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The Principle of Proportionality in Anti-Pornography Law: Comparing Several Countries

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ABSTRACT

The imperative role of anti-pornography laws in shielding the younger generation from the pervasive influence of explicit content is indisputable. Nevertheless, the critique leveled against the formulation of criminal sanctions within the ambit of anti-pornography legislation necessitates a rigorous examination of the principle of proportionality. To elucidate this issue, juridical normative research is paramount, with a particular focus on comparative analyses involving Law No. 44 of 2008 and corresponding anti-pornography statutes in Sweden, the Philippines, Malaysia, and India. The findings derived from this comparative investigation reveal several key insights. Firstly, a nuanced exploration exposes both commonalities and disparities in the



patterns underpinning the formulation of anti-pornography statutes across these jurisdictions. Secondly, while there is alignment between the gravity of the offense and the severity of criminal sanctions, a notable deficiency surfaces in the failure to distinguish between first-time offenders and recidivists, thereby falling short of the fundamental principle of proportionality. Furthermore, a critical observation underscores the absence of rehabilitative measures for adult offenders grappling with pornography addiction, presenting a lacuna in the current legislative framework. Lastly, the relative nature of anti-pornography formulations from diverse nations underscores a compelling correlation between the legal stance on criminality and the prevailing moral ethos of the respective societies. This comprehensive analysis serves as a clarion call for a recalibration of anti-pornography legislation, aligning it more closely with the principle of proportionality and accounting for the nuanced considerations in rehabilitating offenders.

Keywords: Pornography, Criminal, Proportionality, Subsidiarity, Sanction

INTRODUCTION

Criminal law, endowed with punitive measures, serves as an instrumental tool for realizing various societal objectives. Within the legal framework, the anti-pornography legislation, replete with criminal sanctions, is strategically employed to attain multifaceted goals, notably as a mechanism for safeguarding the moral fabric of the younger generation. Recognizing the youth as the vanguards of the nation and the pillars of the Republic of Indonesia, the anti-

pornography law assumes paramount significance. Positioned as a pivotal instrument, this legislation acts as a bulwark for upholding moral standards, thereby shielding the future generations of the nation from the deleterious effects of pornographic proliferation.

Etymologically, the term "*pornography*" originates from two distinct syllables: "*porn*" and "*graphics*." The component "*porn*" conveys immoral acts, particularly those of a sexual nature, characterized by indecency or obscenity. Conversely, "*graphics*" encompasses visual and written elements, with a broad scope that includes sculptural objects, the content or meaning of which manifests something immoral or challenges societal norms of decency. Pornography, within this linguistic framework, pertains to sexual materials, encompassing textual, visual, and audiovisual content, capable of eliciting sexual desire.¹

In Indonesia, the prohibition of pornography is governed by Law Number 44 of 2008 concerning Pornography (hereinafter as Indonesian Anti-Pornography Law) designed as a legislative tool to eliminate instances of pornography. Despite its classification as administrative law, this statute encompasses numerous criminal offenses delineated in the Criminal Provisions (Articles 29 to 38). Specifically, there exist 33 distinct forms of pornographic crimes stipulated across 10 articles within the legislation, underscoring the comprehensive nature of the proscriptions.²

¹ For further discussion, please *also see* Lynn Hunt, and Lynn Avery Hunt, eds. *The invention of pornography, 1500–1800: Obscenity and the origins of modernity*. (Cambridge, Massachusetts: MIT Press, 1993); Nadine Strossen, *Defending pornography: Free speech, sex, and the fight for women's rights*. (New York: NYU Press, 2000); Samuel L. Perry, and Cyrus Schleifer. "Race and trends in pornography viewership, 1973–2016: Examining the moderating roles of gender and religion." *The Journal of Sex Research* 56, no. 1 (2019): 62-73.

² Hwian Christianto, "Measuring cyber pornography based on Indonesian living law: A study of current law finding method." *International Journal of Law, Crime and Justice* 60 (2020): 100348; Alhakim, Abdurrakhman. "Criminal Control for the

The inception of the aforementioned legal statute is intricately linked to the escalating prevalence of pornography. Various surveys conducted in the period leading up to and concurrent with the enactment of the Pornography Law provide intriguing insights into the contextual backdrop surrounding its introduction. Indonesia, in particular, has become a focal point for the dissemination of pornography, with children and teenagers being particularly vulnerable targets. The exposure of this demographic to sexual content, whether through online pornography or live sexual presentations, constitutes a significant risk factor for the development of problematic sexual behavior among youths.³

According to the Attorney General's Final Report on Pornography, a noteworthy observation is that teenage boys aged 12 to 17 constitute the primary consumers of pornography, sourced from various mediums such as magazines, the internet, and tabloids. The ramifications of this exposure manifest in an increasingly active engagement in premarital sexual behavior coupled with a concerning lack of awareness, thereby posing potential threats to the reproductive health of adolescents. Statistics provided by Family Safe Media underscore the magnitude of the issue, indicating the existence of 4.2 million pornographic websites. On a daily basis, there are approximately 68 million search requests for pornographic material through internet search engines, with each internet user, on average,

Distribution of Pornographic Content on the Internet: An Indonesian Experience." *Jurnal Komunikasi Hukum (JKH)* 7, no. 2 (2021): 1041-1053.

³ See also Helda Rahmasari, Randy Pradityo, Risna Karinda, Sudirman Sitepu, & Anis Widayawati. "Policies on Prevention and Repression Against Sexual Violence for Higher Education: The Challenges and Expectations." *IJCLS (Indonesian Journal of Criminal Law Studies)* 8, no.1 (2023): 57-74; Joko Susanto, and Indah Sri Utari. "Children as Victims of Sexual Violence Committed by Parents: A Criminological Perspective". *Journal of Law and Legal Reform* 1, no. 2 (2020): 353-63.

either receiving or sending 4.5 pornographic messages. Alarmingly, the data further reveals that approximately 91% of students have encountered pornographic material, highlighting the pervasive nature of the issue within educational environments.⁴

A survey conducted by the *Kita dan Buah Hati* Foundation in Jabodetabek in 2005, encompassing 1,705 teenage respondents, revealed a disconcerting trend. More than 80% of children aged 9-12 years had accessed pornographic material through internet sites. Notably, the majority of these respondents were students seeking learning materials for their school assignments. This underscores the pervasive nature of both positive and harmful content on the internet. Certainly, this number escalates in tandem with the growing accessibility of information and advancements in technology.⁵

Building on this, a subsequent study conducted by the National Commission for Child Protection in 2007, involving 4,500 teenagers across 12 major cities in Indonesia, demonstrated a staggering prevalence of exposure to pornographic films. The findings disclosed that a staggering 97% of teenagers had watched such content. Subsequently, in 2008, a study conducted by Supriati and Fikawati, involving 395 students, corroborated this trend, revealing that 83.3% of respondents had engaged with pornography. These data points, taken collectively, emphasize the pressing need for comprehensive measures to address the widespread exposure of Indonesian youth to

⁴ Ani Mariani and Imam Bachtiar, "Keterpaparan Materi Pornografi dan Perilaku Seksual Siswa Sekolah Menengah Pertama Negeri," *Makara Human Behavior Studies in Asia* 14, no. 2 (December 2010): 83, <https://doi.org/10.7454/mssh.v14i2.665>.

