

## JURIDICAL REVIEW ON THE PERPETRATORS OF DEMONSTRATIONS WEARING UNDERCLOTHES IN INDONESIA

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### ABSTRACT

*As a democracy, every citizen is allowed to participate either directly or indirectly in order to express his or her opinion on government policy, with what has been or will be decided by the government that is considered unfair to society. Of course, in expressing opinions, every citizen has an obligation and responsibility to obey all the provisions of the laws and regulations that have been set. One of them is respecting the generally recognized moral rules. One case that is being hotly debated related to the use of bikinis during demonstrations is D. For her actions D was designated as a suspect with an alleged case of pornography and act of nudity that was criminally charged with Article 36 of the Law of the Republic of Indonesia Number 44 of 2008 concerning Pornography. For his actions many from among institutions, the community to legal experts who reap the pros and cons of this. Therefore, this study will learn more about pornography and Indecent exposure, fulfilling or not the elements of article 36 of the Pornography Act reviewed from the case of Dinar Miswari, and the assessment of norms of decency in the community. This research paper presents a normative juridical approach with the study of library materials while data management is conducted in deductive analysis.*

**Keywords:** *Demonstration, pornography, indecent exposure.*

### 1. PREFACE

Democracy is a form of government that is a desire for every world community, it is because every citizen is allowed to participate either directly or indirectly to express his opinion on government policy, with what has been or will be decided by the government that is considered unfair to society. This is also confirmed in Law No. 39 of 1999 on Human Rights (hereinafter referred to as the "Human Rights Law") which basically everyone has the freedom to express and disseminate his opinion in oral or with writing (Pasal 23 ayat (2) Undang-Undang Republik Indonesia Nomor 39 Tahun 1999 tentang Hak Asasi Manusia). One way of direct participation as guaranteed by the Indonesian Republic Constitution 1945 (Hereinafter referred to as the "1945 Constitution") and other related laws and regulations in expressing opinions is demonstration. Demonstration is an activity carried out by one or more to issue thoughts with oral, written, and so on demonstratively in public (Pasal 1 ayat (3) Undang-Undang Republik Indonesia Nomor 9 Tahun 1998 tentang Kemerdekaan Menyampaikan Pendapat di Muka Umum). In expressing opinions, every citizen has the right to issue his or her mind freely and obtain legal protection (Pasal 5 Undang-Undang Republik Indonesia Nomor 9 Tahun 1998 tentang Kemerdekaan Menyampaikan Pendapat di Muka Umum), but everyone has an obligation and responsibility to obey all the provisions of the laws and regulations that have been set. One of them is to respect the generally recognized moral rules that heed religious norms, decency and decency in people's lives (Pasal 6 Undang-Undang Republik Indonesia Nomor 9 Tahun 1998 tentang Kemerdekaan Menyampaikan Pendapat di Muka Umum).

One of the cases that was once hotly debated related to the demonstration with the use of a red bikini and carrying a sign that said "I am stressed because PPKM is extended again" on Lebak Bulus Raya highway, Cilandak, South Jakarta is Dinar Miswari (Hereinafter called "D ")

(Firmansyah, 2021). The demonstration had previously been planned by D in advance through his personal Instagram account, intending to take to the streets if the government again extended the Restriction of Community Activities (Hereinafter referred to as "PPKM") Level 4. As a result PPKM Level 4 was extended until August 9, 2021 and the protests were realized (Mangihot, 2021). Then during the demonstration, D ordered his brother who was in charge and his assistant to record the demonstration using his mobile phone (Alam).

For his actions, D was designated as a suspect with an alleged case of pornography and Indecent exposure that was criminally charged with Article 36 of Law No. 44 of 2008 on Pornography (hereinafter referred to as the "Pornography Act"). With the ensnared article 36 of the Pornography Law against D, many of the institutions, the public up to experts who reap the pros and cons of this. One of Al Azhar University's Criminal Law Observers, Suparji Ahmad, gave a response regarding the use of bikinis carried out by the D Celebgram. According to him, this action is very contrary to the values embraced in Indonesia. The move could be criminally charged for violating article 36 of Law No. 44 of 2008 concerning Pornography. Because it's pornographic (Hafizhah, 2021). Meanwhile, according to Commissioner of Komnas Perempuan, he said that the action of D in the street is a form of expression guaranteed by the Law. Then he also argued that the formulation of the notion of nudity is multi-interpretation so that potentially excessive action (Farouk, 2021). Based on the description above, the author is interested in raising the issue, namely whether the demonstration carried out by D meets the elements of article 36 jo. article 10 of the Pornography Law?

