recording devices, and optical disks. The third category is media transmission. In this category,

3 [http : //id.wikipedia.org/wiki/Teknologi_informasi](http://id.wikipedia.org/wiki/Teknologi_informasi)

4 Moch. Basarah, *Prosedur Alternatif Penyelesaian Sengketa Arbitrase Tradisional dan Modern (Online)*, Genta Publishing, Bandung, 2011, p. 98

5 Abdul Wahid, *Kejahatan Mayantara (Cyber Crime)*, Refika Aditama, Bandung, 2005, p. 31

we encounter communications, broadcasting, and networks that make it easier for humans to convey, store, and transmit the information they need.⁶

All these technological developments color forms or products that contain pornography. A person's sexual experiences can now be transmitted to a virtual realm where they can finally be shared with others. This is what is called trading reality, where the reality that exists in the real world is transmitted to the virtual world, and anyone who wants to access must pay a certain amount of money.⁷New electronic technologies from the videotape to the Internet have enabled the development of a massively profitable industry with a global reach.⁸

Pornography is technologically sophisticated slave traffic allowed 'because Us victims are considered as socially worthless.'⁹ Phone sex is another lucrative aspect of the pornography industry.¹⁰ Pornography drove the video revolution, leading to the explosion of adult video stores and eventually mainstream chains such as Blockbuster. In the early 1990s, the development of the Internet provided the pornography industry with important new opportunities. It was easier for the male consumer is to protect their anonymity, and they did not have to leave their homes to visit the video store.¹¹

6 Agus Raharjo, "Pornografi dan Teknologi (Komodifikasi dan Pembatasan Akses Pada Materi Bermuatan Pornografi)" *Journal of Legal Media, Muhammadiyah University of Yogyakarta*, (Volume 15 No.2 December 2008), p. 301

7 *Ibid*, p. 302

8 Sheila Jeffreys, *The Political Economy of The Global Sex Trade*, Routledge, New York, 2009, p. 7 (New electronic technology from video recording to the Internet allows the development of a profitable mass industry with global reach).

9 *Ibid*, p. 65 (Pornography is the slave traffic of technological sophistication that is permitted because its victims are considered socially worthless)

10 *Ibid*, p. 67 (Telephone sex is another profitable aspect of the porn industry).

11 *Ibid*, pg. 69 (Pornography fueled the video revolution, leading to the explosion of adult video stores and ultimately major chains such as Blockbuster. In the early

Andrew Feedberg argues that there are two theories about technology, namely the instrumental theory and the substantive theory. The instrumental theory offers the broadest view of technology based on the general view that technology is a toolkit that is ready to serve the purposes of its users. Based on this theory, technology is considered "neutral" without an assessment of the content of the technology itself. Technology has nothing to do with good or bad and can be used either politically or socially in accordance with the wishes of the person or institution. Technology is a "rational entity" and is generally accepted, followed by the same or similar standard of measurement so that it can be applied to different situations. If technology fails to achieve its goals or when the negative consequences of the technology arise, then it is not the technology that is at fault, but the users of the technology, including politicians, military, big businessmen and others.¹²

The impact of the development of information technology on society, namely¹³:

- a. Dependency is that computer media has an attractive quality that can respond to all stimuli given by its users. Too attractive, making users seem to find their own world that makes them feel comfortable and do not want to let go. We can use computers as a stress reliever by playing existing games.

1990s the development of the Internet provided a new industry for pornography, giving male consumers easier opportunities to protect them, and they don't have to leave their homes. to visit the video store).

12 Agus Raharjo, *Hukum dan Teknologi Suatu Tinjauan Filosofis dan Kritik Terhadap Positivisme Hukum*, Diponegoro University Publishing Agency, Semarang , 2007, p. 17

13 Renny NS Koloay, 2016. Perkembangan Hukum Indonesia Berkenaan Dengan Teknologi Informasi dan Komunikasi *Vol.22 / No.5 / January / 2016, Jurnal Hukum Unsrat* , p. 7 - 9

- b. *Violence* and *Gore* are cruelty, and sadism is also widely displayed on computers. Because the content aspect of the Internet is not limited, site owners use a variety of methods in order to sell their sites. One of them is by displaying things that show cruelty and sadism. Experimental studies show that there is a positive correlation between playing computer games and crime rates among young people, especially computer games that contain elements of violence and murder. There is even a study that shows that games played on computers have more destructive properties than violence on television or even violence in real life. This is especially true for children. They will lack sensitivity to others, trigger aggressive and sadistic behavior in children, and can lead to encouragement for children to act as criminals as they see it (imitating violent scenes).
- c. Pornography is an assumption that says that the Internet is synonymous with pornography, is not wrong. With the ability to convey information that is owned by the Internet, pornography is also rampant. There are so many pornographic sites on the Internet, and it is troubling for many parties, especially parents who are worried that their children will consume pornographic things. Pornography can lead to incentives for someone to act criminally. Ironically, there are websites that target children. They are trying to create sites that are most likely related to children, and they frequently browse.
- d. Antisocial behavior is wrong. One impact that can arise from the misuse of computers is antisocial behavior. Where computer users no longer care about their social environment and tend to prioritize computers. In addition, the computer user no longer cares what is happening around him; the only thing that can attract his attention is the computer. People

will less often interact with the environment around them so that their interpersonal and emotional abilities do not develop optimally. Over time, a person will find it difficult to establish communication and build relationships with the people around him. If this is not addressed immediately, it will have a very bad impact, in which humans will be very individualistic over time, and there will be no more interaction or socialization.

Crime in Information and Communication Technology is the theft of money or property using computers / cyber against the law. This form of crime can be carried out easily in seconds without anyone knowing. Embezzlement, falsification of providing information through computers that harm other parties and benefit themselves. Criminal acts of damaging computer systems (either destroying data or deleting codes that cause damage and loss). This criminal act can also be in the form of additions or changes to programs, information, and media and piracy-related to intellectual property rights, copyrights, and patents.

The development of information and communication technology also has an impact on world relations to become borderless and spread social change.¹⁴ The globalization of¹⁵

14 Social changes that occur in society include major changes in the structure of society that affect the joints of life together and changes in values culture that affects the mind, mentality and soul. Social change does not only mean changes in the structure and function of society, but also includes changes in the values, attitudes and behavior patterns of society. A change in value is basically a change in the code of conduct in people's lives. Types of value changes can be distinguished in two ways, namely (1) changes in primordial cultural values determined by kinship groups, village communication, to a national cultural system and (2) changes in traditional value systems to modern cultural value systems. In Salman Luthan, Kebijakan Kriminalisasi Di Bidang Keuangan, FH UII Perss, Yogyakarta, 2014, p. 10.

15 Globalization is a natural process that arises immediately as a result of the complexity and heterogeneity of relationships between humans as social beings, as a result of the invention of modern technological tools. Even though the term globalization has become a classic vocabulary, whether you like it or not, people in all corners of the

information has positioned Indonesia as part of the world's information society, thus necessitating the formation of regulations regarding the management of information and electronic transactions at the national level. In line with the development process and the era of globalization, as well as the increasing quality of technology, the life of the Indonesian people have undergone many changes. Various things have also influenced people's thinking. Electronic media has had a significant influence on society. This influence can be in the form of a positive influence or a negative influence.

Like a tsunami that blew away all obstacles, the wave of globalization has the same impact on countries that are not prepared for its arrival.¹⁶ One of the developments in information technology in Indonesia is the increasing number of users of services interconnected networking, better known as the Internet.¹⁷

The presence of sophisticated media such as the Internet can have a tremendous positive impact on our lives, such as getting or spreading news very quickly. The progress of the Internet besides having a positive impact also has a negative impact. Computers start to play a role in crime in situations

world now live in a global habitat. (Adi Sulistyono, Reformasi Hukum Ekonomi Indonesia, UNS Educational Institution (LPP) and UNS Publishing and Printing Unit (UNS Press), Surakarta, 2008, p. 1. Globalization is defined as the process of producing a single world. (See Piotr Sztompka, Sosiologi Perubahan Sosial , Prenada, Jakarta, 2012, p. 101. According to Victor Farkl, the negative result of globalization is *existential frustration* with its characteristics, namely excessive desire to power (*the will of power*), having fun looking for pleasure (*the will to pleasure*) which is usually reflected in excessive behavior to raise money (the will to money), to work (*the will to work*) and sexual pleasure (*the will to sex*. See): Abdul Manan, Aspek-Aspek Pengubah Hukum , Kencana , Jakarta, 2009, p. 60

16 Adi Sulistyono, Reformasi Hukum Ekonomi Dalam Era Globalisasi, Sebelas Maret University Press, Surakarta. 2005, p.9.

17 Moch. Basarah, Prosedur Alternatif Penyelesaian Sengketa Arbitrase Tradisional dan Modern (Online), Genta Publising, Bandung, 2011,

where the capabilities of the computer allow a person to commit that crime or store information related to the crime.¹⁸

According to Satjipto Rahardjo, speaking of social change and¹⁹ modernization is not surprising if social change is coupled with the social crisis.²⁰

The development of ICT (Information and Communication Technology), which is increasingly sophisticated and complex. The community has found a new space, living in a network society. Internet access has become a necessity of life for all levels of society. The number of bloggers, facebookers, and twitter continues to increase, and they go surfing the virtual world with various business motives and needs, mass mobilization, spreading political ideology, chatting, browsing the literature, browsing job vacancies, looking for dating and so on.²¹

Technology is known to be double-faced. On the one hand, it provides great benefits for humans and is a sign of the progress of society, but on the other hand, it can also facilitate and even expand crime globally. Misuse or the negative impact of advances in information technology through computerized systems and internet networks is known as "cybercrime."

The latest internet technology has created a new world called cyberspace. According to Howard Rheingold, Cyberspace

18 Anthony Reyes, p. 98 *Cyber Crime Investigation Bridging The Gaps, Between Security Professionals, Law Enforcement, And Procecutors*, Syngress Publishing, United States of America, 2007, Hal. 194.

19 According to Selo Soemardjan, the definition of social change includes various changes in social institutions that affect the social system. Polak defines social change as changes that occur in this structure according to the pattern which is always parallel to cultural change. Mahmud Kusuma, *Menyelami semangat hukum Progresif*, LSHP Indonesia, Yogyakarta, 2009, p. 101

20 Satjipto Rahardjo, *Sosiologi Hukum*, Genta Publishing, Yogyakarta, 2010, p. 25.

21 Abdul Kholek, in http://blog.unsri.ac.id/revolusi_jalan/ 6

is an imaginary space or virtual space that is artificial. Everyone does what is used in everyday social life in new ways.²² The existence of the Internet is growing rapidly and is very easily accessible to the public.

In every region, especially in big cities, there are widespread internet cafes (warnet), not only in city centers but also in areas far from the city center. Especially at this time, with the perfect market competition, internet cafe businesses offer relatively low and affordable prices for adults to children. Not only that, modem offers and internet installation facilities, both wired and wireless, have entered all lines of society. Every telecommunication service complements the technology with this facility. With prepaid and postpaid prices that do not break the pockets, people can take advantage of this technology at an affordable price. At home, at school, in public places, you can use this technology, even with the offer of unlimited usage. Even in public places, currently, many are equipped with hotspot area facilities, so that without spending a penny, you can easily access internet technology. Other conveniences can be obtained by facilities in using the Internet. Simply by typing a series of words through a search engine (using keywords) you want, data and information will be obtained easily from various sites. Often times, mistakes in writing/typing in keywords can bring up unexpected data, images, or information, even if they are not being searched for and smell pornographic. This is because the Internet offers various things related to information and communication needs, both public and private. The development in the field of information technology, which is increasingly rapid today, is an answer to the increasingly complex human need for

22 Yasraf Amir Piliang, *Public Space and Public Cyberspace : RuangPublik in an Era Information*, available at <http://www.bogor.net/idkf/idkf-2/public-space-dan-publicyberspaceruanglepublic-in-era.inf>

information and communication. The world's communication and information network, also known as technology cyberspace, contains a collection of information that can be accessed by everyone in the form of computer networks called the internet network. The Internet is a medium of information and activity for the largest commercial community and is growing very rapidly.

B. Information deviations

Technology (IT), or in English known as Information technology (IT), is a general term that describes any technology that helps humans create, change, store, communicate, and/or disseminate information. Information Technology brings together high-speed computing and communication for data, voice, and video. Examples of Information Technology are not only personal computers, but also telephones, TVs, electronic household appliances, and modern handheld devices (such as cell phones).²³

One of the developments in information technology in Indonesia is the increasing number of users of services interconnected networking, better known as the Internet.²⁴ The network of the networks, defined as a global network of computer networks or a computer network on a global scale. This computer network has an international scale that can make each computer communicate with each other. Network This form a network inter-connection (Inter-connected network) connected through TCP / IP and developed and tested for the first time in 1969 by the US Department of Defense in the ARPAnet project. Internet (inter-network) is a computer network that connects academic, government, commercial, organizational and individual sites.²⁵

23 http://id.wikipedia.org/wiki/Teknologi_informasi

24 Moch. Basarah, *Prosedur Alternatif Penyelesaian Sengketa Arbitrase Tradisional dan Modern (Online)*, Genta Publishing, Bandung, 2011, p. 98

25 Abdul Wahid, *Kejahatan Mayantara (Cyber Crime)*, Refika Aditama, Bandung, 2005, p. 31

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All these technological developments color forms or products that contain pornography. A person's sexual experiences can now be transmitted to a virtual realm where they can finally be shared with others. This is what is called *trading reality*, where the reality that exists in the real world is transmitted to the virtual world, and anyone who wants to access must pay a certain amount of money.²⁷ New electronic technologies from the videotape to the Internet have enabled the development of a massively profitable industry with a global reach.²⁸

Pornography is technologically sophisticated slave traffic allowed 'because Us victims are considered as socially worthless.'²⁹ Phone sex is another lucrative aspect of the

26 Agus Raharjo, "Pornografi dan Teknologi (Komodifikasi dan Pembatasan Akses Pada Materi Bermuatan Pornografi)", Jurnal Media Hukum, Muhammadiyah University of Yogyakarta, (Volume 15 No.2 December 2008), p. 301

27 *Ibid*, p. 302

28 Sheila Jeffreys, *The Political Economy of The Global Sex Trade*, Routledge, New York, 2009, p. 7 (New electronic technology from video recording to the Internet allows the development of a profitable mass industry with global reach).

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pornography industry.³⁰ Pornography drove the video revolution, leading to the explosion of adult video stores and eventually video stores and eventually mainstream chains such as Blockbuster. In the early 1990s, the development of the Internet provided the pornography industry with important new opportunities. It was easier for the male consumer is to protect their anonymity, and they did not have to leave their homes to visit the video store.³¹

Andrew Feedberg argues that there are two theories about technology, namely *the instrumental theory* and the *substantive theory*. *The Instrumental theory* offers the broadest view of technology based on the general view that technology is a toolkit that is ready to serve the objectives of its users. Based on this theory, technology is considered "neutral" without an assessment of the content of the technology itself. Technology has nothing to do with good or bad and can be used either politically or socially in accordance with the wishes of the person or institution. Technology is a "*rational entity*" and is generally accepted, followed by the same or similar standard of measurement so that it can be applied to different situations. If technology fails to achieve its goals or when the negative consequences of the technology arise, then it is not the technology that is at fault, but the users of the technology, including politicians, military, big businessmen, and others.³²

30 Ibid, p. 67 (Telephone sex is another lucrative aspect of the pornography industry).

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32 Agus Raharjo, *Hukum dan Teknologi Suatu Tinjauan Filosofis dan Kritik Terhadap Positivisme Hukum*, Diponegoro University Publishing Agency, Semarang, 2007, p. 17

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33 Renny NS Koloay, 2016. Perkembangan Hukum Indonesia Berkenaan Dengan Teknologi Informasi dan Komunikasi, *Vol.22 / No.5 / January / 2016*, Jurnal Hukum Unsrat., p 7 - 9

incentives for someone to act criminally. Ironically, there are websites that target children. They are trying to create sites that are most likely related to children, and they frequently browse.

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C. Policy Criminal (Penal Policy)

Policy(*policy*) is often used interchangeably with other terms such as programs, decisions, legislation, other provisions such as programs, decisions, laws, regulations, proposals, and draft - great design.³⁴

The term policy, in this case, is transferred from English "*policy*" or in Dutch: "politics" which can generally be defined as general principles that serve to direct the government, especially law enforcement officers in managing, regulating or resolving public affairs, community problems or areas of drafting legislation and applying laws/regulations, with a (general) objective that leads to efforts to achieve the welfare or prosperity of the community (citizens).³⁵

Wisdom is given various meanings, according to the United Nations, as quoted by Solichin Abdul Wahab. Wisdom is defined as a declaration of a basic guideline for action, a certain direction of action, a program regarding certain activities, or a plan. Carl J. Friedrich, states that wisdom is an action that leads to the goals proposed by a group or government in a certain environment in connection with certain obstacles while looking for opportunities to achieve goals or achieve the desired goals. Aderson formulated wisdom as a step of action that is deliberately carried out by an actor or a number of actors with regard to a particular problem or problem at hand.³⁶

(*Criminal law policypenal policy/criminal law policy / strafrechtspolitiek*) can be defined as an attempt to realize criminal laws and regulations that are in accordance with

34 Abdul Wahab, *Analisa Kebijakan dari Formulasi ke Implementasi Kebijakan Negara*, Bumi Aksara, Bumi Aksara, Jakarta 1997, p. 1

35 Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana*, Citra Aditya Bhakti, Bandung: 1996, p. 23-24.

36 *Ibid* p. 2

circumstances and situations at one time and for the future.³⁷ The word appropriate in this sense implies both in the sense of fulfilling the requirements of justice and effectiveness.³⁸

Criminal provisions is the substantive criminal law, the scope of which is included in it basically covers the entire structure of the criminal justice system (*the structure of the penal system*), namely:

- a. The problem of criminalization (*criminalization*): formulation of a crime;
- b. The problem of sentencing / imposing sanctions (*sentencing*);
- c. Issues of the implementation of criminal law (*execution of punishment*)

In the three scopes of the criminal law system, three main problems of criminal law are covered, namely the problem:

- a) What actions should be punished;
- b) What conditions should be fulfilled to blame / account for someone who did the act;
- c) What sanctions (criminal) should be imposed on that person.³⁹

Material criminal law, seen from a dogmatic-normative point of view, according to Barda Nawawi Arief, subsists on 3 (three) main problems of criminal law (meaning material criminal law), which are interrelated issues, namely⁴⁰:

37 Barda Nawawi Arief, *Op.Cit*, p 28.

38 *Ibid*

39 Barda Nawawi Arief, *Kebijakan Formulasi Ketentuan Pidana Dalam Peraturan Perundang-Undangan*, Pustaka Magister, Semarang, 2012 p. 85

40 Barda Nawawi Arief, *Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana Edisi Revisi*, Citra Aditya Bakti, Bandung, 2005, p. 136

1. What actions should be convicted;
2. What conditions should be fulfilled to blame / account for someone for doing that act; and What
3. sanctions / penalties should be imposed on that person.

Criminal law policy essentially contains state policies in regulating and limiting power, both the authority of the community in general, to act and behave as well as the power or authority of the rulers/law enforcers in carrying out their duties to ensure that the community obeys and obeys the established rules. Criminal law policy is a series of processes consisting of three stages, namely:

- a. Legislative /policy stage formulative;
- b. The judicial /policy stage applicable and
- c. Executive /*administrative*

Policy stage Based on the three descriptions of the stages of criminal law enforcement policies, there are three powers/ authorities, namely the legislative /power, which informative authorized to determine or formulate what can be convicted which is oriented towards the main problems in criminal law including acts that are against the law, criminal error/liability and what sanctions can be imposed by legislators, judicial / *applicable* power is the power in terms of implementing criminal law by law enforcement officials or courts and executive /power administrative in implementing criminal law by criminal executing / executing officers. Based on the three stages of law enforcement policies above, crime prevention is always oriented towards efforts to achieve community welfare. As stated by Barda Nawawi Arief,⁴¹ policies or efforts, criminals are essentially an integral part of efforts to protect society (*social defense*) and efforts to achieve *social welfare*.

⁴¹ Barda Nawawi, Arief, Masalah Penegakan Hukum dan Kebijakan Penanggulangan Kejahatan,, Citra Aditya Bakti, Bandung, 2002, Cet 2, p. 73

According to G. Peter Hoefnagels, the criminal policy is a science of policy as part of a broader policy, namely the law enforcement policy (criminal policy as a science of policies part of a more extensive system: the law enforcement policy); while law enforcement policies are also part of social policy. Meanwhile, according to Sudarto, the definition of criminal politics, in brief, is a rational effort by the community in tackling crime.⁴² Therefore, GP Hoefnagels stated that "*criminal policy is a policy of designing human behavior as a crime*" (a criminal policy is a policy in determining human behavior as a crime or a crime).⁴³

Social policy as a general policy consists of policies for the welfare of society (*social welfare policy*) and policy on community protection (*social defense policy*). Public protection policies are set forth in criminal policies, which in their efforts to achieve their goals use penal and non-penal means so that penal and non-penal policies are inseparable parts of community protection efforts and efforts to achieve community welfare or in other words are integral policies.

Barda Nawawi Arief stated that in connection with the limitations and weaknesses possessed by the criminal law, among others, because the prevention or "cure" through the criminal law so far has only been asymptomatic healing/treatment not a causative treatment, and the punishment ("treatment") is only individual / personal, the use or intervention penal should be done more carefully, carefully, sparingly, selectively and imitatively.⁴⁴

42 Sudarto, *Hukum dan Hukum Pidana*, (Alumni: Bandung), 1986, p. 30

43 Barda Nawawi Arief *Bunga Rampai Kebijakan Hukum Pidana, Perkembangan Penyusunan Konsep KUHP Baru*, Kencana Prenada Media Group, Jakarta, 2011, p. 299-300.

44 Barda Nawawi Arief, *Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana*, (Citra Aditya Bhakti: Bandung), 1998, p. 47-49

The criminalization policy is a policy in determining an act that is not originally a criminal act to become a criminal act. In essence, the criminalization policy is part of a criminal policy using the means of criminal law and therefore is part of criminal law policy.⁴⁵

Seen from the perspective of penal policy, criminalization is essentially a policy to "appoint/appoint" an act that was not originally a criminal act to become a criminal act (offense / criminal act). Therefore, a criminal act is essentially an "appointed act" or an act that is designated behavior as an act that can be punished by the legislators. In brief, GP Hoefnagels stated, "crime is behavior designated as a punishable act." The determination of designated behavior" is part of the criminal policy (*criminal policy*). Therefore, GP also states that "*criminal policy is a policy of designing human behavior as a crime*" (a criminal policy is a policy in determining human behavior as a crime).⁴⁶

Along with the development of modern society in the face of technological globalization and the development of the Internet, it will foster changes in social processes and patterns of interaction in the order of people's lives which in addition to having a positive impact also has negative impacts including the development of the internet online prostitution business.

The capacity of the "penal" (criminal law) facility in overcoming crime is very limited, especially in dealing with *cybercrime*, whose development as a Hitech-crime is very fast and sophisticated. Seen from the point of view of the *criminal policy*, efforts to combat crime cannot be carried out

45 Barda Nawawi Arief, Bunga Rampai Kebijakan Hukum Pidana, Citra Aditya Bakti: Bandung, 2002,p. 2-3

46 Barda Nawawi Arief,, Pornografi Pornoaksi dan Cybersex Cyberporn, Pustaka Magister, Semarang, 2011, p. 1

partially with criminal law, but must also be pursued with an integral/systemic approach. As a form of *hi-tech crime* with a technological approach (*techno prevention*), a cultural/cultural approach, an educational/moral/religious approach, an administrative, regulatory approach, and a global approach (international cooperation).⁴⁷

Crime is human behavior that violates the norms (criminal law), is detrimental, irritates, causes victims so that it cannot be tolerated. So that any kind of crime must be prevented and overcome. Many people agree that although crime is not something that can be eradicated or eliminated, it needs to be tackled and taken seriously.⁴⁸ The growth and progress of the development of the economic, socio-cultural, scientific, and technological fields, as well as the increasing flow of information, greatly influence the increase and the forms of crime that occur, which require a thorough and continuous countermeasure.

