

PORNOGRAPHY AND THE FILM CENSORSHIP

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ABSTRACT

Although we agree to prohibit pornography in films, we cannot render precise assessments of pornography. This matter will depend on many aspects. The LSF is the institution that must scrutinize those aspects, so on one hand, the censorship of the LSF will not be regarded as a ban on artistic creativity, while on the other hand, it will not be condemned as the maker of deleterious morality of our society.

I. INTRODUCTION

There are many terms referring to pornography, such as obscenity, smut, or filth. *The Indonesian Big Dictionary* says that pornography is a description of (human) conduct in pictures or writings meant to stimulate sexual desires.¹ A similar definition given by *Black's Law Dictionary* says that pornographic (the adjective of pornography) is: "That which is of or pertaining to obscene literature; obscene; licentious. Material is pornographic or obscene if the average person, applying contemporary community standards, would find that the work taken as a whole appeals to the prurient interest and if it depicts in a patently offensive way sexual conduct and if the work taken as a whole lacks serious literary, artistic, political or scientific value."²

Those definitions seem to distinguish clearly between pornography for commercial purposes and "pornography" for artistic appeal. The distinction is in the intention to make pornography works merely to stimulate sexual desires. Thus, a picture that presents a nude person, for instance, is not always pornographic. We can have the same opinion regarding reliefs in Borobudur and Prambanan Temples.³

In the Indonesian legal perspective, it is not easy to define "pornographic" or

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¹ Tim Penyusun Kamus Pusat Pembinaan dan Pengembangan Bahasa, *Kamus Besar Bahasa Indonesia*, Jakarta: Departemen Pendidikan dan Kebudayaan, 1988, p. 696. The original definition in bahasa Indonesia of the dictionary says, "pornografi: (1) penggambaran tingkah laku secara erotis dengan lukisan atau tulisan untuk membangkitkan nafsu berahi, (2) bahan yang dirancang dengan sengaja dan semata-mata untuk membangkitkan nafsu berahi dalam seks."

² H.C. Black, *Black's Law Dictionary*, 6th edition, St. Paul: West Publishing Co., p. 1161.

³ We also can see the sculpture showing sex techniques from other temples in India and Thailand. See Edgar Gregersen, *Sexual Practices: the Story of Human Sexuality*, New York: Franklin Watts, 1983.

"pornography". In the Penal Code, there is no definition of it. We only find in Article 282 mentioning of a breach of morality, and indeed, it is very broad in meaning compared with pornography. In addition to Article 282 of the Penal Code, other articles constituting the similar thing can be found in Articles 283, 532, and 533. The two last articles are classified in misdemeanor category (Book III), while the other is in infraction category.

To search for the definition of pornography, we can also look into the Decree of Attorney General No. 31 of 1969. This decree gives a broad definition of pornography. The definition covers conducts, pictures, writings, songs, voices, or anything else which can stimulate sexual desires, infringe on social morality, cause wickedness, and disturb public order. So, there are four elements of pornography according to the decree, i.e., (1) stimulating sexual desires, (2) infringing on social morality, (3) causing wickedness, and (4) disturbing public order.

In connection with elements one and two of the Decree of Attorney General No. 31 of 1969 mentioned above, there was a court decision decided by the Netherlands Supreme Court (HR) on March 30, 1925 (NJ 1925-398, W 11329). That decision states that a picture, writing, or anything can be deemed to infringe on social morality if there is a purpose to stimulate sexual desires. For instance, in a book, it is not necessary that all pages contain pornography. Although the pornography is only contained in one or two pages, it is sufficient to consider that the whole book infringes on social morality.⁴

If we analyze the four elements, we can find that they are very subjective and relative. What is regarded as stimulating sexual desires, for example, differs from one person to another. Or, if we mention the impact stated in elements 3 and 4, the assessment is unclear because it depends on the perceptions of time and place.⁵ As an illustration, the research in Sweden has proved that rape cases decreased in average number after the government allowed pornography in mass media there.⁶

⁴ Cf. Shidarta, "Masalah Pornografi dalam Perfilman Indonesia," *Hermas Daily*, Yogyakarta, March 18, 1992, p. 4.

