



Dinar Candy, pornography, freedom of expression, and the law

Sujana Donandi S.

Sujana Donandi S.; President University; Ki Hajar Dewantara Street Number 1, Cikarang Utara; Bekasi City; West Java; Indonesia.

ARTICLE INFO

Article history:

Received 2022-06-01

Received in revised form
2022-07-08

Accepted 2022-08-01

Keywords:

Pornography; Freedom of
Expression; Law.

DOI: <https://doi.org/10.26905/idjch.v13i2.6517>.

How to cite item:

Donandi S, S. (2022). Dinar Candy, pornography, freedom of expression, and the law. *Jurnal Cakrawala Hukum*, 13(2) 202-213. doi:10.26905/idjch.v13i2.6517.

Abstract

Dinar Candy expressed her feeling to PPKM by wearing bikini in the roadside which caused her be stipulated as the suspect of pornography. Dinar Candy's case brought to the conception on the limitation of pornography interpretation and the determination on freedom of expression in action of wearing bikini. The research is conducted through a qualitative approach using secondary data. The results show, first: pornography is limited by 'subjective reason' such as if the pornography is aimed for personal interest, then the action is not pornography. The other is 'action-room limitation' in which an action can be formulated as pornography if the standard and characteristic in the room where the action is done considering that the action is obscene or aims to sexual exploitation. The room refers to specific places such as beach, roadside, hotel, or other specific place, not wide social room. Second: If someone's feeling is expressed by wearing bikini in a room which based on its decency standard allows to wear bikini, then the action can be determined as freedom of expression. In contrary, in a room where bikini is considered against morality, or it is spread to public, then such action is against the pornography law.

Corresponding Author:

* Sujana Donandi S.

E-mail address: sujana@president.ac.id

1. Introduction

Dinar Candy expressed her protest against the policy of the Implementation of Community Activity Restrictions (PPKM) by wearing a bikini on the side of the road while showing the words 'I am stressed because PPKM has been extended.' Some parties consider this action inappropriate and report Dinar Candy on charges of pornography. The actual response to the opposition to Dinar Candy's motion was carried out by the Indonesian Muslim Student Union (SEMMI) Legal Aid Institute, which reported Dinar Candy for her act. (Ernes, 2021)

Then, Dinar Candy's problem was entered into a legal procedure after she became a suspect on suspicion of a crime of pornography because it was deemed to have violated Article 36 of Law Number 44 of 2008 concerning Pornography. The Dinar Candy incident shows an intersection between a person's attitude of self-expression and behavior that is thought to be classified as an act of porn. On one hand, Indonesia recognizes democracy and freedom of opinion and expression. Meanwhile, on the other hand, Indonesia also opposes pornography because it is not by the nation's values of life which have also been formulated normatively in existing regulations.

Indonesia upholds the principle of the rule of law and has responsibility to keep the rule of law. But on the other hand, the law must not be used arbitrarily and must be carried out properly procedurally. In addition, the matter of material acts is also an essential part of law enforcement.

How far can freedom of expression be realized legally? Then, how is the determination of an act of pornography? Is every wearing bikini behavior a pornography? Then what about the bikini clad people on the island of Bali, or what about the Papuan people who have a unique style of dress which in the view of non-Papuans is classified as an open dress?

The questions in the paragraph above attract the Author's attention to see the correlation between freedom of expression, pornography, and

the law. These things then became the background for the Author's idea to compile this article entitled 'Dinar Candy, Freedom of Expression, Pornography, and the Law.'

2. Methods

The Author conducted this research with a qualitative approach. Butarbutar in Indarti states that a qualitative approach is used to find and understand what is hidden behind the phenomenon, which is challenging to comprehend satisfactorily. (Indarti, 2021). In this study, the phenomenon studied was the alleged crime of pornography committed by Dinar Candy, claimed to be a form of expression of the PPKM in Indonesia. The wonder of the Dinar Candy case becomes the subject of analysis to answer the relationship between freedom of expression, pornography, and the law.

In helping The Author to answer the problem behind the existing phenomena, secondary data sources are used. The secondary data related to the phenomena studied that the author used in this study include media news related to the alleged pornography case of Dinar Candy, laws related to pornography and freedom of expression, books and articles. Scientific articles are theoretical basis for The Author to conduct the study to answer research problems.

The research was conducted by understanding the case of Dinar Candy through mass media. Through a case study, The Author formulates the research problem. Furthermore, The Author performs a normative analysis of the relevant laws and regulations and, theoretically, on the doctrines obtained from scientific articles.