⁵ Dani Gunawan et al., "The Identification of Pornographic Sentences in Bahasa Indonesia," *Procedia Computer Science* 161 (2019): 601–6, <https://doi.org/10.1016/j.procs.2019.11.162>.

explicit content and its potential consequences on their well-being.⁶

Meanwhile, in 2015, the Indonesian Commission for Child Protection (*Komisi Perlindungan Anak Indonesia* or KPAI) reported that a minimum of 1,022 children had become victims of pornography and online crimes. This figure comprises 11 percent of children victimized by online sexual violence, 15 percent involving pornographic CD materials, 20 percent linked to online child prostitution, 21 percent associated with online pornography, 24 percent of children possessing pornographic materials, and 28 percent being victims of offline pornography. Moreover, in 2021, the National Survey on the Life Experiences of Children and Adolescents by the Ministry of Women's Empowerment and Child Protection (*Kementerian Pemberdayaan Perempuan dan Perlindungan Anak* or Kemen PPPA) revealed that 66.6 percent of boys and 62.3 percent of girls in Indonesia had witnessed sexual activities (pornography) through online media.⁷

Maisya's research, conducted with a cross-sectional design among 1,340 junior and senior high school students in DKI Jakarta and Banten, yields compelling insights into the prevalence of pornography exposure. A noteworthy 94.5% of students disclosed exposure to grade 1 pornography, emphasizing the urgent need for awareness and intervention. While 3.7% acknowledged exposure to grade 2, and a mere 0.1% reported exposure to grade 3, the

⁶ Julie Fraumeni-McBride, "Addiction and Mindfulness; Pornography Addiction and Mindfulness-Based Therapy ACT," *Sexual Addiction & Compulsivity* 26, no. 1–2 (April 2019): 42–53, <https://doi.org/10.1080/10720162.2019.1576560>.

⁷ Davit Setyawan, "KPAI: 1.022 Anak Jadi Korban Pornografi dan Kejahatan Online", *Online*, February 17 (2015). Retrieved from <https://www.kpai.go.id/publikasi/kpai-1-022-anak-jadi-korban-pornografi-dan-kejahatan-online>; Dhafintya Noorca, "Lebih dari 60 Persen Anak Mengakses Konten Pornografi Melalui Media Online", *Suara Surabaya*, November 30 (2021). Retrieved from <https://www.suarasurabaya.net/kelanakota/2021/lebih-dari-60-persen-anak-mengakses-konten-pornografi-melalui-media-online/>

implications of even this minimal exposure are profound.

Interestingly, the data reveals a gender disparity in exposure levels. A significant 96.7% of females reported exposure to grade 1 pornography, underlining the vulnerability of this demographic. Conversely, a higher percentage of males, 6.7% and 0.2%, reported exposure to grade 2 and grade 3 pornography, respectively. These findings underscore the importance of tailored strategies to address the distinct needs of both genders. Moreover, when examining educational levels, 96.1% of junior high school students disclosed exposure to grade 1 pornography, signaling the urgency of implementing preventive measures at an early stage. In contrast, senior high school students exhibited higher exposure rates to grade 2 (4%) and grade 3 (0.1%) pornography, underscoring the evolving nature of the challenge as students progress in their education. In light of these findings, there is a compelling call for comprehensive and targeted educational initiatives, awareness campaigns, and support systems to safeguard the well-being of our youth. The urgency of addressing the multifaceted impact of pornography on students necessitates a collective and proactive approach to foster a healthier and more resilient younger generation.

In the year 2020, a cohort of 385 Australian undergraduate students (comprising 270 females and 110 males), aged between 17 and 25 years, participated in an online survey. This survey aimed to evaluate their exposure to Internet Pornography (IP), examining affective and cognitive responses, Internet Pornography-related sexual beliefs, self-assessed problematic Internet Pornography viewing, and key psychological vulnerability factors. The majority of both male (57.3%) and female (33.7%) respondents recalled their initial exposure to IP occurring between the ages of 12 and 14 years. Notably, 28.2% of males and 23.7% of females reported their exposure as early as 9 to 11 years, with a smaller proportion indicating exposure

even earlier. The study identified several factors associated with self-assessed problematic IP viewing, including higher frequency of IP consumption, positive affective responses to current exposure, increased sexual impulsivity, and the endorsement of IP-related sexual beliefs.

These findings illuminate the nuanced landscape of IP exposure among Australian undergraduate students, emphasizing the need for targeted interventions that consider both gender-specific patterns and the various associated psychological factors. Understanding the dynamics of IP consumption and its potential impact on psychological well-being is essential for crafting effective preventive measures and support systems for this demographic.⁸

Michael Flood's research in 2007 in Australia, 84% of young men and 60% of young women had watched pornography on the internet.⁹ Michael Flood's research in 2007 in Australia, 84% of young men and 60% of young women had watched pornography on the internet.¹⁰ In the United States, according to the results of research by M.P. Twohig and J.M. Crosby, around 13% of the population regularly watches pornography¹¹. Meanwhile, the results of Carroll's study, as quoted by Twohig and Crosby, showed that 87% of male respondents and 31% of female respondents admitted to having seen pornography. In Hong Kong, a study conducted by Lam and Chan in 2007 found that 93% of 200 respondents aged 18-25 years had visited pornographic

⁸ Shireen Bernstein et al., "Mind the Gap: Internet Pornography Exposure, Influence and Problematic Viewing Amongst Emerging Adults," *Sexuality Research and Social Policy* 20, no. 2 (June 2023): 599–613, <https://doi.org/10.1007/s13178-022-00698-8>.

⁹ Michael Flood and Bob Pease, "Factors Influencing Attitudes to Violence Against Women," *Trauma, Violence, & Abuse* 10, no. 2 (April 2009): 125–42, <https://doi.org/10.1177/1524838009334131>.

¹⁰ Flood and Pease.

¹¹ Fraumeni-McBride, "Addiction and Mindfulness; Pornography Addiction and Mindfulness-Based Therapy ACT."

sites.¹²

The comprehensive analysis conducted by Kingston, Malamuth, Fedoroff, and Marshall, which synthesized findings from numerous research studies involving diverse respondent groups across several countries, yielded conclusions regarding the impact of pornography. Their review identified a correlation between exposure to pornography and instances of sexual aggression, particularly among male respondents who demonstrated a propensity for engaging in sexual harassment. Additionally, the study highlighted that the consumption of pornographic content may lead to various issues, including an increased likelihood of alcoholism and the manifestation of disruptive behavior among adolescents.¹³

Likewise, based on the results of Hald, Yuen, and Malamuth's analysis, watching pornographic content is related to violent attitudes toward women. Several other studies also concluded the same thing. There is a relationship between people who frequently care about pornography and the tendency to commit acts of aggression and sexual harassment.¹⁴ Consumption of pornography by the younger generation, as well as the forensic implications of this phenomenon, include paraphilia, actions, victimization of sexual violence, and increased acts and victimization of sexual aggression. There are quite a lot of forms and types of pornographic acts in cyberspace, such as cyber pornography (especially child pornography), online

¹² Chun Bun Lam and Darius K.-S. Chan, "The Use of Cyberpornography by Young Men in Hong Kong: Some Psychosocial Correlates," *Archives of Sexual Behavior* 36, no. 4 (July 2007): 588–98, <https://doi.org/10.1007/s10508-006-9124-5>.

¹³ Gert Martin Hald, Neil M. Malamuth, and Carlin Yuen, "Pornography and Attitudes Supporting Violence against Women: Revisiting the Relationship in Nonexperimental Studies," *Aggressive Behavior* 36, no. 1 (January 2010): 14–20, <https://doi.org/10.1002/ab.20328>.

¹⁴ Vanessa Vega and Neil M. Malamuth, "Predicting Sexual Aggression: The Role of Pornography in the Context of General and Specific Risk Factors," *Aggressive Behavior* 33, no. 2 (March 2007): 104–17, <https://doi.org/10.1002/ab.20172>.

pornography, cybersex, and so on.¹⁵

An issue widely acknowledged as grave is Cyber Child Pornography. Recognizing the severity of the matter, the European Council, during the Cyber Porn Convention in Budapest in 2001, reached a consensus on the imperative to criminalize child pornography. This concern has been echoed on the international stage through various meetings addressing the problem of child pornography, including the International Conference on Combating Child Pornography on the Internet held in Vienna at Hofburg from 29 September to 1 October 1999.¹⁶

Considering the things mentioned above, it is necessary to have regulations that prohibit pornography. This regulation is needed to counter the increasingly massive development of pornography in Indonesia. There are problems related to the regulation of pornography, namely Law No. 44 of 2008, which is an administrative law that formulates actions, forms of criminal responsibility, and the formulation of criminal sanctions in criminal acts of pornography; the problem is administrative law but in formulating criminal threats. Criminal sanctions for pornography are pretty severe, so academically, it is necessary to pay attention to the sanctions policies in law. It would be interesting to study doctrinally the principles of good criminalization (especially proportionality and subsidiarity) in

¹⁵ Orin Gusta Andini et al., "The Impact of Covid-19 Pandemic on Effective Electronic Criminal Trials: A Comparative Study," *Journal of Human Rights, Culture and Legal System* 3, no. 2 (2023): 185–209, <https://doi.org/10.53955/jhcls.v3i2.57>. See also Avelia Rahmah Y. Mantali, "Implementation of Legal Protection for Child Victims of the Crime of Sexual Intercourse in Terms of the Fulfillment of the Right to Restitution". *Indonesian Journal of Advocacy and Legal Services* 4, no. 2 (2022): 275-94.

