

## CRIMINAL LAW ENFORCEMENT OF CYBERPORN/CYBERSEX IN ORDER TO FIGHTING CRIME IN INDONESIA

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### ABSTRACT

Internet has created a new world called cyberspace, which is a computer-based communications domain that offers a new form of virtual reality. The development of the Internet has increased both technology and its use, has a lot of both positive and negative impacts. The negative impact of internet makes formerly conventional crime now be done using online computer media with very little risk of being caught. One conventional crime that uses online computer media is pornographic images. The problem discussed in this paper is: "How do criminal law enforcement policy against criminal acts of cyberporn/cybersex in the context of crime prevention in Indonesia during this time and the constraints of effort to anticipate the future? Based on the description in the discussion above it can be concluded that: Law enforcement policy against cyberporn/cybersex in Indonesia still use laws that are conventional, such as the Criminal Code, Broadcasting Act, Press Act, Film Act, Information and Electronic Transactions Act and Pornography Act, which still has weaknesses. Therefore, reforms are needed in the field of the substantive law to meet the challenges ahead. In addition to the renewal of the substance of the law also required the improvement of human resources of law enforcement, infrastructure and legal awareness of the society. Given that cybercrime cannot be equated with ordinary/conventional crime, so it cannot be faced by law enforcement and thought/construction of conventional law either.

Key words: Criminal law enforcement, cyberporn/cybersex, to fighting crime

### Introduction

Internet has created a new world called cyberspace, which is a computer-based communications domain that offers a new form of virtual reality. The development of the Internet has increased both technology and its use, has a lot of both positive and negative impacts. The negative impact of internet makes formerly conventional crime now be done using online computer media with very little risk of being caught.

Head of Public Relations of Jakarta Police Commissioner Rikwanto said that cases of crime through the virtual world are different from criminal cases that occur in the world of reality, and its handling also different in terms of disclosure. Police should not be hasty in determining the perpetrators of the crime. Even if there are indications of a crime, the perpetrators cannot be immediately arrested. Rikwanto explained disclosure of criminal cases in cyberspace need valid proof. Not every person conducts criminal offense even though there is an element that is closer, and to prove it need some times. The police are obliged to bring criminal cases to the world of reality first, and then search for victims and losses of material and non-material acquired. Then, police can arrest the operator of the site in cyberspace.<sup>1</sup>

Based on some of the literature and practice, cybercrime has distinctive characters than conventional crimes, among others, namely:

1. The illegal act, without any rights or unethical are happening in cyberspace, so the jurisdiction cannot be ascertained.
2. The act is done using any equipment that can be connected to the Internet.
3. This act resulted in loss of material and immaterial (time, value, service, money, goods, self-respect, dignity, confidentiality of information) which tend to be larger than a conventional crime.
4. The perpetrator is the person who controls the use of the Internet and its applications.
5. This act is often carried out transnationally/cross borders.<sup>2</sup>

Cybercrime can include crimes in all aspects of human life, including all the traditional forms of crime such as contained in the Criminal Code. Congress Report of the United Nations X/ 2000 stated, covers all new forms of crime directed at computers, computer networks and users, and other forms of traditional crime that is now done with the use or with the aid of computer equipment.<sup>3</sup>

One conventional crime that uses online computer media is pornographic images. The pictures circulating on the Internet and can be seen by anyone for free, regardless of age. The spread of pornographic images can resulted in moral decline of society.

<sup>1</sup> <http://www.republika.co.id/berita/nasional/jabodetabek-nasional/14/...> Pengungkapan Kasus Cybercrime butuh waktu lama, download 23 Mei 2014.

<sup>2</sup> Dwi haryadi, 2013, *Kebijakan Integral Penanggulangan Cyberporn Di Indonesia*, Penerbit, Lima, Yogyakarta, p. 44 - 45.

<sup>3</sup> Barda Nawawi Arief, 2005, *Tindak Pidana Mayantara, Perkembangan Kajian Cybercrime Di Indonesia*, RajaGrafindo Persada, Jakarta, p.43.