To overcome the problem of crime, the efforts that can be carried out can be grouped into two aspects, namely before the occurrence of a crime or preventive measures and after a crime or repressive effort has occurred.

1. Preventive Efforts Preventive

Measures are intended as any efforts aimed at preventing crimes from occurring in society. This effort includes coaching, education, and awareness of the general public.

47 Ibid, p. 41

48 Mien Rukmini, "Aspek Hukum Pidana dan Kriminologi (Sebuah Bunga Rampai) ,Alumni, Bandung. 2006, p. 95

According to J. Bentham, the general program in preventive activities includes several matters of general education, moral development, law, and so on.⁴⁹

Other scholars argue that prevention can work best when the level of legal awareness of people has reached such a high and deep level that they understand their rights and obligations.⁵⁰

- a. Inculcating religious education from childhood as the basis of faith to strengthen morals and mentality (here the main role is community groups).
- b. Providing formal education with the aim of instilling a sense of responsibility and broadening horizons, thereby influencing the way of thinking.
- c. Providing legal counseling through information or communication media such as radio, television, newspapers, with the aim of increasing public legal awareness.
- d. Increasing the economic level of the community by empowering various economic potentials that can be developed so as to open job vacancies.
- e. Increase the mental and spiritual development of the community and provide legal information and cultural approaches to the community.⁵¹

Kaiser defines crime prevention as an effort that includes all actions that have a specific objective to minimize the scope of violence or violations, either through reducing opportunities to commit crimes or through efforts to influence potential people. Can become offenders as well as to the general public. Kaiser recommends dividing the main

49 *Ibid*, p. 43

50 *Ibid*

51 *Ibid*

prevention strategies into three groups based on the general crime prevention model:

a) Primary prevention Primary

prevention is defined as a crime prevention strategy through the social, economic, and areas of general policy, in particular as an attempt to influence criminogenic situations and the causes of the basics of evil. The main objective of primary prevention is to create conditions that are very promising for the success of socialization for every member of society. For example, areas relevant to primary prevention efforts (intervention or interference prior to the occurrence of an offense) include education, housing, employment, leisure, and recreation.

b) Secondary Prevention

The fundamentals of secondary prevention can be found in the criminal justice policy and its implementation. It may be added that general precautions and special precautions include early identification of criminogenic conditions and the effecting of tones of these conditions. The preventive role of the police is placed in secondary prevention.

c) Tertiary Prevention Tertiary

prevention is concerned with preventing recidivism through the role of the police and other agents in the criminal justice system. All actions and tertiary prevention thus range from informal judicial sanctions and conditions of paying debts for victims or also as reparation for offenders and imprisonment. Due to the limitations of the sanctions, which in the last period were

oriented towards financing, this tertiary prevention also often reduces repressive measures.⁵²

From this description, it can be seen that the main target of primary prevention is the general public as a whole. The targets of secondary prevention are the people who are most likely to commit offenses. Meanwhile, the main targets of tertiary prevention are people who have violated the law.⁵³

Meanwhile, according to Kemal Darmawan, crime prevention can be divided through several approaches, including:

- a. Prevention of crime through a social approach (*social crime prevention*).

All of its activities aim to eradicate the root causes of crime and individual opportunities to commit violations, which are both the general population (community) or groups that are particularly at high risk of committing violations.

- b. Prevention of crime through a situational approach (*situational crime prevention*).

Its main concern is reducing the opportunity for a person or group to commit an offense.

- c. Prevention of crime through *community-based crime prevention*.

All steps are aimed at improving the capacity of communities to reduce crime by increasing their capacity to exercise informal social controls.⁵⁴

52 *Ibid*, p. 12-14

53 *Ibid*

54 *Ibid*, p. 17

2. Repressive Effort

It is an action to correct the perpetrator of a crime by giving a sentence that has been determined by the applicable law. These repressive measures are in the nature of prosecution and punishment for violations of law and for the sake of security in society so that the balance of the society that has been disturbed can be restored. The purpose of this effort is the fostering of criminals in correctional institutions. Preventive efforts are prioritized because tackling crime is better than punishing the perpetrator because it can reduce and avoid crime victims.

Crime prevention, in general, there are two kinds:

a. Treatment

As one application of penalties against perpetrators of crimes or violations of the law. Treatment based on the application of punishment is generally divided into two parts according to the level of seriousness and lightness of an act, namely:

1. Treatment, which is a criminal sanction, means that the lightest treatment is given to a person who has not already committed a crime.
2. Treatment that imposes criminal sanctions indirectly means that it is not based on decisions that state punishment for the perpetrator.

b. Punishment

meant as a series of retaliation for the offender of the law. Punishment is an act to provide suffering to the perpetrator of a crime that is proportional to or perhaps heavier than the consequences caused by the crime,

whether it is in the form of imprisonment or punishment that is fining in nature.⁵⁵

Soerjono Soekanto stated that to be able to implement a statutory regulation effectively, and it is influenced by several factors, namely as follows:

- a. The legal factor itself;
- b. Law enforcement factors, namely the parties who form or implement laws;
- c. Facility factors or facilities that support law enforcement;
- d. Community factors, namely the environment in which the law applies or is applied;
- e. Cultural factors, namely, as a result of work, creativity, and taste based on the human initiative in social life.⁵⁶

Conceptually, the essence and meaning of law enforcement lie in the activity of harmonizing the relationship of values that are described in solid and embodied rules and attitudes as a series of final stage value descriptions to create, maintain and maintain a peaceful social life. Humans in social life basically have certain views about what is good and what is bad.⁵⁷

The decision to criminalize and decriminalize must that consider various factors *be based on certain policy factors*"the decision to criminalize

55 Abdulsyani, Sosiologi Kriminalitas, Remaja Karya, Bandung, 1987, p. 138

56 Soerjono Soekanto, Pokok-Pokok Sosiologi Hukum, Raja Grafindo Persada. Jakarta, 2001, p. 15

57 Soerjono Soekanto, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum*. Rajawali, Jakarta, 1986, p 3

*or decriminalize should be based on certain policy factors which take into account a variety of factors, including*⁵⁸:

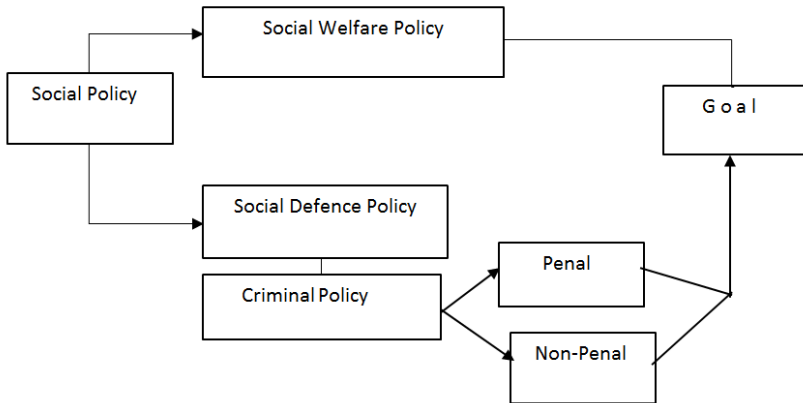
- a. *The proportionality of means used in relation to the outcome obtained;*
- b. *The cost analysis of the outcomes obtained in relation to the objectives sought;*
- c. *An appraisal of the objectives sought in relation to other priorities in the allocation of human power and;*
- d. *The social impact of criminalization and decriminalization in terms of its secondary effects.*

As a crime prevention policy, the criminal policy is part of broad policy, namely *social policy*. A social policy consists of policies for community protection (*social defense policy*) and policies for achieving (*social welfare policy*). These two aspects are integrated to achieve the main goal of the criminal policy, namely the protection of the community to achieve social welfare. Hoefnagels argued that "*Criminal policy as a science is a part of a larger policy: the law enforcement policy ... The legislative and enforcement policy is, in turn, part of social policy.*" This relationship can be seen in the following

58 Teguh Prasetyo, *Kriminalisasi Dalam Hukum Pidana*. Nusa Media, Bandung, 2010, p. 136-137 (More explanation of the policy in above can be developed as follows:

- a. balance of the means used in relation to the results to be achieved
- b. Cost analysis of the results obtained in relation to the objectives-

chart, Figure 1. The relationship between Social Policy and Criminal Policy, according to Hoefnagels.



The chart above illustrates the position of social policy as the parent of policies for achieving social welfare, policies for public protection and criminal policies. In the end, as a manifestation of the objectives of this social policy, it is pursued by means of both criminal law and non-criminal law. From this scheme it is also seen that efforts to combat crime are pursued by a policy approach, in the sense that:⁵⁹

- a. There is integration (integrality) between criminal law policies and social policies;
- b. There is integration (integrality) between efforts to combat crime with "penal" and "non-penal."

In connection with the integrality between criminal law policy and social policy, Sudarto stated that if criminal law is to be involved in efforts to overcome the negative aspects of community development/modernization, it should be seen in the overall relationship between criminal politics or *social defence planning*, this must also be an integral part. Of the national

59 Barda Nawawi Arief, Bunga Rampai.... *Op cit*, p. 4.

development plan.⁶⁰ This is also the concern of the United Nations, which in its various congresses, always pay attention to the balance between the two things.

In criminal policy, efforts to control and prevent crime need to use an integral approach, namely a combination of penal and non-penal means. The penal facility is a means of criminal law through criminal law policy. Meanwhile, non-penal is a means outside of criminal law, which can be in the form of economic, social, cultural, religious, educational, technological, and other policies.

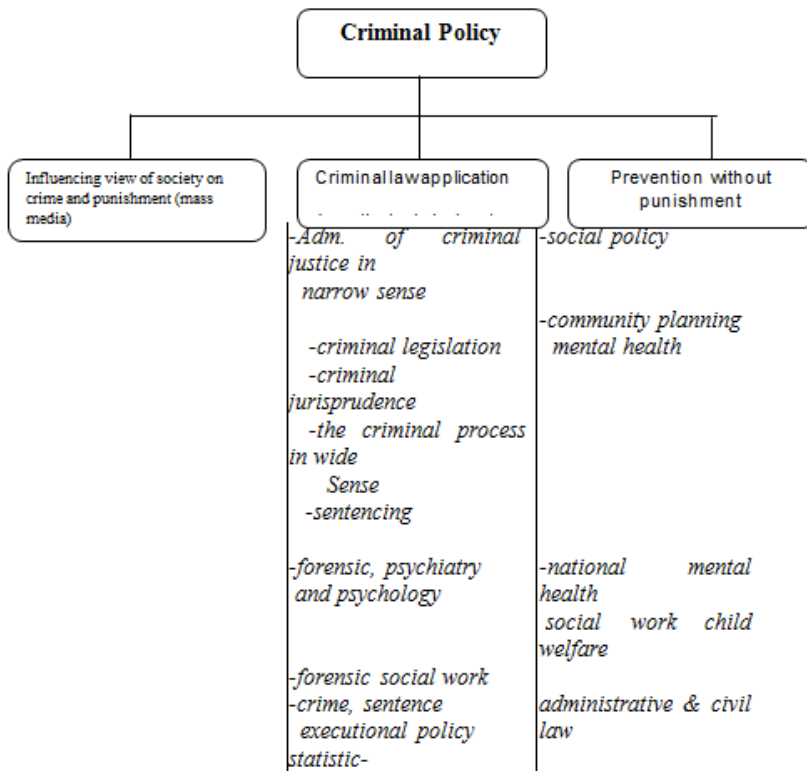
Legal policy or politics is an inseparable part (integral) of social policy; or in other words, the social policy includes legal policy, which is referred to in full as *law enforcement policy*. Within the scope of this law (enforcement) policy, administrative law and civil law occupy the same position as criminal law as a means of overcoming crime.⁶¹ This means, as Hoefnagels argues, statutory policy and law enforcement are part of social policy.⁶²

In essence, efforts and policies to make good criminal law regulations cannot be separated from the goal of overcoming crime. So criminal law policy is also a part of criminal policy. Crime prevention efforts with criminal law are part of law enforcement efforts (especially criminal law enforcement).

Hoefnagels maps the crime prevention policy in the following:⁶³

60 Sudarto, *Hukum dan Hukum Pidana*, Bandung Alumni, 1981, p. 104.
61 Hoefnagels, G.P *The Other Side of Criminology, An Inversion of Concept of Crime*, Kluwer Deventer, Holland, 1972.
62 Sudarto, *Hukum dan Hukum Pidana, Alumni, Bandung*, 1986, p. 159
63 Hoefnagels, Op.cit. , p ... 56

Chart 2. Scope of *Criminal Policy* according to Hoefnagels.



Source: Hoefnagels, 1972

With this scheme, Hoefnagels illustrates that efforts to combat crime can be pursued through:

- (1) *Criminal law application* (application of criminal law);
- (2) *Prevention without punishment* (prevention without punishment)
- (3) *Influencing view of society on crime and punishment/mass media* (influencing people's views on crime and punishment through mass media)

If classified according to efforts to tackle crime through penal and non-penal means as stated by Hoefnagels in front of, then it can be categorized that *criminal law application* is included in penal efforts, while *prevention without punishment* and *Influencing view of society on crime and punishment* (mass media) are included in the category of non-penal efforts. Penal measures are more repressive in nature, while non-penal measures are in the form of preventive or preventive measures. In this regard, according to Muladi,⁶⁴ we should not expect too much of the role of the criminal justice system as a means of controlling crime, because this system is only one means of criminal politics (which is penal in nature). The criminal justice system only functions for *recorded crimes* which it contains. Its function is sometimes not maximal (*total enforcement*) because, in order to maintain a balance between *public order* and *individual rights*, the boundaries of law enforcement are limited by strict provisions.

D. Crime Prevention and Overcoming

Efforts to tackle crime are a means of reaction that can be given to criminals, in the form of criminal (penal) and non-criminal (non-penal) means, which can be integrated with one another. If criminal means are called to tackle crimes, it means that criminal law politics will be carried out, namely holding elections to achieve the results of criminal legislation that are in accordance with the circumstances and situations at one time and for the future.

According to GP Hoefnagels, efforts to combat crime are pursued by⁶⁵:

⁶⁴ Muladi, *Kapita Selektta Sistem Peradilan Pidana*, Publisher UNDIP, Semarang, 1995, p. 3.

⁶⁵ G. Peter Hoefnagels, *The Other Side Of Criminology*, 1969, p. 56 as quoted in his book *Barda Nawawi Arief, Criminal Law Policy; ...* p. 41

- a. Application of criminal law (*criminal law application*);
- b. Prevention *without punishment*; and
- c. Influencing people's views through crime and punishment through mass media (*influencing views of society on crime and punishment/mass media*)

Thus, the efforts to tackle crime can be broadly divided into two, namely through the "penal line." "(Criminal law) and through the" non-penal "route (not / outside the criminal law). In the Hoefnagels GP division above, the efforts mentioned in points (b) and (c) can be included in the non-penal effort group.

Barnest and Teeters show several ways to tackle crime, namely:

- 1) Recognizing that there will be needs to develop social impulses or social pressures and economic pressures that can influence one's behavior towards evil deeds.
- 2) Focusing attention on individuals who show criminal or social potentiality, even if that potential is due to biological and psychological disorders or lack of sufficient socio-economic opportunities so that it can form a harmonious unity.

From Barnest and Teeters' opinion above, it shows that crime we can handle it if the economic condition or social environment conditions that affect a person towards criminal behavior can be returned to good condition. In other words, improvement in the economic situation is absolutely necessary. Meanwhile, biological and psychological factors are secondary factors.⁶⁶

⁶⁶
1993. p 79

Ramli Atmasasmita, Kapita Selektu Kriminologi , Armico, Bandung,

Judging from the definition of a criminal act that violates criminal regulations, is punishable by law and carried out by someone guilty, which person must be held accountable, and the police should also be able to maintain and implement the established regulations, if we examining it further than this definition, it contains several elements of the offense, namely:

- a. There is an element of action;
- b. There is an element of a violation of criminal regulations;
- c. There is an element of being threatened with the threat of punishment;
- d. Done by mistake.

The element of the offense which is an element of the nature of being against the law is an act because only that action is followed only by the elements of the object, which can be divided into several parts, including The

- a. act has been formulated by law;
- b. The act is against the law;
- c. Done by mistake;
- d. Such an act is punishable by the criminal.

A criminal an act is an act that is prohibited by law, a prohibition accompanied by a threat, or a sanction in the form of a specific punishment for anyone who violates the prohibition. Determine when and in what cases those who have violated the prohibition can be charged or sentenced to the punishment as threatened. Determine in what way the imposition of the crime is carried out if there are people suspected of having violated the prohibition.

A person is said to have committed a criminal act if he fulfills the following elements:

- a. Criminal acts in the broadest sense of humans (active and tolerant);
- b. The nature of being against the law (both subjective and objective);
- c. Can be held accountable to someone;
- d. Threatened with punishment.⁶⁷

In international forums, particularly in the development of UN congresses on "*The Prevention of Crime and the Treatment of Offenders*," the issue of prevention / overcoming crime is seen more from the context of global social / development policies. The policy strategies for the prevention/prevention of crime, according to the UN congresses are as follows⁶⁸:

- a. The basic/principal strategy of overcoming crime is to eliminate the factors that cause/conditions that lead to crime;
- b. Prevention of crime and criminal justice must be pursued with an integral/systemic policy (not simplistic and fragmented);⁶⁹

67 Moelyatno. Perbuatan Pidana dan Pertanggungjawaban Pidana. Bintang Indonesia, Bandung, 1998, p. 37-78

68 Barda Nawawi Arief, Op Cit, Hal. 78-81

69 The definition of intergralistic / systemic policy contains various aspects, among others:

- 1) There is an integration between the crime prevention policy and the overall POLEKSOSBUD system development policy.
- 2) There is an integration between the "*treatment of offenders*" (with crimes / actions) and the "*treatment of society*". The entire community (environment) must be built / structured in such a way as to be healthy from criminogenic factors.
- 3) There is an integration between "symptomatic healing / treatment" and "causative healing / treatment"
- 4) There is a coherence between "*treatment of offenders*", "*treatment of the victim*" and "*treatment of society*"
- 5) There is an integration between "individual /personal responsibility and structural /functional responsibility." "
- 6) There is an integration between penal and non penal means;
- 7) There is a mix of formal and informal / traditional means; integration between "*legal system* and "*extra legal system*;
- 8) There is an integration between a policy approach (*policy oriented approach*) and a value approach (*value oriented approach*).

- c. Crimes that have received the attention of the UN Congress to be tackled, one of which is *cybercrime*;
- d. Needs to be addressed and improved the quality of law enforcement officials;
- e. Need to be fixed and improved the quality of institutions and management system organization/data management;
- f. compiled several "*Guidelines*," "*Basic Principles*," "*Rules*," "*Standard Minimum Rules (SMR)*";
- g. Enhanced "*international cooperation*" and technical assistance (*technical assistance*) in order to strengthen "*the rule of law*" and "*management of criminal justice system*."

E. The Criminal Justice System

Muladi argues that the judicial system is a *judicial network* which is a material criminal law, formal criminal law is the law of criminal implementation. However, this institution must be seen in the social context. A character that is too formal if it is based on legal interests alone will bring disaster in the form of justice.

Muladi emphasized that "*integrated criminal justice system*" is a synchronization or opportunity and harmony which can be distinguished into⁷⁰:

1. Structural *synchronization* is the simplicity and harmony within the framework of the relationship between law enforcement agencies.
2. Synchronization substance (*Substantial Synchronization*) is *keseimbangan* and alignment vertically and horizontally in relation to the positive law.

⁷⁰ Yesmil Anwar, Adang, Sistem Peradilan Pidana (Konsep, Komponen dan Pelsanaanya Dalam Penegakan Hukum di Indonesia), Widya Padjadjaran, Bandung, p. 37

- Cultural synchronization (*cultural sycronization*) is the greed and harmony in living out the views, attitudes and a comprehensive philosophy that underlies the operation of the criminal justice system.

La Patra describes the "*interface*" between the criminal justice system and the wider environment or the broader social system as in the chart below:

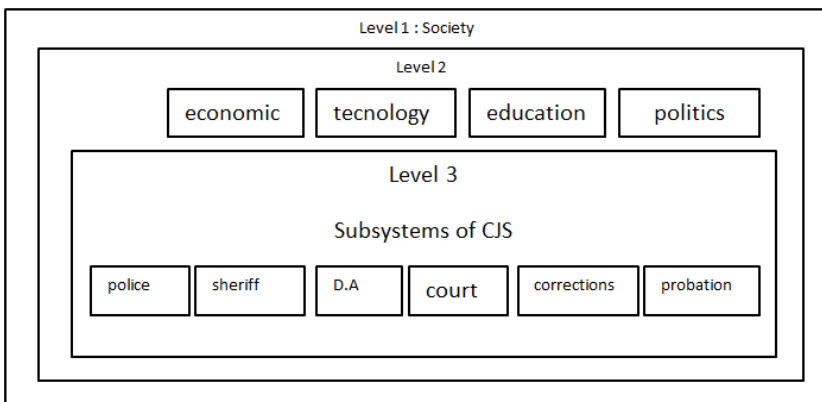


Figure 3. *Interface of Criminal Justice System*⁷¹

In Indonesia, if this part of La Patra is compared with the criminal justice system according to KUHAP, will look as follows:

- Rank (level) 1: Society
- Rank (level) 2: Economy, Technology, Education and Politics
- Rank (level) 3: Criminal Justice Subsystem (Police, Public Prosecutors, Courts and Correction Institutions).

Not all crimes that occur in society are resolved through the criminal justice system because there are crimes that are not

⁷¹ Erna Dewi and Firganeti, *System Indonesian Criminal Justice (Dynamics and Development)*, Graha Ilmu, Yogyakarta 2014, p. 8

reported. Criminal justice will run if the crime that occurred is reported by the police, then prosecuted before the court, and the court gives a decision, which in the end the crimes that originally came from the community are also returned to the community, which can be seen from the following chart.