¹⁶ Zaidah Nur Rosidah, Lego Karjoko, and Mohd Rizal Palil, "The Government's Role in InterfaAith Marriage Rights Protection: A Case Study of AdjustmentC and Social Integration," *Journal of Human Rights, Culture and Legal System* 3, no. 2 (2023): 265–87, <https://doi.org/10.53955/jhcls.v3i2.105>.

anti-pornography laws so that they can be relied upon as instruments for preventing crime.¹⁷

This comparative analysis examines India, Malaysia, the Philippines, Sweden, and India's various approaches in formulating and implementing anti-pornography policies. The choice of country was based on considerations of the majority of religions in that country (Philippines: Catholic, Malaysia: Islam, India: Hindu), considering that anti-pornography measures are closely related to moral (religious) issues. Meanwhile, Sweden is a relatively liberal Western (European) country.¹⁸ In each country, the definition of pornography is not always the same. However, to know for sure what types of pornographic acts are prohibited, of course, you can look at the formulation of formal regulations such as the Criminal Code in each country. This research investigates the sanctions systems implemented by each country and examines the effectiveness of punitive measures.¹⁹

¹⁷ Thomas Kruessmann, "Criminal Law and Human Rights - Some Examples from the Emergence of European Criminal Law," *Russian Journal of Criminology* 14, no. 5 (November 2020): 745–57. See also I Wayan Putu Aryana, "Human Trafficking in Woman and Children Perspective; Protocol to Prevent, Suppress and Punish in Persons." *Substantive Justice International Journal of Law* 4, no. 1 (2021): 77-96. See also Firda Yanis Hardianti, & Emmilia Rusdiana. "Imposing Additional Criminal Sanction of Chemical Castration against Child Sexual Violence Perpetrators." *IJCLS (Indonesian Journal of Criminal Law Studies)* 7, no. 1 (2022): 77-98.

¹⁸ Zuhul Karakoç Dora and Zahide Erdoğan, "The Defeat of Multiculturalism over Nationalism and Religion: Transformation of Immigration Policies in Denmark and Sweden," *Hitit İlahiyat Dergisi* 20, no. 2 (December 2021): 517–46, <https://doi.org/10.14395/hid.980405>.

¹⁹ M. Misbahul Mujib and Mustari Kurniawati Muchlas, *Achievements and "Challenges of Human Rights Protection Policy in Realizing Good Governance in Indonesia and China"*, *Journal of Human Rights, Culture and Legal System* 3 (2023), <https://doi.org/10.53955/jhcls.v3i2.98>. See also Khoiril Huda, and Ridwan Arifin. "Human Rights in Indonesia: Between Protection, Fulfillment, and Law Enforcement". *Lex Scientia Law Review* 2, no. 2 (2018): 119-122.

Conducting this research is imperative to fortify the legal landscape surrounding pornography, ensuring it stands as a moral bastion safeguarding the future generations of our nation. These insights contribute to reshaping the global dialogue on the regulation of explicit content, underscoring the significance of striking a harmonious balance among morality, legal structures, and individual rights in crafting anti-pornography measures that are both effective and equitable. Consequently, the central question addressed in this article is whether the sanction system within Indonesia's anti-pornography law aligns with the tenets of sound criminalization, with a particular emphasis on proportionality and subsidiarity.

This research uses normative juridical research methods with conceptual and comparative study approaches²⁰. The formulation of the anti-pornography law, which focuses on acts and the formulation of criminal sanctions for pornography in Indonesia (Law No. 44 of 2008), is compared with the formulation pattern in the Swedish Criminal Code, the Philippine Criminal Code, the Indian Criminal Code, and the Malaysian Criminal Code. Document analysis is used by collecting secondary data from books, publications, journals, and other sources related to patterns of formulating pornography sanctions, including papers and journals from electronic sources and books. This analysis was carried out to look at a problem more closely and in-depth, especially the proportional ordinal principle and the subsidiary principle, and then examine the regulatory norms in anti-pornography laws in the Criminal Code of each country inductively so that conclusions can be drawn. To answer this problem.²¹

²⁰ Kornelius Benuf and Muhamad Azhar, "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer," *Gema Keadilan* 7, no. 1 (April 2020): 20–33, <https://doi.org/10.14710/gk.2020.7504>.

²¹ Gde Made and Suviwat Jenvitchuwong, "The Participation within Indigenous Land Management : Developments and Challenges of Indigenous Communities

PROPORTIONALITY IN CRIMINAL LAW: THEORIES, PRACTICES, & ITS DEVELOPMENT

In criminal law, the principle of proportionality refers to the need for a balance between punishment and punishment. As Cesare Beccaria said: '*...let the punishment fit the crime...*'. This means that the punishment (threat) must be commensurate with the perpetrator's guilt and the severity of the crime and must not be excessive. Variability in punishment influences policies regarding the severity of punishment.²² The more serious the crime, the more severe the criminal sanctions that are threatened for the perpetrator.²³ It is considered disproportionate if a potent criminal offense is threatened with light criminal sanctions and vice versa.

In connection with the principle of proportionality, it is necessary to remember several theoretical differences: (1). Crimes have different weights from violations, (2). Intentional severity is different from negligence (3). Organized actions have other consequences from individual actions (4). Commercial objectives have different weights from non-commercial interests (5). Victims from the weak side have different weights from those who are not helpless.

The study of sanctions policy from a proportionality perspective is intended to find the point of justice as a principle to be achieved

Protection," *Journal of Human Rights, Culture and Legal System* 3, no. 2 (2023): 308–27.

²² Mario Menegatti, "Variability in Punishment, Risk Preferences and Crime Deterrence," *International Review of Law and Economics* 75 (September 2023): 106140, <https://doi.org/10.1016/j.irl.2023.106140>.

²³ Guyora Binder, "Why Punish?," in *Criminal Law* (Oxford University Press, 2016), 57–94, <https://doi.org/10.1093/acprof:oso/9780195321203.003.0003>.

through criminal proportionality²⁴. Looking at the formulation of transport in a law, viewed from the principle of proportionality (ordinal proportionality), several notes need to be stated.

First, hefty sanctions are aimed at every perpetrator without distinguishing between novice and repeat offenders (recidivists). This is undoubtedly incorrect from the justice perspective: "The same is treated the same, and the different are treated differently." Beginner offenders are certainly not the same as recidivists. The absence of regulations regarding recidivism in law is not by the principle of parity in the principle of ordinal proportionality. Parity occurs when a person has committed several crimes of similar seriousness, thereby deserving punishment of comparable severity.²⁵

Second, the proportional principle is mainly related to the formulation of sanctions, which are prepared based on a scale of the severity of the act. The formation of sanctions above shows rank ordering as one of the principles of ordinal proportionality. This principle requires that punishment be arranged based on a criminal scale so that the severity of the punishment reflects the seriousness of the crime.

Third, the principle of spacing of punishment requires determining the distance of sanctions between one violation and another. Imposing penalty is one of the principles of the principle of ordinal proportionality, which pays attention to the rationality of ranking sanctions based on the seriousness of the act.

²⁴ Léo Fitouchi and Manvir Singh, "Punitive Justice Serves to Restore Reciprocal Cooperation in Three Small-Scale Societies," *Evolution and Human Behavior* 44, no. 5 (September 2023): 502–14, <https://doi.org/10.1016/j.evolhumbehav.2023.03.001>.

²⁵ Nicole Sherretts et al., "Comparison of Murderers with Recidivists and First Time Incarcerated Offenders from U.S. Prisons on Psychopathy and Identity as a Criminal: An Exploratory Analysis," *Journal of Criminal Justice* 51 (July 2017): 89–92, <https://doi.org/10.1016/j.jcrimjus.2017.03.002>.