Cyberporn/cybersex is one type of serious cybercrime and cause huge damage, because the attack is directed at younger generation of a nation that can result in the existence of free sex and result in further reduction in human resources because oriented pornography. Therefore, law enforcement against cyberporn/cybersex needs serious attention from the government.

In the opinion of Dr. Robert Weiss of the Sexual Recovery Institute in Los Angeles, that pornography has a reputation of similar effects to cocaine, which cause sexual addiction. The way it works is very fast and powerful, just like the use of narcotics, sexual pleasure experience gained by viewing pornographic images can cause repetitive behavior patterns and intensified, as a result creates addiction to pornography.<sup>4</sup>

If it is upon the children of Indonesia, one can imagine how suffering the nation, because future generations addicted to pornography. Such impacts are very dangerous for the nation, therefore the criminal law enforcement against cyberporn needs to be improved by the Government.

### **The Problem**

Based on the above mentioned fact the problem discussed in this paper is: "How do criminal law enforcement policy against criminal acts of cyberporn/cybersex in the context of crime prevention in Indonesia during this time and the constraints of effort to anticipate the future?"

### **Research Purposes:**

To identify and analyze criminal law enforcement policy against criminal acts of cyberporn/cybersex in the context of crime prevention in Indonesia during this time and the constraints of effort to anticipate the future.

### **Discussion**

#### **Formulation Policy of Cyberporn/Cybersex Crime in Indonesia**

Criminal law enforcement policy is part of a criminal policy. Law enforcement policy is a set of processes consists of three stages of the policy. First, formulative policy stage or legislative policy stage is the stage of preparation/formulation of criminal law. Second, the judicial/implementation stage, namely the implementation phase of the criminal law. Third, the stage of executive/administration policy, namely the stage of implementation/execution of criminal law. The first phase (legislative policy) is the stage of law enforcement "in abstracto" while the second and third phase (phase of the judiciary and the executive policy) are the stage of law enforcement "in concreto".<sup>5</sup>

The stages of criminal law enforcement aforementioned contains three power or authority, namely legislative authority which formulates or establishes acts as acts that can be imprisoned (criminal offenses) and its criminal sanction, law application authority by law enforcement officials, and the power/authority which execute or carry out a concrete law by authorities/agencies authorized.

The legislative process is a strategic early stage of the law enforcement, so that mistake at this stage is a strategic error that can become an obstacle to law enforcement efforts. With the formulation stage, the prevention and control of crime is not only the task of law enforcement/implementation officers, but also the task of apparatus that make the law (legislative authorities), even legislative policy is the most strategic stage of "penal policy". Its Strategic position is because the penal system and punishment policies formulated by the legislative apparatus are the foundation of legality for criminal practitioners apparatus (judicial officers) and officers of criminal executive (executive/administrative officer).

Related with this cyberporn, the Government has issued several laws that containing criminal acts of decency, among other:<sup>6</sup>

1. Articles 281, 282, 283, 284-292, 532, and 533 of the Criminal Code.

The disadvantage is that the articles of the Criminal Code are not able to reach the corporation as moral perpetrator and also cannot reach the crime of morality that transcends territorial boundaries of Indonesia, the more so if the criminal act of decency is done by means of a computer.

2. Article 5 (1), Article 13, Article 18 paragraph (2) of Law No. 40 of 1999 on the Press.

Article 5 (1) concerning the obligation of the national press to spread events and opinions that respecting religious norms and a sense of public morality as well as the presumption of innocence.

Article 13, set the Press Company shall not contain ads, which among other things resulted in degrading a religion or interfere religious harmony, and contrary to the sense of public decency.

Article 18 paragraph (2), set up for the Press Company violating the provisions of Article 5, paragraph (1) and Article 13, shall be punished by a fine of Rp.500.000.000 (Five Hundred Million).

<sup>4</sup> [http://www.voa-islam.com/read/smart-teen/2011/06/23/15386/hati-hati terhadap Pornografi](http://www.voa-islam.com/read/smart-teen/2011/06/23/15386/hati-hati%20terhadap%20Pornografi), download 9 Mei 2014.