## **2. RESEARCH METHOD**

The research produced in this paper is a study that is normative juridical. Normative juridical research is literature law research conducted by examining literature materials or mere secondary data. This research was conducted to obtain various materials in the form of various principles, theories, concepts, and regulations in the field of law that have a relationship with the subject studied by authors and researchers to be neutral. Normative juridical aims to compile academic work such as papers in academic seminars, thesis, articles in legal journals, and dissertations and research will be conducted neutrally (Marzuki, 2016).

This paper brings contributions to society and law enforcement officials regarding freedom of opinion carried out by demonstrations with regard to norms that are live and apply in society such as religious norms, and decency.

This article consists of several parts. The first part begins with a description that leads readers to understand the basic things about the understanding of pornography and pornography. After the reader has understood the meaning of pornography and pornography, this article will elaborate on the formulation of the criminal provisions of pornography as contained in Article 36 of the Pornography Law which is associated with the D case. In the third part, the conclusions are produced in this study.

## **3. RESULT AND DISCUSSION**

Etymologically, pornography comes from two syllables namely porn and graphics. Pornos means an act that is immoral (in sexual matters), or an act that is indecent or obscene. While graphics are images or writing, which in a broad sense includes objects of sculpture, whose content or meaning to express or describe something that is immoral or attacks the sense of decency of society (Chazawi, 2005).

Based on the Law of the Republic of Indonesia No. 44 of 2008 concerning Pornography (hereinafter referred to as the "Pornography Law") Pornography is an image, sketch, illustration, photograph, writing, sound, sound, moving image, animation, cartoon, conversation, gesture, or other form of message through various forms of communication media and / or public performances, which contain obscenity or sexual exploitation that violates the norms of decency in society (Pasal 1 ayat (1) Undang-Undang Nomor 44 Tahun 2008 tentang Pornografi). According to Neng Djubaidah, Pornography is an attitude, behavior, act of body movement, erotic and sensual sound either done single or together, or done between animals deliberately performed by people or more aimed at arousing the lust of people, both pornographic acts and pornographic acts performed heterosexually, homosexually, lesbian, oral-sex, fellatio, cunnilingus, onani, masturbation, anal intercourse (sodomy) either done by persons of any kind or opposite sex, which address or cause persons who see it and or hear it, and or touch it arise a disgusting and/or disgusting and/or shameful feeling, contrary to local religions and/or customs (Djubaedah, 2003).

Indecent Exposure is a depiction of the action of movement, shaking, body, protrusion of the dominant body parts giving sexual stimulation up to the act of showing the breasts and accidental or intentional vital tools to provoke the rise of sexual appetite for those who see it. Pornography is originally the action of sexual subjects that are displayed directly from one person to others, thus causing sexual stimulation for a person including causing sexual hysteria in society (Chazawi, 2005). The definition of Indecent Exposure is implicitly also contained in the Pornography Law which contains: Anyone is prohibited from exhibiting themselves or others in performances or in public that depict nudity, sexual exploitation, sexual exploitation, sexual intercourse, or other pornographic content. If the pornographic activity is carried out, then based on article 36 of the Pornography Law can be punishable by imprisonment for a maximum of 10 (ten) years and / or a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah).

Article 36 of the Pornography Law is a criminal provision that contains the formulation of criminal convictions for violations of provisions that contain prohibition norms in article 10 of the Pornography Law, with the contents of the following articles: "Any person exhibiting himself or any other person in a performance or in public depicting nudity, sexual exploitation, sexual exploitation, or other pornographic content as referred to in Article 10 shall be punished with a maximum imprisonment of 10 (ten) years and/or a maximum fine of Rp5,000,000,000.00 (five billion rupiah) (Undang-Undang Nomor 44 Tahun 2008 tentang Pornografi).

If the formulation of the criminal act article 36 of the Pornography Law is detailed, then there are the following elements: (Rongkene, 2020) (a) subject: everyone; (b) actions: showing yourself or others; dan (c) objects: depicting nudity, sexual exploitation, sexual exploitation, sexual intercourse or other pornographic charges in performances or in public.

With the division of these elements, then an analysis will be carried out with the case of D fulfilling the four elements or not.

Everyone is a corporate person or corporation, both incorporated and non-incorporated (Pasal 1 ayat (3) Undang-Undang Nomor 44 Tahun 2008 tentang Pornografi). According to L.J. Van Apeldoorn quoted by Chidir Ali revealed that people in the juridical sense are everyone who has legal authority. Legal authority is the ability to be a subject of law. Furthermore, it is said, the law is bound only to humans, because only humans can have subjective rights meaning authority and obligations (Ali, 2015). According to Memorie van Toelichting (MvT) explained that the word "Everyone" indicates to whom the deed should be held accountable or who should be made a

suspect / defendant for an act. Thus the element "Everyone" has a lot to do with who is held accountable in a matter. Regarding the ability to be responsible can be seen in article 44 of the Criminal Code so that it can be drawn conclusions that can be held responsibly judging from the state of reason or soul that is disabled growth or disturbed due to diseases determined by psychiatrists, there is a causal relationship between the state of the soul and the deeds carried out where the relationship is assessed by the judge (Hiariej, 2016).