The Anti-Pornography Law, encapsulated within Chapter VII focusing on Criminal Provisions, prescribes a comprehensive array of sanctions. These sanctions, delineated to address diverse transgressions, can be succinctly categorized as follows: Firstly, the framework incorporates basic punishments, incorporating both imprisonment and exemplary measures. Secondly, a nuanced system comprises special maximum and minimum sanctions, strategically tailored to the severity of individual offenses. Thirdly, specific additional penalties for corporations are defined, encompassing measures such as the suspension and revocation of business permits, the confiscation of criminal proceeds, and the revocation of legal entity status. Furthermore, the legislation introduces particularly burdensome sanctions for offenses involving child pornography, emphasizing the heightened gravity of such transgressions. Lastly, distinct and stringent sanctions are outlined for corporations implicated in activities falling under the purview of the Pornography Law, reinforcing the legislative commitment to ensure robust deterrence and accountability within the corporate realm.

The *quo* law also recognizes specific minimum penalties, both imprisonment and fines. Apart from that, not a single violation of the *quo* law is subject to a single sanction, for example, imprisonment or a fine. Instead, all violations are punished cumulatively and alternately. The cumulative-alternative system is seen in the vocabulary "and/or," which refers to the options that can be used, namely one or both biases, imprisonment or a fine.

Compared with the Criminal Code as the "Basic Law," formulating criminal sanctions using the cumulative-alternative system in the Pornography Law is a deviation from the Criminal Code. This is because the types of criminal sanctions in the Criminal Code only recognize two systems: (1) a single formulation system, where imprisonment is formulated as the only type of criminal sanction for

the criminal act in question, and (2). Alternative formulation system, where detention is developed alternatively with other types of criminal sanctions based on the order of the types of criminal sanctions from the most severe to the lightest.

The following Strafoort formulation concerns specific matters that characterize the sanctions policy in the Pornography Law:

TABLE 1. Criminal Limits and Additional Criminal Sanctions in the Pornography Law in Indonesia

Limits of Imprisonment and Additional Criminal Sanctions	Details of Sanctions in Article
Special Maximum Sanctions	<p>Article 31: Maximum imprisonment of 4 (four) years and a maximum fine of 2 billion rupiah.</p> <p>Article 32: Maximum imprisonment of 4 (four) years and a maximum fine of 2 billion rupiah.</p> <p>Article 34: Maximum imprisonment of 10 (ten) years and a maximum fine of 5 billion rupiah</p> <p>Article 36: Maximum imprisonment of 10 (ten) years and a maximum fine of 5 billion rupiah</p>
Special Minimum Sanctions	<p>Article 29: Minimum imprisonment of 6 (six) months and a minimum fine of 250 million rupiah</p> <p>Article 30: Minimum sentence (six) months and/or a minimum fine of 250 million rupiah</p> <p>Article 33: Minimum imprisonment of 2 (two) years and a minimum fine of 1 billion rupiah.</p> <p>Article 35: "...at least 1 (one) year and/or a minimum fine of 500 million rupiah.</p> <p>Article 38: "...at least 6 (six) months and/or a minimum fine of 250 million rupiah (1).</p> <p>Specific minimum sanction:</p>

Limits of Imprisonment and Additional Criminal Sanctions	Details of Sanctions in Article
Aggravating Sanctions Against Corporations	Article 40: (7) In the case of criminal acts of pornography committed by corporations, in addition to imprisonment and fines against its management, fines are also imposed on corporations, with the maximum penalty multiplied by 3 (three) of the fines specified in each pornography article.
Aggravated Sanctions Regarding Child Involvement	Article 37: Everyone who involves a child in activities and/or as an object, as referred to in Article 11, shall be punished with the same punishment as referred to in Article 29, Article 30, Article 31, Article 32, Article 34, Article 35, and Article 36, plus 1/3 (one third) of the maximum penalty.
Sanctions for Corporate/Legal Entity Perpetrators	Article 41: In addition to the main crime, for corporate actors, there are additional sanctions in the form of (1) freezing of permits, (2) revocation of business licenses, (3) confiscation of assets obtained from criminal acts, (4) revocation of legal entities

Source: Law No. 44 of 2008 concerning Pornography

Looking at the formulation of transport in this law, viewed from the principle of proportionality (ordinal proportionality), several notes need to be stated.

First, very heavy sanctions are aimed at every perpetrator without distinguishing between novice and repeat offenders (recidivists). This is undoubtedly incorrect from the justice perspective: "*The same is treated the same, and the different are treated differently.*" Beginner offenders are certainly not the same as recidivists. In the Criminal Code, special provisions regulate the aggravation of recidivists, namely Articles 486, 487, and 488 of the Criminal Code. The absence of regulations regarding recidivism in the Pornography Law is not by the principle of parity in the principle of ordinal

proportionality. Parity occurs when a person has committed several crimes of similar seriousness, thereby deserving punishment of comparable severity²⁶.

Second, the quo law is relatively proportional, especially concerning the formulation of sanctions, which are based on a scale of the severity of the act. Regarding the weight of sanctions or *strafmaat* in pornography law, it can be summarized as follows: (1). Imprisonment for a maximum of 5 (five) years, (2). The maximum fine is IDR 7,500,000,000.00 (seven billion five hundred million rupiah), (3). Imprisonment for a minimum of 6 (six) months to 2 (two) years, (4). A minimum fine of IDR 250,000,000.00 (two hundred and fifty million rupiah), (5). Specifically for pornography involving children, the penalty is increased by 1/3 (one-third) of the maximum penalty (6). In the case of criminal acts of pornography committed by a corporation, in addition to imprisonment and a fine against its management, a fine will also be imposed on the corporation with a maximum penalty multiplied by 3 (three) of the fine specified in each article (7). Aside from the basic criminal penalty, corporations may be subject to additional criminal sanctions: a). Business license suspended; b). business license revoked; c). Confiscation of assets resulting from criminal acts; and D). Its legal entity status was revoked.

Based on the severity of sanctions, both alternative and accumulative, the order of types of violations with the threat of the heaviest to the lightest sanctions is as follows:

²⁶ Mitchell N. Berman, "Proportionality, Constraint, and Culpability," *Criminal Law and Philosophy* 15, no. 3 (October 2021): 373–91, <https://doi.org/10.1007/s11572-021-09589-2>.

TABLE 2 Norms and Sanctions in Indonesia's Pornography Law.

Prohibited Actions	Imprisonment and Fines
Prohibited acts: funding or facilitating acts according to the intent of Article 7	Minimum of 2 years, 15 years, a minimum fine of 1 billion rupiah, and a maximum of 7.5 billion rupiah.
In conjunction with Article 9, Prohibited forms of action include Making another person an object or model that contains pornographic content.	Minimum one year and maximum 12 years, a minimum fine of 500 million rupiah, and a maximum of 6 billion rupiah.
Forms of prohibited actions are Producing, Reproducing, Disseminating, Broadcasting, Importing, Exporting, Offering, Trading, Renting, or Providing pornography.	A minimum of 6 months and a maximum of 12 years and/or a fine of at least IDR 250 million and a maximum of IDR 6 billion
Article 34, in conjunction with Article 8: the act is in the form of "intentionally or with his consent becoming an object or model of pornography	Maximum ten years and a maximum fine of 5 billion rupiah.
Prohibited acts are in the form of: "... showing oneself or others in performances or in public that depicts nudity, sexual exploitation, intercourse or other pornographic content.	Maximum ten years and a maximum fine of 5 billion rupiah.
Article 30, in conjunction with Article 4 paragraph (2), contains a prohibition on acts in the form of: "...providing pornographic services.	Minimum of six months and a maximum of six years, a minimum fine of 250 million rupiahs, and a maximum of 3 billion rupiahs.
Prohibited acts: "... inviting, persuading, taking advantage of, allowing, abusing power, or forcing children to use pornographic products or services.	Minimum of 6 months and a maximum of 6 years and/or a minimum fine of 250 million rupiah and a maximum of 3 million rupiah

Source: Law No. 44 of 2008 concerning Pornography

The formation of sanctions above shows rank ordering as one of the principles of ordinal proportionality. This principle requires that punishment be arranged based on a criminal scale so that the severity of the punishment reflects the seriousness of the crime. Suppose the criminal sanctions for violation A are determined to be more severe than for violation B. In that case, it must be ensured that violation A is more reprehensible than violation B. In short, penalties must be arranged according to levels so that the punishment's severity reflects the violation's seriousness.