<sup>5</sup> Barda Nawawi Arief, 2012, *Kebijakan Formulasi Ketentuan Pidana, Dalam Peraturan Perundang-undangan*, Pustaka Magister, Semarang, p.10.

<sup>6</sup> Barda Nawawi Arief, 2011, *Pornografi, Pornoaksi, dan Cybersex-cyberporn*, Pustaka Magister, Semarang, p.44-59.

The weakness of the Press Law is no qualifying offense and there are no rules of liability for corporation, there are no rules about when or in terms of how the corporate/company press with a criminal offense and how if the fine is not paid, because there are no rules regarding criminal lieu of fines.

3. Article 57 Jo 36 paragraph (5), Article 57 Jo 36 paragraph (6), Article 58 Jo 46 paragraph (3) of Law No. 32 Year 2002 on Broadcasting.

Article 57 Jo Article 36 paragraph (5) threatening, among others, broadcast that accentuating the obscene. For radio, the threat of criminal imprisonment of 5 (five) years and/or a maximum fine of Rp. 1.000.000.000 (one billion Rupiah), while for television broadcasting, criminal threats imprisonment of 5 (five) years and/or a fine of Rp.10.000.000.000 (ten billion rupiah).

Article 57 Jo 36 paragraph (6), threatens punishment against broadcast that bullying, degrading, insulting and/or ignore religious values, dignity of Indonesian. Criminal threats for radio broadcasting, imprisonment of 5 (five) years and/or a maximum fine of Rp. 1.000.000.000 (one billion Rupiah), while for television broadcasting, criminal threats imprisonment of 5 (five) years and/or a fine of Rp.10.000.000.000 (ten billion rupiah).

Article 56 Jo 46 paragraph (3) threatens punishment against commercial advertisement in which includes among other things that are contrary to public morality and religious values, and/or exploitation of a child under the age of 18 years. Criminal threats 2 (years) and/or a fine of Rp. 500.000.000 (five hundred million rupiah) for radio broadcasting, and the imprisonment of 2 (two) years and/or a fine of Rp.5.000.000.000 (five billion rupiah) for television broadcasting.

The above provisions may be directed to cybercrime in the field of ethics, because according to this law the broadcastings are: activities that spreading broadcast by means of transmission and/or means of transmission on land, at sea, or in space by using the radio frequency spectrum through radio, through the air, cable and/or other media to be received simultaneously and concurrently by the community with the broadcast receiving device.

Weakness in the law Broadcasting is that the offenses aforementioned are limited to broadcast via radio or television, do not include broadcasting in digital technology, satellite, internet and other specific forms, whereas there are many broadcasts and advertisements in cybersex and cyberporn sites.

4. Article 40 and Article 41 of Law No. 8 of 1992 on Film.

Artikel 40, threatened with imprisonment of a maximum of 5 years and/or a maximum fine Rp.50.000.000 (fifty million) to acts:

- a. Intentionally distribute, export, display and/or broadcast movies and/or advertisement films that rejected by the film censorship institution as referred to in Article 33 paragraph (6); or
- b. Intentionally distribute, export, display and/or show pieces of film and/or a certain sound that was rejected by the film censorship institution as referred to in Article 33 paragraph (6); or
- c. Intentionally distribute, export, display and/or show a film that was censored as referred to in Article 33 paragraph (1).

Article 41, threatened with imprisonment 1 (one) year and/or a maximum fine of Rp. 40.000.000 (forty million) to acts:

- a. Doing movie business without license (Jo Article 14 paragraph (1), Article 17, Article 19, Article 20, Article 24 and Article 27).
- b. Distribute, export, display or showing uncensored films (jo Article 33 paragraph (1)).

The weakness of this law is that there is no provision of corporate criminal liability, in addition to the maximum criminal fine of only Rp 50 million, it does not mean anything for the film company, compared to the Broadcasting Act maximum fines up to Rp 10 billion.

5. Article 45 Jo 27 paragraph (1) and Article 52 of Law No.11 of 2008 on Information and Electronic Transactions.

Article 45 Jo 27 paragraph (1), threatening 6 years imprisonment and/or a fine of 1 billion rupiah, if intentionally and without right to distribute and/or transmit and/or make accessible electronic information and/or electronic documents that violate decency.

