



Juridical Analysis of Underwear Commercialization Models Based on Law Number 44 of 2008 Concerning Pornography

Sefira Nurfadilla^{1*}, Anisa Nurhaliza², Hulwah Fikriyani Fauziyah³, Nuchraha Alhuda Hasnda⁴

^{1,2,3,4} Law Study Program, Faculty Of Business And Humanities
Nusa Putra University
Sukabumi, West Java, Indonesia

^{1,2,3,4} {sefira.nurfadilla_hk20, anisa.nurhaliza_hk20, hulwah.fikriyani_hk20, nuchraha.alhuda}@nusaputra.ac.id

Abstract. Commercialization models are essentially legal subjects that have a legal relationship to their work habits, so that in this case a commercialization model of underwear will result in legal incidents based on the regulations contained in Law Number 44 of 2008 concerning Pornography. Apart from giving rise to legal incidents for oneself, a commercialized underwear model can also be a cause of new crimes committed by other people against a model, because in reality a commercialized underwear model will display the beauty of her body openly to the public, in this way it will be easier to cause crimes to occur with any element. In this research there are 2 (two) problem formulations, including: 1) What are the legal regulations regarding underwear commercialization models in Indonesia?; 2) What is the legal certainty regarding the underwear commercialization model in Indonesia?; Apart from the formulation of the problem, this research also uses normative juridical research methods accompanied by in-depth methods based on the statutory approach method (Statute Approach) and the theoretical approach method (Conceptual Approach). This is because it makes it easier to achieve research results that will be presented as scientific work, and is appropriate with hopes or suggestions for the public.

Keywords: Legal certainty, Commercialization model, Underwear.

1 Introduction

The rise of underwear commercialization can be seen from various sources today, from social media to digital-based online shops. Moreover, the current commercialization of underwear is not just a series of advertising appearances of the goods, but is accompanied by models who also appear visible to the public in this series of commercialization. The models consist of both male and female models. If studied further, this will have a negative impact on a crime committed by another person in any way, and of course will

© The Author(s) 2024

A. Armansyah and U. B. Jaman (eds.), *Proceedings of the International Conference on Law, Public Policy, and Human Rights (ICLaPH 2023)*, Advances in Social Science, Education and Humanities Research 859,
https://doi.org/10.2991/978-2-38476-279-8_8

harm one of the parties involved in it. Especially if the commercialization is through social media, where the public has free access to see and watch it.

Judging from the many negative and threatening impacts on a person's comfort in essence, this cannot be allowed to continue to exist and be displayed, because basically it is considered practically. It is not good if a commercialization of underwear is displayed publicly with the models. Because there are many impacts of crimes that will occur and ultimately the law will act. Speaking within the scope of law, if we look at Law Number 44 of 2008 concerning Pornography, whether it is considered a violation or not, of course there is always a need for legal certainty regarding what is done, what happens and the impact it has on society.

Commercialization is essentially a trading activity, where the goal is an effort to fulfill one's needs in terms of economic factors, but it is important to remember that Indonesia is a legal state based on religious values and norms in society. so that if it actually produces a bad impact, it is best to prevent it in accordance with the laws in force in Indonesia. Therefore, in this research, based on the results of hypotheses and general studies, the author raised the title "Judicial Analysis of Underwear Commercialization Models Based on Law Number 48 of 2008 concerning Pornography"

This research raises the following problem formulation:

- 1) What are the legal regulations regarding underwear commercialization models in Indonesia?
- 2) What is the legal certainty regarding the underwear commercialization model in Indonesia?

The two problem formulations above are the main form of study in this research, which in the following discussion will be described and explained theoretically to answer in a solution to the problems raised in this research, as well as those that occur in fact in society.

2 Research Methods

As scientific legal research, this research uses normative juridical research methods, this is because it is adapted to the study of answers to problem formulations that dominate the need for argumentation and legal certainty. In addition, normative legal research also functions to provide juridical arguments when there is a legal vacuum, or ambiguity and conflict of norms. Furthermore, it is interpreted that normative legal research has a role in maintaining the critical aspects of legal science as a *sui generis* normative science. So the theoretical basis used is the theoretical basis found at the level of normative legal theory

Furthermore, this normative legal research method is also accompanied by an approach method that is used to strengthen the arguments obtained in order to produce optimal research. The approach methods used in this research include the following:

1) The statutory approach method (Statute Approach). This approach is carried out by reviewing all laws and regulations relating to the legal issues that occur. As is the case in this discussion, the problem is where to examine legal regulations with specifications for underwear commercialization models, so as to obtain results in the form of legislative hypotheses based on its nature and form, *lex specialis derogate legi generalis*.