Third, the formation of sanctions in the quo law is also by the principle of criminal spacing, which requires determining the distance between sanctions from one violation to another. Imposing punishment is one of the principles of the principle of ordinal proportionality, which pays attention to the rationality of ranking sanctions based on the seriousness of the act. For example, violations A, B, and C have different levels of seriousness, from serious to light, so the sanctions for violation A must have a sanction distance from violation B, namely one level below violation A. And so on until there is a rational criminal distance between the offenses. Serious, serious offenses, with minor offenses.

Fourth, suppose you look at the formulation of *strafmaat* in the quo law. In that case, it seems that criminal acts of pornography in the eyes of the legislators are serious acts, so the sanctions used for every criminal act of pornography are layered (imprisonment and/or fines). Not only that, the weight of all existing sanctions is also classified as very heavy; there are even special minimum sanctions. Suppose you look closely at the minutes of discussion of this draft law. In that case, there are proposals for alternative punishments other than imprisonment and fines, namely: (1). Announced to the public after the perpetrator is sentenced, (2). The social work sanction is helping disadvantaged villages for a certain period and being given a fine.

Whether or not the strategy formulation policy is appropriate based on the principle of proportionality can be explained based on the cardinal principle of proportionality (which requires maintaining a rational proportion between the highest level of crime and the seriousness of a crime). If we look closely, the threat of heavy sanctions in the quo law is relatively commensurate with the dangers posed by pornography. Regarding the seriousness of the spread of pornography, data from the Ministry of Communication and Information of the Republic of Indonesia shows that so far, the negative content complaints found have been dominated by pornography. Of the 1,219,904 negative content findings, 1,028,702 findings were pornographic content. As of August 2020, there were 1,051,543 findings. From August 2018 to April 2019, the Negative Content Scavenging Machine (AIS) detected 898,108 pornographic content, 162 election-related hoaxes, 3,021 cases of online fraud or fraud, 41 to 50 cases of cyberbullying, 10,451 related to radicalism, and 71,265 content about gambling.

Thus, these heavy sanctions can be seen as an effort to tackle pornography wholeheartedly (*gelding*). Theoretically, this method is based on retributive theory in criminal law. This theory focuses on punishment as an absolute requirement for taking revenge (*vergelding*) against the perpetrator and his actions. Retaliation against the perpetrator is subjective (*subjective vergelding*), namely, retaliation directly aimed at the perpetrator's mistake. Meanwhile, the opposite is *objective vergelding*, namely retaliation aimed solely at what has been done by the person concerned.

Morally justified is the basis of the philosophy of retribution, which provides an explanation that the perpetrator deserves to receive punishment (sanctions) because he has committed a crime. This justification is based on the assumption that punishment is a response to the crime committed by the perpetrator. In other words,

as a form of moral responsibility and a form of guilt, perpetrators deliberately and consciously violate certain moral norms that underlie a legal rule.²⁷

Apart from that, these heavy sanctions can also be seen as an effort to eradicate pornography by providing a deterrence effect to the perpetrators. Based on deterrence theory, the deterrence effect function is preventive, both general deterrence and individual-specific deterrence. According to Jeremy Bentham, “the determinations that can be applied to the situation of convicted criminals and the situation of other people in general, distinguish between *“special precautions applied to the criminal himself; and general prevention that applies to all members of society without exception.”*²⁸

As is known, the aim of punishment is for general prevention; it is hoped that it will provide a warning to the public not to commit criminal acts, while for unique prevention, it is intended that the punishment imposed will have a deterrent effect on the perpetrator so that they do not repeat their actions. Action again. In the specific context of deterrence, retributive theory legitimizes punishment as a means of retaliation for crimes that a person has committed. Crime is seen as an immoral and immoral act in society. Therefore, criminals must be retaliated against by imposing punishment. The purpose of punishment is regardless of any goal, so punishment only has one goal: retaliation. According to Romli Atmasasmita, in retributive

²⁷ Nurul Putri Awaliah Nasution, Fathul Hamdani, and Ana Fauzia, “The Concept of Restorative Justice in Handling Crimes in the Criminal Justice System,” *European Journal of Law and Political Science* 1, no. 5 (November 2022): 32–41, <https://doi.org/10.24018/ejpolitics.2022.1.5.37>.

²⁸ Steven Sverdlik, “Bentham on Temptation and Deterrence,” *Utilitas* 31, no. 3 (September 2019): 246–61, <https://doi.org/10.1017/S0953820819000104>.

theory,²⁹ The justification for imposing a criminal sentence on a criminal is based on: (1). The type of retributive flow called vindictive is that imposing punishment will satisfy the victim's feelings of revenge, both feelings within himself, his friends and his family. This feeling cannot be avoided and cannot be used as a reason to accuse of disrespecting the law; (2). The type of retributive flow called fairness is that criminal impositions are intended to warn criminals and other members of society that every action that harms other people or obtains unfair advantage from other people will be rewarded; (3). There is a comparison between the severity of a violation and the criminal sanctions imposed.

Prevention in retributive theory is the main goal of sanctions. According to Zimring and Hawkins, "*deterrence*" is used more limitedly to apply criminal sanctions to a case where the threat of punishment makes someone feel afraid and refrain from committing a criminal act. However, the "net deterrent effect" of this threat on an individual can also threaten the rest of society from committing crime.³⁰

Nigel Walker calls this school the reductive school (reductivism) because the justification for giving sanctions to violations in this school's view is to reduce the frequency of crimes (... the justification for giving sanctions to violations is to reduce their frequency). Reductivists argue that punishment can reduce offenses in one or more of the following ways³¹: (1). Prevention of criminals (detering the offender), namely persuading the perpetrator to restrain himself

²⁹ Matthew C. Altman, *A Theory of Legal Punishment* (Milton Park, Abingdon, Oxon; New York, NY: Routledge, 2021. |: Routledge, 2021), <https://doi.org/10.4324/9781003143352>.

³⁰ Maurice J. G. Bun et al., "Crime, Deterrence and Punishment Revisited," *Empirical Economics* 59, no. 5 (November 2020): 2303–33, <https://doi.org/10.1007/s00181-019-01758-6>.

³¹ Sverdlik, "Bentham on Temptation and Deterrence."

or not commit another violation of the law through his memory of the punishment imposed. (2). Prevention of potential perpetrators (detering potential limiter), in this case, giving fear to other people who have the potential to commit criminal acts by looking at examples of criminal acts that have been imposed on the perpetrators, thereby giving rise to fear of the possibility of being punished. He. (3). Reforming the perpetrator, namely improving the perpetrator's behavior so that the perpetrator realizes there is little possibility of committing a crime again, even without fear of punishment. (4) Educate the public to think more seriously about the occurrence of crime so that it can indirectly reduce the frequency of crime. (5) protecting the public (protecting the public) through long prison sentences.

Fifth, the a quo law does not contain sanctions for individual perpetrators. It must be admitted that behind the rationality of the formulation of sanctions in the Pornography Law, which does not regulate sanctions against individual perpetrators, there is another issue that has escaped the attention of the legislators, namely rehabilitation. This is very necessary for those who are classified as addicted to pornography. Like drug addicts, pornography addiction also causes severe brain damage. Pornography affects not only adult brains but also children's brains.