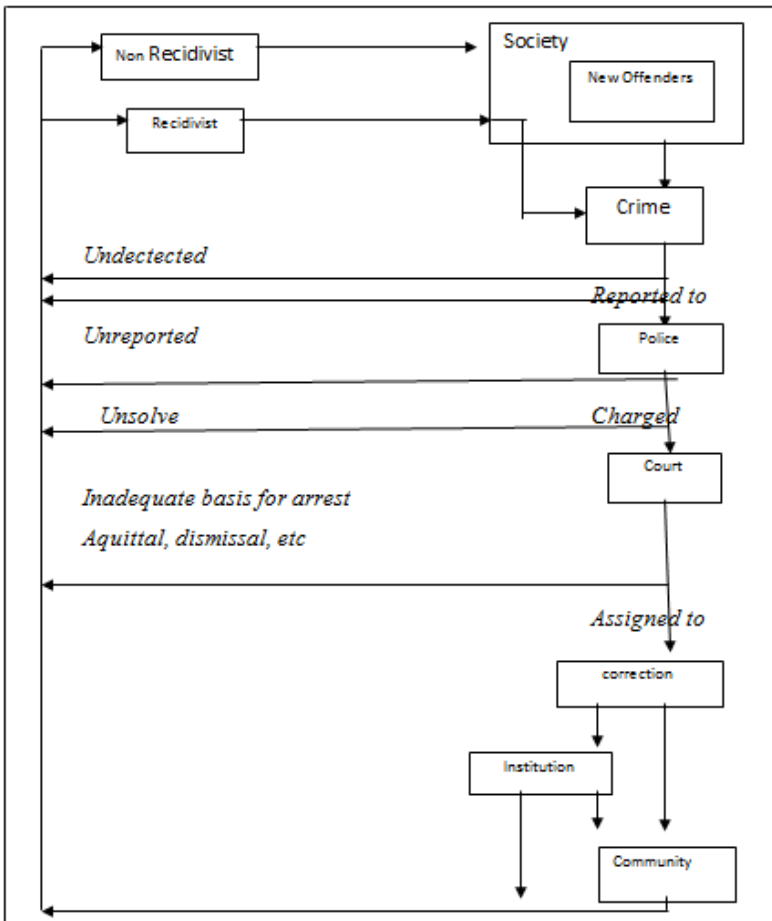


Figure 4. Net Works Criminal Justice System⁷²

72 Ibid, p. 9

The importance of the role of criminal law in the criminal justice system, because these laws give power to policy makers and provide a legal basis for the policies implemented. The legislative body participates in preparing policies and provides legal steps to formulate policies and implement predetermined policy programs. So, everything is part of legal politics which essentially functions in three forms, namely the formation of laws, law enforcement, and the exercise of authority and competence.

According to Muladi, the objectives of the criminal justice system can be categorized as follows:

- a) Short-term goals, if what is to be achieved is resocialization and rehabilitation of perpetrators of criminal acts.
- b) Medium-term goals, if what is to be achieved is broader, namely the control and prevention of crime in the context of criminal politics (*criminal policy*).
- c) Long-term goals, if what is to be achieved is *social welfare* in the context of social politics (*social policy*).

The objectives of the criminal justice system above are in line with the opinion of P. Hoefnagels regarding criminal law policies which consist of criminal policy, *law enforcement policy* and *social policy* whose ultimate goal is to realize social welfare.⁷³

*The criminal justice system comprises a number of crime processing stages, the number of people receiving criminal sanctions is far fewer than the number coming into contact with the police.*⁷⁴

73 Erna Dewi, Firganefi, Sistem Peradilan Pidana Indonesia (Dinamika dan Perkembangan), Graha Ilmu, Yogyakarta, 2014, p. 10

74 Sharyn L Roach Anleu, Law And Social Change Second Edition, Sage, Los Angeles, p 152

Mardjono Reksodipoerto gave an opinion that the criminal justice system is a system in a society to tackle crime problems. So that the objectives of the criminal justice system are⁷⁵:

- a) To prevent people from becoming victims of crime.
- b) Resolve cases of crimes that have occurred so that the public is satisfied that justice has been heard and the guilty are punished.
- c) Make sure those who've committed crimes don't do it again.

Joseph Goldstein, clearly describes the criminal law enforcement program, as in the chart below:

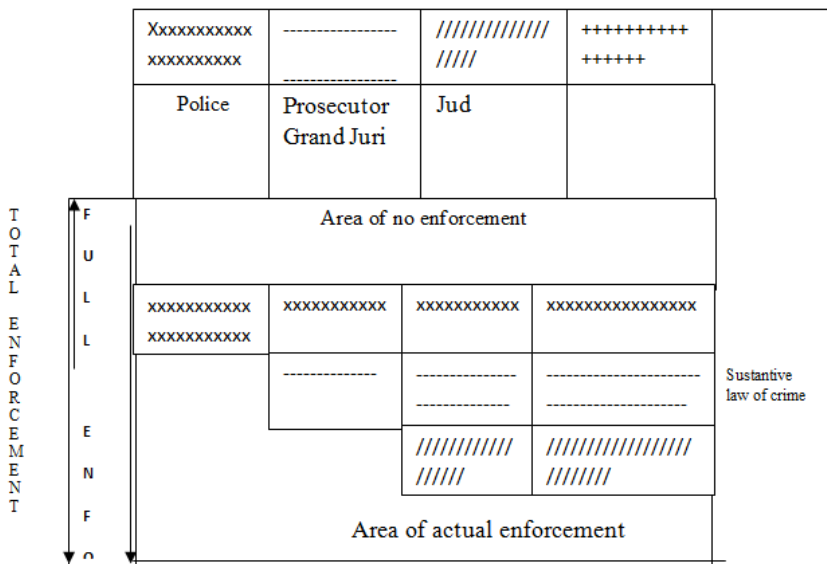


Figure 5. The Area of Law Enforcement⁷⁶

⁷⁵ Ibid, p. 4

⁷⁶ Dewi, *Op Cit*, p. 25

Joseph Godstein offers three concepts in law enforcement (*lawenforcement*)⁷⁷ are:

1. *Total enforcement* is the scope of criminal law enforcement as expected and formulated by the criminal law of material (*substantivelaw ofcrime*), which may not be realized due to the limited movement of law enforcement due to their restrictions are strictly by the law of criminal procedure which includes rules or procedures for arrest, search, detention, confiscation up to the stage of preliminary examination or possibly restrictions by the material criminal law itself, which stipulates that a criminal act can only be prosecuted based on a complaint (*klacht delict*).
2. *Full enforcement*, here law enforcers are expected to uphold the law maximally. This law "*full enforcement*" of is an unrealistic expectation because there are obstacles in its implementation in the form of limited time, personnel, tools for investigating funds and so on, thus requiring discretion.
3. *Actual enforcement*, which is concrete law enforcement as a result of *total enforcement* minus the *area of no enforcement*, results in *full enforcement*, and finally it is reduced by the existence of discretion (*decision not to enforcement*) resulting in actual law enforcement.

F. Definition of Giving Penalty and Purpose of Giving Criminal

Criminal is an effort based on the law which regulates it to be carried out on a person because he has committed an unlawful act whose elements meet the requirements to be said to be an act against the law.

A criminal act means an act for which the perpetrator is liable to a criminal penalty. In criminal law, this offender can

77 Dewi, Op Cit, p 26

be said to be the subject of criminal law besides there are other elements that the perpetrator of a criminal act can be convicted.

In Indonesia's positive criminal law, namely the Criminal Code, there are 2 (two) types of criminal acts or criminal acts, namely:

- 1) Material crime, namely if the criminal act intended in a provision of the criminal law is declared an act that causes an effect without formulating the intent of the act. .
- 2) A formal crime is if the criminal act is intended as an act of intent without questioning the consequences caused by the act.

The explanation for the conviction of the perpetrator of a criminal act can be explained, among others:

The existence of the subject of a criminal act

This implies that the first element of a criminal act that can be punished is the existence of the perpetrator. Indonesian Criminal Code that could be the subject of the act.

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The explanation for the conviction of the perpetrator of a criminal act can be explained, among others:

The existence of the subject of a criminal act

This implies that the first element of a criminal act that can be punished is the existence of the perpetrator. Indonesian Criminal Code that can be the subject of a criminal act is a human being as a person. Even though the association is formed so that it can form a body that has the power as a legal subject, but in the end the person who will be punished is still a human being as a person.

With the fulfillment of the first element of a criminal act so that a person can be punished, it does not mean that the legal subject can be punished because there are requirements inherent in him, namely the ability of the subject of the crime to be held accountable.

However, the ability to take responsibility which is inherent in the subject of a criminal act does not mean that the perpetrator can be guaranteed to be convicted, but there are several things that need to be considered.

From the point of view of criminal law science, there are different terms for criminal abolition which are basically just different terms. It is stated in the reasons for the abolition of a crime, consisting of 2 (two) types, namely:

- 1) Reason for abolition of prosecution
- 2) Reason for abrogation of criminal.

Both of these reasons are found in the criminal law code in force in Indonesia. Another term for the elimination of crime in criminal law was put forward by Van Hamel, who stated that a distinction was made between reasons that eliminate the nature of being against the law and reasons that eliminate the nature of being punishable.⁷⁸

78 Ibid., p. 191.

This opinion turned out to be unacceptable to other criminal law experts, namely MR HB Van Vos, which in more detail became the elimination of the unlawful nature of the act so that the act was justified, in other words it was called a justification reason and removed from the responsibility of the maker so that the act was not punished. with excuses.

Meanwhile, the Indonesian criminal law expert, Wirjono Projodikoro, argues that to be able to eliminate the nature of a criminal act it must be based on:

- 1) Eliminating the nature of violating the law so that the perpetrator's actions are allowed.

This reason can also be called justifying or justifying actions which are generally criminal acts. In the Criminal Code in force in Indonesia, Wirjono Projodikoro provides details on eliminating the nature of breaking the law, namely:

- a) Because there is a need to defend oneself as mentioned in Article 49 paragraph 1.
 - b) There is a law which is actually implemented in the form of the act concerned in accordance with Article 50.
 - c) Actions due to carrying out an order the position given by the competent authority in accordance with article 51 paragraph 1.
- 2) There are special things so that the perpetrator cannot be held accountable for it or what is often called with excuse.

Details regarding the presence of special matters so that the perpetrator cannot be held accountable for them were also presented by Wirjono Projodikoro as contained in the Criminal Code. The details are:

- a) There is a disturbance in the thinking power of the perpetrator in accordance with Article 44 paragraph 1.

- b) There is force / overmacht according to Article 48.
- c) Violating the limits of self-defense because of a shaky feeling as a result of an attack on him in accordance with Article 49 paragraph 2.

Against the law

In order to be convicted of a person, in addition to the existence of the perpetrator of a criminal act who can be responsible for his actions, he must also fulfill the existence of being against the law.

The definition of against the law implies that there is an act that violates the provisions of the current law. This affirms that the main thing in the description of against the law beforehand there must be positive rules or laws that regulate in advance or are often referred to as the legality principle.

In criminal law, the principle of legality means that to impose a sentence a law is required first. So a law is not issued after an act against the law has occurred. The principle of legality requires that no act can be punished except for the strength of the criminal rules in legislation that existed before the act was committed.

The will that is contained in this principle is adopted by many countries in the world, including in the Criminal Code in force in Indonesia as contained in Article 1 paragraph 1 of the Criminal Code.

An understanding of breaking the law must also be understood as treason, because it is through this mistake that a person who commits a criminal act will be punished. Mistakes are the main aspect of breaking the law. This is in accordance

with the principle that exists in criminal law that no one can be convicted without guilt.

According to Jonkers, there are several types of mistakes, namely:

- 1) In addition to intentional or negligence
- 2) Includes an unlawful nature
- 3) The ability to be responsible.⁷⁹

Meanwhile, Pompe has his own opinion regarding mistakes, namely having a sign as a despicable thing which in essence does not prevent behavior that is against the law. Not preventing illegal misconduct means deliberate and negligent.⁸⁰

Thus the elements in the error can be formulated as an element against the law. This formulation actually faces challenges from other legal experts who state that criminal acts must be separated from mistakes in their respective elements.

E. Mezger argues that the separation between the criminal act and the element of error is:

- 1) Ability to be responsible
- 2) There is a form of error in the form of deliberate action and culpa
- 3) There is no excuse for erasing mistakes⁸¹

Whereas there is an assumption that mistakes in a criminal act are identical to intentionality and culprit, gradually raises another opinion also that mistakes not only consist of intentional and negligent but also the existence of other inner elements in the form of the ability to be responsible and the element of the absence of excuses.

79 Ibid., p. 135.

80 Ibid.

81 Ibid., p. 136.

Then if it is viewed from a formal juridical point of view, mistakes can be said if someone has an act which is declared as wrong and the wrongdoer can be reproached against him personally.

From a juridical point of view it will be found that this aspect is a bridge for people to give reproach which can be in the form of a certain punishment to a person who commits an act as a maker and for an act that is wrong because it is against the law.

After it is sufficiently known that a person fulfills the elements to be punished, the regulations regarding sanctions established by the legislators require further realization. This is very reasonable because the existing sanctions do not materialize by themselves.

In the implementation of realizing sanctions, it is necessary to have an agency or agency that can actually realize the criminal sanction. Likewise, in the case of imposing sanctions, the formation of a body that clearly embodies a criminal rule does not mean that an error is a form of a criminal act, the body authorized to impose sanctions will immediately apply the witness, but it must go through a process called a judicial process. Criminal

The real purpose of criminal justice is to create real justice in the sense that the criminal act committed must be sanctioned accordingly based on a sense of justice that can be accepted by the perpetrator of the criminal act and the public represented by the state, in addition to other purposes, namely limiting the authority that may arise. in criminal law and supervise and limit the exercise of these powers.

The purpose of criminal procedural law is to seek and obtain or at least approach material truth, which is

the complete truth of a criminal case by applying the provisions of criminal procedure law honestly and accurately, with the aim of finding who the perpetrator can be accused of committing a crime. violation of the law, and then request an examination and decision from the court to find out whether it is proven that a criminal act has been committed and whether the person accused can be blamed.⁸²

Quoting in the draft concept of the 1972 National Criminal Code Book I, the objectives of the crime can be formulated, among others:

- 1) To prevent criminal acts from being committed for the sake of protecting the state, society and population.
- 2) To guide the convicted person to convert and become good and useful members of society.
- 3) Remove stains caused by criminal acts.

In order to be convicted of a person, in addition to the existence of the perpetrator of a criminal act who can be responsible for his actions, he must also fulfill the existence of being against the law.

The definition of against the law implies that there is an act that violates the provisions of the current law. This affirms that the main thing in the description of against the law beforehand there must be positive rules or laws that regulate in advance or are often referred to as the legality principle.

An understanding of breaking the law must also be understood as treason, because it is through this mistake that a person who commits a criminal act will be punished. Mistakes

⁸² Andi Hamzah. *Pengantar Hukum Acara Pidana Indonesia*. Ghalia Indonesia, Jakarta, 1996, p. 18

are the main aspect of breaking the law. This is in accordance with the principle that exists in criminal law that no one can be convicted without guilt.

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purpose of criminal justice is actually to create real justice for all Indonesians in the sense that the criminal act committed must be sanctioned accordingly based on a sense of justice that can be accepted by the perpetrator of the criminal act and the community represented by the state, in addition to other objectives. namely limiting the powers that may arise in criminal law and supervising and limiting the exercise of these powers.

CYBERCRIME IN THE FIELD OF DECENCY

(INFORMATION TECHNOLOGY AND MORALITY)

Dr. Hervina Puspitosari, S.H., M.H.

BAB II

**DIGNITY OF HUMAN
CIVILIZED**

A. Rights Human Rights

On 23 September 1999 promulgated the Law of the Republic of Indonesia Number 39 of 1999 on Human Rights (HAM) with consideration of the enactment of this law is:

- (1) That the Human Rights (HAM) is the right adasar which is inherently inherent in human beings, universal and enduring, therefore must be protected, respected, maintained and should not be ignored, reduced or taken away by anyone;
- (2) That the Indonesian nation as a member of the United Nations (UN) has a moral and legal responsibility to uphold and implement the Universal Declaration of Human Rights (HAM) established by the United Nations (UN) and various other international instruments regarding human rights Human (HAM) that has been accepted by the Republic of Indonesia.

The understanding of human rights is meant to be rights that are owned by humans not because they are given to them by the community so they are not based on the applicable positive law, but are based on their dignity as a human being. Man has it because he is human. In the understanding of human rights, it includes that rights cannot be eliminated or declared invalid by the state. Through human rights, prepositive moral demands can be realized in positive law. On the one hand, human rights express the basic demands of human dignity, which is what Natural Law Theory stands for. But on the other hand, because these demands are formulated as concrete and operational rights or obligations. These demands can be included in positive law as basic norms in the sense that all other legal norms must not conflict with them. Thus the demands of legal positivism are fulfilled that only positive legal norms may be used by judges to make decisions. From there it can be concluded that more

and more of the basic demands of justice and human dignity are included as human rights into positive law. It is also more guaranteed that the law is just and in accordance with human dignity.¹

According to their respective nature and direction, human rights are usually divided into four groups, each of which:

a. Negative or liberal

human rights This first group of rights is championed by Liberalism and essentially wants to protect the private life of humans against interference by the state and the forces of other social forces. These human rights are based on freedom and individuals to take care of themselves and are therefore also called freedom rights. These include the right to life, physical integrity, freedom of movement, freedom to choose a mate, protection of property rights, the right to take care of one's own household, to choose a job and place of residence, the right to freedom of religion, freedom to follow conscience as long as it does not reduce freedom. like others, freedom of thought, freedom of association and association, the right not to be arbitrarily detained and so on.

These rights are called negative in a logical sense: these rights can only be defined by using the word "no". It cannot be said what is allowed, but what cannot be done. That is, my life should not be interfered with by outsiders. These rights guarantee freedom, in which we ourselves have the right to determine ourselves similar to the fence around the house which is a boundary mark for the rights of others to enter.

¹ Bambang Sunggon. *Aries Harianto, Bantuan Hukum dan Hak Asasi Manusia Mandar Maju, Bandung, 200, p. 71*

From ethical negative human rights is the demand that everyone's autonomy over themselves be respected. No person or institution has the right to determine how others should take care of themselves.

b. Active or democratic human rights

fought for by liberals or republicans. The basis of these rights is the belief in the people's sovereignty which demands that the people rule themselves and every government under the people's power. These rights are called active because they are the rights to a human activity, namely the right to participate in determining the direction of community development. Democratic rights challenge the traditional and feudal view that there are certain persons or groups who because of their birth rank or rank have special rights to rule over society and thus to control the state. Based on the understanding that all people are equal as human beings, common affairs are the right of all of them.

c. Positive Human Rights Positive

understanding of human rights is based on the assumption that the state is not an end in itself, but is an institution created and maintained by the community to provide certain services. So the people are automatically entitled to these services and the state is obliged to provide them.

d. Social Human Rights The

obligation of the state in modern society includes ensuring and as necessary to create minimal equality between all citizens of society. The state should not allow people to be forced, because they do not have sufficient means, to live below the minimum level which is considered reasonable. Natural inequalities which naturally exist between humans

and human groups and which are further strengthened through the institutionalization of social structures must be balanced by the state.

In this way, the understanding of positive human rights is broadened so that it includes basic social demands. Social human rights reflect the awareness that every member of society is entitled to a fair share of the material and cultural assets of his nation and to a fair share of the economic value that is continuously created by society as a whole through systems of social division of labor. This right, as necessary, must be guaranteed by state action.

Human rights are human rights that are inherently inherent in every creature born with a human biological figure, which provides moral guarantees and enjoys freedom from all forms of treatment that cause that human being unable to live properly as a glorified human being, and therefore not It may be transferred to or even seized by anyone, to / even by state power holders, except to be reduced on the basis of the agreement of the rights holders through legislative processes that are truly representative for the enforcement of the human rights of other human beings in the life of society.²

B. Basic Human Dignity Human

Tendency to behave is inseparable from the instincts and feelings that exist in him. According to experts in the psychology of instinct, it has been brought by humans from birth. The desire arising from instinct was a "boost" (*drive*), as well as sexual desire, lust mixed with other species, appetite, lust sustain lives hang lust, desire to relate to others, and so on. Uncontrolled drive of lust can result in humans behaving in criminal acts. In addition

² Soetandyo Wignjosobroto. *Hukum Paradigma dan Dinamika Masalahnya*. Huma, Jakarta 2002, p. 436

to instinct, humans also have feelings, namely awareness that arises from within humans because their mind is healthy, can distinguish good and bad, a sense of joy and compassion to see what is happy and what is difficult. The altruist nature of man makes him use feelings more than instinctual drives. His diversity, knowledge, associations and experiences make him full of feelings. If he sees someone being treated unfairly, at least he feels sorry for him and his feelings will arise to try to help, prevent or protect him from acts of injustice, or just advise with patience.³

Even though the field of law must be distinguished from the moral field, law cannot maintain its legitimacy if it is separated from the basic demands of a just life in accordance with human dignity.

Meanwhile, according to Teguh Prasetyo⁴, dignified justice theory, the dignified justice theory departs from the postulant system; works to achieve the goal, namely dignified justice. Justice that humanizes humans, or justice "*nge wong ke wong*." The layers of legal science in the perspective of the dignified justice theory work or function as a source or place where the law is found

3 Hilman Hadikusuma, *Antropologi Hukum Indonesia*, Alumni, Bandung, 1986, p. 6-7

4 Teguh Prasetyo. *Keadilan Bermartabat Perspektif Teori Hukum*. Nusa Media, Bandung, 2005. p 2

Table 1. Layers in Legal Studies as follows:

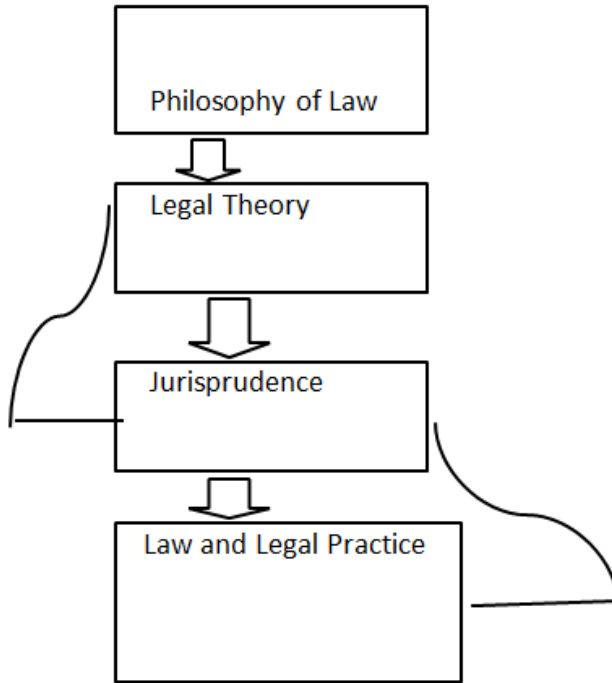
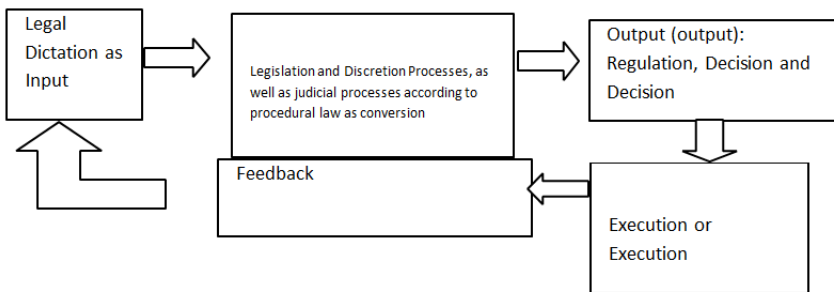


Table 2. Justice Theory Framework⁵:



5 *Ibid* p. 6

Dignified In that context, the dignified justice theory rejects arrogance, but encourages self-confidence and self-confidence in a legal system, in this case a legal system based on Pancasila. There is a principal difference between arrogance and self-belief. the first is the attitude that is not good and even precisely not good, but the second is the attitude, especially the scientific attitude that is encouraged, in a responsible manner. Those who study philosophy always try to be broad-minded and open-minded.

They, philosophers, in this case legal philosophers are invited to respect the thoughts, opinions and views of others, and do not impose the truths they believe in (*indoctrination*) to other people or parties. ⁶As a theory, the results of philosophical thinking, the dignified justice theory also has an approach method in studying and explaining or describing and explaining the object of the theory study. In this case the object of study of the dignified theory of justice is all applicable legal principles and principles.

The most distinctive approach in the theory of dignified justice towards the object of study so that this theory can be identified as having a dignified character, namely that the rules and principles of law are seen as a system. In other words, the theory of justice dignified work seeara system, the approach can also be called systemic or, as has been stated in advance that the philosophical approach (*philosophical approach*). That is why, in the theory of justice with dignity, the principles and principles of Indonesian law are also seen as being and being part of a structured legal system that applies in a positive system.