According to Article 52, if the violation of Article 27 paragraph (1) concerning morality or sexual exploitation of children, criminal liability substantially aggravated third.

6. Article 29 - Article 41 of Law Number 44 Year 2008 on Pornography.

Article 29, threatened imprisonment minimum of 6 (six) months and a maximum of twelve (12) years and/or fined at least Rp.250.000.000 (two hundred and fifty million rupiah) and maximum Rp. 6,000,000,000 (six billion), for every person who produces, makes, reproduce, copy, distribute, broadcast, importing, exporting, offering, reselling, leasing, or providing pornography as referred to in Article 4 paragraph (1).

As for Article 4 paragraph (1) provides: Every person is prohibited to produce, make, reproduce, copy, distribute, broadcast, importing, exporting, offering, reselling, leasing, or providing explicit pornography that includes:

- a. Sexual intercourse, including distorted sexual intercourse;
- b. Sexual violence;
- c. Masturbation;
- d. Nudity or an impressive display of nudity;
- e. Genitals; or
- f. Child pornography.

In the explanation of Article 4 paragraph (1) stated: what is meant by "making" is not included for himself and his own interests.

Article 30, threatened imprisonment of 6 (six) months and no later than 6 (six) years and/or fined at least Rp.250.000.000 (two hundred and fifty million rupiah) and maximum Rp. 3,000,000,000 (three billion rupiah), any person who provides pornography services as referred to in Article 4 paragraph (2).

Article 4 paragraph (2) stipulates: everyone prohibited from providing pornography services that:

- a. Presenting explicitly nudity or display of nudity;
- b. Presenting genitals explicitly;
- c. Exploiting or displaying sexual activity; or
- d. Offer or advertise, either directly or indirectly, of sexual services.

Article 31, threatened imprisonment of 4 (four) years and/or a maximum fine of Rp. 2.000.000.000 (two billions rupiah), for every person who lent or downloading pornography as referred to in Article 5.

Article 5 set every person is prohibited to lend or download pornography as referred to in Article 4 paragraph (1).

Article 32, threatened imprisonment of 4 (four) years and/or a maximum fine of Rp.2.000.000.000 (two billions rupiah), for every person who play, show, utilize, possessing or storing pornographic products referred to in Article 6.

Article 6 set that anyone banned from show, utilize, possessing or storing pornographic products referred to in Article 4 paragraph (1), except as authorized by legislation.

Article 33, threatened imprisonment of 2 (two) years and a maximum of 15 (fifteen) years and/or fined at least Rp.1.000.000.000 (one billion rupiah), and most Rp.7.500.000.000 (seven billions, five hundreds million rupiah), for every person who financed or facilitated acts as referred to in Article 7.

Article 7 set any person prohibited from funding or facilitating acts as referred to in Article 4.

Article 34, threatening criminal imprisonment of ten (10) years and/or a maximum fine of Rp.5,000,000,000 (five billions rupiah), any person who intentionally or with the approval her/himself into a object or model that contains pornographic content, as referred to in Article 8.

Article 8 regulates: Each person is prohibited from intentionally or as permitted himself to be an object or a model containing pornography.

Article 35, threatened imprisonment of 1 (one) year and a maximum of twelve (12) years and/or fined at least Rp.500.000.000 (five hundred millions rupiah) and at most Rp.6.000.000.000 (six billions rupiah), any person who makes other people as objects or models that contain pornographic content as referred to in Article 9.

Article 9 set each person is forbidden to make another person as an object or a model that contain pornographic content.

Article 36, threatened imprisonment of ten (10) years and/or a maximum fine of Rp. 5,000,000,000 (five billions rupiah), every person who showed themselves or others in the show or in public that depicts nudity, sexual exploitation, mating, or other pornographic contents referred to in Article 10.

Article 10 set that every person is prohibited from exposing themselves or others in the show or in public that depicts nudity, sexual exploitation, mating, or other pornographic contents.

Article 37, threatening everyone who involve children 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 threats.