3. Result and Discussion

3.1 Limitations regarding the meaning of the crime of pornography in Indonesia

Dinar Candy is a Disc Jockey (DJ) with the full name Dinar Miswari, born in West Java on

April 21, 1993. Dinar Candy's father, Acep Ginayah Sobiri, is a Koran teacher. Dinar Candy started her career as a dangdut singer and once collaborated with Pamela Safitri in the group 'The Bubble.' As a DJ, Dinar received offers to record in Jakarta and has released three songs. Dinar had also appeared to make appearances on several televisions. (Istighfaroh, 2019)

Dinar Candy is an Indonesian celebrity who certainly has fans. As a celebrity, her activities are often in the spotlight. Sometimes, as a celebrity, She also publishes her action, as what happened on the alleged crime of pornography addressed to her. The allegation of pornographic violation addressed to Dinar Candy occurred because of the bikini she was wearing. The element of wearing a bikini is what The Author sees as the key to determining whether or not there is a pornographic element to Dinar Candy's actions. For this reason, it is necessary first to examine what pornography means and its limitations as the primary basis in imposing a criminal act of pornography on someone. After adjusting what pornography is, then there will be fundamental basis in analyzing whether the action of Dinar Candy is a pornography or not. Further, the description of the pornography will also be basis in making further analysis in seeing the difference on action categorized as porn and action which is considered as a freedom of expression. Furthermore, defining freedom of expression will also very essential in analyzing problems in this research.

The term pornography is composed of two words, namely porn and graphics. Pornography comes from the Greek phrase *porne* and *graphien*. *Porne* means prostitute, and *graphien* means expression. Pornography, according to the Big Indonesian Dictionary, namely: the first depiction of erotic behavior with paintings or writings to arouse lust, both reading materials that are intentionally and solely designed to stimulate desire. (Sushanty, 2017)

Pornography means erotically depicting behavior with actions or attempts to arouse lust, stimulate actions or attitudes, or engage in sexual acts. Pornography can be done directly, through sexual intercourse, or through print and electronic media such as images or obscene readings to arouse lust. (Abbas, 2017)

Authentically, the term pornography has also been defined and regulated in the laws and regulations in Indonesia. A law specifically regulates pornography, namely Law Number 44 of 2008 concerning Pornography (Pornography Law). Pornography in the Pornography Law is defined as pictures, sketches, illustrations, photos, writings, sounds, moving images, animations, cartoons, conversations, gestures, or other forms of messages through various communication media or public performances which contains obscenity or sexual exploitation that violates the norms of decency in the society. (Article 1 Number 1 Law Number 44 of 2008 concerning Pornography, 2008). In more detail, Article 4 of the Pornography Law stipulates that everyone is prohibited from producing, making, reproducing, distributing, broadcasting, importing, exporting, offering, trading, renting, or providing pornography that explicitly contains: a). intercourse, including deviant intercourse; b). sexual violence; c). masturbating; d). nudity or an impressive display of nudity; e). genitals; or f). child pornography.

The Law stipulates more prohibitions on pornography. According to Article 5, everyone is prohibited from lending or downloading pornography. Everyone is also banned from playing, showing, utilizing, possessing, or storing pornographic products, except those who are given authorization. Furthermore, every people is also prohibited from funding or facilitating actions (Article 7) and is not permitted intentionally or with their consent becoming an object or model containing pornographic content (Article 8). Furthermore, everyone is also prohib-

ited from making other people as objects or model with pornographic content (Article 9); everyone is not permitted to show themselves or others in shows or public depicting nudity, sexual exploitation, intercourse, or other pornographic content (Article 10). Furthermore, everyone is prohibited from involving children in activities or as objects related to pornography (Article 11).

Pornography is regulated and defined in the Criminal Code (KUHPidana) as a general legal norm (*lex general*) for each criminal act. In the Criminal Code, pornography is a crime that belongs to the category of criminal acts violating the decency contained in Articles 282 -283 of the Criminal Code. The Pornography Law does not explicitly abolish the crime of pornography in the Criminal Code but still enforces the Criminal Code. In some instance and circumstances with solid legal reasons, the crime of pornography in the Criminal Code can be applied. The types of pornographic crimes in the Criminal Code are as follows: (Rongkene, 2020) 1. The crime of pornography intentionally and with culpa (Article 282 of the Criminal Code), this crime of pornography is contained in Article 282, whose complete formulation is as follows: (1)Whoever broadcasts, displays, or puts up in public writings, pictures, or objects whose contents are known to violate morality, or whoever with the intention of broadcasting, showing, or affixing them in public, makes such writings, pictures, or objects import them into the country. Forward it, remove it from the government, or have stock or anyone who openly or by circulating a letter without being asked, offers it or shows it as available, shall be punished by a maximum imprisonment of one year and six months or a maximum fine of Rp. 4,500. –