2) Theoretical approach method (Conceptual Approach). The conceptual legal approach is an approach that originates from views and doctrines that have developed in legal science to answer similar legal issues. Likewise, it relates to the problem in this research, where a commercialization model requires logical views from experts. Law so that it is able to produce an analysis of the results that the commercialization of underwear by a model is an element of crime or pornography violations that can be proven or will only be an abstract legal fact.

Research will be successful if it is carried out in accordance with the research methods and approaches applied to relevant legal issues

3 Research Finding and Discussion

The commercialization of underwear in Indonesia is now no longer a taboo subject, which is why it is seen as normal, even though if we examine it further, the commercialization of underwear survives behind the normalization of technological development, because technological development has become one of the opportunities for commercialization of underwear based on trade or sales. digital. Strengthened by the social status in today's society among influencers or better known as social media celebrities such as celebgram or other social media, they are part of the ongoing commercialization, because they also play a role as models in promoting underwear brands in accordance with the agreement on what will be done. obtained, in this case the monetary income from the promotion.

The world of underwear commercialization is not only carried out by men or women, but both. Although the reality is that it often happens and can be seen that female models dominate more than male models. For some ideologies that demand economic progress or in world understanding what is known as capitalism, they believe that the attractiveness of women is stronger and gives a better impression and message to the public than men. With this, it can be said that culture and understanding of capitalism indirectly normalize opportunities for harassment against women, especially in this case, it is published publicly and consumed publicly so that commercialization goals are achieved accompanied by collaboration with media parties. And in Indonesia this is precisely the case. which should be considered based on religious diversity as a form of obedience so that criminal acts do not occur which originate from excessive public consumption and even lead to the broadcast of pornography.

According to the Big Indonesian Dictionary in Alimuddin Siregar's book, pornography is explained that pornography is the depiction of erotic behavior by painting or

writing to arouse lust or reading materials that are deliberately and solely designed to arouse lust. Even the definition of pornography reinforced in Article 1 Number 1 of Law Number 44 of 2008 concerning Pornography which states "Pornography is a picture, sketch, illustration, photo, writing, sound, sound, moving image, animation, cartoon, conversation, body movement, or other form of message through various forms of communication media and/or public performances, which contain obscenity or sexual exploitation which violates the norms of decency in society."

The commercialization model of underwear is subjectively included as an element of pornography, but only the form and results of promotional images or videos are carried out. Many models of underwear commercialization have resulted in victims of criminal acts, often verbal sexual harassment through social media itself. This is something that must be firmly anticipated. Criminal law adheres to a causal relationship or known as causality theory, which is explained as a concept in philosophy, science and logic that discusses the cause-and-effect relationship between events or phenomena, then how a particular event or action can be the cause of an event or action. other. Causation in criminal law is based on the idea that every event has an identifiable cause and effect. Economically, it answers the questions "why" and "how" in an event that occurs

Based on the explanation above, it is natural that criminal acts of sexual harassment often occur, either directly or indirectly, as expressed in the content of social media comments. From a practical economic perspective, the commercialization model is indeed a profession or job which will of course provide income to fulfill the daily needs of the models involved, only if it is carried out directly by the subject, in this case humans, it will actually give rise to legal events that occur. Therefore, it is necessary to pay careful attention to the regulation of the underwear commercialization model, apart from that it is seen and paid attention to based on the object in the commercialization act itself.

Explicitly, the regulation regarding the underwear commercialization model is still a big confusion in front of the public, people's thoughts and perspectives still have pros and cons according to their respective points of view, but as a country that adheres to positive law, Law Number 44 of 2008 concerning Pornography has states the related provisions as follows: Article 8 "Every person is prohibited from intentionally or with his own consent becoming an object or model containing pornographic content". And for the criminal provisions in Article 34 "Every person who intentionally or with his own consent becomes an object or models containing pornographic content as intended in Article 8 shall be punished with imprisonment for a maximum of 10 (ten) years and/or a fine of a maximum of Rp. 5,000,000,000.00. (five billion rupiah)".

Apart from Law Number 44 of 2008 concerning Pornography, there are other regulations that regulate and relate to directions that will result in harassment and/or immorality because they are caused by similar motives, which is referred to in Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, more specifically regulated in Article 27 paragraph (1) with criminal provisions in Article 45 paragraph (1). The explanation is as

follows: Article 27 paragraph (1) "Every person intentionally and without right distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents which have content that violates morality." Continued with the criminal provisions in Article 45 paragraph (1) "Every person who meets the elements as intended in Article 27 paragraph (1) shall be punished with imprisonment for a maximum of 6 (six) years and/or a fine of a maximum of Rp. 1,000,000,000.00 (one billion rupiah)".