Article 11, set each person is prohibited involve children in activities and/or as an object as referred to in Article 4, Article 5, Article 6, Article 8, Article 9, or Article 10.

Article 38, threatened imprisonment of 6 (six) months and no later than 6 (six) years and/or fined at least Rp. 250.000.000 (two hundred and fifty millions rupiah), and most Rp.3.000.000.000 (three billions rupiah), every person who invite, persuade, exploit, let, abuse of power, or force the child to use the pornographic products or services referred to in Article 12.

Article 12, set each person is forbidden to invite, persuade, exploit, let, abuse of power, or force the child to use the pornography products or services.

According to Article 40, in the case of pornography offenses committed by or on behalf of a corporation, the imposition of criminal charges can be made against the corporation and/or its management. The charge to administrators is in the form of imprisonment and fines, while the corporation was sentenced to the maximum penalty multiplied by 3 (three) of the criminal penalties in every chapter. Corporations can also be sentenced to an additional form of: freezing a business license, business license revocation, seizure of the proceeds of a criminal offense and revocation of legal status.

Of the various laws mentioned above, not all articles contained in the law can be used to handle cyberporn/cybersex in Indonesia, only a few chapters just as has been mentioned above, and even then there are still some weaknesses.

## Criminal Law Enforcement against Cyberporn/Cybersex in the Context of Crime Prevention, and Constraints Faced In Indonesia

In addition to the weakness from material criminal law standpoint (its substance), there are also a formal weaknesses in the evidence domain. Juridical recognition of the electronic record, as an evidence only exist on Corruption Act and Money Laundering Act, so that it becomes a problem for other crimes, especially those related to cybercrime.<sup>7</sup>

The weaknesses from this material criminal law standpoint will cause weak enforcement of the criminal law against cybercrime. This is in accordance with the opinion of Soerjono Soekanto which states that: "The functioning of law depends heavily on a harmonious relationship between the law itself, law enforcement, facilities and the people it governs. Lameness in one of the elements, it will probably result that the entire system will be exposed to negative influences".<sup>8</sup>

The legislation factors that often interfere with law enforcement are:

1. Not following the principles of the act enacted.
2. The absence of regulations that is necessary to implement the Act.
3. Unclear meaning of the words in the Act which led to confusion in the interpretation and implementation.<sup>9</sup>

Conceivably, if the law itself contains confusion in the interpretation then there are many court's decisions with striking disparity, so there is no legal certainty.

Following the opinion of Gustaf Radburch that any application of the Act into society rests on three (3) legal basis namely the value of the rule of law, justice and expediency, then this will add to the long row of weaknesses of criminal law enforcement.

In addition to the effect of substance on the rule of law, law enforcement evidently also influenced by the structure, and culture. This is in accordance with the opinion of Laurence M. Friedman of the Legal System Theory which says that: the legal system includes three components:

- a. *Legal substance*, actual results issued by the legal system, in the form of legal norms, both regulations, decisions used by law enforcement officials as well as by those who are governed;
- b. *Legal structure*, the parts that move in a mechanism, which is an institution created by the legal system and has the function to support the operation of the legal system (includes a domain of legal system as legal institutions, and the relationship or the distribution of powers between the legal institution);
- c. *Legal culture* in the form of ideas, attitudes, expectations and opinions on the law as a factors that determine how the legal system obtain its place or otherwise.<sup>10</sup>

This is because law enforcement is a process to realize the desires of law becomes a reality. The desire of Law are thoughts of law-making body formulated in legal regulations. Law enforcement process also reach law making. Formulation of lawmakers thought set forth in the rule of law will also determine how the law enforcement will be held. In fact, the law enforcement process culminated in the implementation by law enforcement officials.<sup>11</sup>

Satjipto Rahardjo states that: Law enforcement is not a stand-alone activity, but have a close reciprocal relationship with the community, therefore, in speaking of law enforcement should not be ignored discussion of the structure of society behind it.<sup>12</sup>

Law never operates in a vacuum state of the environment, always will be a mutual process between the law and the environment. Law works through human being, it is increasingly clear role of the environment on the legal life of a nation.