(2) Whoever broadcasts, displays, or puts up in public writings, pictures, or objects that violate decency, or whoever with the intention of broadcasting, showing, or pasting them in public, make imports into the country, transmits them,

removes them from the government, or has supplies, or anyone who openly or by circulating a letter without being asked, offers, or appoints as can be obtained, threatened if there are solid reasons for the one to suspect that the writing, picture or object violates morality, with a maximum imprisonment of nine months a maximum fine of four thousand five hundred rupiahs. This provision is continued by the further provision: (3) If the person guilty of committing the crime referred to in the first paragraph has a quest or habit may be sentenced to a maximum imprisonment of two years and eight months or a maximum fine of seventy-five thousand rupiahs.

2. Crime of Pornography against Minors (Article 283 of the Criminal Code) The crime of pornography against minors is formulated in Article 283 of the Criminal Code; 3. The crime of pornography in searches with repetition (Article 283 bis of the Criminal Code). The corruption of decency referred to above is formulated in Article 283 bis of the Criminal Code.

Other arrangements for pornography in Indonesian laws and regulations can be found in Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE). The ITE Law does not explicitly mention the term 'Pornography,' but the ITE Law regulates actions that contain decency. Article 27 of the ITE Law stipulates that every person is prohibited from intentionally and without rights distributing or transmitting and making accessible Electronic Information or Electronic Documents that have content that violates decency. If the prohibition is carried out about etiquette or sexual exploitation of children, it will be subject to a weighting of one-third of the major crime. (Article 52 of Law Number 11 of 2008 concerning Information and Electronic Transactions, 2008)

Based on the analysis of the existing language, doctrine, and normative provisions, The

Author can conclude that pornography is part of an act that violates decency. Pornography has various manifestations, which are obscene nuances that can offend decency in society and are synonymous with efforts to arouse sexual desire.

In explaining the Pornography Law, we can find further provisions regarding exceptions to actions formulated as pornographic crimes. The Elucidation of Article 4 Paragraph (1) of the Pornography Law states that what is meant by “making” is not for oneself and one’s interests. The same thing is also seen in the explanation of Article 6, which also states that “The prohibition of “possessing or keeping” does not include for oneself and one’s interests.”

The restrictions described in the explanation of the Pornography Law indicate that acts classified as pornographic acts only apply when the actions and products resulting from the pornography act are carried out so that other people can access them. Making for self-interest is not a crime of pornography, which means it is not a legal problem as long as it is intended for oneself.

As described in the Elucidation of the Pornography Law, the limitation can be said to be a subjective limitation or scope. The Author calls this subjective limitation because it relates to whom the pornographic action or product is accessed or used. The limits in the existing provisions stipulate that subjectively, as long as it is only for oneself, the act is not a pornographic crime. The Author also mentions the limitation of reach because, as The Author has explained, as long as the action cannot be reached and witnessed by anyone else, then the act is not a violation of the norms of the Pornography Law.

According to The Author, the subjective limit itself is still not fully explained, namely regarding the phrase ‘for oneself.’ As long as it is interpreted textually, then for oneself is for one’s interests, where the word itself refers to the meaning of ‘one individual.’ However, it is not explained whether

the meaning of ‘self-interest’ in the elaboration of the Pornography Law is entirely aimed at a single human individual, or it can also be interpreted as ‘self’ in a broader context. For example, what if a wife does the act of producing pornography (e.g., recording sensual activities such as dancing naked (without clothes), but the goal is for her and her husband. When she makes it, her husband was not there, but when he comes home, she shows the pornography production that she has made. If the meaning of ‘oneself’ is meant for a single individual, when the wife shows her pornography production to her husband, there has been a violation of Article 4 of the Pornography Law. Whereas in practice, it is only the two of them who can access pornography production. As husband and wife, they are one unit in marriage, even though they are two human individuals. So, can the husband file a complaint against his wife for a pornographic crime? This question leads to a deeper dimension regarding giving meaning to the term ‘oneself,’ remembering the husband and wife is physically legally able to have sexual intercourse and whether a very intimate act by a wife for the common good of her legal husband as the illustration that the author gives about a wife who commits sensual acts, can be suspected of being a pornographic crime?