6 Teguh Prasetyo and Abdul Halim Barkatullah, *Filsafat, Teori, Jan Ilmu Hukum Pemikiran Menuju Masyarakat Yang Berkeadilan dan Bermartabat*, Raja Grafindo Persada, 2012, p. 4

In relation to the concept of positive law mentioned above, it is necessary to reiterate here that when people talk about law, then what should always be in the mind of that party is the law at this time or the law that is here and made by the competent authorities at the time. here and in this place (*ius constitution*). law is called positive law or some call it the applicable law (*Suchpositiefrecht, gelden recht or stelling recht*).⁷

It should be noted here that, systemic comes from the word system. The word system that is understood in the theory of dignified justice contains the notion of unanimity and a number of elements that are interconnected according to the order or structure / arrangement of arrangements to achieve something or fulfill a certain role or task. In expressing an answer to a system approach problem uses opinions or arguments which are philosophical descriptions that are regularly related, interrelated with one another and contain a specific purpose or purpose.

In connection with the dignified justice theory which only studies its object, namely law with a systems approach, it is necessary to add that the system is a unit consisting of elements or elements that interact with each other. Dignified justice theory views that in a system it is not desired to have conflicts or conflicts between the elements in the system. The theory of justice with dignity as a system also adheres to the view that whenever a conflict is inevitable in the system, then the conflict or incompatibility, contradiction or overlap between elements in the system can immediately be resolved by the system itself.

In connection with what has just been stated above in the positive legal system in Indonesia, the characteristics of legal pluralism can be found. The positive legal system in Indonesia

7 E. Utrecht / Moh Saleh Djindang, Pengantar Dalam Hukum Indonesia, Sinar Harapan, 1983. p. 20

does not deny the existence or existence of five major legal systems such as the Customary Law system, *Civil Law* or *Roman Law*, *Islamic Law* and *Common Law* and *Socialist Law*.

The dignified justice theory has a dignified character considering that this theory views Indonesia's positive legal system as a legal system that is tolerant of the existence of the five major legal systems and traditions that humanity has built. Given its tolerant nature of the five major legal system traditions, Ilham Basri argues that the Indonesian legal system as a system of rules that applies in Indonesia is such a complex and extensive system.

Ilham Basri considers that the five major legal systems of the world, in Indonesia's positive legal system, are elements of law. According to Ilham Basri, legal elements are interrelated, influence each other and complement each other in Indonesia's positive legal system. Therefore, the discussion of a field or element or sub-system of law in effect in Indonesia cannot be separated from others, so that the positive legal system in Indonesia is similar to the body of a human being, the legal element is like an organ in a body whose existence cannot be separated from the organ. another.⁸

Furthermore, it needs to be put forward in the theory of dignified justice which contains another basic characteristic, namely that the positive legal system is goal-oriented. In a system the whole is more than the sum and the parts. Furthermore, an oriented system with a larger system, namely the environment. The working of the parts of the system creates something of value. Furthermore, in a system the individual parts must fit together and there is a unifying force that binds the system.

⁸ Teguh Prasetyo and Arie Purnomosidi, *Membangun Hukum Berdasarkan Pancasila*. Nusa Media, Bandung, 2014. p. 41.

Next, in the system there is a control, correction or monitoring and feedback mechanism "which functions to maintain the continuity of existence and the system.

C. Moral Sense Theory

Sometimes because human perceptions change because they see their natural environment change, then a feeling arises wanting a change in implementing it. In this way, humans try to change the old system of social control with the new system of social control.⁹

Moral is the overall rules and values with regard to "good" or human good deeds¹⁰. Morality is a quality in human actions which shows that the action is right or wrong, good or bad. Morality includes the pros and cons of human actions.¹¹

Emile Durkheim's concept, law as social morality is essentially an expression of social solidarity that develops in a society.¹² Law in its moral nature as an expression of social solidarity cannot possibly be supported by punitive forces of action (whose main purpose is to wreak vengeance).¹³ According to Theodorb Geiger's theory, law is a social phenomenon, Geiger tends to deny the role of morals in law. Living together in modern society, according to Geiger, is less and less based on moral considerations. Even consensus in the field of morals is rarely found anymore. Therefore, the rules of living together

9 *Ibid*

10 Arief Sidhartha, Refleksi Tentang Hukum Pengertian- Pengertian Dasar dalam teori Hukum . Citra Aditya Bakti, Bandung, 2011, p. 223.

11 W.Poespoprodjo, Filsafat Moral Kesusilaan Dalam Teori dan Prktek, Pustaka Grafika, Bandung, 1998, p. 118

12 Satjipto Rahardjo, Teori Hukum Strategi Tertib Manusia Lintas Ruang Dan Generasi, Genta Publishing. Genta Publishing, Yogyakarta, 2010, p. 115

13 *Ibid*, p. 118

cannot be burdened with moral considerations. In other words, values no longer play a role in law.¹⁴

The basic assumption of the theory of legal discourse and morality formulated by Habermas is that in a modern plural society, social norms that are enforced can only gain their validity from human reason. Only norms based on human reason can bind discursive interactions between different groups and individuals in a plural society.¹⁵

Thomas Reid describes the moral sense theory as follows:
" *The abstract notion of moral good and ill would be of no use to direct our life, if we had not the power of applying it to particular. Actions, and determining what is morally good, and what is morally ill.*¹⁶

Extrinsic morality is morality that views actions as something that is ordered or prohibited by someone in power or by positive law, either from the original human or from God.¹⁷

The flow of moral positivism rests on positive law as opposed to *natural law*. According to this theory, actions are considered right or wrong based on:

14 *Ibid*, p. 145.

15 Reza AA Wattimena, *Melampaui Negara Hukum Klasik*, Kanisius, Yogyakarta, 2007, Hal. 159

16 *Ibid*, p. 135.

17 *Ibid* p. 119

1. Human habits¹⁸
2. State laws,
3. God's free election.

Individuals were caught in the grip of the law from the earliest days of their lives and their early views of morals were shaped by this influence. Olivecrona argues that there is never a single cause for something as complex as moral ideas. Orders instilled directly by parents, teachers and others. Thus Olivecrona concludes that the use of force (which can be seen as something that becomes the basis for law) is one of the principal factors in the formation of standards and not the other way around.¹⁹ In the context of the current legal crisis, Satjipto Rahardjo gave a distinctive assessment as the root cause. It is said that “all this time the science of law has been like sleeping in agreement with the dominant legal mind which is monopolized by legal professionals. Legal order, legal certainty, legal logic, and others are powerful professional instruments for smoothing the business *lawyering*... in fact, the current crisis should inspire legal scientists to contribute other approaches and methodologies outside of the dominant. The reason for this is simple, namely because the dominant mind or sect has failed to help us resolve the current legal crisis. The other approach and methodology in Satjipto Rahardjo's mind is law enforcement based on morals born from the concept of *Rule of Moral*. The essence of the

18 Auguste Comte, moral habits emerge from social habits and continue to change with the actions that exist in society. In contrast to Rousseau asserts that morality is based on the convention: “*Man is born free, and everywhere he is in chains. Many one believes himself the master of others, and yet he is a greater slave than they. How has this change come about? I do not know. What can render it legitimate? I believe that I can settle these questions, The social order is a sacred right which serves as a foundation for all others. This right, however, does not come from nature. It is therefore based on conventions.* Contrary to the opinion of Samuel Pufendorf, a German jurist stated that all forms of morality depend on divine will (Ibid, p. 121-127).

19 Acmad Ali, Wiwie Heryani, Resep Hukum Sebuah Bunga Rampai. Kencana, Jakarta, 2012, p. 5.

Rule of Moral is the basic values in Pancasila that have lived in communalism in Indonesian society, such as deliberation, the principles of kinship, harmony, and balance. Having reflected the word "moral" in the doctrine, it has illustrated that Indonesian society praises moral commitment and justice more than laws and regulations.²⁰

20 Adi Sulistiyono, Negara Hukum: Kekuasaan, Konsep, Dan Paradigma Moral. UNS Press, Surakarta. p 107

CYBERCRIME IN THE FIELD OF DECENCY

(INFORMATION TECHNOLOGY AND MORALITY)

Dr. Hervina Puspitosari, S.H., M.H.

BAB III

**CYBER CRIME IN THE
FIELD OF DECLARATIONS**

A. Understanding Cyber Porn

Pornography comes from the dangers of Ancient Greece, namely *pornē* and *graphos*. *Pornē* means prostitute, specifically referring to the lowest class prostitutes. In Ancient Greece not all prostitutes were despised or despised. Only pornographic women are the cheapest, least valued and unprotected prostitutes or women. They are like sexual slaves to the entire male population. *Grapos* means writing, sketch, or drawing. Thus the meaning of pornography is the writing, sketch or picture of women as cheap class prostitutes. Ade Armando in a paper published by the Ministry of Women's Empowerment defines pornography as material presented in certain media which can and or is aimed at arousing public sexual desires or exploiting sex. This particular media is print and electronic media, audio or visual.¹

American Demographic Magazine which counts the number of porn sites and the number of pages of porn sites. In 1997 there were 22,100 porn sites. In 2000 it increased to 280,000 and in 2003 it nearly quadrupled to 1.3 million porn sites. Meanwhile, there were 14 million pornographic web pages in the world in 1998 and increased sharply in 2003, namely to 260 million. In 2008, the latest data on porn site pages in the world has reached 420 million.²

Cyber Porn is an act of using *cyberspace* to create, display, distribute, publish pornography and obscene material. *Cyberspace* with technology that carries pornography, so that pornography provides a more feature-rich form of pornography,

1 Sulistyowati Irianto, *Perempuan dan Hukum, Menuju Hukum Yang Berperspektif Kesetaraan dan Keadilan*, Yayasan Obor Indonesia, Jakarta, 2006, p. 299.

2 http://novitadewi79.blogspot.com/2010/05/cyberporn-tinjau-sosiologi-hukum_11.html

pornography also undergoes media translation and makes pornography multi-featured.³

B. The Dynamics of Development of Cyber Porn

Internet is an information and communication space that promises to penetrate boundaries between countries and accelerate the spread and exchange of knowledge and ideas among scientists and scholars around the world. The internet brings us to a new space or world that is created which is called Cyberspace. This new world provides many conveniences for the development of human civilization, where residents can relate to anyone, anywhere and anytime. Many people use this technology for public business interests (e-commerce), even its use has reached private needs and has created a dependency on its own technology for its users. Cyberspace can simplify human life, namely by facilitating easy use of the internet. Simply by typing a series of words through the desired search engine (keyword), data and information will be obtained easily from various sites.

However, this fact has a further and more serious impact, as new modes of transaction and communication will become more prevalent. One of them is cyberporn (cyberspace pornography) pornography on the internet cannot be avoided because of the increasingly sophisticated flow of information and communication. This is because sex is a commodity that can bring substantial profits in business, especially through e-commerce services. Pornography that penetrates into cyberspace can be easily accessed by anyone, regardless of age, gender, educational level, or social stratification.

³ Feri Sulianta. Cyber Porn Bisnis atau Kriminal. Elex Media Komputindo, Jakarta, 2010, p. 3 - 4

Etymologically, pornography comes from two syllables, namely pornos and graphy. Pornos, which means an immoral act (in matters related to sex), or an act that is indecent or obscene. Graph is a picture or writing, which in a broad sense whose content or meaning shows or describes something immoral or attacks a sense of decency in society. Technological developments have provided space and opportunities for the spread of pornography, computers can function to duplicate files containing pornography onto VCDs, then sell or rent them to interested people. Internet is one of the means / media that is often used to conduct trade transactions, disseminate science and technology, disseminate news and information, on the other hand it is also used to disseminate pornography in the form of electronic information in the form of pictures, photos, moving images (videos), and other forms.

An interactive global communication network through internet relay chat (chattiny) facilities can be used to disseminate information about pornographic stories or images (both for the dark side and the bright side of pornography) or also known as cybersex. Cyberspace itself is a psychological space, it turns out that it opens opportunities for criminals, including presenters and netters who exchange collections of pornographic images or writings. It is undeniable that most of the internet users today are young people, so that the presence of cyberporn is entertainment in itself, especially since the pictures presented are pictures of people who are well known in society.

Images, photos, moving images (videos), and other forms are now widely circulating, both in the real world and in cyberspace. In the real world, many CDs / DVDs have been circulating, which can cost tens of thousands of rupiah. Likewise with the virtual world, its distribution is fast and easy.

Consumers can access it at internet cafes, laptops and computers connected to the internet or even just by using a cellphone. The virtual world is a world without borders that passes across countries. Once you enter data on the internet, various search engines, such as Google, will immediately store it and will be accessible anywhere, anytime and by anyone.

Internet cafe technology is possible to enter remote, mountainous, or coastal villages as long as there is telecommunications infrastructure, although it may not be as good as in urban areas.

This means that information technology through the internet has penetrated and entered the regions inevitably. On the one hand, it is useful to open the horizons of science and technology in the local community. Apart from being the spearhead in the framework of empowering information technology and telematics, internet cafes are also the spearhead for connoisseurs of porn sites.

The existence of the internet is growing rapidly and is very easily accessible to the public. In every region, especially in big cities, there are widespread internet cafes (warnet), not only in city centers, but also in areas far from the city center. Especially at this time, with the perfect market competition, internet cafe businesses offer relatively cheap and affordable prices for adults to children. Not only that, modem offers and internet installation facilities, both wired and wireless, have entered all lines of society. Every telecommunication service complements its technology with this facility. With prepaid and postpaid prices that don't drain your pockets, people can take advantage of this technology at an affordable price. At home, at school, in public places you can use this technology, even with the offer of unlimited usage. Even in public places, nowadays many are

equipped with hotspot facilities, so that without spending a penny, you can easily access internet technology.

Other conveniences can be obtained by facilitating the use of the internet. Simply by typing a series of words through the desired search engine (keyword), data and information will be obtained easily from various sites. Often times, mistakes in writing / typing in keywords can bring up unexpected data, images, or information, even if they are not being searched for and smell pornographic. This is because the internet does provide various things related to information and communication needs, both public and private. The development in the field of information technology which is increasingly rapid today is an answer to the increasingly complex human need for information and communication. The world's communication and information networks, also known as cyberspace technology, contain a collection of information that can be accessed by everyone in the form of computer networks called Internet Network. The Internet is a medium for providing information and activities for the largest commercial community and is growing very rapidly.

Cyberspace offers humans to "live" in an alternative world. The cyberspace universe has brought people in various new facets of reality that have never been imagined before, which is full of hope, fun, convenience and adventure such as teleshopping, teleconferencing, teledildonic, virtual café, virtual architecture, virtual museum, cybersex, cyberparty and cyberorgasm.

The cybernation process that raises hopes for convenience, pleasure and opportunity is not always the case because cyberspace also has a dark side that we need to pay attention to, as stated by Neill Barrett and Mark D. Rasch that the internet has a dark side, as a means of supporting crime. , where 80% of

the images on the internet are pornographic images. Cyberporn or cybersex is one of the negative sides of this information technology. This is because sex is a commodity that can bring substantial profits in business, especially through e-commerce services. Pornography that penetrates into cyberspace can be easily accessed by anyone, regardless of age, gender, educational level, or social stratification. In addition, the ease and convenience of transacting sex online, creates satisfaction and privacy, which is often argued not to do much harm, because anxiety and its negative effects cannot be felt directly.

Technological developments have provided space and opportunities for the spread of pornography, namely the use of computers to copy pornographic-laden files onto VCDs, which are then sold or rented to interested people. The internet is one of the means / media that is often used to conduct trade transactions, disseminate science and technology, disseminate news and information, on the other hand it is also used to disseminate pornography in the form of electronic information in the form of pictures, photos, cartoons, moving pictures, and other forms. others, even in sexual transactions. According to Dimitri Mahayana, the internet is a knowledge big bang marked by electromagnetic communication via satellite or cable, supported by the existence of an existing telephony network and will soon be supported by hundreds of satellites that are currently and will be launched.

Etymologically, pornography comes from two syllables, namely pornos and graphy. Pornos, which means an immoral act (in matters related to sex), or an act that is indecent or obscene. Graph is a picture or writing, which in a broad sense whose content or meaning shows or describes something immoral or attacks a sense of decency in society.

Pornography is relative, meaning that it depends on space, time, place and people and the culture of a nation. Even within a nation itself, there are variations in the definition of pornography, for example between Acehnese and Balinese, Minahasa and Bugis tribes there are very striking differences. Traditional pornography is usually done through old media such as books, magazines, films and videotapes. The presence of the Internet and cyberspace has given its own color to the issue of pornography. Pornography on the internet is related to the content or content of the site that is presented to its accessers, so the European Union Convention on Cybercrime categorizes this pornography in the category Content-related offenses contained in Title 3, article 9. There are at least four opinions related to pornography. as concluded by Jonathan Blumen, namely: "Pornography is bad because it is violence and expression (Catharine Mackinnon) Pornography must be tolerated for free speech reasons (Nadine Strossen) Pornography is good, liberating, allows us to grow as sexual beings (Wendy McElroy) Pornography is absolutely bad by religious commandment or other rule arising from a morality of prohibition ”.

An interactive global communication network through internet relay chat facilities can be used to disseminate information about pornographic stories or images (both for the dark side and the bright side of pornography) or it is also called cybersex. There are two forms of cybersex in chat rooms, namely Computer mediated interactive masturbation in real time and Computer mediated telling of interactive sexual stories (in real time) with the intent of arousal.

Meanwhile, according to Law Number 44 of 2008 concerning Pornography, pornography is: pictures, sketches, illustrations, photos, writings, voices, sounds, moving pictures,

animation, cartoons, conversations, gestures, or other forms of messages through various forms of communication media. and / or public performances, which contain obscenity or sexual exploitation that violate the norms of decency in society.

Furthermore, it is stated that the regulation of pornography is based on the one and only Godhead, respect for the dignity of humanity, diversity, legal certainty, non-discrimination, and protection of citizens.

Based on the definition of pornography contained in the law, it is broadly defined as pornography, in the sense that it is published through various forms of communication media. However, specifically the problem of pornography through cyberspace is contained in its *lex specialis*, namely Law Number 11 of 2008 concerning Electronic Information and Transactions. American Demographic Magazine which counts the number of porn sites and the number of pages of porn sites. In 1997 there were 22,100 porn sites. In 2000 it increased to 280,000 and in 2003 it nearly quadrupled to 1.3 million porn sites. Meanwhile, there were 14 million pornographic web pages in the world in 1998 and increased sharply in 2003, namely to 260 million. In 2008, the latest data on porn site pages in the world has reached 420 million. This fact is inevitable. As stated by Dr. Robert Weiss of the Sexual Recovery Institute in the Washington Times in 2000. Weiss stated that sex is the topic no. 1 searched on the Internet. Another study conducted by MSNBC / Stanford / Duquesne stated that 60% of internet visits go to sex (porn) sites. This data is enhanced by a publication from The Kaiser Family Foundation which states that 70% of teenage Internet users visit pornographic sites. Another study published by TopTenReviews.Com states that the real dominance of Internet visitors in America is people aged 35-44 years (26%).

According to LIPI researcher, Romi Satria Wahono, it is stated that every second there are 28,258 people viewing pornographic sites, every second 372 Internet users type certain keywords on search sites to find pornographic content, and the number of pornographic site pages in the world reaches 420 million. The spread of pornography in cyberspace is closely related to the pornography industry that crosses borders between countries. America is the largest contributor to 89% of pornographic sites in the world. Followed by Germany, England, Australia, Japan and the Netherlands followed behind him. although America is the largest contributor of porn sites in the world, it only ranks fourth in total revenue (revenue) from the pornography industry in the world. The winner is China, followed by South Korea and Japan. The total annual revenue of the pornography industry in the world is around 97 billion USD, this is equivalent to the total of major companies in America, namely: Microsoft, Google, Amazon, eBay, Yahoo!, Apple, Netflix and EarthLink. This shows how powerful the pornography industry is in the world. A little related to this, one article on CNET in 1999 stated that: Online pornography is an e-commerce product that has consistently ranked first in business on the Internet. From the various data on Internet pornography above, what is quite surprising is that it turns out that the audience and recipients of negative excesses of the pornography industry on the Internet are not producing countries, but rather small and developing countries as consumers. We can see from the trend of search requests with three keywords, namely xxx, porn and sex, all of which are controlled by small or developing countries such as Pakistan, South Africa, India, Bolivia, Turkey, and also Indonesia.

According to Dr. Mary Anne Layden a researcher from the University of Pennsylvania, cyberporn brings bad impacts, namely: increased crime. He said, "I have provided assistance to perpetrators and victims of sexual violence for 13 years. And I have never handled 1 case that was not caused by pornography. Pornography triggers aggressiveness and in the end triggers a person to commit criminal acts. " Second, psychological and educational risks. According to VB Cline, a psychosocial and pornographic problem riserter, revealed that there are 4 stages of sexual addiction in pornography consumers: (1) Addiction or addiction, (2) Escalation, namely: increasing the quality of addiction to increasingly deviant behavior, (3) Decentization, namely: decreasing sensitivity, and (4) Acting Out, namely: Pornography addicts begin to practice. Third, health risks. According to the Indonesian Health Division of ASA Dewi Inong Irara, a specialist in skin and genital diseases, explained the health risks caused by sexually transmitted diseases (STDs) due to pornography are genital infections, complications, chronic genital disease, genital cancer, infectious babies in the womb, and HIV / AIDS. Fourth, cultural risk (shifting values). Now it can be seen clearly due to the pornography industry, many cultural values in society are no longer being ignored, such as the life of the night world which is synonymous with prostitution places and the increasing number of pornographers.

In order to prevent and overcome the increasing number of access to porn sites, criminal law can be used as a tool even though it is only symptomatic treatment. Crime prevention policies or efforts are essentially an integral part of efforts to protect society (social defense) and efforts to achieve social welfare. Therefore it can be said that the ultimate goal or main goal of criminal politics is "protection of the community to achieve social welfare". Crime

prevention efforts need to be pursued with a policy approach that includes integration (integrality) between criminal politics and social politics and integration between crime prevention efforts with penal and non-penal. An integral crime prevention effort also means that society with all its potential must be seen as part of criminal politics.

C. Cyber Child Pornography

The development and increase of access to the internet, as well as the use of home-computer technology, have dramatically changed the way pornographic images are distributed due to the easy access to the internet and the lower costs of producing and distributing these images, especially across national borders. Computer technology has transformed the production of these images into a (*sophisticated global industry sophisticated global cottage industry*).⁴ The perpetrators of child pornography crimes (molesters) currently use computer technology to organize and collect these illegal images. Besides, they also use the Internet to increase the number of these collections of images. The creation of these illegal pictures of children is very expensive on the Internet, as the perpetrators have a higher status than the actors in this field who still traditionally distribute and trade these images.⁵ As noted above, possessing or distributing so-called child pornography is a crime under the federal laws and the laws of the 50 states in the United States. According to researchers and law enforcement officials, this crime is increasing and the increase is due to increased use of the internet.⁶

Every country has different definitions of children. The United Nations (UN) in the *Convention on the Right of*

4 Sutan Remy Syahdeini. 2009. *Kejahatan dan Tindak Pidana Komputer*. Pustaka Utama Grafiti: Jakarta. p 178.

5 *Ibid.* p. 179

6 *Ibid.*

the Child (CRC) or KHA applies the definition of a child as follows: "Child means every human being under the age of 18 years, except according to the law that applies to children, maturity is attained. earlier". Meanwhile, Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection: "A child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb". After the birth of the Child Protection Law, which is categorized as a *lex specialis*, all other provisions regarding the definition of children must be adjusted, including policies that are born relating to the fulfillment of children's rights.