Referring to the definition above, D admitted that he was stressed due to PPKM that was extended continuously. Therefore, we must know in advance about the definition of stress falls into the category of mental disorders or not. Stress is the body's reaction to changes that require a response, regulation, and/or physical, psychological, and emotional adaptation. Stress can stem from situations, conditions, thoughts, and/or cause frustration, anger, nervousness, and anxiety (Hidayati & Harsono, 2021). According to a psychiatric specialist from the Division of Child and Adolescent Psychiatrists Department of Psychiatry FKUI / RSCM Tjhin Wiguna stated that stress is just a lay expression that refers to mental disorders. In fact, stress is a pressure that makes people have to adapt in the face of it to survive. If it can adapt means a person can manage stress well, but if the difficulty will trigger various types of mental disorders (Kartika, 2014).

On both definitions above, if we link criminal liability and the definition of stress with the case of D. For the sake of legal certainty, D should be examined first by a psychiatric psychiatrist about whether or not he is aware of his actions. Because based on the information given about his actions on the podcast Deddy Cobuzier, D stated that he was conscious and unconscious when doing so. If based on the results of a report made by a psychiatrist stated D was aware of doing the deed. Then D has fulfilled the elements of everyone as in article 36 of the Pornography Act.

Furthermore, about the element of action is to show themselves or others. According to the Great Dictionary of Indonesian (KBBI) the understanding of showing is to show something (theatrics, movies, and so on) as a spectacle; demonstrate (excellence and so on); exhibiting (items, paintings, and so on). For this understanding, to fulfil the element of showing themselves or others, according to the author must know in advance whether the action is done on the basis of intentionality or accident even though in the formulation of this article is not explicitly mentioned the element of intentionality. The author's statement is reinforced by the opinion of Eddy O.S. Hiariej who states that there is no mention of intentional elements in the delict formulation has an important meaning in the context of proof (Hiariej, 2016). In criminal law, the type of intentionality consists of 3 (three) namely intentionality as a intent, intentionality as certainty, and intentionality as a possibility. Based on these 3 types of intentionality is associated with the deeds and confessions of D So, his action fulfils the element on the type of intentionality as an intent (*opzet als oogmerk*).

Simply put, intentionality as a means is the motivation of someone to do deeds, actions and consequences are actually realized (Hiariej, 2016). It can be based on the actions of D who did the planning in advance and uploaded into his personal Instagram account. In the planning until D did the act of beikini on the highway, he can be declared to have wanted the act, coupled with himself who uploaded the act of berikini on the highway into his personal Instagram account. On the understanding and data that has been described, element 2 (second) is to show themselves or others have been fulfilled.

Then the third element or element of the object that describes nudity, sexual exploitation, sexual exploitation or other pornographic content in performance or in public. In this third element

consists of various elements that describe nudity or sexual exploitation, percentism or other pornography. Therefore, the three elements do not need to be proven one by one because they are alternative. In a day-to-day basis, the understanding of describing nudity consists of 2 (two) elements of the word that describes and nudity, according to the Language Development and Development Agency of the Ministry of Education and Culture, verb understanding describes imagination (imagine, create, design), sign (showing: expressing), embodiment (realizing: symbolizing, expressing, image), implicit, and iconography (meaning) (Badan Pengembangan dan Pembinaan Bahasa Kementerian Pendidikan dan Kebudayaan).

While according to KBBI, nudity means about being naked where naked has the understanding of not being dressed, unsheathed or not having clothes. If we refer to the Pornography Law, there is no definition or criteria about describing nudity, but in the explanation of Article 4 Paragraph 1 Letter d of the Pornography Law there is a definition of impressive nudity that is the condition of a person who uses body coverings, but still shows genitals explicitly. Referring to KBBI, the genitals are the part of the body that serves as a drain of urine wasting and a means to hold offspring. What is meant by explicit is plain, which means clearly visible; easily visible (because without lids, obstacles, and so on) (Permatasari, 2021). On the two understandings above, implicitly the understanding of describing nudity and displeasing nudity has a similar understanding. Because the notion of describing nudity can be understood as a sign, embodiment (symbolizing) or imagining (imagining) people who are not dressed so as to have a similar understanding with impressive nudity. Furthermore, based on Article 1 Paragraph 8 of the Law of the Republic of Indonesia Number 21 of 2007 concerning the Eradication of Trafficking in Persons (Hereinafter referred to as the "TPPO Law") social exploitation is any form of utilization of sexual organs or other organs of the victim for profit, including but not limited to all prostitution and fornication activities. The third element is prostitution. According to the Ministry of Education and Culture's Language Development and Development Agency, the same is a noun of prostitution that has the understanding of selling themselves as prostitutes; procrastination. And the last element is other pornographic charge. Other pornographic meanings can be seen in the explanation of Article 10 of the Pornography Law, namely sexual violence, masturbation.