DEVELOPMEENT OF ANTI-PORNOGRAPHY LAW IN SEVERAL COUNTRIES

I. Swedish Criminal Code

Sweden is known for its looser approach to pornography regulation when compared to some other countries. Instead, Sweden places greater emphasis on policies protecting children and preventing the distribution of pornography to them. The broad definition of 'pornography' was given by the Swedish Government when the proposal to legalize it was submitted to the Riksdag; the concept here includes not only printed or moving images intended to arouse sexual desire but also 'mediated pornography.' The Crime Commission later defined this as a performance that depicts a sexual situation or series of events in an abusive and provocative manner.³²

Acts that are prohibited in pornography are as follows:³³ (1) displays a child in a pornographic image; (2) distributes, transfers, grants, uses, or exhibits in other ways to make the image of a child available to others; (3) obtain or offer such images of children, (4) establish contact between buyers and sellers of such images of children or take other similar steps to facilitate the transaction of such images, or (5) possessing images of children shall be punished for the crime of child pornography with a maximum imprisonment of two

³² Mikael Svanberg, "The Legalisation of Child Pornography in Sweden and What Followed (1969-1999)," *Bergen Journal of Criminal Law & Criminal Justice* 11, no. 1 (September 2023): 30–72, <https://doi.org/10.15845/bjclcj.v11i1.4039>.

³³ Svanberg.

years, or if the crime is light, a fine or imprisonment for a maximum of six months.

Sweden is known for its looser approach to pornography regulation when compared to some other countries. Instead, Sweden places greater emphasis on the policy of protecting children and preventing the distribution of pornography to them. What is meant by a child is a person whose puberty has not yet fully developed, or if it appears from the picture and accompanying circumstances, who is less than 18 years old.³⁴ However, like most European countries, Sweden has laws against child pornography and explicit material involving children. This law aims to protect children from sexual exploitation and ensure that pornographic material involving children is prohibited and punished. Freedom of expression and individual rights in Sweden are recognized and respected, and regulations focus more on child protection and individual rights.³⁵

Any person who, while carrying out business or for other purposes of obtaining money, distributes images as mentioned in the first paragraph due to his negligence shall be punished with the crime discussed here. If the crime mentioned in the first paragraph is considered serious, the severe penalty imposed for child pornography is six months and a maximum of four years. In assessing whether the crime is severe and special consideration should be given to whether the crime was committed in business or for profit, whether the offense

³⁴ Damon Barrett, Frida Petersson, and Russell Turner, "Best Interests and Low Thresholds: Legal and Ethical Issues Relating to Needle and Syringe Services for under 18s in Sweden," *Harm Reduction Journal* 19, no. 1 (February 2022): 15, <https://doi.org/10.1186/s12954-022-00597-6>.

³⁵ Lars Trägårdh and Lars Svedberg, "The Iron Law of Rights: Citizenship and Individual Empowerment in Modern Sweden," in *Social Policy and Citizenship* (Oxford University Press, 2012), 222–56, <https://doi.org/10.1093/acprof:oso/9780199754045.003.0043>. See also Umi Mujiarti, "Advocacy and Combating Sexual Crimes in the Perspective of Child Protection Law". *Journal of Law and Legal Reform* 2, no. 2 (2021): 165-86.

was separate from systematic criminal activity carried out on a larger scale, or was related to massive activities. Several drawings or images in which children are subjected to callous treatment.

The prohibition against drawing and mastering does not apply to people who draw, paint, or use similar craft methods to produce images as written in the first paragraph, as long as they are not intended to be distributed, transferred, or used as appropriate, exhibition, or in any other way made available to others. Even in other cases, the act cannot be considered a crime if, taking into account the circumstances, the action can be justified.

The Swedish Criminal Code punishes child pornography with a maximum prison sentence of 2 years and a minimum fine or six months in prison. Meanwhile, doing business with child pornographic objects (either for business or for profit) is a serious crime that is punishable by a minimum sentence of 6 months and a maximum of 4 years. Judging from the cardinal principle of proportionality, there is a relationship between the severity of the act and the criminal sanctions; there is even a minimum sentence limit of 6 months.

II. Malaysian Criminal Code (Criminal Law 574 Incorporating All Amendments Up To 1 January 2006 and the Sexual Abuse of Children Bill 2017)

Regarding the court process and preparation of evidence, it is also necessary to refer to the Evidence Act of 1950 and the Criminal Procedure Code. The term 'pornography' does not exist in the following law, but instead, reference is made to the words 'obscene' and 'indecent' which are closest in content to regards to pornography.

In Malaysia, there is no distinction between adult and child pornography, as both are considered crimes.³⁶

Pornography in any form is illegal in Malaysia.³⁷ They come in various forms, such as magazines, pictures, DVDs, and video clips. Likewise, it is an unlawful act to sell or distribute pornographic material to other people. Pornography laws in Malaysia are primarily based on morals and the moral norms of society. The moral norms referred to in Malaysia are rooted in religion, so if religious norms prohibit pornography, then all pornographic acts are a violation of the law.

Although the illegal nature of the act of possessing pornographic material is an individual's moral behavior, this act can damage the moral norms of Malaysian society as a whole, and pornography can harm the moral integrity of society, so it is an illegal act in Malaysia.

In the Malaysian Criminal Code Part II, Offenses Related to Child Pornography, there is a description of the meaning of child pornography, which is a form of act that is prohibited from being carried out and, therefore, violates the law. Such acts include any representation in whole or in part, whether visual, audio, or written or a combination of visual, audio, or written, by any means including but not limited to electronic, mechanical, digital, optical, or magnetic means, or made manually. Or any combination of methods. (i) a child who engages in sexually explicit behavior; (ii) a person who appears to be a child engaging in sexually explicit conduct; (iii) realistic or

³⁶ Najwa Rosli, Nabilah Hani Ahmad Zubaidi, and Farah Nini Dusuki, "Regulating the Protection and Rehabilitation of Victims of Internet Child Pornography in Malaysia," *International Journal of Academic Research in Business and Social Sciences* 9, no. 5 (May 2019), <https://doi.org/10.6007/IJARBS/v9-i5/5887>.

³⁷ Aliffitri Ali Zohor Ali et al., "Internet Pornography Exposures amongst Young People in Malaysia: A Cross-Sectional Study Looking into the Role of Gender and Perceived Realism versus the Actual Sexual Activities," *Addictive Behaviors Reports* 14 (December 2021): 100350, <https://doi.org/10.1016/j.abrep.2021.100350>.

graphic depictions of a child engaging in sexually explicit behavior; or (iv) realistic or graphic depictions of a child appearing to engage in sexually explicit behavior.

Forms of explicit sexual behavior include actual or simulated as follows: (i) sexual intercourse or obscene acts including physical contact involving genitals to genitals, mouth to genitals, anus to genitals, or mouth to anus, among others people of the same sex or the opposite sex. ; (ii) bestiality; (iii) masturbation; (iv) sadistic or masochistic abuse in a sexual context; (v) exposing genitals, buttocks, breasts, pubic area or anus for sexual purposes; and (vi) use of any object or instrument for obscene acts.

The act of child pornography in the form of creating, producing, directing the production or production, or participating, involved or involved, in any way, in the output, producing or supervising the production or production of any child pornography, is an offense and if proven guilty, is punishable by a maximum prison sentence of thirty years and is threatened with whipping at least six times.³⁸ The act of child pornography, namely making preparations to produce, produce, or direct the creation or production of child pornography, committing a criminal act, and if found guilty, is threatened with imprisonment for a maximum of ten years and is also threatened with caning.

Child pornography is an act in the form of using or causing a child to be used in preparation for the manufacture or production, or in preparation for directing the production or production, or in the production or directing the manufacture or production, any child pornography is a criminal offense and if proven is punishable with a

³⁸ Taufik Mohammad and Intan Nooraini, "A Qualitative Study of Precursors to Rape in Sexual Behaviour of Juvenile Offenders with Underage Partners in Malaysia," *Journal of Human Rights and Social Work* 5, no. 4 (December 2020): 246–56, <https://doi.org/10.1007/s41134-020-00131-3>.

maximum prison sentence of twenty years and threatened with a minimum of five canings.

Acts of exchanging, publishing, etc., child pornography in the form of (a) exchanging, publishing, selling, renting, distributing, exhibiting, advertising, transmitting, promoting, importing, exporting, delivering, offering, or providing, by any means, pornography any child; (b) obtain, collect or search for child pornography; or (c) participates in or receives profits from a business that he knows or believes is related to child pornography, commits a criminal offense and if proven guilty is punishable by a maximum imprisonment of fifteen years and is also subject to a maximum prison sentence of fifteen years. The maximum lashing is less than three strokes.