Regarding the definition of children, several laws define children as follows:

1. Law Number 1 of 1974 concerning marriage, for example, requires a marriage age of 16 years for women and 19 years for boys.
2. Law Number 4 of 1974 concerning Child Welfare, defines a child aged 21 years and has never been married.
3. Law Number 39 of 1999 concerning Human Rights, states that a child is a person who is not yet 18 years old and has never been married.
4. Law Number 13 of 2003 concerning Manpower, allows a working age of 15 years.
5. Law Number 20 of 2003 concerning the National Education System imposes 9 Years Compulsory Education, which connotes children aged 7 to 15 years.
6. Based on the Supreme Court Decision as outlined in Law Number 11 of 2012 concerning the Criminal Justice System for Children, what is meant by children are children who have reached 12 (twelve) years of age, but are not yet 18 (eighteen) years old.

Laws and regulations on child pornography as follows⁷ :

a. United States Law In

response to the emergence of this increasingly rampant crime, the US Department of Justice (USDoJ) has taken various steps including creating the Internet Crimes Against Children (ICAC) Task Force. The move is to help states and state law enforcement agencies deal with these crimes and finance units of federal state law enforcement agencies that specialize in Internet Child Exploitation.

It is illegal to produce, own or distribute images (images or photos) of children under 18 (minors) who engage in sexual behavior. Although several states in the United States and many countries allow sexual conduct and marriage between adults and children (minors), visual depictions (photos or films) that depict such sexual behavior are prohibited by law. - federal legislation in the United States. Likewise, sexual behavior between children or by a child is tolerated but visual depictions (photos, films) featuring such sexual behavior are also prohibited.

All states in the United States and the District of Columbia have laws on child pornography. Therefore, a person who violates federal law with the pleasure of such images (photographs, films, etc.) may also face additional claims under the laws of the state concerned in addition to prosecution under federal law.

United States Federal Law defines a minor / a child as a person who is less than 18 years of age. While most states adhere to the provisions of the federal law, there are several states that define a minor or child as a young person younger

7 Sutan Remy Syahdeini. Op. Cit. p. 183-187

than 14, 16 or 17 years. Delaware law defines everyone who is 18 years old and less than 18 years old, including the definition of child.

b. Canadian Act

Bill C-15A, which is a Canadian law intended to amend the Criminal Code in connection with sexual exploitation of children on the internet, was approved by the King in June 22002. The amendment authorizes to law enforcers to take actions related to the new crimes. The law does not only cover criminal acts in the form of possessing and distributing child pornography, but also criminal acts in the form of accessing child pornography. The new amendment also criminalizes the offense to commucicate with children via a computer system which aims to facilitate certain sexual offenses such as offline or abduction.

Child pornography according to Canadian law is an indictable offence for which any offender is liable to imprisonment for a term up to five or ten years, depending on the offence or an offence punishable on summary conviction.

Canada's Criminal Code criminalizes the following acts:

- 1) Possess any child pornography (section 163.1 (4))
- 2) Make, print, publish or possess for the purpose of publication any child pornography (section 163.1 (2))
- 3) Import, distribute , sell pr possess for the purpose of distributions of sale any child pornography (section 163.1 (3))

Amendments to section 163.1 (3) of the Canadian Penal Code, made in June 2002, including transmission is to ensure that the offense applies also for the act of distributing child

pornography via the internet including by means of e-mail and posting such material on a website. A clause is added that the storage of a computer system (such as an Internet Service Provider (ISP) is not a criminal act if the storage is solely intended to provide telecommunications facilities used by the person who commits the crime.

In relation to the internet, possession of child pornography usually requires that the perpetrator downloads material onto a computer hard drive, disk or printer Sections 163.1 (4.1) of the Canadian Criminal Code, which was added in 2002, defines as a criminal offense an act of access child pornography through such means as internet browsers (section 163.1 (4.2). In the case of summary convictions the perpetrator is liable to a fine of \$ 2,000, and / or a maximum imprisonment of six months. Meanwhile, for an indication, the penalty is imprisonment of up to five years. 163.1 (6) and (7) Canadian Criminal Code me broaden the defense of artistic merit, educational, scientific or medical purpose and serving the public good, to apply to existing child pornography crimes.

In 2002, Sections 172.1 was added to the Canadian Criminal Code to criminalize electronic communication with a person believed to be a child for the purpose of facilitating the commission of sexual offence. Depending on the crime committed, the age of the victim is between 14 and 18 years.

Internet offline children can be punished based on summary of conviction. The maximum penalty for the offense is a fine of \$ 2,000, and / or a maximum imprisonment of six months. For an indictment, the punishment is a maximum of five years imprisonment.

Whereas for a child perpetrator of a criminal act, the responsibilities are as follows:

Limitation of mention between a child and an adult can be distinguished from the age of a child. Because with a person's biological and psychological age he can be categorized as a child or not, although in certain cases the age limit cannot be used as a benchmark whether a person can be said to be legally competent or not. However, in general, the age limit of a person will make him obtain certain rights and perform certain obligations.

In the context of legal liability, especially in criminal law, the age limit is very important. This is considered as a benchmark whether a person is considered by law to be accountable for his criminal act or not. A criminal act committed by a minor who has not been able to clearly distinguish the consequences of his criminal act is clearly a situation where his ability / awareness is in doubt that he has committed a criminal act. This happens because children, both psychologically and biologically, have not been able to maintain awareness of their responsibilities.

Juridically, the laws and regulations in Indonesia provide different limits on the definition of children.⁸ The most basic principle that distinguishes children from adults is age and legal action (having been married) before adulthood. Several laws provide different limitations regarding the age limit of children so that their rights and obligations are relatively different. For example, the age limit is under 16 years, 17, 18, 19, 21 years. These limits are closely related

⁸ The definition of child is always related to the age limit of the child. In the most general (universal) limits the age of children is limited by a certain age and is required not to marry before reaching adulthood.

to issues of maturity so that they can or have not been able to carry out certain legal actions. The age limit, if identified, can be seen in the table below:

Table 8. Child Age Limit⁹

No	Regulation / Law	Child Age Limit
1	Criminal Code Article 45	Not 16 years of age and never married
2	Laws Civil Code	Not yet 21 years old and unmarried
3	Law no. 1 of 1974 concerning Marriage	Aged 16 years for women and 19 years for men
4	Law No. 1 of 1979 concerning Child Welfare	Not yet 21 years old and unmarried
5	Law no. 39 of 1999 concerning Human Rights	under 18 years of age and have never been married, including children who are still in the womb if it is in their interests
6	Law Number 11 of 2012 concerning the Criminal Justice System for Children	Minimum age limit of responsibility for children at the age of 12 years old but not yet 18 years old. Determination of 12 years of age is based on the Constitutional Court Decision No. 1 / PUU-VIII / 2010, which in its consideration states that it is necessary to set an age limit for children to protect children's constitutional rights, especially the right to protection and the right to grow and develop.
7	Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection	Children are someone who is not yet 18 (eighteen) years old, including children who are still in the womb.

⁹ Hj. DS. Dewi and Fatahillah A. Gratitude, Penerapan Restoratif Justice di Pengadilan Anak di Indonesia. (Depok: Indie Publishing, 2011), p. 8.

No	Regulation / Law	Child Age Limit
8	Provisions regarding child support for Civil Servants (PNS)	Children still receive allowances from the government until the age of 25 if they are still in the educational process.

In a broader and more detailed scope, the age limits for children can be seen in the following table:

Table 9.¹⁰

No	Name of Law	Child Age Limit
1	Article 330 of the Civil Code	21 years
2	Article 1 paragraph (6) of Law no. 1 of 1985 (LN 1985 No. 2), concerning General Elections; jo. Article 13 of Law no. 12 of 2003 (LN 2003 No. 37), concerning the Election for members of the DPR, DPD and DPRD.	Age of voting rights 17 years
3	Article 6 letter (q), article 7 of Law no. 23 of 2003 (LN 2003 No. 93), regarding the Election of the President and Vice President	If you are 17 years old, the right to be elected as President / Vice President is at least 35 years old
4	Article 4 letter (h), article 5 paragraph (1) Law No.5 of 1979 (L of 1979 No. 58), concerning Village Government; jo. Article 97 letter (e) Law No.22 of 1999 concerning Regional Autonomy.	Right to be elected as Village Head aged 25 years and the right to vote 17 years

¹⁰ Bunadi Hidayat, *Pemidanaan Anak di Bawah Umur*. Bandung: Alumni, 2009, p. 14-15

No	Name of Law	Child Age Limit
5	Article 58 letter (d), article 68 of Law No. 32 of 2004 (LN 2004 No. 25), concerning Regional Government. The	right to be elected as the Head / Regional Head aged 30 years and the right to vote 17 years
6	Article 1 paragraph (7) Law No.3 of 1985 (LN 1985 No. 12) regarding Political Parties and Golkar jo. Article 2 number (1). Article 10 paragraph (1) Law no. Law No. 31 2002 (LN 2002 No. 138) concerning Political Parties	Founders of Political Parties must be 21 years old and become members of political parties aged 17 years
7	Article 1 paragraph (2) of Law no. 2 of 1985 (LN 1985 No.2), concerning the Composition and Position of the MPR and DPR; jo. Article 1 number (5) Law no. 22 of 2003 (LN 2003 No. 93), concerning the Composition and Position of the MPR, DPR, DPD and DPRD	Right to become members of the People's Representative Council aged 21 years
8	Article 7 paragraph (1) Law no. 1 of 1974 (LN 1974 No.1), concerning Marriage of	Men aged 19 years and women aged 16 years
9	Article 1 paragraph (2) Law no. 4 of 1979 (LN 1979 no. 32), concerning the Welfare of Children	21 years of age

No	Name of Law	Child Age Limit
10	Article 1 number (1) Law no. 23 of 2002 (LN of 2002 No. 109), concerning Protection of Children	18 years
11	Article 1 paragraph (5) of Law no. 39 of 1999 (LN 1999 No. 165), calm Human Rights (HAM)	18 years
12	Article 12 Law no. 14 of 1969 (LN of 1969 No. 6), concerning the Basic Provisions Regarding Labor.	Persons who can enter into a 21 year old work agreement
13	Article 17 paragraph (1) of Law no. 8 of 1974 (LN 1974 No. 8) concerning Basic Personnel; jo. UU no. 43 of 1999 (LN of 1999 No. 169) concerning Amendments to Law no. 8 of 1974 concerning the Principles of Civil Service	Children are entitled to a pension aged 25 years
14	Article 1 number (26), article 76 paragraph (1) Law no. 3 of 2003 (LN 2003 No. 39) concerning Labor	Childare people who are under 18 years of age
15	Article 19 of Law no. 15 of 2003 concerning the Crime of Terrorism	Childis a person aged 18 years

No	Name of Law	Child Age Limit
16	Article 1 Number 3 Law Number 11 of 2012 concerning the Criminal Justice System for Children	The minimum age limit for accountability for children is 12 years old but not yet 18 years old. Determination of 12 years of age is based on the Constitutional Court Decision No. 1 / PUU-VIII / 2010, which in its consideration states that it is necessary to set an age limit for children to protect children's constitutional rights, especially the right to protection and the right to grow and develop.
17	Article 110 paragraphs (1 and 2) of the Draft Law on the New Criminal Code (2004)	Children under 12 years of age cannot be convicted, those who can be convicted / acted are those aged 12-18 years. Their

difference age limits for children above results in different treatment of all consequences. legal acts committed. This depends on the intended interests as the basis for the legal action. In the realm of criminal law, the age limit of children is an important matter, because it will affect the responsibilities that will be faced by the child. Therefore, suggesting the age limit of criminal responsibility against children is very relevant.

The issue of criminal responsibility (*criminal liability / toerekeningvatsbaarheid*) to a child cannot be separated from the age limit and the understanding of the child himself. The legal provisions regarding the age limit for child criminal responsibility for children who commit criminal acts are regulated in the criminal law in Indonesia, namely in the Criminal Code which was replaced by Law Number 3 of 1997 concerning Juvenile Court (Juvenile Court Law), and finally

replaced by Law Number 11 of 2012 concerning the Criminal Justice System for Children (UU SPPA).

In the conceptual definition, what is meant by criminal liability is the forwarding of an objective reproach to a criminal act based on the provisions of the applicable law. Subjectively, the maker who meets the requirements in the (criminal) law can be subject to punishment for his actions. Meanwhile, the requirements for criminal responsibility or the imposition of a crime, then there must be an element of guilt in the form of deliberate action or negligence. And what is meant by child is someone who has not reached the age of 18 years. In the case of a delinquent child, the child referred to is a child who is 14 (fourteen) years old, but not yet 18 (eighteen) years old, who is suspected of having committed a criminal act. The criminal law in question is a law which aims to determine what actions or who can be convicted (including the age limit of criminal responsibility), as well as what sanctions are available.

The provisions on the age limit for criminal responsibility for children in the Criminal Code still have shortcomings. The shortcomings are:¹¹

1. In the Criminal Code there is no minimum age limit for child criminal responsibility, while *The Beijing Rules* recognize the concept of age limit for criminal responsibility for juveniles.
2. In addition to the Criminal Code, there is no explanation regarding the institutions that support child protection in law.
3. The rules regarding child criminal law in the Criminal Code are too simple, not in accordance with the development of Indonesian society.

11 Bunadi Hidayat, *Pemidanaan Anak di Bawah Umur Alumni*, Bandung, 2010, p. 43-44.

Because historically the age of the Criminal Code is quite long and too very simple and prioritizes the theory of retaliation in its regulations regarding the criminal law of children, the KUHP regulations that specifically regulate child criminal law, especially Articles 45,46,47 are deleted and replaced by laws that are more in nature. specifically, namely Law Number 3 of 1997 concerning Juvenile Court.

The Juvenile Court Law stipulates that the age of criminal responsibility for children has reached the age of 8 (eight) years but has not reached the age of 18 (eighteen) years and has never been married. The philosophical ideas about determining the age limit for criminal responsibility in the Juvenile Court Law are:
The

- a. determination of the age limit for criminal responsibility is based on the consideration that psychologically, at that age the child already has a sense of responsibility.¹²
- b. There is an excuse for forgiveness for a child who commits a crime but is not yet 8 years old.¹³
- c. Improve legal protection for children.¹⁴
- d. According to the legislature, the maker of the Juvenile Court Law at that time, sociologically, psychologically, and pedagogically an 8-year-old child is accountable for his actions.¹⁵
- e. Philosophical ideas are also contained in the Manuscript of Law Number 3 of 1997 concerning Juvenile Court in the explanation section which explains that it is necessary to consider the position of the child with all its characteristics

12 Maidin Gultom, *Perlindungan Hukum Terhadap Anak*, Refika Aditama, Bandung, 2006, p. 84.

13 Minutes of the Working Meeting of the Special Committee on Juvenile Justice Bill, September 27, 1996, p. 38.

14 Minutes of the Special Committee Working Meeting on the Draft Child Justice Bill, Wednesday, 9 Oktober 1996, p. 4.

15 See Elucidation of Article 4 Paragraph 1 of the Juvenile Court Law.

and characteristics, so it is necessary to differentiate treatment and threats in order to provide the right direction in coaching and child protection.¹⁶

- f. The government's attempt in 1957 by sending several experts from several departments abroad resulted *agreement* in an oral between the Attorney General's Office, the Police and the Judiciary to provide special treatment for children who had committed criminal acts, as well as the ideas in the Minutes of the Special Committee Working Meeting. The Draft Law on Juvenile Justice with the Minister of Justice of the Republic of Indonesia is a historical idea of shifting the age limit for criminal responsibility for children from the age limit stipulated in the Criminal Code.

However, history shows that in the end, Law Number 3 Year 1997 regarding Children's Court was tested in the Constitutional Court (MK). This examination resulted in the Constitutional Court Decision Number I / PUU-VIII / 2010 finally granted some of the petitioners' petition, namely Article 1 Number 2 letter b, Article 4 Paragraph 1, and Article 5 Paragraph 1 of Law Number 3 Year 1997 regarding Juvenile Courts which declared conditional unconstitutional. In this decision, the Constitutional Court expressed its opinion regarding the age of criminal responsibility for children being 12 years.

Finally, the government passed a new law which it hoped would be more in line with international ideals of protecting children. The enactment of Law Number 11 of 2012 concerning the Criminal Justice System for Children determines the age limit for new criminal responsibility for children who are 12 (twelve) years old, but not yet 18 (eighteen) years old. There are philosophical ideas in determining the age limit for criminal

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See the explanation of Law No. 3 of 1997 on Juvenile Court.

responsibility of children in the SPPA Law, these ideas are as follows:

1. Consideration of adolescence as a critical period for child development, psychologically is still very vulnerable to environmental influences.¹⁷
2. Restorative and diversion approaches that are suitable to be applied in juvenile criminal law.¹⁸
3. Avoiding stigmatization of children in conflict with the law.¹⁹
4. After 14 years, they can be deprived of their liberty. So, those who are 12 are indeed processed but cannot be deprived of their independence as a form of punishment.²⁰
5. Whereas marital status should not be used as an excuse to change the status of a person who is basically still a child, who is called a child, should only be limited by time, not by marital status.²¹

In the provisions of international instruments, the determination of the age limit between 8 and 18 years is in line with what is stated in the *Standard Minimum Rule for the Administration of Juvenile Justice (The Beijing Rules)*.

In Rule 4, it is stated that in legal systems that recognize the concept of age of criminal responsibility for children, the initial age cannot be determined at a lower age level considering the realities of emotional, mental and intellectual maturity. In his explanation, it was emphasized that the minimum age of criminal responsibility varies widely due to history and culture. The

17 Minutes of the Panja General Hearing Meeting on the Child Criminal Justice System Bill with the Unicef Representative at the event receiving input related to the Bill on the Criminal Justice System, Tuesday 21 February 2012, p. 3.

18 *Ibid*

19 *Ibid.* p. 7

20 Minutes of Committee III DPR RI Committee Meeting on Wednesday, March 21, 2012.

21 Minutes of DPR RI Committee III Committee Meeting on Tuesday, February 14, 2012

modern approach will consider whether a child can live up to the moral and psychological components of criminal responsibility; this means whether a child, based on the clarity of his mind and individual understanding, can be held responsible for inherently anti-social behavior. If the age of criminal responsibility is set too low or if there is a lower age limit at all, the definition of responsibility will have no meaning. In general, there is a close relationship between the notion of responsibility for criminal behavior or those that violate criminal law with social rights and responsibilities, such as marital status, national maturity and others.²²

As a comparison, it can be seen that the age limit set in the UK, where the minimum age is determined, in Sweden is 15 years, while in Australia children under 8 years cannot be held accountable for the offense or crime they have committed. On the other hand, the Latin America seminar at Rio de Janeiro in 1953, called for each country to set the same age limit in criminal legislation, which should not be less than 14 years old. Thus, children under 14 years of age are considered unable to be held accountable.²³

In European countries the variation is 16 years, while in Belgium and Sweden the age is 21 years. The jurisdiction in the United States has set an age limit of 16 to 21 years, depending on the state and most states have the age of 18. In Latin America 14 to 20 years, the maximum age limit depends on the country, but the average is 18 years. In Asia it is 15 to 20 years old, and in Japan it is 20 years old.

22 Nandang Sambas, *Child Criminal System Reform in Indonesia*, Yogyakarta: Graha Ilmu, 2010, p. 201.

23 Ida Z Fahrudin., *Beberapa Catatan Mengenai Pendidikan Anak di Bandung*. Bandung: Unpad Faculty of Law, 1961, p 4.

The same thing can be seen from the results of UN surveys in North American countries, in addition to being determined as stated above. In certain cases, the age limit for children is 21 years. In some provisions including the federal government and the states of Columbia, the maximum age limit is 18 years. However, in some areas there is an overlap between the boundaries of a criminal act and juvenile delinquency and juvenile justice. In some other states the age limit is 7 years. Some countries, criminal justice has a special authority to the perpetrators of criminal acts, especially for premeditated murder(*murder*), or on big cases. In other countries, for special reasons or for some similar crimes.²⁴

Some states have a minimum age limit of 7 years, based on the *Common Law Rule*, which states that a child under 7 cannot be held responsible for a crime. Meanwhile, the *National Advisory Commission for The Law Enforcement Assistance Administration*, has recommended that all states set an age limit of 10 years.²⁵

Some states that have a maximum age limit of 17 years extend that age limit to a child *delinquent* to 18 years. While some other states have an age limit of 20 years, even more than 40 states have an age limit of 21 years.²⁶

In several Asian and Far Eastern countries, various differences were noted in determining the age limits for child responsibility. In the laws in force in some Far Eastern countries, dividing offenders is called "*child*" and "*juvenile*".²⁷

24 United Nations, *Comparative Survey on Juvenile Delinquency*, Part 1. North America (New York: Department of Social Affairs Devition of Social Welfare, 1953), p. 6.

25 Hazel B. Kapper and J. Israel, *Introduction To The Criminal Justice System*, Second Edition, 1979., p. 390-391.

26 *Ibid.*

27 United Nations, *Comparative 'Suryey on Juvenile Delinquency*, Part 1V.

In Burma (Myanmar), India, and Pakistan, the *age limits of juvenile delinquency* are between 7 and 16 years. However, it is not considered as a perpetrator of an offense for children aged 7 to 17 12 years. Except in Bombay, the age limit for "children" between 7 and 14 years, * and "youth" / "youth" between 14 and 16 years.

In Japan, the age limit for children is between 14 and 20 years, the Philippines between the ages of 9 and 16 are considered bad boys, but children between 9 and 15 years old cannot be held accountable. Whereas in Thailand, children aged 7 to 18 are considered to be naughty, but the age limit for "children" is determined: between 7 and 14 years, and "adolescents" between 14 and 18 years.

In several Middle Eastern countries, in the criminal laws of Egypt, Syria, Lebanon, and Iraq, there are provisions regarding child delinquency committed by boys and girls aged 7 years, but have not reached 15 years and found an error, against the perpetrator is subject to criminal sanctions. On the other hand, the criminal laws of Iran and Turkey strictly stipulate the age limit for juvenile delinquents between the ages of 11 and 18. In Saudi Arabia and Yemen there are no criminal laws or special laws for child delinquents, but in the Islamic Scriptures and Islamic law it is explained that, a child is considered a naughty child if he has been sentenced as a perpetrator after reaching adolescence, but not yet reaching adulthood.

In the Korean Criminal Code, the minimum age limit for a criminal liability is 14 years, as is also used in Japan and Norway. In *Article 9 of The Korean Criminal Code*, it is stated that "a person who is under 14 years of age cannot be convicted for the

Asia and Far East (New York: Department of Social Affairs Devition of Social Welfare, 1953), p. 1.

criminal act he has committed.”²⁸*Section 46 of The Norwegian Penal Code* states “No one can be convicted for an act he has committed before he meets the age of 14. ”²⁹ Likewise in *Article 41 Criminal Statute*, it is stated that:” The actions of a person who is 14 years old are not punished. ”³⁰

There are differences in determining the minimum and maximum age limits for child criminal responsibility, in fact it is not an impossible thing. the determination of these criteria is adjusted to the situation, condition, and historical background as well as the culture of each country As stated in *Rule 4 of the Beijing Rules* that in a legal system that recognizes the age limit for accountability it should not be set for children, the beginning of the age limit of accountability should not be established. set too low considering the back factor emotional, mental and intellectual handling of children.

By looking at the various provisions on the minimum age limit, both applicable in several countries as well as guidelines as stipulated in international instruments; Given the objective condition of the Indonesian state, which is classified as a developing country, the development of society in general, both in the social, political and economic fields, is still relatively backward. Either directly or indirectly, this has an impact on the growth and development of children in general. Therefore, the minimum age limit of 8 years for children who can be held

28 Gerhard OW Muller (editor-in-chief), *The Korean Criminal Code*, Fred B. Rothman & Co. South Hackensack. NJ Sweet & Maxwell Limited, London, New York University, New York 1960. See also Andi Hamzah (editor), *Korean Criminal Code for Comparison. Series of Criminal Code for Foreign Countries* (Jakarta: Ghalia Indonesia, 1987), p. 56.