Another limitation that according to The Author, needs to be determined further is the limitation regarding the activity or act of Pornography itself. The author calls it a ‘verb’ boundary, referring to a linguistic term where an action is categorized as ‘verb.’ The Author intends to refer it to the limitations regarding the act of committing the crime of Pornography itself.

In the case study, Dinar is addressed allegations of Pornography against her because she was wearing a bikini on the side of a public street. Thus, ‘wearing a bikini on the side of a public road’ is an activity based on the verb ‘wearing (bikini),’ which must be identified as a pornographic crime

Dinar Candy, pornography, freedom of expression, and the law

Sujana Donandi S.

as formulated in the legal norms applicable in the field of Pornography.

To understand the definition of this verb, The Author sure it is essential to review what is conveyed by Article 1 of the Pornography Law regarding the meaning of Pornography. From the description in the Pornography Law, at least some elements must be met, including 1. There is an embodiment in which the model in question can be in the form of pictures, sketches, illustrations, photos, writings, sounds, sounds, moving images, animations, cartoons, conversations, gestures, or other forms of messages through various forms of communication media or public performances; 2. contains obscenity or sexual exploitation; 3. violate the norms of decency in the society.

The three elements above play a crucial role in identifying whether or not pornography has existed. When viewed from the existing definition, the first element is absolute (must exist), while the third element is the causality of the second element. That is, the second element must be considered as the cause of the emergence of the third element; otherwise, pornography is not fulfilled.

The Author sees that in the case of Dinar Candy, the first element is visible. Dinar Candy intended to record her bikini action on a public road for others to see. To increase the number of people who can access her efforts, the recordings of her actions were then published by her consciously. There are manifestations of Dinar Candy's actions, namely in actions and recordings of bikinis on the highway.

According to The Author, the elements that need deeper study are the second and third elements. In the activity of wearing a bikini on the side of the road, as Dinar Candy did, it must prove that the act contains obscenity or sexual exploitation. For this reason, it is necessary to conduct further research on the meaning of obscenity and sexual exploitation.

The word obscenity comes from the root word 'obscene.' In Kbbi.kemdikbud.go.id, the term obscene is defined as vile and dirty; indecent (violates decency, decency). Obscenity is defined as 'obscene traits.' (No Title, 2021) (KBBI Kemendikbud). Thus, we can briefly state that obscenity is a vile, dirty, or indecent trait because it violates the value of decency.

In his analysis of the Roth vs. the United States case, Doherty stated that there needs to be a standard in assessing whether an act or material is obscene. The criteria that apply depend on the standards of the community or group where the indecent act or material is located. An obscenity seems to rely on the meaning of an act for the community in a place that can be from one place to another. The assessment of the act is different (Doherty, 1999)

Can find one of the meanings of sexual exploitation in the definition regulated by the Trafficking in Persons Act. However, the purpose of sexual exploitation as regulated in Article 1 point 8 only provides a general understanding of sexual exploitation without referring to the explanation of forms of sexual exploitation activity. "Sexual Exploitation is any form of using sexual organs or other organs of the victim for profit, including but not limited to all activities of prostitution and fornication." (Yuniantoro, 2018)

It appears that acts of sexual exploitation place more emphasis on efforts to use body shape for things that are sexually arousing. At the same time, fornication has a broader meaning. It is oriented toward actions aimed at generating or displaying something considered to be able to arouse lust (sexual), on which the judgment is based. The attitude towards that attitude is based on standards of decency, and its form is not limited to efforts to use body parts alone but can be in other states, either sound or images.

The third element regarding decency in society is closely related to the second element about

standards of obscenity and sexual exploitation. This can be seen from the definition and discussion of obscenity in which obscenity is formulated based on decency as a test tool. Indonesia consists of thousands of islands with various tribes, religions, and cultures. Each region has its peculiarities, ranging from language, clothing, and way of speaking to unique foods. This difference causes something in one area to be very liked or expected, but in another, it can be something that is hated.

Society's culture in dressing is, of course, also very different. Therefore, standards regarding decency need to be identified in more detail. The absence of measurable standards seems to be an objection in the community regarding the existence of the Pornography Law, which emerged even when the law was still only a draft.