Discussing enforcement without offending people who run the enforcement aspect, a sterile discussion of nature, when discussing law enforcement just holding on imperatives as contained in the provisions of the law, it will only get an empty picture. Discussing enforcement be unbiased when linked to concrete implementation by humans.<sup>13</sup>

According to Van Doorn, "People always tend to give their own interpretation of the functions within the organization, based on personality, social origin and level of education, economic interests and political beliefs and view of his own life". Therefore, the human factor becomes important, because it is only through human factors such enforcement is executed.

Functional coordination relationship from each law enforcement agencies (police, prosecutors, judges, Correction Department) that currently shows the central ego and neglect in their duties that they are actually one of the criminal justice system needs to be fixed. According Muladi: "As a system, the criminal justice have structures device or sub-system supposed to work in a

<sup>7</sup> *Ibid*, p. 62.

<sup>8</sup> Soerjono Soekanto dan Mustafa Abdullah, 1987, *Sosiologi Hukum Dalam Masyarakat*, CV Rajawali, Jakarta, p. 20.

<sup>9</sup> Soerjono Soekanto, 1983, *Faktor-faktor yang Mempengaruhi Penegakan Hukum*, CV Rajawali, Jakarta, p.10.

<sup>10</sup> Lawrence M.Friedman, 1975, *The Legal System: A Social Science Perspective*, Russell Sage Foundation, New York, p 10.

<sup>11</sup> Satjipto Rahardjo, 2011, *Penegakan Hukum Suatu Tinjauan Sosiologis*, Genta Yogyakarta, p.24.

<sup>12</sup> *Ibid*, p 31.

<sup>13</sup> *Ibid*, p.26.

coherent, coordinated and integrated way in order to achieve maximum efficiency and effectiveness. The combination of efficiency and effectiveness in the system is essential, because it is not necessarily the efficiency of each sub-system, by itself produce effectiveness. Functional fragmentation of sub-system will reduce the effectiveness of the system, it can even make the whole system dysfunctional".<sup>14</sup>

Weak law enforcement is also caused by the legal culture of society that lack of respect for the law. Legal culture is defined as people's attitudes, values, ideas, and expectations of society against the law. Indonesia legal culture is not yet conducive for law enforcement, as tends to be elitist and corrupt. Culture of feudalism and paternalism that live in the community led to the law being elitist, derived and defined from above, even the officer remarks are considered something that must be obeyed.

According to Barda Nawawi Arief, in current crisis situation the most important thing is precisely the immaterial aspects of the legal reform, namely reform of legal culture, legal ethics/moral and law science/education. This immaterial aspects of this legal reform should be an advantage if the main goal is justice. The core of law reform/development is not on the formal aspects and external (such as the formation of new legislation, new institutional structures and mechanisms/procedures, more buildings and facilities/infrastructure), but rather lies in the aspect of immaterial, namely build culture and values of law.<sup>15</sup>

Barda Nawawi Arief asserts that legal reform means not only renewal of legal substance reform, but also legal structure reform, and legal culture reform which also includes legal ethics and legal science/education reform).<sup>16</sup>

Efforts to tackle cybercrime requires seriousness from all parties, in view of information technology, especially the Internet has been used as a means to build a civilized society of information. The existence of laws governing cybercrime is necessary, but law enforcement is influenced by factors other than legislation, is also influenced by law enforcement personnel, facilities and also legal awareness.

According to the author, Cybercrime is a crime with high-tech dimension, however, Indonesian law enforcement agencies do not fully understand what is cybercrime. In other words, human resources, especially law enforcement officers still do not fully understand about cybercrime. The availability of funding or budget for training of human resources is minimal, so that law enforcement agencies difficult to transmit their training both at home and abroad, although now the police as law enforcement officers have set up special units to deal with crimes of cybercrime namely VIT/Cybercrime Unit, that has Cybercrime laboratory which is the largest in Asia that can easily keep track of credit card fraud, porn video website, or bomb threats by short message system,<sup>17</sup> but not on local police station level. Indonesia can not only be measured by Jakarta, but outside Jakarta should also receive attention.