29 Harland Scholdeger, (Translated), *The Penal Code*, Fred B. Rothman & Co. South Hackensack. NJ Sweet & Maxwell limited, London, New York University, New York, 1961.

30 Andi Hamzah, , *KUHP Korea Sebagai Perbandingan. Seri KUHP Negara Negara Asing* (Jakarta: Ghalia Indonesia, 1987), p. 84.

responsible for the crime is deemed too low. Thus, determining the age limit that is too low is not in line with the nature of providing protection for children. Likewise, the child's right to obtain protection against the environment that could harm or hinder their growth and development naturally, does not go well, according to what is expected.³¹

Judging from the aspect of psychological development, as expressed by experts, in general, the stages of development between children and adolescents / youths globally, adolescence / youth takes place between the ages of 12 and 21 years. EJ Monks and friends reveal in the books *Angelsaksis*, the term youth (*youth*), which is a transitional period between adolescence and adulthood. Also separated between adolescence age between 12 to 18 years, and youth age between 19 to 24 years.³² Meanwhile, Zakiah Daradjat divides the human age range from womb to old age into four age groups: children, adolescents, adults, and old people. Children are generally agreed upon from birth, even from fetuses in the womb up to 12 years of age.

In line with Zakiah Daradjat, Kartini Kartono said that someone who has a logical and rational attitude will eventually reach the age of 13-14 years. At this age the emotionality of children decreases, while the elements of intellect and reason (ratio-thinking) become increasingly prominent. 'The objective

31 Law Number 4 of 1979 *concerning Child Welfare*, Article 2 paragraph (2) states that

1. children have the right to welfare, care, care and guidance based on affection both within their families and in special care to grow and develop naturally.
2. Children have the right to services to develop their abilities and social life, in accordance with the culture and personality of the nation, to become good and useful citizens.
3. Children have the right to care and protection, both during pregnancy and after birth.
4. Children have the right to protection of the environment that can harm or hinder their normal growth and development.

32 Sudarsono. *Etika Islam Tentang Kenakalan Remaja*. (Bandung: Rineka Cipta, 1991), p 8.

interest in the world around him is growing. However, he also said that at this time children were no longer controlled by *endogenous* or *impulsesinternal impulses* in their actions and thoughts but were more stimulated by external stimuli.³³

Regarding the development of the child's observation function, William Stem in his theory reveals four stages in the development of the child's observation function, namely:

1. Stage-state, 0-8 years. In addition to getting a vague total picture, the child now observes objects and people closely;
2. Stage-action, 8-9 years. Children take a keen interest in the work and actions of adults and in the behavior of animals;
3. Stage-relationship, 9-10 years and beyond. Children observe relations / relationships in the dimensions of mang and time; also the causal relationship of things and events;
4. Stage-subject (characteristic): the child begins to analyze the results of his observations, by constructing the characteristics of the object.³⁴

Oswald Kroh, in his book "*Die Psykologie des Grundschulkindes*" (Psychology of Elementary School Children), states that there are four periods in the development of a child's maturity function, namely:

1. Synthesis-fantasy period, 7-8 years. This means that all observations are an impression of totality, its character is still vague. Furthermore, these impressions are complemented by children's fantasies. association with this the child is fond of fairy tales, sage, myths, legends, tales and imaginary stories;
2. Period of naive realism, 8-19 years. Children are able to distinguish parts, but have not been able to connect one another in the totality of the relationship. Fantasy elements have been replaced by concrete observations;

33 Kartini Kartono. Psikologi Anak (Bandung: Alumni, 1979), p. 137.

34 Kartini Kartono, *Child Psychology* (Bandung: Alumni, 1979), p. 139.

3. Critical observation period, 10-12 years. The observations are realistic and critical. Children are able to carry out a logical synthesis, because their understanding, insight and reason have reached maturity. The child is now able to connect parts as a whole or into a single structure;
4. Subjective phase, 12-14 years. Emotional or feeling elements reappear, and very strongly influence the child's assessment of all observations. This period is limited by the symptoms of the second puberty (the period against the second).³⁵

Taking into account the developmental age of children from a psychological aspect, it can be seen that children under the age of 12 are still in an unstable condition. Even though the child is able to think rationally, can make an assessment of something, his thoughts and views are still partial, not totally. However, children over 12 years of age do not necessarily mean that they are rationally or emotionally mature, because external elements have a greater effect on emotional and emotional conditions. Therefore they are not yet fully responsible for all the consequences of their actions and actions.

If we pay attention to Article 2 of Law Number 168 of 1948 concerning the Law on Children in Japan, a person is categorized as a “child” or “*shoonen*” person who is less than 20 years old. Meanwhile, the definition of a child that can be submitted to the Family Court hearing includes:

1. Child, crime (“*hanzaishoonen / iuvenile offender*”), namely children aged at least 14 years and not more than 20 years who have committed a crime.
2. Children offenders of the law (“*shokuho oshoonen / children offender*”), namely children aged less than 14 years who have committed crimes.

35 Kartini Kartono, *Child Psychology* (Bandung: Alumni, 1979), p. 140.

3. Children who are pre-delinquents (“*guhan-shoonen / pre-delinquens juvenile*”), are children who have a tendency to misbehave and can be seen as committing a law violation.

In the provisions of the Children's Law in Japan, although children under 14 years old can be submitted to the family court, the child cannot be convicted. According to the Japanese Criminal Code, people aged less than 14 years are considered unable to be responsible for their actions, so that children are treated differently in juvenile justice.³⁶

Based on the description above, the following shows the age limit of children who can be held liable for criminal acts according to Sri Widowati Wiratno Soekito's records in several countries as follows:

1. United States, there are 27 states that have a maximum age limit of 18 years, 6 states have the maximum age limit is 17 years, and other states the maximum age limit is 16 years. While the minimum age is 8 years on average;
2. UK, the maximum age limit is 16 years and the minimum age limit is 12 years;
3. Australia, the maximum age limit is 18 years and the minimum age limit is 8 years;
4. Netherlands, the maximum age limit is 18 years and the minimum age limit is 12 years;
5. Cambodia, the maximum age limit is 18 years and the minimum age limit is 15 years;
6. Sri Lanka, the maximum age limit is 16 years and the minimum age limit is 8 years;
7. Taiwan, the maximum age limit is 18 years and the minimum age limit is 14 years;

36 Nandang Sambas. *Pembaruan Sistem Pemidanaan Anak di Indonesia*. Bandung: Graha Ilmu, 2010. p. 207.

8. Japan and Korea, the maximum age limit is 20 years and the minimum age limit is 14 years;
9. Iran, the maximum age limit is 18 years and the minimum age limit is 6 years;
10. Philippines, the maximum age limit is 16 years and the minimum age limit is 7 years;
11. Malaysia, the maximum age limit is 18 years and the minimum age limit is 7 years;
12. Singapore, the maximum age limit is 16 years and the minimum age limit is 7 years.³⁷

Determination of the minimum and maximum age limits is necessary because in these countries there is a difference between a *delinquent child* (a child who commits an offense) and a *dependent*. The reason for distinguishing these two terms is because the *delinquent child* recognizes the minimum age limit, while the *neglected child (dependent)* does not recognize *minors*.

In this regard, Sri Widowati Wiratno Soekito argued that *juvenile delinquency* was determined on the basis of the age of the perpetrators and based on the types of behavior of the perpetrators to be submitted to juvenile court. Most countries have a minimum age limit and a maximum age limit for a child to be admitted to juvenile court with the understanding that the minimum age limit only applies to *delinquent children*. While *dependents* or *neglected child* is no minimum age limit.

In addition to the age limit for children as mentioned above, in the realm of law and other disciplines, in this regard it can be noted, among others :

³⁷ Sri Widowati Wiratno Soekito, *Wanita dalam Hukum*. Jakarta: LP3ES, 1983, p. 11

1. According to Soepomo that a person based on customary law can be declared an adult if he is already *mentas gawe* or *strong gawe*.³⁸
2. Moh. Rivai said that according to Islamic law, a child can be declared an adult if it has reached maturity (can already distinguish between good and bad) or has experienced physical development, such as: for women there is growth of genital hair, development of breasts, and has expelled. puerperal or menstrual blood. Meanwhile, for men, they have dreamed of having sex with the opposite sex, there is the growth of a mustache, and experiencing an enlarged voice change (Javanese: *agor-agori*). *Jumhur Ulama* believes that the average maturity of children is 9 years old.³⁹
3. Monks said that psychologically, girls mature faster than boys, girls are aged 14-15 years and boys are 16-17 years old.⁴⁰

Based on the uncertainty about the definition and age limitation of children above, the child criminal law instrument and the formulation of the articles put forward, according to the author, for the time being in this connection, the age of the child who can be held liable for criminal responsibility is 8 (eight).⁴¹ years and not yet 18 years of age and has never been married.⁴² This limit is made to respond to age restrictions so

38 Soepomo, *Asas-Asas hukum Adat*. Jakarta: Alumni, 1979, p. 13.

39 Bunadi Hidayat. *Pemidanaan Anak di Bawah Umur*. Bandung: Alumni, 2010, p. 16.

40 FJ Monks. *Psikologi Perkembangan*. (Yogyakarta: Gajah Mada University Press, 1994), p. 14.

41 In the next discussion, the author proposes that the minimum limit for a child to be criminally responsible is 12 (twelve) years.

42 The problem is if a child between the ages of 8 and 18 is raped for some reason (for example: raped) so that he becomes pregnant and gives birth, is he still categorized as a child or even considered an adult?: The author believes that in this case an approach should be used. *MotS Znya* to the person concerned is categorized as an adult, but if it is committing a crime the law enforcers, especially the judge, must carefully consider the mitigating penalty solutions that can be applied.

that children can be held responsible for the crime they have committed.

D. Regulation of Cyber Porn In Indonesia

Indonesia already has several regulations related to *cyberporn*. For example, the Criminal Code (KUHP), the Telecommunications Law, the Information and Electronic Transactions Law (ITE).

a) The Criminal Code (KUHP) The

KUHP currently used in Indonesia is a translation of Wetboek van Strafrecht (WvS) which was enacted under Law Number 1 of 1946 concerning Criminal Law Regulations for the Entire Territories of the Republic of Indonesia. Based on the provisions as regulated in the Criminal Code related to prostitution, the following provisions are as follows:

The forms of pornography in the Criminal Code are grouped into three, namely

- 1) criminal acts in the form of porn action,
- 2) criminal acts in the form of pornography,
- 3) pornography as a livelihood.

Cyber pornography perhaps it can be interpreted as the spread of pornographic content over the internet. The dissemination of pornographic content via the internet is not specifically regulated in the Criminal Code. In the Criminal Code there is also no known term / crime of pornography. However, there is an article of the Criminal Code that can be imposed for this act, namely Article 282 of the Criminal Code concerning crimes against decency.

"Whoever broadcasts, displays or posts in public the writings, images or objects whose contents are known to

violate decency, or who with the intention of being broadcast, displayed or posted in public, makes such writings, images or objects, brings them into the country, continues them. , take it out of the country, or have inventory, or whoever openly or by circulating a letter without being asked, offered or show as can be obtained, punishable by a maximum imprisonment of one year and six months, or a fine of four thousand five hundred rupiah

b) Act-Law Number 36 of 1999 concerning Telecommunications

On September 8, 1999, Law Number 36 of 1999 concerning Telecommunications was passed. The sociological background or foundation of this Law is that the influence of globalization and the very rapid development of telecommunications technology has resulted in fundamental changes in the operation and perspective of telecommunications; Article 21 which reads "Telecommunications operators are prohibited from carrying out telecommunications operation business activities that are contrary to the public interest, morals, security and public order".

c) Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions

Article 27 paragraph 1 of the ITE Law "Everyone knowingly and without right distributes and / or transmits and / or makes electronic information accessible and / or Electronic Documents that have contents that violate decency"

Explanation of the article:

Paragraph (1)

What is meant by "distributing" is sending and / or distributing Electronic Information and / or Electronic Documents to many People or various parties through Electronic Systems.

What is meant by "transmitting" is sending Electronic Information and / or Electronic Documents to one other party through an Electronic System. What is meant by "making accessible" is all actions other than distributing and transmitting through Electronic Systems that cause Electronic Information and / or Electronic Documents to be known by other parties or the public.

d) Law Number 44 of 2008 concerning Pornography

The law that explicitly regulates pornography is Law no. 44 of 2008 concerning Pornography (Pornography Law). The definition of pornography according to article 1 point 1 of the Pornography Law is:

"... pictures, sketches, illustrations, photos, writings, sounds, sounds, moving pictures, animation, cartoons, conversations, gestures, or other forms of messages through various forms of communication media and / or public performances, which contain obscenity or sexual exploitation that violates the norms of decency in society. "

The prohibition against the dissemination of pornographic content, including via the internet, is regulated in Article 4 paragraph (1) of the Pornography Law, namely;

"Everyone is prohibited from producing, creating, reproducing, duplicating, distributing, broadcasting, importing, exporting, offering, trading, renting, or providing pornography that explicitly contains:

- a. intercourse, including sex that is deviant;
- b. sexual violence;
- c. masturbation or masturbation;
- d. nudity or a display that suggests nudity;
- e. genitals; or
- f. child pornography. "

Violation of article 4 paragraph (1) of the Pornography Law is punishable by imprisonment for a minimum of six months and a maximum of 12 years and / or a fine of at least Rp. 250 million and a maximum of Rp. 6 billion (article 29 of the Pornography Law).

Article 10 of Law Number 44 Year 2008 concerning Pornography "Every person is prohibited from showing himself or others in performances or in public that depict nudity, sexual exploitation, intercourse, or other pornographic content".

Article 44 of the Pornography Law states that at the time this Law comes into effect, all laws and regulations that regulate or relate to the crime of pornography are declared to remain valid as long as they do not conflict with this Law.

E. Definition of Cyber Prostitution

Activities in the world *cyber* include activities that exist in the real world where the difference is the way of activities and the

and transactions are not done face to face or (*face to face*) but are carried out through internet media in cyberspace (*cyber space*).

The word "*cyber*" comes from the prefix "*cybernetic*" which comes from

the Greek word which means the adjective skilled in directing or controlling. The word "*cyber*" is used in the terms *cybersex*, *cyberporn*, *cyberspace* and terms *cyber* other.⁴³

The term *cyber* is used to describe entities that exist (or events that occur) in cyberspace. The term *online* is also one of the activities carried out in cyberspace. In the dictionary.web.id "*Online*" is an activity that is connected via a computer network that can be accessed via other computer networks.⁴⁴

Cyber porn is a branch of *cyber crime*. *Cyber crime* is a term that refers to criminal activity with computers or computer networks that are the tools, targets or places of crime. *Cyber crimes* include auction fraud *online*, check fraud, credit card fraud or carding confidence fraud, identity fraud, pornography, etc.

The term "*porn*" or pornography comes from Greek based on the etymological element, namely *pornographos* (*porne*: prostitute and *graphein*: writing), which is defined as writing about prostitution.⁴⁵

Based on merriam-webster.com, the word pornography is defined as follows:

- Describes / describes erotic behavior aimed at evoking sexual stimulation (in the form of writing or images). A
- material (book or photo) that describes erotic behavior and is intended to generate sexual stimulation.

43 Liddell and Scott "Greek-English Dictionary" at www.wikipedia.com

44 www.kamus.web.id

45 Sulianta Ferry. 2010. *Cyber Porn Bisnis atau Kriminal*. Jakarta: Elex Media Komputindo, p. 3

No different from pornography, *cyberporn* is the act of using *cyberspace* in creating, displaying, distributing and publishing pornography and obscene material.⁴⁶

Cyberporn can be found in a form that looks acceptable, there is a community, there is a portal to distribute it. The more obvious forms are found in various internet features such as:

46 Ibid, P. 3, Cyberspace with technology that carries pornography, so that pornography provides a more feature-rich form of pornography, pornography also experiences media translation and makes pornography created multi-features. So it is different from the early pornography which was only made on paper or stone slabs in the form of two-dimensional objects as well as statues. Nowadays, pornography is presented in a more lively form, pornography which was once expensive and rare to obtain, which was usually owned by rich aristocrats and merchants, can now be easily obtained and also cheap and can even be "free", such as: technology computers, internet, cheap storage media (CD / DVD), transaction flexibility, etc. Automatically everyone can access pornography without being limited by the "money" factor. In general, pornography including *cyberporn* is categorized into four parts based on the characteristics of its content, including:

- 1) Soft core pornography / nudity (for example, playboy magazines)
- 2) Hard core pornography (non-violent sex acts, in contrast to soft core, hard core pornography displays unusual sex scenes. even tends to be excessive)
- 3) Violent pornography-pornography accompanied by acts of violence (for example: slavery, torture and carried out without rejection)
- 4) Rape - rape pornography (using force or coercion and of course accompanied by rejection) This

classification of pornographic content has many forms and variations even fantasy is made so that the content is able to provide certain stimulation. More specific forms of pornographic viewing are classified as follows:

- 1) Sadism: depicting pain as something that is pleasurable and capable of arousing sexual arousal, the forms of the action are for example: body piercing, torture and mutilation.
- 2) Rape: emphasizes that rape brings sexual satisfaction more than sex without coercion.
- 3) Pedophilia: adults who use children as their sex objects.
- 4) Incest: commit and enjoy sexual harassment caused by family members.
- 5) Snuff film: cheap porn movies where the character is molested and then killed.
- 6) Combining human waste with sexual activity
- 7) Orgies or group sex: having sex in a group.
- 8) Necrophilia: sex with corpses
- 9) Bestial: sex with animals
- 10) Sexual abuse rituals
- 11) Sex involving pregnant women as the object
- 12) Crossover: depicting heterosexual development into homosexual and bisexual acts, a novelty from pornography which is also supported by the free global lifestyle of society.

*newsgroups, discussion groups, mailing lists, chat boxes, peer to peer networks, file reservoirs or services file sharing, as well as websites as content accessed via a web browser. The content also has a variety of file formats including text which contains a collection of adult stories, images, sound and even audio video. Most of this content is presented on a website with a very neat management, in the sense that a webmaster must create a display that makes people tempted by this pornographic product. The strategies vary, starting with website tours, providing free samples or snippets until later there will be paid products to access.*⁴⁷

The definition of prostitution is often referred to as prostitution. The definition of "prostitution" according to Article 296 of the Criminal Code, is an act of a woman or man who surrenders her body to commit obscenity for a fee.

WA Bonger said that crime is a part of immoral act, therefore immoral acts are anti-social acts.⁴⁸ Prostitution is an element of decency crime. Prostitution is a societal symptom in which women sell themselves for sexual acts as a livelihood. The scholar PJ de Bruine van Amstel argues that prostitution is the surrender of women to many men on payment.⁴⁹ Basically, a pimp can be subject to criminal sanctions because in addition to providing a place for sexual immorality, they also often act as intermediaries or sex brokers. Pimp as someone who eases sexual immorality and does so as a steady source of income.

Kartini Kartono put forward the definition of prostitution as follows⁵⁰:

47 *Ibid*, p. 7
 48 Abdulsyani. , Sosiologi Kriminalitas . Remaja Karya Bandung, 1987,
 p. 12
 49 Kartini Kartono. Patologi Sosial . Raja Grafindo Persada, Jakarta,
 2009, p. 214.
 50 *Ibid*, p. 207

1. Prostitution is a form of sexual deviance with organizational patterns of sexual impulses or impulses that are unnatural and not integrated in the form of the release of sexual desires without control with many people (*promiscuity*) accompanied by the exploitation and commercialization of impersonal sex without affection in his nature.
2. Prostitution is an event of selling oneself (adultery) by selling body, honor, and personality to many people to satisfy their sexual appetite in exchange for payment.
3. Prostitution is the act of a woman or man who surrenders her body to commit obscenity for a fee.

The Global Alliance Against Trafficking Women (GAATW) 1997 identified four approaches to prostitution that are being applied around the world, namely:

1. Criminalization. In this approach, prostitution is considered a criminal offense and is prohibited by law. Some countries criminalize all parties involved in prostitution, be it vendors, buyers or third parties who benefit from sex transactions.
2. Decriminalization. Sexual transactions are not considered a crime. However, the exploitation or abuse of sex workers may be prohibited by law. This decriminalization will not automatically lead the government to carry out regulations on prostitution.
3. Regulation. All sex workers are registered, usually through the brothels in which they operate. This registration is usually useful for controlling health checks of sex workers. Unregistered sex workers face penalties and are therefore vulnerable to exploitation.
4. Legalization. Labor laws are imposed on sex workers and their income is taxed.⁵¹

⁵¹ Global Alliance Against Traffic in Women (1997), *Handbook for Human Rights Action in the context of Traffic in Women*, GAATW, Bangkok (at <http://>

Cyber prostitution is a type of *cyber crime*⁵² from several types of *cybercrime*, which arise as a result of the negative impact of the development of information technology and communication facilities for the global community, resulting in changes in the behavior patterns of society in this field as internet abuse.

Violations of decency include *cyberporn* and prostitution using electronic means or the internet. Prostitution is a problem that does not only involve the prostitutes, but more than that, it is an activity that involves many people, such as pimps, brokers, and consumers, most of whom are male perpetrators. The development of technology has led to the proliferation of the prostitution business because it can take advantage of the internet to make transactions and offer prostitution. Consumers can easily vote through pictures and photographs even without clothes or with minimal clothing available on the internet, including prostitution business using Facebook.

prostitution is *Online* easily accessible and can be ordered easily without having to be on the street. *Sexual*

odishalahuddin wordpress.com/2010/03 trafficking-trafficking-children-and-women-problem-definition /).

52 Cybercrime is a broadly used term to describe criminal activity committed on computers or the Internet. Canadian law enforcement agencies accepted the definition: "a criminal offence involving a computer as the object of the crime, or the tool used to commit a material component of the offence." In similar vein, Foreign Affairs and International Trade Canada discusses cyber crime as consisting of specific crimes dealing with computers and networks (such as hacking) and the facilitation of traditional crime through the use of computers (child pornography, hate crimes, telemarketing / Internet fraud). They also discuss "computer-supported crime" which covers the use of computers by criminals for communication and document or data storage, the activities which might not be illegal in and of themselves, but are often invaluable in the investigation of actual crimes. (See: Anteneh Ayanso, Tejaswini Herath, "Law And Technology Crossroads In Cyberspace" Where Do we Go From Here ", Brock University, Canada, In Premier Reference Source Investigating Cyber Law and Cyber Ethics Issues, Impacts, And Practices, Information Science Reference (an imprint of IGI Global), the United States of America, 2012, p. 59.

offenses that involve the use of the Internet are a relatively recent phenomenon, which makes estimating the number of individuals that fall victim to online predators very difficult. To magnify the problem, this is a widely underreported crime and complex for law enforcement to detect. The World Wide Web is used for a variety of sexual purposes, including child and adult pornography, the facilitation of prostitution, and sites that cater to a variety of fetishes with the expressed goal of linking those with similar sexual preferences. Chat rooms also exist wherein potential sexual offenders can meet potential victims. While it is certainly only a rough estimate the Texas Office of the Attorney General suggested that sexual solicitation affects one in five young people online.⁵³

Sex and pornography on the Internet are too abundant and rapidly changing to be described completely. At best, the abundance of online sexual materials can only be presented in a snapshot fashion. Following are some working categories to illustrate the amount and variety of sexual material and pornography on the Internet:

- 1. Standard pornography Web sites (including Web sites catering to special sexual tastes);*
- 2. Nudity and sex aimed at attracting viewers (even when a product or service is not primarily sexual);*
- 3. Sexual information, sex education, and sexual products;*

⁵³ Sexual offenses involving the use of the Internet are becoming a new phenomenon, it is difficult to estimate the number of individuals who are victims of online predators. To discuss the problem, it is widely reported that crime detection needs to be detected, and complex for law enforcement. The World Wide Web is used for a variety of sexual purposes, including child and adult pornography, prostitution facilitation, and sites that serve various fetishes with the aim of connecting people with similar sexual preferences. Chat rooms also exist where potential sexual offenders can meet potential victims. While the estimates, the Texas Attorney General's Office suggested that sexual solicitation affects one in five young people online.

