

Kebijakan Penanggulangan Kejahatan (Criminal Policy) terhadap Tindak Pidana Pornografi di Dunia Maya (Cyberporn) melalui Pembaruan Kitab Undang-Undang Hukum Pidana (KUHP) Indonesia = The criminal policy of cyberporn offences in the renewal of the Indonesian criminal code

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Abstrak

Kebijakan Penanggulangan Kejahatan (Criminal Policy) terhadap Tindak Pidana Pornografi di Dunia Maya (Cyberporn) melalui Pembaruan Kitab Undang-Undang Hukum Pidana (KUHP) Indonesia Tesis ini membahas permasalahan utama mengenai bentuk kebijakan penanggulangan kejahatan (criminal policy) yang dapat diterapkan terhadap tindak pidana pornografi di dunia maya (cyberporn), prospek bentuk criminal policy terhadap tindak pidana cyberporn dalam KUHP Nasional di masa mendatang, serta implikasi dari keberadaan KUHP Nasional terhadap undang-undang lainnya dalam pengaturan tindak pidana cyberporn. Dengan menggunakan metode penelitian hukum normatif (yuridis-normatif), maka berdasarkan data sekunder yang diperoleh melalui studi dokumen seperti: bahan hukum primer, bahan hukum sekunder dan bahan hukum tertier, telah dihasilkan suatu kesimpulan bahwa bentuk criminal policy yang dapat dilakukan dalam upaya penanggulangan tindak pidana cyberporn melalui sarana penal adalah dengan menerapkan ketentuan undang-undang, seperti: Kitab Undang-Undang Hukum Pidana (KUHP), Undang-Undang Nomor 40 Tahun 1999 tentang Pers, Undang-Undang Nomor 32 Tahun 2002 tentang Penyiaran, Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik, Undang-Undang Nomor 44 Tahun 2008 tentang Pornografi, dan Undang-Undang Nomor 33 Tahun 2009 tentang Perfilman, sementara bentuk kebijakan non-penal yang dapat dilakukan adalah melalui berbagai pendekatan seperti: pendekatan teknologi (techno prevention), pendekatan budaya/kultural, pendekatan moral/edukatif, dan pendekatan global (kerjasama internasional). Di dalam RUU-KUHP telah dimuat beberapa ketentuan baru berkaitan dengan tindak pidana cyberporn, antara lain meliputi: pengaturan mengenai ruang lingkup berlakunya peraturan perundang-undangan pidana Indonesia terhadap tindak pidana di bidang teknologi informasi, pengaturan mengenai tindak pidana pornografi anak (child pornography) melalui komputer, serta pengaturan khusus mengenai tindak pidana pornografi. Keberadaan KUHP Nasional di masa mendatang dapat menimbulkan suatu implikasi terhadap undang-undang lainnya dalam pengaturan tindak pidana cyberporn berupa adanya tumpang tindih (overlapping) diantara KUHP Nasional dengan berbagai undang-undang tersebut, namun persoalan ini dapat diatasi dengan melakukan pencabutan sebagian atau seluruh ketentuan dari undang-undang di luar KUHP Nasional atau dengan menerapkan azas *lex specialis derogat legi generalis* secara kasuistis.

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This thesis discusses the main problems of the criminal policy that can be applied to combat cyberporn activities, the prospect of the cyberporn criminal policy in the future Indonesian Criminal Code, and the implication regarding to the existence of the new Indonesian Criminal Code with the other regulations relating with cyberporn offences. Using the normative legal research method (normative-juridical) based on the secondary data that consist of primary legal material, secondary legal material and tertiary legal material

wich were gain through documentation study, concludes the cyberporn criminal policy that can be effort with the penal policy is by applying several regulations, such as: The Indonesian Penal Code, The Press Act No. 40/1999, The Broadcasting Act No. 40/1999, The Information and Electronic Transaction Act No. 11/2008, The Pornography Act No. 44/2008, and The Movie Act No. 33/2009, in the other part using the non penal policy can be submit with several approaches, for instance: technological approach, educational approach, cultural approach, and global approach. The new Indonesian Penal Code concept have several new regulations regarding to cyberporn offences, consisting: the regulation of Indonesian jurisdiction involving technology and information crimes, the regulation of child pornography using computers, and the special regulation of pornography offences. The existence of the new Indonesian Penal Code may causes an overlapping condition with the other regulations dealing with cyberporn, but this problem can be solve by eliminating some or the whole guidelines of a regulation, or by applying the *lex specialis derogat legi generalis*? principle based on cases.;This thesis discusses the main problems of the criminal policy that can be applied to combat cyberporn activities, the prospect of the cyberporn criminal policy in the future Indonesian Criminal Code, and the implication regarding to the existence of the new Indonesian Criminal Code with the other regulations relating with cyberporn offences. Using the normative legal research method (normative-juridical) based on the secondary data that consist of primary legal material, secondary legal material and tertiary legal material wich were gain through documentation study, concludes the cyberporn criminal policy that can be effort with the penal policy is by applying several regulations, such as: The Indonesian Penal Code, The Press Act No. 40/1999, The Broadcasting Act No. 40/1999, The Information and Electronic Transaction Act No. 11/2008, The Pornography Act No. 44/2008, and The Movie Act No. 33/2009, in the other part using the non penal policy can be submit with several approaches, for instance: technological approach, educational approach, cultural approach, and global approach. The new Indonesian Penal Code concept have several new regulations regarding to cyberporn offences, consisting: the regulation of Indonesian jurisdiction involving technology and information crimes, the regulation of child pornography using computers, and the special regulation of pornography offences. The existence of the new Indonesian Penal Code may causes an overlapping condition with the other regulations dealing with cyberporn, but this problem can be solve by eliminating some or the whole guidelines of a regulation, or by applying the *lex specialis derogat legi generalis*? principle based on cases.