Based on 4 (four) elements that have been described in this object element. And attributed to the events of D, the proven element is describing nudity. This can be proven because when D conducted an extended PPKM demonstration, he only uses bra and underwear (panties) clothing where the definition of describing nudity is a sign, embodiment (symbolizes) or imagines (imagine) an undressed person.

The last element in Article 36 jo. Article 10 of the Pornography Act is in a show or in public where it consists of 2 (two) elements, namely the performance or in public so it only needs to be proven one of them because it is alternative. According to KBBI, the term show means something that is shown or a spectacle (cinema, puppets, and so on), or also an exhibition. In the large dictionary Indonesian the second edition of the Library Hall of the Ministry of National Education. The meaning of the word show contains three things, namely: 1) The existence of actors of activities called presenters, 2) the existence of activities carried out by presenters and then called performances, and (3) the presence of people (audiences) who are targeted by a show (audience). Based on that meaning, the show can be interpreted as the activity of presenting something in front of others (Departemen Pendidikan Nasional, 1999). Next is in public. Basically understanding in public is the same as understanding in the open. It was conveyed by S.R. Sianturi, S.H. who explained that the intention of "open" (openbaar or almost the same as openlijk) is in a place where the public can come to that place or somewhere that can be seen, heard, or witnessed by the public

(who are in that place or elsewhere) (Sianturi, 1983). So, basically "open place" or "open" or "in public" is a place where others can see, hear, or witness it.

After deciphering the definition of each element in this fourth element and being connected to the D case, the fulfilled element is in public. Because at the time of doing this deed D did his deeds on the highway which is a public place where the public can see and witness the deeds done by D.

One of the elements that must be considered and proven in the pornography law is the norms of decency found in the community. This becomes important because in each region certainly has different norms of decency and cannot be equalized. For example, in Bali, wearing a bikini is commonplace, but it is different if the act is done in Aceh, which enforces Islamic sharia. So that to know whether or not an act can be punished for allegedly committing pornographic acts, it must also be considered the norms of decency that apply in the area where the act occurred. The meaning of decency (immoral acts) has something to do with modesty, feelings of shame related to sexual desire, such as having sex, groping women's breasts, groping female genitalia, showing members of the pubic, kissing (R. Soesilo, 1996). Decency is about something that damages decency, the nature of corrupting decency of such acts sometimes depends heavily on public opinion at that time and place. That people having sex in the middle of the road damages public decency is obviously an act of damaging decency, but kissing in public places in big cities today is done by the Indonesian nation still has to be questioned whether it damages decency or not. If the police encounter this kind of event, then in connection with the various measures of decency according to existing customs, it should first investigate whether the deeds that have been done by the suspect according to the place and circumstances can be viewed as immoral acts. The important thing that needs to be seen is the extent to which the violation of decency (immoral acts) is carried out, namely the need for observation of the law with reference to existing customs to see the context of immorality" (R. Soesilo, 1996). Furthermore, according to Barda Nawawi Arief, "Delik decency is a delik related to decency. While the understanding and boundaries of decency are quite broad and can vary according to views with the values that apply in society. Basically every delik or criminal act contains violations of the values of decency, it can even be said that the law itself is the values of minimal decency (*das recht ist das ethische minimum*) (Arief, 2014).

For the explanation that has been outlined, the norms of decency can be said to be violating if it is not in accordance with values and / or customs and is seen as an act of immorality in the community that applies in the area. If the understanding that has been outlined is implemented by the actions of D who protested about the extension of PPKM by using a bikini on lebak Bulus Raya highway, Cilandak, South Jakarta. So, the use of bikinis has violated the norms of decency in society. Because based on cultural norms it is not common and ethical to use bikinis on the highway with the main purpose of protesting about the extension of PPKM.

With the fulfilment of all the elements that have been outlined above and have violated the norms of decency, D can be punished with Article 36 jo. article 10 of the Pornography Law.

#### 4. CONCLUSIONS AND RECOMMENDATIONS

Demonstration is an activity carried out by one or more to issue thoughts with oral, written in public. In expressing their opinion, everyone must pay attention to the prevailing values in society, one of which is the value of decency. Demonstration activities conducted by D using bikinis on Jakarta highways must have violated the norms of decency in the community. In addition to disturbing the norms of decency in the community, the actions of D must have violated as

stipulated in Article 10 of the Pornography Law and resulted in D can be punished as stipulated in Article 36 of the Pornography Law.

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