Initially, the plan to regulate pornography was accompanied by a plan to regulate porn action, emphasizing actions that containing porn. Abbas stated that the reaction to the discourse on the draft on anti-pornography and porn action did get strong opposition from some local community groups, such as; Bali, North Sulawesi, and Papua. There was an impression that the sense of national unity and integrity is disturbed even though most regions do not question it and even gave their support. Those who refuse from community groups in several areas are based on a fear that their habits as traditions that have been passed down from generation to generation will be criminalized under the pornography law. For example, it has become a tradition for Balinese women to get used to being bare chested. Likewise, our brothers and sisters in Papua, with their habit of covering their genitals modestly, with that habit, parts of the body that are considered taboo to be shown or displayed to the public are still visible (Abbas, 2017)

Bali is well-known as an essential destination in the world of Indonesian tourism. Bali has a variety of tourism variants, including types of cultural

and natural tourism. For nature tourism, Bali has many beautiful beaches and stunning natural scenery. Many foreign tourists like to come to Bali. On the beach, swimming, or playing in the sea, many wear pretty revealing clothes, such as bikinis.

If you look at the case of Dinar Candy, where the main suspicion of pornography is wearing a bikini, then if it is applied equally to people wearing bikinis on the beach or swimming pool, the documentation, either in the form of photos or videos, can be accessed by other parties. This person should also be charged with pornography. However, as with the exceptions to the verbs that have been identified, it is necessary to determine whether or not there is an element of obscenity and sexual exploitation. The meaning of obscenity has previously been described as the assessment of the presence or absence of obscenity is very dependent on the values that apply to the local community.

In the case of Dinar Candy, based on liputan6.com, according to Yusri, an investigator from the South Jakarta Metro Police Satreskrim, the making of the viral video content was on the side of a road in the vicinity of Lebak Bulus, South Jakarta. (liputan6.com) .(Layan, n.d.) Thus, to assess whether the act of wearing a bikini is obscene and leads to sexual exploitation (using sexual organs to gain profit), according to the references previously referred to, it is necessary to identify the standard of obscene acts in the Lebak Bulus area, South Jakarta.

Lebak Bulus is located in the capital city of Jakarta, the center of business and government. In urban society, office and trade activities are the main lines. Jakarta is an area that is generally a place of strenuous activities (office work and government administration). Thus, wearing a bikini in Jakarta may be inappropriate, especially on the streets. However, in Jakarta, there is beach such as Ancol or swimming pools that are also located in vacation spots and inns. If the bikini is

wore on the beach, it will be more appropriate, considering a beach is a place for swimming. This is in line with the act of wearing a bikini on the beach in Bali, for example, which of course, based on its location, is acceptable and does not violate the standards of dress on the beach in Bali. However, not everyone is allowed to wear a bikini in every area of Bali. If someone wears a bikini in a house of worship in Bali or at a formal event in Bali, of course, in that case, this such action violates the decency because it is not appropriate to wear a dress at a formal occasion or a house of worship.

The definition of standard meaning in assessing verbs (behavior) related to pornography is ideally not based on general societal values in a particular area. However, evaluating whether an act includes pornography must be found on the standards in the space (specific place) where the behavior was carried out. The room The Author means is oriented more narrowly, not to a broad area such as Bali, Papua, or Jakarta, but precisely where the event is located, whether on the beach, on the highway, or in an office. Thus, the limitation of assessing the presence or absence of pornography from the aspect of the action (verb) must be based on the characteristics of the nature of the space in which an act is carried out.

In the case of Dinar Candy, it appears that she carried out the actions on the side of the road, which is an area of transportation traffic and community activities. Generally, it is inappropriate for a person to wear a bikini in a place that is not intended for swimming, where swimming is regularly done in a bikini. Considering that this behavior is not by the characteristics of the function of the place where she is wearing a bikini, then the act can be categorized as pornography, as long as the elements regarding the formulation of pornography, such as forms of manifestation and obscenity or the purpose of sexual exploitation that have been formulated by law are fulfilled.

In principle, the formulation of legal norms regarding the meaning of pornography contains a transparent element that pornography must have aspects of obscenity or sexual exploitation and is contrary to the decency. However, the purpose of the two aspects should be clarified with firm boundaries so that the application and assessment of these elements are carried out specifically by taking into account the characteristics and characteristics inherent in the space where the incident occurred.

In the area of evidence, even if the limitation of the specific characteristics of the place of occurrence is used as the substance of changes to regulations regarding pornography, the determination of whether or not the elements meet the standards of pornography in that space cannot be carried out recklessly. Investigators should be careful in determining the presence or absence of these elements and ideally should seek expert testimony to identify them.