⁵ Some researchers conclude that sexual norms and behaviors of adolescence in Indonesia has been changing from time to time. There were noticeable differentials by sex and area. Female respondents have much less sexual experience than urban ones. With regard to attitudes on premarital intercourse and induced abortion, Balinese respondents were more permissive than the Javanese. As a matter of fact rural Balinese were more permissive than urban Yogyakarta respondents. See the result of Masri Singarimbun's research in "Norma norma dan Perlakuan Seks Remaja," *Populaxi Journal*, No. 1 Vol. 2, 1991, pp. 11-23. Cf. Sudito W. Narwono, *Pergerakan Norma Perlakuan Seksual Remaja: Sebuah Penelitian terhadap Remaja Jakarta*, Jakarta: Rajawali, 1981.

⁶ See "Pornografi, Dibiarkan, Jangan," *Forum Keadilan Magazine*, No. 05/ March, 1989, pp. 85-87. Sweden actually is quite permissive in dealing with sexual industries. Cf. Richard A. Posner, *Sex and Reason*, Cambridge: Harvard University Press, 1992, pp. 161-180.

Having quoted Richard S. Randall in his *Freedom and Taboo: Pornography and the Politics of a Self Divided*, Richard A. Posner concludes that pornography has not yet been proved to affect the incidence of rape. "No implications for public policy flow directly from such a conclusion, however, since it does not deny the *possibility* that pornography incites to rape, directly or indirectly."⁷ The positive correlation (in USA anyway), according to Posner, between the sale of pornography and rape is statistically robust. Although this does not establish a causal relation, it is suggestive of one.⁸

To define the other term of pornography, "obscenity", the US Supreme Court comments, "Whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to the prurient interest." This definition raises more questions than it answers. Who is "the average person?" What are "contemporary standards?" How many torrid sex episodes are needed before a work "taken as a whole" become prurient? There has never been a satisfactory definition of obscenity, for every possible definition involves a subjective judgment, and eventually becomes, "if I think it's obscene, then it's obscene." Sheer nudity is less provocative than gossamer covering. Innocent dialogue may become suggestive through gesture or inflection. Obscenity code may produce a sophisticated sort of sexual innuendo which makes people even more sex-conscious than would frank sexuality. To define obscenity so as to prevent the cheap exploitation of sex without also preventing literary realism and artistic integrity seems to be impossible. To define subversion so as to prevent the deliberate undermining of the social system yet permit mature social criticism is still more impossible. In fact, many attempts to censor subversion are basically attempts to prevent the expression of any social criticism.⁹

II. THE FILM CENSORSHIP INSTITUTION

Censorship is a mechanism to select something, generally a scientific or art product. Censorship is contradictory to the principle of freedom of speech. In Article 28 of the Indonesian Constitution of 1945, it is stated that freedom of association and assembly, of

⁷ *Ibid.*, p. 371.

⁸ In Indonesia, there are many cases showing the relation between pornography and rape. One case which involved the BSF happened in 1979. Justice Bismar Siregar at that time released Herman Yanto (the suspect, 14 years old) and ordered him to be "anak negra" and the custody for Herman Yanto was given to the head of the BSF (the North Jakarta District Court Sentence No. 200/Pid/79/UT/Tol.).

⁹ P.B. Horton & G.R. Leslie, *The Sociology of Social Problems*, New York : Appleton-Century-Crofts, 1995, pp. 533-534.

expressing thoughts and of issuing writing and the like, shall be prescribed by statute. The elucidation of that article says that the article referred to here, both those which concern citizens alone as well as those which concern all residents, contain the desire of the Indonesian people to build a state with a democratic character which seeks to put into practice social justice and the principle of humanity.