Laura J. Zilney and Lisa Anne Zilney, *Reconsidering Sex And Offenders Prosecution or Persecution* ?, United States of America, 2009, p. 30.

4. *Interpersonal communications about sex (chat rooms and emails);*
5. *Blogs, YouTube, Myspace, Facebook, and other personal Websites.*⁵⁴

*Pornography Web sites have become fairly standardized on the Internet. Even a novice can quickly learn to navigate the vast array of pornographic sites. A step-by-step search for pornography on the Internet might include the following: Finding Pornography Web sites. The first step in a search for pornography is to select any one of the available Internet search engines (Google, Yahoo, etc). Next, enter any sexual or sexually suggestive word or phrase (sex, pornography, voyeurism, kinky sex, or any one of many vulgar sexual terms). These step will yield dozens (often hundreds) of pornography Web sites.*⁵⁵

*Cyber prostitution is also not free from pornography. Pornography*⁵⁶*comes from the dangers of Ancient Greece,*

⁵⁴ Sex and pornography on the internet are abundant and undergoing rapid changes. Online sexual material can only be presented in snapshot mode. Here are some categories to describe the amount and variety of sexual material and pornography on the internet:

1. Standard pornographic Web sites (including Web sites catering for specific sexual tastes);
2. Nudity and sex aim to attract viewers (sexual products or services);
3. Sexual information, sex education, and sexual products;
4. Interpersonal communication about sex (chat rooms and email);
5. Blogs, YouTube, MySpace, Facebook, and personal Web and other sites.

Kenneth CW Kammeyer, *A Hypersexual Society Sexual Discourse, Erotica, and Pornography in Today America*, the United States of America, 2008, p. 183.

⁵⁵ *Ibid*, (Pornographic websites have become fairly standard on the Internet. Even beginners can quickly learn to navigate the vast array of pornography sites. A step-by-step search for pornography on the Internet might include: Finding it: Web Pornography. The first step. in a search for pornography is to select one of the available Internet search engines (Google, Yahoo, etc). Next, enter a sexually suggestive word or phrase (sex, pornography, voyeurism, kinky sex, or one of the many sexual terms (vulgar). This step will result in dozens (often hundreds) of pornographic websites).

⁵⁶ Pornography is sometimes considered a minor crime and is private. So it is considered a "victimless crime" because the victim wants the crime himself. However, when examined in depth, the loss and casualties caused by pornography

namely *porn* and *graphos*. *Porn* means prostitute, specifically referring to the lowest class prostitutes. In Ancient Greece not all prostitutes were despised or despised. Only pornographic women are the cheapest, least valued and unprotected prostitutes or women. They are like sexual slaves to the entire male population. *Grapos* means writing, sketch or drawing. Thus the meaning of pornography is writing, sketches or pictures of women as cheap class prostitutes. Ade Armando in a paper published by the Ministry of Women's Empowerment defines pornography as material presented in certain media which can and or is intended to arouse public sexual desires or exploit sex. This particular media, namely print and electronic media, audio or visual.⁵⁷

Prostitution is not a symptom of moral violation but is a trafficking activity. A number of international conventions

appear extraordinary. Considering this crime can undermine the morality of a nation. The importance of national morality is related to the continuity of development, especially the nation's young generation. The role of criminal law as a strengthening of morality is in accordance with Patrick Devlin's opinion, that criminal law can be said to be a law that reaffirms the form of immorality in society that is appointed as a criminal act. In other words, criminal law is based on moral principles (*that the criminal law as we know it is based upon moral principle*). The principle of upholding morality is the basis for an act to be considered despicable in society so that it can be the basis for the imposition of criminal sanctions against the perpetrator. This is as stated by Van Bemmelen, as quoted by Roeslan Saleh, that in general it must be viewed as a crime as anything that is destructive and immoral. However, it is not sufficient, as stated by Herbert L. Parker in his book "*The Limits Of The Criminal Sanction*" that "*only conduct generally considered immoral should be treated as criminal*" that *immoral an insufficient conditions harm to other to include risk damage to interest of others*. The elements of loss can be material or spiritual according to the 7th UN Congress Code No A / CONF / 121 / C.2 / L.14 followed by the Mu-PBB resolution No. 40/34 dated 29 November 1985 concerning the *Declaration of Basic Principles of Justice for Victim of Crime and abuse of Power*, affirming that what is meant by victims of crime are people, both individuals and collectively who are suffer losses due to actions (not doing) that violate the criminal law in force in a country, including regulations that prohibit abuse of power. Meanwhile, the definition of *harm* includes *physical or mental injury, emotional suffering, economic loss, or substantial impairment of their fundamental rights*. See Sulistyanta, Spread of Legal Thought, Maulana, Solo, 2008. p. 23-25

⁵⁷ Sulistyowati Irianto. *Perempuan dan Hukum, Menuju Hukum Yang Berperspektif Kesetaraan dan Keadilan*,. Yayasan Obor Indonesia, Jakarta, 2006, p. 299.

have been established to protect women and girls from these ill activities. Trafficking of women and trafficking of girls is a new concept known by society. Although this concept has developed about 20 years ago. But in simple terms people recognize this symptom as prostitution or prostitution. In some countries the term prostitution is considered to have a negative meaning. In Indonesia, the perpetrators are referred to as Tuna Susila (WTS). This means that these women are immoral people because they do a job that is contrary to the moral values prevailing in society. Because of such views, sex workers are stigmatized as dirty, despicable, and undignified, but the people who employ them and benefit greatly from these activities are not labeled as such. When viewed from a broader perspective, we will find that what sex workers actually do is an activity that involves not only the woman providing sexual services in exchange for monetary rewards. But this is a trading activity that involves many parties. This trade network also spans a wide area, sometimes not only within one country but several countries.⁵⁸

The criminal act of *cyber prostitution* does not have uniform terminology. *Cyber prostitution* is described as an act of prostitution that is carried out using a computer.

According to Barda Nawawi Arief, *cyber prostitution* is part of *cyber crime*, which states that the criminal offense contained in the Criminal Code can also occur in *cyber space*, especially those related to pornography, pimps / brokers, and immorality / fornication / indecent act / adultery.⁵⁹

58 http://www.yayasanhak.minihub.org/direito/Lxt/2003/26/11_direito.html

59 Barda Nawawi Arief. Tindak Pidana Mayantara Perkembangan Kajian Cyber Crime di Indonesia. Raja Grafindo Persada, Jakarta, 2006, p .179

As part of *cyber crime*, cyber prostitution has the same characteristics as cyber crime, namely⁶⁰:

- a. Actions that are carried out illegally, without rights, or unethical. Occurs in *cyber space*, so it cannot be ascertained which jurisdiction of the country applies to it.
- b. This action is carried out using any equipment connected to the internet.
- c. These acts resulted in material and immaterial losses (time value, services, money, goods, dignity, dignity, and information confidentiality) which tended to be greater than conventional crimes.
- d. The need for people who master the use of the internet and its applications.
- e. These acts are often carried out transnationally / across national borders.

prostitution *Cyber* comes from two words that can stand independently, namely prostitution and *cyber*. Prostitution comes from the English language, namely *prostitution*. Frank E. Hagan in his *introduction to Criminology Theories, Method and Criminal Behavior* states that:

*Prostitution can be defined as the practice of having sexual relations with emotional indifference on a promiscuous and mercenary basis. In some countries and most US States, prostitution itself is not a criminal offense, it is the act of soliciting, selling, or seeking paying customers which is prohibited. Although sometimes referred to in jest as the "world's" oldest profession "prostitution certainly has been widespread in societies, both ancient and modern.*⁶¹

60 Abdul Wahid and Muhammad Labib. *Kejahatan Mayantara (Cyber Crime)*. Refika Aditama, Bandung, 2005, p. 76

61 Frank E. Hagan, 1989, "*Introduction Criminology theories, Method and Criminal Behavior*", Nelson-Hall inc. Chicago, p. 243 (in her book Dewi Bunga, "*Cyber Prostitution The Discourse of Law Enforcement in the Anatomy of Transnational*

prostitution *Cyber* is the activity of offering sexual services through cyberspace. In the State Journal Online it is stated that "*prostitution is touted as the world's oldest profession. If that's true, it also one of our longest running crimes. Making the matter worse, the profession is growing thanks to the internet.*"⁶²

prostitution *Online* can be defined as the sale of sexual services for money with the mode of offering and transactions via an internet connection by sex sellers and consumers. prostitution *Cyber* is a part of *cyber crime* which is the dark side of activities in cyberspace.

Abdul Wahib and Mohammad Labib stated that *cyber crime* has unique characteristics compared to conventional crimes, namely:

- a. Actions that are carried out illegally, without rights or unethical in *cyber spaces* so it cannot be ascertained which country jurisdiction applies to it. .
- b. This action is carried out using any equipment connected to the internet.
- c. These acts result in material and immaterial losses (time, value, services, money, goods, dignity, dignity, and information confidentiality) which tend to be greater than conventional crimes.
- d. The need for people who master the use of the internet and its applications.
- e. These acts are often carried out transnationally / across national borders.⁶³

Crime", Udayana University Press, 2012, p. 31)

62 State Journal, 2010, "*Prostitution Poses Problems On The Streets And In Cyber space*", (<http://www.statejournal.com/story.cfm?func=viewstory&storyid=85348>, (Prostitution is said to be the oldest profession in the world. If that is true, it is also one of the longest running crimes. This problem is getting worse because This profession is increasingly developing thanks to the internet.)

63 Dewi Bunga, *Prostitusi Cyber Diskursus Penegakan Hukum Dalam anatomi Kejahatan Transnasional* , Udayana University Press, 2012, p. 55

Thus prostitution *cyber* is a prostitution activity carried out through the internet media with an operating system in *cyber space*. Therefore this crime can be committed across borders.⁶⁴

prostitution *Cyber* in the anatomy of transnational crime can be explained with the following picture:⁶⁵

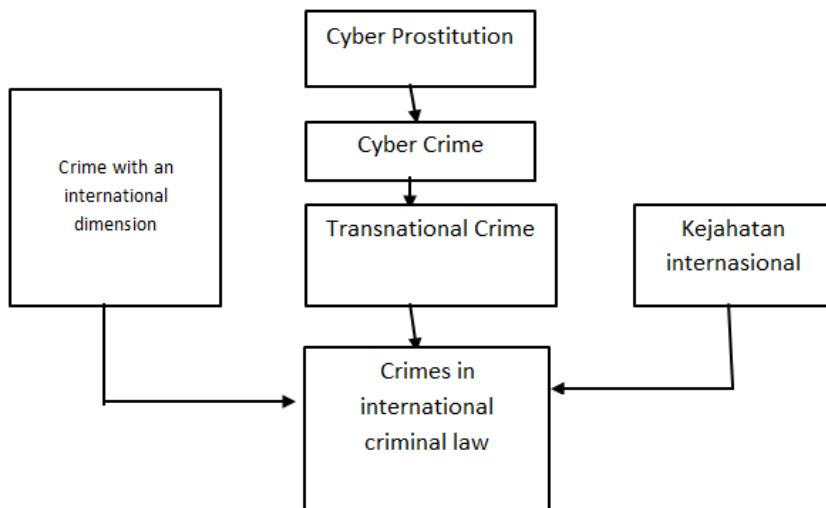


Figure 8

Cyber prostitution in the anatomy of transnational crime

Transnational Crime is a crime that occurs across countries in the sense that an act can be categorized as a crime if there are legal instruments that are violated so that it could happen that an An act that is formulated, designed, prepared, carried out in a country may not constitute a crime, but when the proceeds of a regulated crime are prepared to cross national borders to enter the jurisdiction of a different country then it is categorized as a *Transnational Crime*.⁶⁶

64 *Ibid*

65 *Ibid*, p. 42

66 Srigunting Journal, *Kejahatan Trnasnasional*, Online Series 5 December

prostitution *Cyber* by Indonesian pimps can market sex workers from abroad and sexual transactions can also be carried out with overseas clients. This situation shows that prostitution *cyber* is in the anatomy of transnational crime.⁶⁷

The Department of Social Welfare and Development (DSWD) in its conference in Manila, Philippines, stated that *cyber prostitution* has become a crime that develops along with the development of technology. "*The DSWD noted that cyber pornography and cyber prostitution have become troublesome and ever-growing crimes. Modern technological advancement through information and sharing not only simplifies everyday life but also invites villains to take advantage of the technology to expose people, especially children and women to violence and exploitation.*" So that it takes an important role for countries in overcoming *cyber prostitution*.⁶⁸

F. Cyber Prostitution Arrangements

Indonesia already has several regulations related to *cyber prostitution*. For example, the Criminal Code (KUHP), the Telecommunications Law, the Information and Electronic Transactions Law (ITE), and several Regional Regulations (Perda).

a) The Criminal Code (KUHP).

KUHP currently used in Indonesia is a translation of *Wetboek van Strafrecht (WvS)* which was enacted under Law Number 1 of 1946 concerning Criminal Law Regulations for the Entire Territories of the Republic of Indonesia. Based

2011, in <http://journalsrigunting.wordpress.com/2011/12/05/kejsatria-transnasional/>

67 Dewi Bunga, Op.Cit. p. 41

68 PH Calls From Strong ASEAN Partnership To Fight Cyber Pornography and Cyber Prostitution, Posted on 02 July 2012 , ([http : //www.dswd.gov.ph/2012/07/ph-calls-for-strong-partnership-among-asean-to-fight-cyber-pornography-and-cyber-prostitution/](http://www.dswd.gov.ph/2012/07/ph-calls-for-strong-partnership-among-asean-to-fight-cyber-pornography-and-cyber-prostitution/))

on the provisions stipulated in the Criminal Code related to prostitution, the following provisions are stated: The

Criminal Code in Article 296 reads "*Anyone who deliberately causes or facilitates obscene acts by another person, and makes it a search or habit, is punishable by imprisonment of one year and four months. or a maximum fine of fifteen thousand rupiahs*".

His job is an act that can provide a living (profession), while a habit is making it ordinary. Both are actions that are done for profit. It also means that actions are repeated, even continuously.⁶⁹

The act of making or facilitating it can also mean giving opportunities for other people to commit obscene acts. It can even be interpreted as an act of organizing, such as a pimp providing women or simply providing a place or providing both the place and the women at the same time for men in need.⁷⁰

Obscene act with another person means that at least three people are involved in this crime, namely the perpetrator, another person and a third party. Obscene acts are all acts that violate decency or morality, but also every act against the body or with one's own body or other person's body that violates decency, is obscene, including acts of intercourse outside of marriage.⁷¹

So that only the pimps or pimps can be punished under the provisions of the article, prostitutes and customers cannot be convicted.

69 Moh. Anwar (Dading), *Tindak-Tindak Pidana Bagian Khusus*. Alumni, Jakarta, 19 ... p. 242 - 243

70 *Ibid*

71 *Ibid*

a) Law Number 36 Year 1999 regarding Telecommunication

On September 8, 1999, Law Number 36 Year 1999 regarding Telecommunication was passed. The sociological background or foundation of this Law is that the influence of globalization and the very rapid development of telecommunications technology has resulted in fundamental changes in the operation and perspective of telecommunications; Article 21 which reads "Telecommunications operators are prohibited from carrying out telecommunications operation business activities that are contrary to the public interest, morals, security and public order".

b) Law Number 11 of 2008 concerning Electronic Information and Transactions

Article 27 paragraph 1 of the ITE Law "Everyone knowingly and without rights distributes and / or transmits and / or makes electronic information and / or electronic documents accessible with contents that violate decency"

c) Law Number 44 of 2008 concerning Pornography

Article 10 of Law Number 44 of 2008 concerning Pornography "Everyone is prohibited from showing themselves or other people in performances or in public depicting nudity, sexual exploitation, intercourse, or other pornographic contents" .

In addition to the various regulations above related to the problem of prostitution, several regions in Indonesia have also regulated in the form of regional regulations, for example:

a) Surakarta City Regional Regulation Number 3 of 2006 concerning Combating Commercial Sexual Exploitation Regional

- b) Regulation Number 8 Series E Year 2005 Kota Tangerang Regarding Prohibition of Prostitution
- c) Malang City Regional Regulation Number 8 of 2005 concerning Prohibition of Prostitution and Obscene Actions
- d) Bantul Regency Regional Regulation Number 5 of 2007 concerning Prohibition of Prostitution in Bantul Regency Provincial Regulation of the Special Capital Region of Jakarta Number 8 of 2007 concerning Public Order (Articles 42 and 43).

In 2009, the *International Telecommunications Union* issued a document *Understanding Cybercrime: A Guide For Developing Countries*. This document describes the characteristics of cyber crime and provides guidelines that countries around the world can use regarding acts that need to be criminalized in legislation. This guideline collects the regulation of content that is considered illegal in various countries which may not be considered crimes in CoC⁷² such as adult pornography.⁷³

In the provisions of the CoC, it only regulates illegal content, namely child pornography as stated in article 9 of the CoC.

Title 3 Content- related offences

Article 9 - Offences related to child pornography

⁷² One of the international instruments that regulate *cybercrimes* regionally is the *Convention on Cybercrime*. The CoC was opened and signed by member countries since 23 November 2001, but only came into force in 2004. This convention aims to harmonize the laws of member countries, both material law and procedural law, including arrangements regarding international cooperation in dealing with *cybercrimes*. There are already forty three member states of the Council of Europe that have signed the convention. (In Josua Sitompul, *Cyberspace, Cybercrimes, Cyberlaw, Overview Legal Aspects of Criminal Procedure of NusaDua, Jakarta*, in 2012, p. 107-108)

⁷³ *Ibid*, p. 121- 122

- 1) *Each Party shall adopt such legislative and others measures as may be necessary to establish as criminal offenses under its domestic law, when committed intentionally and without right, the following conduct:*
 - a. *Producing child pornography for the purpose of its distributions through a computer system;*
 - b. *Offering or making available child pornography through a computer system;*
 - c. *Distributing or transmitting child pornography through a computer system;*
 - d. *Procuring child pornography through a computer system for oneself or for another person;*
 - e. *Possessing child pornography in a computer system or on computer- data storage medium.*
- 2) *For the purpose of paragraph 1 above, the term "child pornography" shall include pornographic material that visually depicts:*
 - a. *A minor engaged in sexually explicit conduct;*
 - b. *A person appearing to be minor engaged in sexually explicit conduct;*
 - c. *Realistic images representing a minor engaged in sexually explicit conduct.*
- 3) *For the purpose of paragraph 2 above, the term "minor" shall include all persons under 18 years of age. A party may, however, require a lower age - limit, which shall be not less than 16 years.*
- 4) *Each Party may reserve the right not to apply, in whole or in part, paragraph 1, sub-paragraphs d and e and 2, sub-paragraphs b and c*

What is meant by Article 9 of the CoC is committed intentionally and without right) committed an act:

- a. Producing child pornography to be distributed through a computer system;
- b. Offer or make child pornography accessible via computer systems;
- c. Distribute or transmit child pornography via computer systems;
- d. Procuring child pornography via computer systems for himself or others;
- e. Having child pornography on a computer system or in a storage medium.

The criminalization of bidding is based on the consideration that the act of bidding indicates that the person offering can or is able to provide child pornography. Meanwhile, the criminalization of the act of "making it accessible" is based on the consideration that granting access to child pornography on the internet can be done easily through various means, including creating a website containing a compilation of *hyperlinks to*⁷⁴ child pornography.⁷⁵

In 2007, the European Union again published the *Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*, a convention that specifically regulates the protection of children from sexual exploitation and sexual violence. Article 20 of this

⁷⁴ *hyperlinks* (English: *hyperlink*) is a reference in adocument *hypertext* (*hypertext*) to other documents or other sources. As well as a citation in the literature. In combination with a data network and according to anprotocol access, a computer can be requested to obtain referenced sources. *Hyperlink* is a special function to connect each ofpages to *website* yourone another or to *website* another, so if your website visitor is clicking a word or image that contains a hyperlink, he will be directed to theaddress *URL* on in the *hyperlink* . (see : <http://ririnnuraeni.blogspot.com/2012/05/pengentuk-hyperlink-dan-apa-fungsi-nya.htm>).

⁷⁵ Sitompul, Op Cit, p. 159.

convention updates the scope of Article 9 of the CoC, namely by criminalizing an act that has not been regulated in the provisions of child pornography in the CoC, namely "*knowingly obtaining access, through information and communication technologies, to child pornography.*" This provision is intended to criminalize people who view child pornography online by accessing child pornography sites without the need to download (*download*)⁷⁶ so that they cannot be arrested on the basis of *procuring or possession*.⁷⁷

The following is the cyber prostitution arrangement as an act of internet abuse in several countries:

1) Russia

A man who is caught in the act of prostitution will be given a choice of punishment to go to prison or marry a prostitute woman. These regulations are contained in the draft legislation that has been considered by the President of Russia. If the rule is implemented, prostitutes will be given the option to pay a fine of 100,000 rubles (1,450 Euros) or spend 15 days in prison.⁷⁸

2) Japan

In Japan, the Japanese police state that crime cases in Japan involving Internet technology jumped by about

⁷⁶ *Understanding downloads according to experts:*

Dominicus Juju, *download* is the process of retrieving *files*, whether *software*, *ebooks*, or videos from a *server* or the *web*. According to Yuhevizar., *downloading* is a way or an effort to provide *files* that can be *downloaded* by users or members of a site. According to Onno W. Purbo., a *download* is the *traffic* or *bytes* transferred from the internet to the home LAN network via an *ADSL router*. According to Tyas Venneza, *downloading* is the process of transferring internet data to a computer or other local media either a *web server*, *FTP server*, *mail server*, or other system. (see : <http://dilihatya.com/1661/pengentuk-download-menurut-para-ahli>).

⁷⁷ Sitompul, Op Cit, p. 160

⁷⁸ <http://www.republika.co.id/berita/internasional/global/14/10/30/ne7xzx-this-sentence-for-actor-prostitution-in-russia>.

60 percent in just half a year. Most of these crimes were related to online transactions and prostitution.⁷⁹ The decency offense in Japan is regulated in CHAPTER XXII Book II entitled "*Crimes of Independency, Rape and Bigamy*" (Articles 174-184). This chapter covers the regulation on:⁸⁰

- a) Violation of decency in public (*public indecency*);
- b) Distribution of obscene literature etc (*distribution of obscene literature etc*);
- c) Misconduct by coercion (*indecency through compulsion*);
- d) Rape (*rape*);
- e) Sub (c) and (d) above actions towards people who are unconscious / unable to fight (*constructive compulsory indecency and rape*);
- f) Encouraging or persuading people to have illicit sex (*inducement to illicit intercourse*);
- g) Carrying out "bigamy"

3) China Chinese

The government has a surefire way to curb the growth rate of the sex industry. One of them is forcing visitors to night saunas and massage parlors to show their identity cards. During this time the male visitors to the sauna and massage parlors are free to express their lust without being identified. However, they can no longer hide their identities because all personal information must be included. Investigators will visit these places regularly to ensure that the regulations are

79 <http://yudhim.blogspot.com/2008/02/dissecting-internet-crime-di.html>

80 Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana Perkembangan Penyusunan Konsep KUHP Baru*. Kencana Prenada Media Group, 2011, p. 270.

followed. Violations can be rewarded with business license revocation.⁸¹

4) Korea The

offense of decency is regulated in Chapter 22 entitled "*Crimes Against Morals*" (Articles which includes regulations on:⁸²

- a) Zina (241-245 *alduthery*));
- b) Pimps / brokers for *pandering*;
- c) Distribution of obscene images and so on (*distribution of obscene pictures etc*);
- d) Making obscene pictures and so on (*manufacture of obscene pictures etc*);
- e) Indecent acts in public (*public indecency*).