3.2 Determination regarding freedom of expression embodied in the act of wearing a bikini in Indonesian law

kbbi.kemdikbud.go.id defines determination as 'determining matters (determining, ensuring)'. The second discussion will focus on how to determine the existence of the right to freedom of expression. Concerning the first problem, it will also try to explain under what conditions wearing a bikini is not a form of freedom of expression but a crime of pornography.

If we look at the history of the emergence of pornography laws, the conflicts that arise are not only from the clash of cultures and customs of the people in certain places, as explained in the previous sub-chapter. Laksana and Suratman stated that the implementation of the pornography law had led to various conflicts. Some think pornography laws can impede freedom of expres-

sion, which is not in line with democracy. However, this law is also considered necessary to respond to the current world conditions closely related to digitization, which causes pornographic content to spread quickly, so there is a need for a legal basis to manage and control it. (Laksana & Suratman, 2014)

Freedom of expression as a right has been expressly stated in the 1945 Constitution of the Republic of Indonesia, in article 28F, which states: "Everyone has the right to communicate and obtain information to develop his personal and social environment, and has the right to seek, obtain, possess, store, process, and convey information using all available channels." The Human Rights Law in article 14 paragraph (2) also contains a similar substance which in principle gives the right to anyone to seek, obtain, possess, store, process, and convey information by using all available means. In addition, the International Covenant on Civil and Political Rights contained in article 19, paragraph (2) also stipulates that "Everyone has the right to freedom of expression; this right includes the freedom to seek, receive and impart information and ideas of any kind, regardless of restrictions, either orally, in writing, in print, in the form of works of art or through other media of their choice." (Rahmanto, 2016)

Freedom of expression as a right is often juxtaposed with 'freedom of opinion,' which emphasizes efforts to express opinions or aspirations. The norm of the right to freedom of expression and thought is considered one of the keys to democracy. The standard of the right to freedom of expression and opinion is needed to realize an accountable government. Guaranteed rights to freedom of expression and thought always provide supervision and control by the general public to the running of the government (public control and direction). (Warong, et.al., 2020)

Freedom of opinion and expression is an individual and collective right, which allows people

to have the opportunity to convey, seek, receive, and share various kinds of information, which can develop and express their opinions/views in a way that they think is appropriate. Freedom of expression can be seen in two ways: the right to access, receive and disseminate information and; the right to express oneself through any medium. (Setiawan, 2017)

The Author thinks that it is true that every citizen should have the authority to express his feelings (expression), and this is already governed and has a normative basis that is recognized by the state. However, Indonesia also puts the law as supremacy in implementing social life. Every community action must also be based on the existing legal rules. Recognized democracy is inherent in each individual, which is in principle limited by the rule of law to create order and avoid conflicts between the use of freedom of expression and other community rights recognized and protected by law.

Referring to the results of the first problem analysis, actually, 'bikini' is not a sign that there has been a pornography violation in it. So that not all activities to express expression by wearing a bikini is a violation of the law. However, wearing a bikini in a place that is not supposed to cause the act of wearing a bikini to become a violation of the law, and with the element of violating the law, the reason for freedom of expression should be set aside for the sake of upholding the rule of law.

Self-expression manifested in bikini activities will only become a complete 'expression' without violating the law if the expression is carried out in a place where wearing a bikini is not considered a lousy standard and is not against the standard of decency in that place. Expressing any feelings, be it happy, sad, disappointed, or angry, by wearing a bikini in a swimming pool or beach that allows visitors to wear a bikini will not be a violation of the law and can be defined as a form of expression that is free and acceptable by local morality.

The embodiment of expression by wearing a bikini must also be interpreted in the context of not being continued with other activities, which then lead to other events that are included in the criminal formulation. For example, when a person is wearing a bikini on the beach to express their expression, then as far as her act of wearing a bikini on the beach allows visitors to wear a bikini, that action is not against the law. However, when the bikini event was recorded and distributed to the general public and fulfilled the elements contained in the pornography formulation as referred to in the existing provisions, a violation of the law in the realm of pornography occurred. However, the two main events in the illustration must be separated. When someone wears a bikini on the beach as a form of expression, it is a legal event, while the recording and distribution is another legal event. Therefore, if the recorder is the person in the recording, she can be charged with pornography. However, the suspicion of pornography is not because she is wearing a bikini on the beach, which allows visitors to wear a bikini. Still, the problem is because of the spread she has done. Meanwhile, if the spreader is someone else and the distribution is done without permission, it is recorded, then the recorder is suspected of being pornography.