Acts of selling child pornography and others: selling, renting, distributing, exhibiting, advertising, transmitting, promoting, conveying, offering or providing, by any means, child pornography to children, committing a criminal offense punishable by a maximum imprisonment of five twelve years. And is also threatened with whipping at least five times.³⁹ Act of accessing child pornography: accessing, or possessing or possessing, any child pornography is an offense and, if convicted, is punishable by imprisonment of a maximum of five years or a fine of a maximum of ten thousand ringgit or both.

The Malaysian Criminal Code regarding threats to pornography has a reasonably broad scope, including limitations covering sexual understanding and prohibited acts. Starting from the production preparation stage, production, distribution, transmission, and sales,

³⁹ Mahmud Abdul Jumaat and Sodiq Omoola, "Comparative Analysis of The Operational Guidelines or Rules Under the Sexual Offences Against Children in Malaysia and India," *Malaysian Journal of Social Sciences and Humanities (MJSSH)* 8, no. 6 (June 2023): e002351, <https://doi.org/10.47405/mjssh.v8i6.2351>.

especially child pornography. The criminal sanctions are pretty severe - on average, they range from 5 years - to 30 years, and in the Malaysian Criminal Code, there is a penalty of whipping/beating; in child pornography, the penalty is between 3-6 lashes/beating. The relationship between the act and the criminal sanction threatened follows the principle of proportionality.

Apart from postulating criminal sanctions, another critical aspect of protecting children from sexual exploitation in the form of child pornography is supporting their welfare—the negative impact of child pornography on the mental health, emotional, and physical development of victims. Physically, the victim experiences pain and/or injuries such as wounds to the genitals, lacerations and other injuries, headaches, loss of appetite, and difficulty sleeping. Other harmful impacts are psychological pressure, feelings of worthlessness, emotional isolation, anxiety, fear, and guilt. As a result, victims often engage in self-destructive behavior such as depression, drug abuse, suicide, and prostitution.⁴⁰

III. Indian Penal Code (Indian Penal Code and Pocso Act 2012)

According to the Indian Penal Code, there are 3 (three) acts related to pornography, namely (1) selling and distributing pornographic material, (2) selling and distributing pornographic material to teenagers (children), and (3) performing and singing obscene songs.

Based on Article 292 of the Indian Penal Code of 1860, some acts can be punished, namely selling, distributing, exhibiting, circulating, importing, or exporting obscene images, paintings, writings, books,

⁴⁰ Rosli, Zubaidi, and Dusuki, "Regulating the Protection and Rehabilitation of Victims of Internet Child Pornography in Malaysia."

pamphlets, or pictures that are lascivious or obscene or damage the morals of others. For this act, the perpetrator can be sentenced to a maximum imprisonment of 2 years and a maximum fine of Rp. 2000 for the first criminal. For subsequent crimes, the prison sentence can be extended to a maximum of 5 years and a fine of a maximum of IDR. 5000. The POCSO Rules and Regulations Act 2012 provides detailed guidance on the necessary protection procedures for child victims and witnesses to the relevant authorities⁴¹.

The POCSO Act of 2012 is a comprehensive law that protects children from violations of sexual violence, sexual harassment, and pornography while safeguarding the interests of children at every stage of the life of the judicial process by including child-friendly mechanisms for reporting, recording evidence, investigation, and speedy trial of violations through an appointed Special Court⁴². These actions include "Special Courts," where the child victim is allowed to record his or her statement on camera in a child-friendly environment and at the same time the identity of the child also remains unknown. However, these specific measures are not infallible in protecting children from sexual abuse⁴².

All sexual acts described in POCSO are, without exception, considered criminal offenses if they involve a 'victim' who is under 18 years of age. This is true regardless of the issue of consent or the age of the 'offender.' In the case of consensual sexual relations between two minors, the concepts of victim and perpetrator are interchangeable because the law inevitably criminalizes sexual

⁴¹ Abdul Jumaat and Omoola, "Comparative Analysis of The Operational Guidelines or Rules Under the Sexual Offences Against Children in Malaysia and India."

⁴² Shrabanti Maity and Pronobesh Ranjan Chakraborty, "Implications of the POCSO Act and Determinants of Child Sexual Abuse in India: Insights at the State Level," *Humanities and Social Sciences Communications* 10, no. 1 (January 2023): 6, <https://doi.org/10.1057/s41599-022-01469-x>.

behavior in children under 18 years. The law does not grant any sexual autonomy to children, who can then be held accountable for committing sexual acts under the law. POCSO has always criminalized juvenile 'offenders' of CSA to be "dealt with under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000".⁴³

Section Actions for selling and distributing pornographic material to teenagers: This article is primarily aimed at teenage victims. The form of the act and the criminal sanctions are as follows: "Anyone who sells, distributes, displays or distributes images, paintings, writings, books, pamphlets or obscene images that contain lust or are obscene to persons under eighteen years of age, is threatened with criminal. With a maximum imprisonment of three years and a fine of up to Rs.2000. "Furthermore, a maximum imprisonment of seven years and a maximum fine of Rs. 5,000."

Section: Other acts include acts and singing obscene songs in public. The form of the show and the sanctions are as follows: "If someone commits a lewd act in a public place, such as singing, chanting or uttering obscene songs or words that cause disturbance to other people, then this is a criminal offense. The defendant is threatened with imprisonment for three months, a fine, or both.

Pornographic content/material is currently available in the form of electronic media, so Article 67A and Article 67B of the 2000 Information Technology Law apply. Article 67A of the Law "determines the publication, transmission of sexually explicit acts or acts in

⁴³ Jyoti Belur and Brijesh Bahadur Singh, "Child Sexual Abuse and the Law in India: A Commentary," *Crime Science* 4, no. 1 (December 2015): 26, <https://doi.org/10.1186/s40163-015-0037-2>. See also Nahid Ferdousi, "Comparing Reforms of Juvenile Justice in Bangladesh and Malaysia." *Substantive Justice International Journal of Law* 3, no. 1 (2020): 15-35.

electronic form is punishable. The defendant faces a maximum prison sentence of five years and a maximum fine of IDR 10,000,000. This imprisonment is extended to seven years in the event of a subsequent sentence.”

Article 67B of the Information Technology Law formulates the same form of offense as in the previous section, punishable by crime if it involves explicit acts depicting children (maximum age 18 years) (sexually (regulating pornographic content involving children/children) porn). The Indian Penal Code, like other provisions of the Penal Code, regulates pornography and child pornography (which involves children as perpetrators/victims). Judging from the sanctions system based on the data above, it can be seen that the maximum sentence varies: 3 months, two years - to 5 years, and three years - to 7 years in prison. Likewise, the fine is between Rs 200 – Rs 500. Proportionately, it is pretty balanced between punishment and criminal sanctions.

IV. Philippine Criminal Code (Revised Philippine Penal Code and Other Criminal Codes Act No. 3815 S 1930 *jo* Anti-Obscenity and Pornography Act 2008 Senate Bill No. 2464)

Pornography in the Philippines, apart from being regulated in the Philippine Criminal Code, the Anti-Obscenity and Pornography Law, Senate Bill of 2008 No. 2464. Article 2: There is a State policy that gives exceptional value to the dignity and worth of every human being and promotes and maintains the moral, spiritual, and social integrity and welfare of its citizens, especially youth in general and women in

particular, from the negative impacts of obscene acts and pornography.⁴⁴

Understanding some terms: The word “obscene,” according to the Philippine Criminal Code, refers to anything that is indecent or offensive or contrary to good customs or religious beliefs, principles, or doctrines, or tends to corrupt or corrupt the human mind, or is deemed capable of corrupting the human mind.⁴⁵ Cause dirty thoughts or indecent things, or violate language decency and human behavior, whatever the motives of the maker, printer, publisher, author, importer, seller, distributor or exhibitor such as, but not limited to (1) Displaying, depicting or depicting sexual acts, (2) Showing, depicting or depicting human sexual organs or female breasts, (3) Showing, depicting or depicting completely naked human bodies, (4) Depicting reactions, feelings or erotic experiences from sexual acts.