In addition to the legislation, law enforcement, and infrastructure factors, other important factors that affect the law enforcement according to the author, is legal awareness of community. The question of ethics to interacts on the internet still not well understood, low legal awareness to report the case to the police, the victim does not want his case known to the public because it looked a disgrace to the family.

Prevention and control of cyberporn/cybersex is not enough just to criminalize that states in the article, but rather required the cooperation of the Government, law enforcement agencies, NGOs, and communities in order to reduce the crime rate. Actually, the Internet Service Provider in Indonesia, had done to block pornographic sites, but the number of sites blocked has not been much so that the users are still free to enter into these sites, especially sites that come from abroad. For that ISPs need to collaborate with relevant agencies to update the list of porn sites that need to be blocked.

In addition, according to Barda Nawawi Arief, for effecting positive criminal law, it would need to be taken several steps/effort as follows:<sup>18</sup>

1. Increase the commitment of national strategy/priorities in crime prevention in the field of ethics, which should be aligned with efforts to reduce corruption, drugs, terrorism, and so on.
2. Increase the socialization movement/campaign about danger or negative impact of moral offense in the field of cyber (cybersex, cyberporn, cyber phone, cyber prostitution, cyber/virtual cohabitation, and so on) on national development goals, like campaign of anti-drug, anti-corruption, or anti-terrorism;
3. Increase the dissemination of basic values and spirit contained in the preamble of the Constitution of 1945, as well as goals (Vision and Mission) contained in the national development plan, which is the base value/passion to eradicate colonialism in all its forms (including colonization moral and cultural) as well as the spirit to build a life that is free national paradigm based on moral/national culture.
4. Improve dissemination and strengthening of law enforcement officers on the purpose (general guidelines) and the National Decency value in various laws (among others in the Film Act and the Broadcasting Act).
5. Construction Juridical reform, among others:

<sup>14</sup> Muladi, 1995, *Kapita Selekta Sistem Peradilan Pidana*, UNDIP, Semarang, p.21.

<sup>15</sup> Barda Nawawi Arief, 2010, *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana Dalam Penanggulangan Kejahatan*, Kencana Prenada Media Group, Jakarta, p. 6.

<sup>16</sup> *Loc Cit*, p. 6.

<sup>17</sup> <http://www.islatimes.org/vdcjahe88uqei8z.bnfu.html>, download 23 Mei 2014.

<sup>18</sup> Barda Nawawi Arief, *Op Cit, Pornografi...*, p.65.

- Reconstruction of law enforcement (legal thought) in the context of policy reform of the legal system and national development;
- Conducting substantial legal construction in the face of the juridical constraints;
- Enhance scientific culture/scientific approach in the making process and the enforcement of criminal law.

### Policy Formulation in The Future

Based on the opinion of Barda Nawawi Arief, mentioned above, then it is time for Indonesia to reform criminal law, especially in the face of cybercrime, not simply by ITE Act, but it takes a law that comprehensively regulates the issue of cybercrime. Cybercrime cannot be equated with conventional criminal offense. Conventional principles in the positive criminal law and legal doctrine that had been applicable are: the principle of legality, culpabilities principle, the principle of jurisdiction, evidence and so on. Therefore, need renewal in the field of criminal law to combat cybercrime.

Criminal law reform in effect must be taken by policy-oriented approach as well as value-oriented approach. The views and the concept of the value of the public/citizens regarding the values of decency need to be considered in the determination of the offense.<sup>19</sup> View of society that is familial, collectivist, and mono-dualism consideration would need to formulate a criminal offense of cyberporn and cybersex is in the legislation, no longer as a complaint-based offense but as an ordinary offense.

Author opined that the arguments of Barda Nawawi Arief still needs to be coupled with morality and ethics Improvement from law enforcement officers.

According to Aristotle's moral function is to guide man to choose a middle way between two opposite extreme, including in determining fairness.<sup>20</sup>

Morality covers a broad field of human behavior that are both personal and social nature. Sensitizing law enforcement officers against social situations people need to be improved. Moral and ethical hold the key to arbitrate progressively.