5) Australia

A court recently ruled that female workers on a sex portal are entitled to receive equality as other workers, such as social benefits and other employee rights. Previously, arguing that the sex industry would never die, the owner of the sex portal paid his staff "rates *freelance*". Sharon Austen, owner of one of two well-known adult sites in Australia, plans to enter the capital market (*initial public offering*) in the near future and is eyeing a profit of 100%. The seven staff will also get a share of the company's profits from the capital market.⁸³ Sex workers, once touted as the oldest profession on earth, have now transformed into a giant industry that

81 [http://cybermed.cbn.net .id / cbprtl / cyberman / detail.aspx? x = Eccentric & y = cyberman | 0 | 0 | 5 | 338.](http://cybermed.cbn.net.id/cbprtl/cyberman/detail.aspx?x=Eccentric&y=cyberman|0|0|5|338)

82 Arief, Op Cit, p.270

83 [http://yudhim.blogspot.com/2008/02/membedah-kejahat-internet-di.html.](http://yudhim.blogspot.com/2008/02/membedah-kejahat-internet-di.html)

is exploiting and inviting every owner of capital to participate.

Children and adolescents are the easiest targets to be exploited by companies that do business on a regular basis. *online* to find personal information, because most children use the internet to find information. These companies have been able to obtain their personal information, both actively and passively, unconsciously. In addition to children's activities on the internet, irresponsible people are often exploited such as crimes *phedophile* through activities *chatting* so that crimes *phedophile* start from relationships *online*. So it needs efforts to minimize the development of *cyberprostitution* via the internet.

From the sociological perspective of the life of the virtual community, among others, it can be identified in terms of social relations or more specifically, it can be seen that the *networks* of the virtual world community. These networks create stimulus, response and collective action framed by social norms, values and sanctions.

The ineffectiveness of the law in dealing with *cyber prostitution*, one of which is due to the narrowness of our view of the phenomenon of *cyber prostitution*. The approaches taken so far are still technical and sectoral. Though it shouldn't be the case. It is time for this *cyber prostitution* to be viewed from three perspectives, namely, technology (*technic*), business (*business*), and society (*socio*). If we only look at the technology and business side, the law will never work effectively in overcoming the symptoms that arise in society. Enforce a legal provision, inseparable from the local community (social conditions).

It must be remembered that the law is not always reflected in the decision of the ruler (regulation), but can be in the form

of an agreement that exists during the internet connection. The obstacle is that the "agreement" does not have the power to force and contain criminal sanctions. For the offender or the perpetrator, it is difficult to hold accountable criminally if it is only based on norms.

The law is frozen history (Carl Friedrich). Each legal provision has its own history. The sound of the legal provisions is that which appears on its foundation, there is an iceberg that has been frozen for centuries or even millennia. There are provisions that are easy to change, some are complicated, even very difficult.⁸⁴

Theoretically and practically law as a discipline should have an analytical model and be able to solve various problems. One thing that is considered quite disturbing is the too narrow scope of the legal boundaries put forward by conventional theorists.⁸⁵

84 Achie Sudarti Luhulima. *Bahan Ajar Tentang Hak Perempuan* . Indonesian torch Foundation, Jakarta, 2007, p. 13

85 Otje Salman and Anthon F. Susanto. *Teori Hukum Mengingat, Mengumpulkan dan Membuka Kembali* ., Refika Aditama, Bandung, 2008, p. 12

CYBERCRIME IN THE FIELD OF DECENCY

(INFORMATION TECHNOLOGY AND MORALITY)

Dr. Hervina Puspitosari, S.H., M.H.

BAB IV

**ETHICS OF
INFORMATION
TECHNOLOGY**

A. Legal System and Functioning of Law in Society

According to Lawrence Meir Friedman, there are three elements that affect the working of the law is:

- a. The legal structure (*legal structure*)
- b. The substance of the law (*legal substance*)
- c. Kulture law (*legal culture*)¹

Briefly according to Lawrence Meir Friedman to describe the third The elements of the legal system are as follows:

- a. The legal structure is like a machine.
- b. The substance of the law is what the machine does and produces.
- c. Legal culture is anything or anyone who decides to turn the machine on and off, and decide how it is used.

To recognize law as a system, it must be observed whether it fulfills 8 (eight) principles or eight legality principles, as according to Fuller, as follows:

- a. A legal system must contain regulatory rules, meaning that it cannot contain only decisions *ad hoc*.
- b. The regulations that have been made must be announced.
- c. Rules cannot be retroactive.
- d. The rules are arranged in an incomprehensible formula.
- e. A system must not contain rules that conflict with one another.
- f. The rules must not contain more demands than what can be done.
- g. The rules shouldn't be changed frequently.
- h. There must be a match between the enacted regulations and their daily implementation.²

i.

1 Achmad Ali. *Kepurukan Hukum di Indonesia, Penyebab dan Solusinya*. Ghalia Indonesia. Jakarta. 2002, p. 2.

2 Esmi Warasih,. *Pranata Hukum Sebagai Telaah Sosiologis*. Suryandaru Utama, Semarang, 2005, p. 3.

According to Satjipto Raharjo, sociologically, the function of law is:

a. *Social control*(social control)

Social control, which is to influence citizens to behave in line with what has been outlined as the rule of law, including the values that live in society. What includes the scope of social control are:

- 1) Act of legal norms, both those that give designation and that determine the relationship between people and people.
- 2) Resolving disputes with the community.
- 3) Ensuring the continuity of community life, namely in the event of social changes.

b. *Social engineering* (social engineering)

- 1) The conscious use of law to achieve an order or social condition as desired by lawmakers.
- 2) This function is more directed at discussing the future attitudes and behavior of the people in accordance with the wishes of legislators.

If successful, the desired changes will eventually become institutionalized as new patterns of behavior in society.

Furthermore, it is said that the implementation of law enforcement or legal effectiveness, of course, is also the implementation or policy or commitment concerned with 5 factors, namely:

- a. The legal factor itself, namely the Polri policy in an effort to reveal criminal acts.
- b. Law enforcement factors, namely the parties who form or implement the law, in this case the Police, the Attorney General's Office and the Court.

- c. Factor means or facilities that support law enforcement.
- d. Community or customary law factors, namely the environment in which the law applies or is applied.
- e. Cultural factors, namely as a result of work, creativity and taste based on human initiative in social life.

The five factors are closely interrelated, because they are the essence of law enforcement, and are a measure of the effectiveness of law enforcement.³

Factors affecting law enforcement according to Soerjono Soekanto are⁴ :

1. Legal Factors The

practice of law enforcement in the field sometimes conflicts between legal certainty and justice, this is because the conception of justice is an abstract formula, whereas legal certainty is a predetermined procedure. normatively. A policy or action that is not completely based on law is something that can be justified as long as the policy or action is not against the law. So in essence, law enforcement includes not only law enforcement, but also *peace maintenance*, because law enforcement is actually a process of harmonizing the values of principles and real patterns of behavior aimed at achieving peace.

2. Law Enforcement Factors The

function of law, mentality or personality of law enforcement officers plays an important role. If the regulations are good, but the quality of officers is not good, there are problems. Therefore, one of the keys to success in law enforcement is the mentality or personality of law enforcers.

³ Soerjono Soekanto. "Kegunaan Sosiologi Hukum Bagi Kalangan Hukum. Citra Aditya Bakti. Bandung. 1983. p. 5.

⁴ Soerjono Soekanto, "Faktor-Faktor Yang Mempengaruhi Penegeakan Hukum , Fifth Printing. Jakarta, Raja Grafindo Persada, 2004, p. 42

3. **Supporting Facilities or Facilities supporting Factors**
Facilities or facilities include software and hardware, one example of software is education. The education received by the police today tends to be in conventional practical matters, so that in many cases the police experience obstacles in their objectives, including knowledge of computer crime, in special crimes that have been given authority to prosecutors, this is because juridically, the police are considered incapable and not ready. Although it is also recognized that the duties that the police must carry out are vast and numerous.
4. **Community Factors**
Law enforcement comes from society and aims to achieve peace in society. Every member of the community or group at least has legal awareness, the problem that arises is the level of legal compliance, namely high, moderate, or insufficient legal compliance. The degree of community legal compliance with the law is one indicator of the functioning of the law in question.
5. **Cultural Factors**
Based on the concept of everyday culture, people often talk about culture. Culture, according to Soerjono Soekanto, has a very large function for humans and society, namely to regulate people so that people can understand how they should act, act, and determine their attitudes when they relate to other people. Thus, culture is a basic line of behavior that establishes rules about what to do, and what is prohibited.

In order for the law to influence people's behavior, the law is disseminated as widely as possible so that it is institutionalized in society. The existence of a certain means of

communication is one of the requirements for the dissemination and institutionalization of the law, such communication can be carried out formally, namely through an officially organized procedure. But besides that, there are also informal arrangements that are not official in nature. This is one of the limits in the use of law as a means of modifying and controlling behavior. This includes what is called diffusion, which is the spread of certain cultural elements within the society concerned. The diffusion process, among others, can be influenced by:

- a. Recognition that the cultural elements concerned (in this case law), have a use.
- b. Whether there is influence from other cultural elements, which may be a negative or positive influence.
- c. As a new element, the law may be rejected by society, because it is contrary to the function of the old element.

The position and role of those who propagate the law affects the effectiveness of the law in changing and regulating the behavior of citizens.⁵

Three elements that need to be considered in law enforcement, namely:⁶

1. Legal certainty

Legal certainty is a justifiable protection against arbitrary action, which means that a person will be able to obtain something that is expected in certain circumstances. The community hopes that there will be legal certainty in society that will be more orderly.

⁵ Satjipto Rahardjo. *Hukum dan Masyarakat*. Angkasa, Bandung, 1980, p. 127-128.

⁶ Sudikno Mertokusumo, *Hukum dan Masyarakat*, Yogyakarta: Liberty, 1999, p. 145

2. Usefulness of

law is for humans, then law or law enforcers must provide benefits or benefits to the community, so as not to cause unrest in society because of law enforcement or enforcement.

3. justice

Legalis not synonymous with justice. The law is general, binding everyone, generalizing. On the other hand, justice is subjective, individualistic, and does not generalize.

Lawrence M. Friedman states that the legal system consists of a legal structure (in the form of legal institutions), legal substance (legislation) and a legal culture or legal culture. These three components support the running of the legal system in a country. In social reality, the existence of a legal system that exists in society undergoes changes as a result of the influence, what is called modernization⁷ or globalization, either by evolution or revolution.⁸

The following is a demonstration of the operation of law in society:

⁷ Modernization is a process of shifting attitudes and mentality as citizens to live in accordance with the demands of the present. (in Arif Gosita, Masalah korban Kejahatan,, Bhuana Ilmu Populer, Jakarta, 2004, p 168

⁸ Saifullah, Refleksi Sosiologi Hukum. Refika Aditama. Bandung, 2010, p. 26

Figure 6.
Reorientation of the operation of law in society⁹

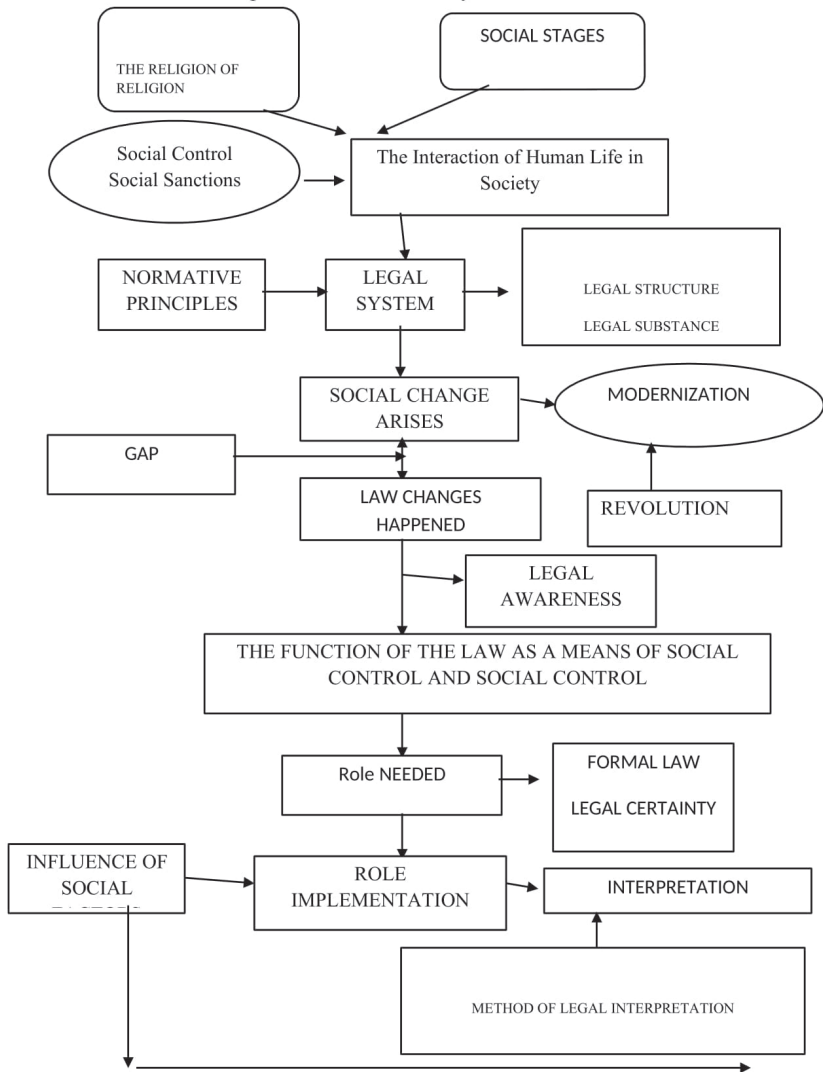
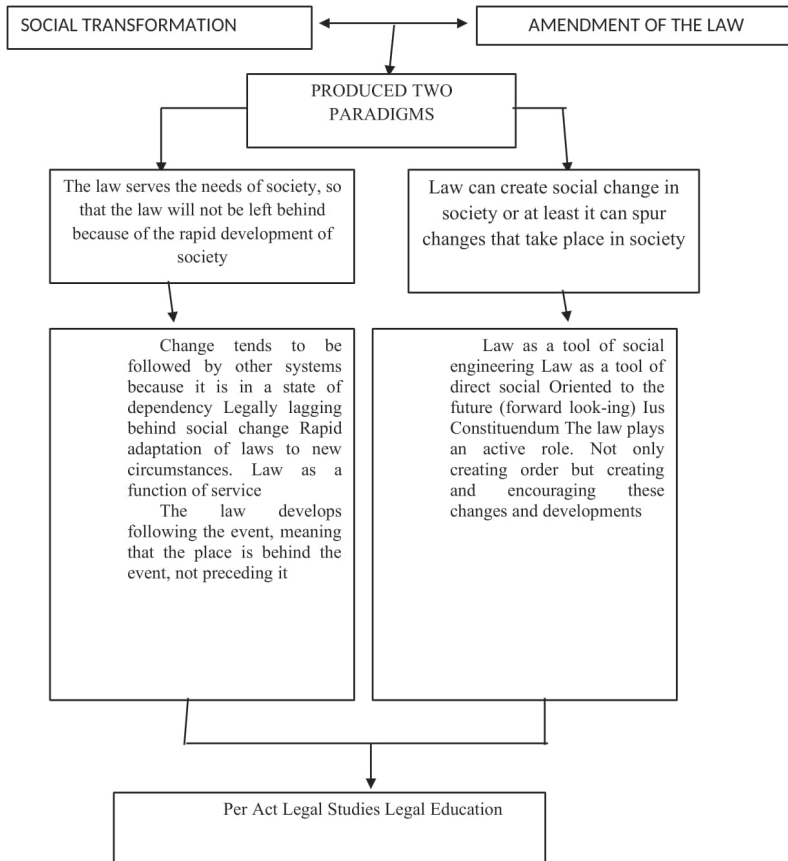


Figure 7.
Interaction of Social Change and Legal Change¹⁰



The larger part of law is related to sexual offenses, the creation of laws which are very difficult to ascertain the logical relationship between concepts legal violations and moral ideas that most of us hold on to. The function of criminal law is to maintain public order and decency, protect citizens from what could attack or injure them, and provide adequate safety lines against exploitation. The function of the law to intervene in the private life of citizens, or to seek to reinforce certain patterns of behavior, is more than necessary to achieve goals.¹¹

B. Cyber Ethics

Cyber ethics is an unwritten set of regulations that aim to provide universal value to fellow information technology users. The absence of clear physical boundaries and the wide use of IT in various fields make it expected that everyone who uses information technology will comply with existing *cyber ethics*

.¹²

Ethics is the science of what is good and what is bad and about rights and obligations (morals) Ethics in the internet is commonly referred to as cyber ethics. Cyber ethics is an unwritten rule known in the IT world. A mutually agreed value to be obeyed in interactions between technology users, especially information technology. The absence of clear physical boundaries and the wide use of IT in various fields make it expected that everyone who uses information technology will comply with existing cyber ethics. Cyber ethics creates new opportunities in the fields of education, business, government services with the presence of the internet. So that it raises netiquette / nettiquette, which is one of the reference ethics in communicating using the internet,

11 RM Dworkin, translated by Yudi Santoso, *Filsafat Hukum Suatu Pengantar*, Merkid Press, Yogyakarta, 2013, p. 103-105

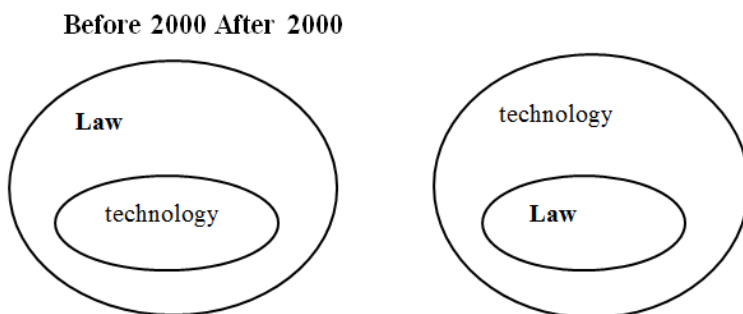
12 <http://jastroklasik.blogspot.co.id/2013/04/cyber-ethic-dan-contoh-kasus.html>

guided by the IETF (*the internet engineering task force*), which determines the RFC (*netiquette guidelines in requests for comments*).¹³

C. Accountable Information Technology Legal

Provisions to keep up with technological developments are not easy because often the law is lagging behind technological developments which can be seen from the following figure:

Figure 4. Law and Technology Development

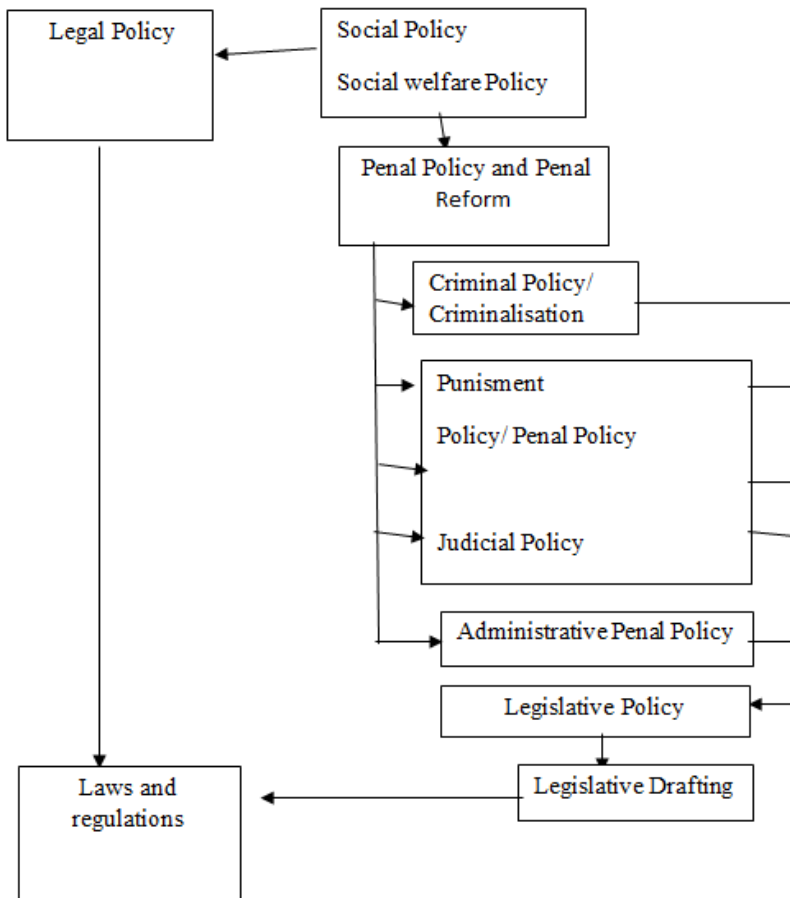


So that the law can be said to have lagged behind with changes fast technological development.

The following is an overview of the scope of the politics of criminal law and its position in the politics of national law.

13 <http://ul501.ilearning.me/2015/05/04/atrikel-tentang-isu-isu-cyber-ethics/>

Chart 10. The scope of the criminal law politics¹⁴



In this regard, the political criminal law can be subdivided into some form of branches and political scope of criminal law, among others:

- 1) the criminalization Policy (*criminalization policy*), which focused on the legal political effort to formulate evil deeds as acts reformed criminal law or a new form of formulation in the draft law.

¹⁴ Mokhammad Najih. Politik Hukum Pidana Konsepsi Pembaharuan Hukum Pidana Dalam Cita Negara Hukum. Setara Press, 2014, p 23.

- 2) Penalty policy / penintesier law (*penal* and *non penal policy*), criminal law politics that focuses on punishment in criminal law, types or types of punishment, forms of punishment, the means required for this.
- 3) Criminal Justice Policy (*Judicial Criminal Policy*), examines the criminal justice system and procedures (*criminal justice system*).
- 4) Criminal law enforcement policy (*lawen forcement policy*), which is part of the criminal law policy review and discuss the problems that need to be considered in the implementation of criminal law enforcement.
- 5) Criminal Justice Administration Policy, namely with regard to the administration of criminal justice. This policy is closely related to the field of law enforcement and the implementation of punishment.

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The development of Information and Communication Technology which is increasingly sophisticated and complex. Society has found a new space for the network society. Technology is known to be double-faced, on the one hand it provides great benefits for humans and is a sign of the progress of society, but on the other hand it can also facilitate and even expand crime globally. Social changes in society that continue to develop along with advances in information technology have a positive impact as well as the emergence of the phenomenon of deviating from the use of information technology, one of which is cyber crime in the field of morality which reduces the degradation of morality such as cyber porn and cyber prostitution. This form of crime is transnational and it is necessary to have a criminal policy that follows the development of this crime in an effort to overcome it. The existence of this book offers several solutions in dealing with the phenomenon of the development of cyber crime in the field of decency in terms of description, penal policy, the dynamics of the development of cyber crime in the field of decency.

Hopefully the e-book that the readers can easily access will be an additional reference for exploring cyber crime material. Happy reading.



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