Meanwhile, pornography is the object or subject of photography, television shows, films, illustrations, music, games, paintings, pictures, illustrations, advertisements, writing, literature, or narratives, contained in any form, whether audio or visual, fixed or moving images. . in any form of film, print media, electronic, external media or broadcast media, or any future technology that will be developed, designed to arouse, excite or arouse obscene thoughts and obscene interests, whatever the author's motives.⁴⁶ Child

⁴⁴ Andrea Peatric Hatane, “Dinamika Kejahatan Dunia Maya Mengenai Online Child Sexual Exploitation di Tengah Pandemi Covid-19,” *Jurnal Magister Hukum Argumentum* 7, no. 2 (July 2022): 94–104, <https://doi.org/10.24123/argu.v7i2.4664>.

⁴⁵ Jozon A Lorenzana and Cheryl Ruth R Soriano, “Introduction: The Dynamics of Digital Communication in the Philippines: Legacies and Potentials,” *Media International Australia* 179, no. 1 (May 2021): 3–8, <https://doi.org/10.1177/1329878X211010868>.

⁴⁶ Mubarak Rahamathulla, “Cyber Safety of Children in the Association of Southeast Asian Nations (ASEAN) Region: A Critical Review of Legal Frameworks and Policy Implications,” *International Journal on Child Maltreatment*:

pornography is a serious and widespread problem with terrible consequences for the victims' families and society as a whole.⁴⁷

The mass media used as pornographic media in the Philippines is almost the same as the definition of media used as pornographic media in Indonesia. Forms and types of pornographic acts in the Philippines have terms, such as the term "material," which refers to media as a means. In contrast, the term "sex" refers to behavior and sexual desire, and the term "sexual act," such as acts of intercourse.

Republic Act 9344, also known as the Philippine Juvenile Justice and Welfare System, deals with rehabilitating, reforming, and protecting children in conflict with the law and children at risk. It is a legal system that provides due process of law to the child, including aftercare of the person. The law came into force on April 28, 2006.

Based on the Revised Penal Code (RPC) of the Philippines, humans are divided into four parts: the age of absolute irresponsibility is nine (9) years and under, the age of conditional responsibility is fifteen (15) years to eighteen years, the age of dependent responsibility is fifteen (15) years to eighteen years, the age of full responsibility is eighteen (18) years to seventy (70) years and the age of reduced burden is fifteen years to eighteen years to seventy years and under.

Luis Reyes stated that juvenile offenders are minors and are over nine years old but less than eighteen years old at the time of the crime, but the law has been changed by the new juvenile system in the Philippines. The current age of criminal responsibility is fifteen years to eighteen years, but it will only be punished if the child has acted

Research, Policy and Practice 4, no. 4 (December 2021): 375–400, <https://doi.org/10.1007/s42448-021-00087-5>.

⁴⁷ Cedrick Zabala, "Child Pornography in Zamboanga City, Philippines: Prevention Strategies and Risk Management," *SSRN Electronic Journal*, 2023, <https://doi.org/10.2139/ssrn.4522196>.

wisely. It has been proven that parents greatly influence children's growth and development. Children who do not feel love and security from their parents are more likely to do something that diverts their attention to their parents. Misbehaving kids are not born bad kids. They also fall victim to their emotional vulnerability. Live sexual abuse of children is a violation of several Philippine laws. A suspect can be charged with three different offenses, namely child trafficking, child pornography, and child abuse.⁴⁸

Articles 4 and 5 regulate criminal sanctions for perpetrators of pornography crimes based on the Philippine Criminal Code, among others:

1. Producing, printing, performing, exhibiting, importing, selling, advertising, or distributing obscene or pornographic material in all forms of mass media, with the threat of imprisonment for the mayor, minimum imprisonment of 6 (six) years, and 1 (one) day or a maximum twelve (12) years and shall be subject to a fine of at least five hundred thousand pesos (P 500,000.00) or more than one million pesos (P 1,000,000.00).
2. Causing a regional fair or exhibition or printing, publication or advertisement, or selling obscene or pornographic material in any form in the mass media is punishable by a maximum imprisonment of 3 (three) years and one (one) year in prison. 1) days or more than six (6) years and shall be subject to a fine of not less than two hundred thousand pesos (P200,000.00) or more than five hundred thousand pesos (P500,000.00).

⁴⁸ Sandra Concepcion Layla S. Hernandez et al., "Sexual Exploitation and Abuse of Children Online in the Philippines: A Review of Online News and Articles," *Acta Medica Philippina* 52, no. 4 (July 2018). See also Setyarini Nur Octaviana, "Child Sexual Abuse in Indonesia: History and Challenge in Legal Perspective." *IJCLS (Indonesian Journal of Criminal Law Studies)* 4, no. 1 (2019): 83-92.

3. Showing, displaying, selling, advertising, or distributing obscene or pornographic films of any kind, whether produced in the Philippines or abroad, in restaurants, clubs, or any other place open to the public, including buildings or homes private where spectators are not limited to the owner and his family members, mayoral imprisonment, imprisonment for a minimum of 3 (three) years and 1 (one) day or a maximum of 6 (six) years and a fine of at least 2 (two) days. Hundred thousand pesos (P200,000.00) or more than five hundred thousand pesos (P500,000.00) will be charged.
4. Writing obscene or pornographic articles in print or electronic media is punishable by imprisonment for the mayor, imprisonment for a minimum of 3 (three) years and a maximum of 6 (six) years, and a fine of at least two hundred thousand. Pesos (P200,000.00) or more than three hundred thousand pesos (P300,000.00) will be charged.
5. Carrying out, displaying, or displaying obscene or pornographic acts in all forms of mass media is punishable by imprisonment for the mayor, imprisonment for a minimum of 1 (one) year and a maximum of 3 (three) years, and a fine of at least one (one) year. Year. A hundred thousand pesos (P100 000.00) or more than three hundred thousand pesos (P300 000.00) will be charged.
6. Performing or permitting a live sex performance or live sexual act in a public place, public place, or place open to the public. The mayor shall be imprisoned for a minimum of 1 (one) year and a maximum of 3 (three) years. Years shall be subject to a fine of not less than one hundred thousand pesos (P100,000.00) nor more than three hundred thousand pesos (P300,000.00).

The Philippine Criminal Code punishes acts of pornography in general as a form of safeguarding state policy that places exceptional value on the dignity of every human being and promotes and

maintains the moral, spiritual, and social integrity and well-being of its citizens, especially the youth, in general, and women in particular, from the harmful effects of obscenity and pornography.⁴⁹ Based on Article 4, there is a definition of an act prohibited from being carried out, formulated in detail. Article 5 contains criminal threats for several pornographic acts, with a minimum prison sentence of between 1-6 years and a maximum sentence of around 3-12 years. Meanwhile, the acceptable ranges from 100,000 - 1,000,000 pesos. From the perspective of the cardinal principle of proportionality, there is a relationship between the severity of the act and the criminal sanctions threatened.

CONCLUSION

In conclusion, Law Number 44 of 2008 concerning Pornography serves as Indonesia's primary anti-pornography policy, encompassing regulations on criminal acts related to pornography and the imposition of criminal sanctions. The policy's approach to addressing the severity of such criminal acts is grounded in the principle of proportionality, evident in the structured formation of criminal sanctions corresponding to the nature of offenses. However, a notable deficiency lies in the lack of differentiation between novice offenders and repeat offenders (recidivists), rendering the current formulation inconsistent with the principle of proportionality. To address this discrepancy, lawmakers should consider reformulating provisions specifically addressing recidivist offenders. Furthermore, this study highlighted that an examination of anti-pornography laws

⁴⁹ Robert Brian Smith, "Cybercrime in ASEAN: Anti-Child Pornography Legislation," *Journal of Indonesian Legal Studies* 5, no. 2 (2022): 277-94

in the Criminal Codes of Sweden, the Philippines, India, and Malaysia underscores the importance of proportionality between the nature of the offense and the severity of criminal sanctions. Nevertheless, despite this shared principle, substantial disparities exist in the formulation of norms among these countries. The divergent legal frameworks and definitions of explicit content are reflective of varied cultural and religious influences, contributing to diverse approaches in categorizing and organizing pornography. Recognizing and understanding these differences is crucial for informed policy-making and fostering international cooperation in the regulation of explicit content.

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