Based on analysis using the statutory approach method, the regulations related to the commercialization model of underwear have not been explained in detail and with certainty, because if we look at Law Number 44 of 2019 concerning Pornography, it is not specifically explained regarding the types or types and forms that are limited in commercialization, it's just that the assertion of a model is prohibited in any commercialization object, especially those containing pornography, so this element is considered relevant. Meanwhile, other regulations related to this matter are Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, which specifically emphasizes immoral matters via electronic media. Immorality itself is an act or behavior that deviates from the norms and rules of decency which currently tends to occur a lot in society, in fact nowadays immoral crimes are increasingly widespread everywhere. Thus the legal causes of this incident related, that is why there is a need for legal firmness based on existing regulations.

Judging from other laws and regulations, nothing specifically can be found regarding the commercialization model of underwear, especially in Provincial Regional Regulations and City and Regency Regional Regulations which in fact touch more on the social interactions of the surrounding community, including the Province of Bali, which is a province in Indonesia that Having cultural introductions and international visits does not have special arrangements for these events, it is only common in local tourism arrangements. Therefore, Law Number 44 of 2008 concerning Pornography and Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions are still used as relevant references even though the contents of the regulations are considered unclear and touch on commercialization of underwear.

Legal Certainty Regarding Underwear Commercialization Models in Indonesia

Discussing briefly about legal certainty, based on the analysis related to events in this research, it is assumed that the legal certainty stated by Sudikno Mertokusumo is very closely related. According to Sudikno Mertokusumo, legal certainty is a guarantee that the law is implemented, that those entitled to it according to the law can obtain their rights and that decisions can be implemented. Although legal certainty is closely related to justice, law is not identical with justice. Law is general, binding on everyone, generalizing, while justice is subjective, individualistic, and does not generalize at all.

Further regarding legal certainty, in the scientific journal Lord Lloyd stated that "law seems to require a certain minimum degree of regularity and certainty, for without that

it would be impossible to assert that what was operating in a given territory amounted to a legal system". This view can be understood that without legal certainty people will not know what to do and ultimately uncertainty will arise which will ultimately lead to violence due to the lack of certainty in the legal system. So, legal certainty refers to clear, permanent and consistent application of the law where its implementation cannot be influenced by subjective circumstances.

The theory and principles of legal certainty put forward by Sudikno Mertokusumo and Lord Lloyd essentially cover the firmness of a legal system and whether or not the law itself is implemented. A law can work and be firm depending on the law enforcers, because absolute regulations are only guidelines in written form so the law will never work and be upheld if the law enforcers do not carry it out. In the analysis of the legal events studied, it is clear that Law Number 44 of 2008 concerning Pornography and Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions have provided formal confirmation, meaning that the regulations have been implemented. Even though it is not made explicitly, it is still related. It's just that looking at the conditions that occur related to the commercialization of underwear which is carried out using promotional methods by model objects (living humans) it still exists, even people judge it by habit so that it becomes normalization in society, even though if it causes detrimental legal actions then the relevant legal subject needs public defense and protection and guarantees before the law, even though criminal law strictly adheres to a cause-and-effect relationship.

Normalizing the underwear commercialization model is not an absolute view before the law, because a criminal act or better known as an offense is a reference for how law enforcement can proceed depending on the legal act or criminal act committed by a person. Pornography is not included in the complaint offense, so pornography is categorized as an ordinary offense, where an ordinary offense is an offense that can be prosecuted without requiring a complaint. Likewise, the regulations regarding moral norms are stated in Article 27 paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions is included in ordinary offenses.

Basically, a criminal act can be categorized as an ordinary offense in this incident or generally included in a complaint offense because it is seen from the impact that occurs in the criminal act committed by a person. As in this case, pornography, in particular, no party is harmed by the publication or distribution of the commercialization of underwear, it actually benefits the owner of the underwear brand, it's just that society's point of view is regarding the norms that apply, especially the norms of decency in Indonesia. Those who do not adhere to western ideology actually adhere more to religious values in Indonesia, considering this model of underwear commercialization to be controversial, unethical, uncivilized and unethical, that is why laws exist and are made regarding pornography. Without realizing it, this incident will have an impact, especially a negative impact on the model, whose future direction will definitely require legal protection and guarantees.

In general, the negative impacts that often occur from the commercialization of underwear which is identical to pornographic behavior are as follows:

1. Rape and harassment;
2. Other sexual crimes triggered by sexual acts;
3. A person's mindset that is difficult to develop;
4. Excessive addiction;
5. Regular health.

The impacts above will not only be detrimental to the public who consume it, but the object of the underwear commercialization model itself is likely to be harmed, from verbal harassment to rape. That is why pornography is a common offense because law enforcement officials must play a role. intensively in preventing this criminal act from occurring.