When activity in bikini has entered the digital world and is intended to be widely accessed, then the standard limits of the decency in the space where bikini-wearing activities are carried out, as discussed in the first discussion subchapter, are no longer valid because the spread of events already exists in the public domain. It can be accessed anywhere, not only in Indonesia but even outside Indonesia. The standard that applies in the digital world is the general standard where the event occurred. The general standard in question is available in the country where the event occurred. If it happens in Indonesia, then the measure of standard of decency that is common in Indonesia is used.

Determining freedom of expression in bikini activities depends on where the action is carried out. Suppose a person's feelings are expressed by wearing a bikini in a room that standards of decency allow it, such as in a swimming pool or beach where visitors are allowed to wear a bikini, In that case, wearing a bikini can be considered a freedom of expression. However, when wearing a bikini is done in a room that views the bikini activity as morally wrong, or when it is published to the public, the act violates pornography law, invalidating the argument for the right of expression for the perpetrator.

4. Conclusion

The crime of pornography in the Indonesian legal framework is limited by subjective reasons such as the subject for whom an act or pornographic product is committed. If it is done for private purposes, then the action is not a pornographic crime. Another limitation is the 'action-space limitation' where an act can be defined as pornographic only if the standards and distinctive characteristics of the space in which the action is carried out deem it obscene or have the purpose of sexual exploitation and are against standard of decency. The area in question is a particular place on the beach, roadside, hotel, or other specific locations, not a broad community unit space. Suppose a person's feelings are expressed by wearing a bikini in a room that standards of decency allow it, such as in a swimming pool or beach where visitors are allowed to wear a bikini, in that case, wearing a bikini is a freedom of expression. However, when wearing a bikini is done in a room that views it as morally wrong, or when it is published to the public, the act violates pornography law, invalidating the argument for the right of expression for the perpetrator.

Legislative must revise the Pornography law, which reaffirms, even more, the peculiarities of the nature of space in identifying whether an act

is classified as a pornographic crime or not. There needs to be a more precise formulation regarding the limits and characteristics of allowed freedom of expression in a normative provision in Indonesia, to strengthen legal certainty in determining whether the term manifested by a person is contrary or not to the law, decency, and orderliness in society, so that will decide that identification of whether wearing bikini constitutes freedom of expression or is a violation of pornography law measurably.