Based on Article 28 of the Indonesian Constitution of 1945, in Article 4 of Act No. 11 of 1966 on the Basic Principles of the Press, it is stated that no censorship or bridling shall be applied to the national press. This act was amended later by Act No. 21 of 1982 on Amendments to Act No. 11 of 1966 concerning Basic Provision on the Press as Amended by Act No. 4 of 1967. Act No. 21 of 1982 did not mention anything about Article 4. It means that article is still enforceable. Unfortunately, the promise as stated in Article 4 means nothing with the addition of Article 13. By this addition, every press publication undertaken by a press enterprise must require a Press Publication Business License, to be further abbreviated SIUPP, issued by the government.

Although our government always denies that there is censorship or bridling of the Indonesian press, the fact is that the government can stop a publication of certain news just by using the telephone, or if necessary, the minister of information can withdraw the SIUPP anytime he wants. By doing so, the effects of those things are not different from censorship and bridling.

In the Indonesian press, especially in printing media, there is officially no censorship (and bridling), although that situation exists in films. There is a special institution who has the task to censor films coming from abroad and from our own country. The institution is called "Lembaga Sensor Film" or the Institution of Film Censorship.

Just like in media printing, actually, every film can be produced freely without any permission. But a film can not be shown directly to the public. This situation is different from printing media. Every film must fulfill some criteria before it can be presented to the public. One of those criteria is that the film must not contain pornography.

If we discuss Indonesian movie films as products of art, we have to define pornography in the context of art as well. Here, the Institution of Film Censorship (Lembaga Sensor Film or LSF) has to be careful in doing its work because this institution is the last "goal posts" for film censorship in Indonesia. The LSF also need to consider whether the scenes in a film can be regarded as pornography or not.

Having enforced Law No. 8 of 1992 concerning Film Industry and Government Regulation No. 7 of 1994 concerning the Film Censorship Institution, the government

formed the LSF as a single institution that can censor every movie film and video tape in Indonesia. This institution used to be known as the Film Censorship Board (Badan Sensor Film or BSF).

The LSF is an institution in the Ministry of Information. But, the director of the LSF and the deputies are not appointed by the minister. They are elected by the members of LSF. There are 45 persons in the LSF coming from several organizations chosen by the government, but the persons are nominated by those organizations.

There are five divisions in the LSF, i.e., (1) plenary session, (2) daily organizers, (3) commissions, (4) censorship group, and (5) secretariat.

The plenary session is the highest level in the LSF and it holds at least two meetings a year. The plenary session forms the daily organizers consisting of a head and a vice head, a secretary, and some members. The members are composed of heads of commissions and their deputies, secretaries, and the youngest or the oldest member of the LSF. The daily organizers will perform the plenary session jobs in general.

There are two commissions in the LSF. First, it is Commission A which observes and follows any development of Indonesian society value and culture. Second, it is Commission B which does the same things and observes Indonesian appreciation regarding films and film advertisements. The results of their jobs will be submitted to the LSF so that the LSF can always meet the needs of our people.

To censor films, there is a censorship group whose members decide whether a film can be shown to the public or not. Every decision will be reached by deliberation. This group is formed once a month by the daily organizers consisting of five persons. It means every month the composition of this group will be changed.

To handle administrative matters, there is a secretariat. It is composed of one secretary and several members. All members are employees of the Ministry of Information.

Besides the LSF, there is another body having a strategic position. It is the National Film Consultative Board (Badan Pertimbangan Perfilman Nasional or BP2N). It consists of 25 persons and like the LSF, the persons of the BP2N come from some public and state-owned organizations. The BP2N is a "think tank" which can give its opinions to the Indonesian Government in managing every aspect of films and their industry.