The various discussions above, starting from the impacts and criminal acts that occur in the underwear commercialization model, are seen and linked to the viewpoints of Sudikno Mertokusumo and Lord Lloyd regarding legal certainty that has not been implemented optimally. The biggest influence in Indonesia today is to consider it normal so that it is normalized, even though the bad impacts that are occurring are bringing the current of thought to the next generation of the nation. Lord Lloyd above said that legal certainty is a person's guide to his actions and the firmness of the law itself. If we analyze the event of the underwear commercialization model, even though it is not explicitly formal, the formal law is firm in regulating this as stated in Article 8 of Law Number 44 of 2008, it is hoped that the public will be aware of this regulation because the law in Indonesia recognizes the principle of presumption *iures de iure* which is This means that when a statutory regulation has been promulgated, at that time everyone is considered to know.

In terms of legal certainty, according to Lord Lloyd, legal certainty is not only about formal law, the same goes for the legal system adopted by Indonesia, that formal law must always be accompanied by material law and law enforcement parties who implement it. So in this legal incident, the law regarding pornography is considered to be less strict, meaning that law enforcers have not investigated this model of underwear commercialization as absolute pornography, it seems that they are still being carried along by the current of normalization in society.

The next connection regarding legal certainty was put forward by Sudikno Mertokusumo based on an analysis of the legal events of the underwear commercialization model. Sudikno Mertokusumo practically states that legal certainty explains whether a law is valid or not, which is closely and relevant to Lord Lloyd's opinion about whether the law is firm or not. The view of legal certainty from Sudikno Mertokusumo analyzed this incident that the law is still not working, because the law does not work alone. As a formal written form, there is a role for law enforcement that must be carried out. In relation to ordinary offenses, law enforcers should investigate and deal with them with-

out having to make complaints, because what must be upheld in this incident is compliance with existing norms in society, but until now law enforcers have not paid attention to this, resulting in legal certainty. In terms of legal aspects whether it is running or not, it is still far from optimal, everything remains consider it normal even though this incident must be addressed immediately.

4 Conclusion

Based on the results of the discussion of this research, it produces two conclusions that are in accordance with the topic or problem formulation in this research, including the following:

1. There are no specific legal regulations in Indonesia regarding underwear commercialization models explicitly, it's just that in Article 8 of Law Number 44 of 2008 concerning Pornography it is stated that every person is prohibited from making models as objects of commercialization that contain pornography, meaning commercialization underwear can still be correlated with this article. Apart from that, Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions only includes related matters, where Article 27 paragraph (1) of this Law is more concerned with distribution via electronic media which contains And violates the norms of decency, in reality pornography is included in the elements of decency norms. Other regulations that touch directly on society, in this case, are Provincial Regional Regulations and City and Regency Regional Regulations. There are no such regulations yet, so currently it still refers to Law Number 44 of 2008 concerning Pornography, although it is considered to be unclear and precise.
2. Legal certainty in this research refers to the views of Sudikno Mertokusumo and Lord Lloyd, which can be concluded that legal certainty is about whether a law is valid or not, then whether a law is firm or not. This legal incident is part of an ordinary offense which law enforcers can investigate without prior complaint, but it is a shame that this action has not yet been taken even though if we look at the existing formal regulations, this underwear commercialization model can still refer to the Law. Law Number 44 of 2008 concerning Pornography. This indicates that the law has not implemented strictly in accordance with the mandate of legal certainty put forward by Sudikno Mertokusumo and Lord Lloyd, even though the impact of this underwear commercialization model is the bad impact of pornography consumption, but the law is still silent and does not work because it considers this is a normalized thing.

Reference

- [1] Diantha, I Made Pasek. Normative Legal Research Methodology in Justifying Legal Theory. Jakarta: Prenada Media Group, 2017.

- [2] Efendi, A'an, and Dyah Ochterina. *Legal Research (Legal Research)*. Jakarta: Sinar Graphics, 2014.
- [3] Wibowo, Richo Andi, et al. *Government Contracts: Concept, Variety, Regulatory Development, and Decision Review*. Jakarta: Kencana, 2021.
- [4] Handayani, Rivi. "Male Gaze in Model Photography: Objectification and Commercialization of Women's Bodies." *Journalism Department Journal*, vol. 3, no. 1, 2017, pp. 102.
- [5] Siregar, Alimuddin. *Legal Regulation of Pornography*. Surabaya: Scopindo Media Pustaka, 2019.
- [6] Nurjamal, Ecep. *Criminal Law and Application of Criminal Procedure Law*. Tasikmalaya: Edu Publisher, 2023.
- [7] Sutanto, Aji. "Social Impacts of Commercialization: A Legal Analysis." *Journal of Legal Studies*, vol. 15, no. 2, 2022, pp. 205-220

Open Access This chapter is licensed under the terms of the Creative Commons Attribution-NonCommercial 4.0 International License (<http://creativecommons.org/licenses/by-nc/4.0/>), which permits any noncommercial use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.