References

- Abbas, A. H. (2017). Telaah terhadap Undang-Undang Pornografi Perspektif Hukum Islam. *Jurnal Al-'Adl*. Vol. 10 No. 1, Januari 2017. DOI: <http://dx.doi.org/10.31332/aladl.v10i1.688>.
- Bunga, D. (2011). Penanggulangan Pornografi Dalam Mewujudkan Manusia Pancasila. *Jurnal Konstitusi*, 8(4), 453-478. DOI: <https://doi.org/10.31078/jk>.
- Doherty, K. M. (1999). An analysis of obscenity and indecency regulation on the internet. In *Akron Law Review* (Vol. 32, Issue 2).
- Ernes, Y. (2021). *Pelapor Desak Polisi Tetapkan Dinar Candy Tersangka di Aksi Berbikini*. DetikNews. DOI: <https://news.detik.com/berita/d-5671204/pelapor-desak-polisi-tetapkan-dinar-candy-tersangka-di-aksi-berbikini>.
- Indarti, S. T. (2021). Kebijakan Keimigrasian di Masa Covid-19: dalam Perspektif Hak Asasi Manusia. *Jurnal HAM*, 12(1), 19. DOI: <https://doi.org/10.30641/ham.2021.12.19-36>.
- Istighfaroh, M. (2019). *Profil Lengkap Dinar Candy, DJ Seksi yang Soal Usul Semua Artis Jalani Tes Urine*. Tribunnewswiki.Com. Available at: <https://www.tribunnewswiki.com/2019/07/24/dinar-candy>.
- Laksana, A. W., & Suratman. (2014). Analisis Yuridis Penyidikan Tindak Pidana Pornografi Di Era Digitalisasi. *Jurnal Pembaharuan Hukum*, 1(2), 169-177.
- Layan, C. V. (2021). 8 Fakta Video Viral Dinar Candy Pakai Bikini di Pinggir Jalan. Available at: <https://www.liputan6.com/news/read/4624839/8-fakta-video-viral-dinar-candy-pakai-bikini-di-pinggir-jalan>.
- Lumingkewas, F. (2016). Tindak Pidana Kesusilaan Dalam Kuhp Dan Ruu Kuhp Serta Persoalan Keberpihakan Terhadap Perempuan. *Lex Crimen*, 5(1), 21-27.
- Marwadianto, M. (2020). Hak Atas Kebebasan Berpendapat dan Berekspreasi. *Jurnal HAM*, 11(1), 1-4. Available at: <https://ejournal.balitbangham.go.id/index.php/ham/article/view/976/pdf>.
- Mudjiyanto, B. (2019). Kebebasan Berekspreasi dan Hoaks Freedom of Expression and Hoaks. *Promedia*, 5(1), 1-39. DOI: <http://journal.uta45jakarta.ac.id/index.php/kom/article/view/1613>.
- Olivia, D. (2020). Pelaksanaan hak kebebasan berekspreasi, tanpa adanya rasa takut atau campur tangan penting untuk eksis di tengah-tengah masyarakat yang demokratis, di mana setiap orang mendapatkan akses dalam menikmati hak asasi manusi. *Law Jurnal Asasi Manusia Ringkasan*, 1(2). DOI: <http://dx.doi.org/10.36355/v1i2>.
- Prahassacitta, V., Hasibuan, B. M., Bisnis, J. H., Humaniora, F., Bina, U., & Kijang, K. (2019). Dalam Penerapan Pasal Penghinaan Undang-Undang Informasi Dan Transaksi Elektronik Kajian Atas Putusan Pengadilan Periode Tahun 2010-2016. *Jurnal Yudisial*, Vol 12, No 1 DOI: <http://dx.doi.org/10.29123/jy.v12i1.299>. 61-79.
- Rahmanto, T. Y. (2016). Kebebasan Berekspreasi Dalam Perspektif Hak Asasi Manusia: Perlindungan, Permasalahan Dan Implementasinya Di Provinsi Jawa Barat. *Jurnal HAM*, 7(1), 45. DOI: <https://doi.org/10.30641/ham.2016.7.45-53>.
- Rongkene, B. (2020). Tindak Pidana Pornografi Menurut Kuhp Dan Undang-Undang Nomor 44 Tahun 2008 Tentang Pornografi. *Human Relations*, 3(1), 1-8.
- Saidah, M., & Irwansyah, I. (2019). Kebebasan berekspreasi dan paradoks privasi dalam hubungan pertemanan. *Jurnal Studi Komunikasi (Indonesian Journal of Communications Studies)*, 3(2), 215. DOI: <https://doi.org/10.25139/jsk.v3i2.1683>.
- Sari, R. F. (2019). Menyoal Keablasan Berpendapat: Malfungsi Media Sosial Sebagai Panggung Produsage Konten Negatif. *Jurnal Penelitian Pers Dan Komunikasi Pembangunan*, 23(1), 1-16. DOI: <https://doi.org/10.46426/jp2kp.v23i1.86>.

Dinar Candy, pornography, freedom of expression, and the law

Sujana Donandi S.

- Selian, D. L., & Melina, C. (2018). Kebebasan Berekspresi Di Era Demokrasi: Catatan Penegakan Hak Asasi Manusia. *Lex Scientia Law Review*, 2(2), 189–198. DOI: <https://doi.org/10.15294/lesrev.v2i2.27589>.
- Setiawan, R. (2017). *Kebebasan Ekspresi Individual Dalam Pembangunan Manusia Era Digital*. Prosiding Seminar Nasional Pendidikan FKIP UNTIRTA 2017, 169–178.
- Sushanty, V. R. (2017). Pornografi Dunia Maya Menurut Kitab Undang-Undang Hukum Pidana, Undang-Undang Pornografi Dan Undang-Undang Informasi Elektronik. *Journal of Chemical Information and Modeling*, 53(9), 1689–1699.
- Warong, K. M., Caecilia J. J., Waha, C. T. (2020). Kajian Hukum Hak Asasi Manusia Terhadap Kebebasan Berpendapat Oleh Organisasi Kemasyarakatan di Media Sosial. *Lex Administratum VIII*(5), 2018–2020.
- Yuniantoro, F. (2018). Eksploitasi Seksual Sebagai Bentuk Kejahatan Kesusilaan Dalam Peraturan Perundang-Undangan. *Justitia Jurnal Hukum*, 2(1). DOI: <https://doi.org/10.30651/justitia.v2i1.1227>.