III. THE ASSESSMENT

In talking about the assessment of censoring a film, we must realize that censorship

always has some limitations. According to Horton and Leslie, there are several fundamental limitations.¹⁰ First, it is purely negative. Although it may eliminate "bad" content, it cannot produce "good" content. To censor pornography or obscenity does not produce noble drama; instead, it is more likely to produce a studious playing at the fringes of the obscenity code. Second, there may be a boomerang effect. This often happens in Indonesia, that a banned film can still be bought or rented somewhere else. Nothing stimulates the sales like *True Lies*, for instance, after being banned by the government. Third, to define unsuitable content is difficult. Fourth, it is hard to place limits upon censorship.

No doubt the assessment of how to censor a film is very obscure. The LSF cannot cut any sequence of film without good reasons. The censorship may not distort the story of the film as a whole. It is not an easy task because the assessment is not supposed to deal with sex exclusively.

At least, there are four viewpoints that the LSF must heed, i.e., (1) ideology and politics, (2) socioculture, (3) public order, and (4) religion. From ideological and political viewpoints, for example, a film may not contain any propaganda of anti-Pancasila ideology and the Indonesian Constitution of 1945, like Marxism/Leninism, Maoism, colonialism, imperialism, or fascism. From the viewpoint of socioculture, a film may not be harmful to public morality. It may not contain any misinterpretation of the Indonesian customs. From the viewpoint of public order, a film may not present unlawful actions in a manner that is so detailed that might stimulate someone to imitate them. In this category, a film is not allowed to expose excessive violence or to count heavily on sex. A film is not tolerated to express any sentiment of ethnic, religion, race, social or political group, which we call in Indonesian: SARA. From the religious viewpoint, a film is not permitted to show any action of antireligion and ruin the harmony of various religions in Indonesia.

By looking at these four viewpoints, it can happen that a film which does not expose sex can still be rejected by the government. It can occur that although a film which has been approved by the central government is rejected by the regional government. An example for the last mentioned item is a film entitled *Last Rites* telling about the life of a priest, the son of an Italian mafia godfather. It had been approved by the BSF (now it is the LSF), but it was later rejected by the North Sulawesi Province Government. The reason was that the film would be harmful to the harmony of religions in that province.¹¹

¹⁰ *Ibid.*, p. 533. See also: Dick Meister, "How 'Howl' Became a Best Seller," *The Progressive*, Vol. 22, Februari, 1958, pp. 36-37.

¹¹ Shidarta, *Loc. Cit.*

In censoring films, the LSF will follow the Ministerial Decree of Information No. 216/Kep/Menpen/1994 concerning the Work Mechanism of the Film Censorship Institution and the Management of Censorship. Unfortunately, in this decree we cannot find the criteria for censoring films. It just regulates the structure of the LSF and the procedure of censoring films. Article 35 of the decree cites that every previous ministerial decree which was enforced will not be enforceable anymore. This statement is very strange because it does not mention which ministerial decree will be withdrawn.

There is a decree which regulates the criteria for censoring films, that is Ministerial Decree of Information No. 120/Kep/Menpen/1989 dated July 19, 1989. If this decree is still enforceable, we can look into Article 9 stipulating that sequences of films or video records which needed to be cut out (because of sex abuse) are, among others, a showing of a man and/or woman who is/are naked or be assumed naked; a close-up of thigh, female breast, buttocks, navel, and other sexual organs, with body covering or not; and a scene of sensual kissing. Besides, a film can be rejected as a whole or be rejected to revise, if the film contains more than five percent of sexual scenes.

In fact, we can still see many films showing those scenes mentioned above. They are not only shown in movie theaters, but also in television programs. It is very disturbing, because television has never provided any age selection of its audiences. The recent research conducted by Muhammad Budyatna proves that there is the same custom between teenagers in Indonesia and US in watching television programs. In average, they spend 3-4 hours of their 5-hour free time per day in watching the television programs. He concludes that violence in television programs (such as film series) can stimulate psychological effects, though indirectly.¹²

We realize that in the present condition it is impossible to shut out every window from outside cultural infiltration. This is also an extra job for the team of the LSF to whom Indonesian people entrust the job of censorship. They must follow cultural development of our people and try to meet their needs. Of course, this is not easy. We can imagine, how difficult it is to meet the needs of more than 180 million people. In LSF, there are two groups of people (Commission A and B) who control every development of our society, especially their values and cultural beliefs.