According Soerjono Soekanto, indicators of good moral are, among others, rationality, honesty, responsible, fair, and productive. The basis of the deviant behavior is among others is bad intention. This is because with a clean conscience, then humans will be able to distinguish which one is the bad behavior and which is a good behavior.<sup>21</sup>

According to the author: "Pancasila-based Morality will be different from non Pancasila moral. Ethics that aligned with the values of Pancasila will not distort the progressive laws for personal and institutional gains.

### Conclusion

Based on the description in the discussion above it can be concluded that: Law enforcement policy against cyberporn/cybersex in Indonesia still use laws that are conventional, such as the Criminal Code, Broadcasting Act, Press Act, Film Act, Information and Electronic Transactions Act and Pornography Act, which still has weaknesses. Therefore, reforms are needed in the field of the substantive law to meet the challenges ahead. In addition to the renewal of the substance of the law also required the improvement of human resources of law enforcement, infrastructure and legal awareness of the society. Given that cybercrime cannot be equated with ordinary/conventional crime, so it cannot be faced by law enforcement and thought / construction of conventional law either..

### Suggestion

To face the challenges of the future need to be made law on cyberporn/cybersex specifically with regard to the principle of enactment of criminal law according to the place (jurisdiction), the type of crime, criminal liability for corporations as perpetrators, evidence and proofing and the rules of sentencing, which is specifically applicable to the crime in cyberspace.

### References

- Barda Nawawi Arief, 2012, *Kebijakan Formulasi Ketentuan Pidana, Dalam Peraturan Perundang-undangan*, Pustaka Magister, Semarang.
- , 2011, *Pornografi, Pornoaksi, dan Cybersex-cyberporn*, Pustaka Magister, Semarang.
- , 2010, *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana Dalam Penanggulangan Kejahatan*, Kencana Prenada Media Group, Jakarta.
- , 2005, *Tindak Pidana Mayantara, Perkembangan Kajian Cybercrime Di Indonesia*, RajaGrafindo Persada, Jakarta.
- , 2011, *Bunga Rampai Kebijakan Hukum Pidana*, Kencana Prenada Media Grup, Jakarta.
- Bernard L Tanya, 2011, *Penegakan Hukum Dalam Terang Etika*, Genta, Yogyakarta.
- Dwi haryadi, 2013, *Kebijakan Integral Penanggulangan Cyberporn Di Indonesia*, Penerbit Lima, Yogyakarta.

<sup>19</sup> Barda Nanwai Arief, 2011, *Bunga Rampai Kebijakan Hukum Pidana*, Kencana Prenada Media Grup, Jakarta, p 29.

<sup>20</sup> Bernard L Tanya, 2011, *Penegakan Hukum Dalam Terang Etika*, Genta, Yogyakarta, p.103.

<sup>21</sup> Soerjono Soekanto & Mustafa Abdullah, *Op Cit*, p.166.

Lawrence M. Friedman, 1975, *The Legal System: A Social Science Perspective*, Russell Sage Foundation, New York.  
Muladi, 1995, *Kapita Selekt Sistem Peradilan Pidana*, UNDIP, Semarang.  
Satjipto Rahardjo, 2011, *Penegakan Hukum Suatu Tinjauan Sosiologis*, Genta Yogyakarta.  
Soerjono Soekanto dan Mustafa Abdullah, 1987, *Sosiologi Hukum Dalam Masyarakat*, CV Rajawali, Jakarta.  
Soerjono Soekanto, 1983, *Faktor-faktor yang Mempengaruhi Penegakan Hukum*, CV Rajawali, Jakarta.

**Internet:**

<http://www.voa-islam.com/read/smart-teen/2011/06/23/15386/hati-hati> terhadap Pornografi, diakses tanggal 9 Mei 2014.  
<http://www.islamtimes.org/vdcjahe88uqe8z.bnfu.html>, Polri bentuk unit khusus tangani kejahatan *Cyber*, download 23 Mei 2014.  
<http://www.republika.co.id/berita/nasional/jabodetabek-nasional/14/...> Pengungkapan Kasus Cybercrime butuh waktu lama, download 23 Mei 2014.