On the other hand, the LSF must have more authority than before. Soekanto, the head

¹² See Muhammad Budyatna, "Perilaku Remaja Jakarta Menonton Tiyangan Televisi," *Prisma*, No. 4 April, 1994, pp. 77-96.

of BSF, once admitted that his institution could not do anything when RCTI presented some films before they were censored by the BSF.¹³

In some cases, we can see that films which have been approved by the BSF/LSF can also be withdrawn by the government due to criticisms of the Indonesian Moslem Ulama Council (MUI). An example of such cases occurred last year regarding a film entitled *True Lies*. We can say that this proves that our government always pays attention to criticisms,¹⁴ but in the long run, it is bad for the BSF/LSF. This institution consists of every element of our people, including the MUI members. If the government wants to withdraw those films, the government must give opportunities to the LSF to reconsider their decisions. In this way, the members of the LSF will discuss whether the proposals of the MUI or other persons/institutions are reasonable enough to be accepted or not.

Actually, the LSF can predict the impact of a film – especially a western film – before it comes to Indonesia. Take "*True Lies*," for instance, which has become a controversial film in many countries although it won the American film award. In dealing with such films, the members of the LSF must be more careful in their censorship. The LSF can invite the MUI members (excluding its members in the LSF) or other critics to discuss the problem. Although there are many persons representing those institutions in the LSF, sometimes we see, their opinions are not the same as those opinions of their institutions. Certainly, it is not necessary to have such a discussion for every film because it may take a long time. This is not a wise step seen from the business or commercial viewpoint.

Our question now is: can the LSF be given sufficient power to force every institution, like television stations and movie theaters to obey the rules of the game? If a television station shows a film before it is censored by the LSF, can the station be given sanctions? What kind of sanctions will be delivered?

I think it is very difficult to give sufficient power to the LSF to stop a film being presented in a television station or a movie theater because that film has not been censored yet. The LSF is just an institution to censor or to judge in any case whether a film is harmful or not to be shown. If a film is presented without the LSF's approval, the police can stop the film which is being presented in a television station or a movie theater. It is a crime! The police can investigate the motivations of the persons in doing such a thing. Of

¹³ He mentioned this statement when he presented his paper at the Panel Discussion on the Indonesian Advertisement Ethics in Mangala Wanabhakti Building Jakarta, on July 11, 1992.

¹⁴ Also in Malaysia, the government often censors mass media there based on pornography issues just to magnetize Moslems' sympathy in general election. See "Sensor Pers Gaya Tetangga," *Gatra Magazine*, No. 16/Year I, March 4, p. 36

course, the licenses of those stations or movie theaters can be withdrawn later by our government.

Another example is the current situation which allows movie goers to see films meant for adults (the 17-year-old-film) accompanied by their children below 17 years old without any restrictions from the officers. It seems as if the law regulating that restriction is not enforceable anymore. So what in the sense of the LSF labeling certain films: 17 years old and older?

This restriction is not easy to apply to television. To deal with this problem, it would be safer if television stations do not show adult films (17-year-old-films) in their programs because those films would bring about harmful effects to young spectators.

As a conclusion, we can say that, to support a good functioning of the LSF's task is a necessity. This will involve many factors, e.g., government,¹⁵ film industries, movie theaters, television stations, and our societies in general, including us: the movie goers and television audiences.

¹⁵ It means the government must support the LSF decision. It once happened that a film which had been approved by the LSF could not be presented directly to the public because of government's ban without giving any reason, for example, the bans on showing the films entitled "Saijah dan Adinda" and "Langitku Rumahku".