

The Authority of Indonesian Broadcasting Commission in Selecting Content That is Suspected to Contain the Pornographic Elements in Netflix Streaming Platform in Indonesia

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ABSTRACT

Netflix has not yet complied with the existing regulations in Indonesia. The films shown on Netflix have a wide variety of genres and content. There are several film contents that Netflix has shown which contain pornographic elements. This has created a desire from the Government and Indonesian Broadcasting Commission (KPI) to monitor the content on Netflix. This research method used normative legal research. Until now, Indonesian Broadcasting Commission (KPI) does not have the authority to supervise pornographic content that was broadcast by Netflix, this is because Netflix, which is a digital broadcaster, has not been regulated in the Broadcasting Law. Because no institution can oversee the operation of Netflix in Indonesia, several ways can be done to minimize the circulation of pornographic content in Netflix, one of which is by involving the Film Censorship Institute (LSF) before Netflix films are broadcasted in Indonesia. Seeing that there are no regulations that specifically regulate the operation of Netflix in Indonesia, the author's suggestion is, so that the Indonesia Broadcasting Commission (KPI) and involve the Film Censorship (LSF) to conduct selection and censorship of films to be broadcast by Netflix.

Keywords: Netflix, Pornographic, Indonesia Broadcasting Commission

1. INTRODUCTION

Technology has become an integral part of our daily life. The invention of technology offers human to do things more efficiently, easier and comfortable. The etymology of technology meaning knowledge of how to do or make something [1]. Internet consists of small networks that are connected to each other and form a large network. Initially the internet was created for military purpose, along with the times, the internet is now used for global communication [2]. Numerous people utilize internet to perform various activities, one of which is to search entertainment. Commonly, people use internet for visual and audio entertainment, such as watching movies. Film is a creation that is utilized as an instrument to get information as well as a device to obtain entertainment. Film is also used as an educational tool that has a role in disseminating new cultural values [3].

At the beginning of its emergence, movie was only entertained through cinemas, television, Digital Video Disk (DVD) or hard disk drives. Along with the development of technology, entertainment has been accessible through internet using computers, laptops, smartphones or other

media connected to the internet, usually known as streaming [4]. Streaming can be defined as a technology that able to shrink a file, both audio and video, to make it more accessible via the internet [5]. Streaming can also be interpreted as the technology used to play video through a media that is connected to the internet [6].

Streaming could be performed through a streaming service provider or Streaming Platform. Streaming Platform can be defined as a subscription-based service that provides movies and television programs online [7]. In the Cambridge Dictionary, Streaming Platform is defined as a service that delivers files in the form of videos or music by means of internet, users are able to listen or watch directly without downloading the file. One of Streaming Platforms that is often used in Indonesia is Netflix. Netflix is a service that was founded on April 14, 1998 by Marc Randolph and Reed Hastings. As of January 7, 2016, Netflix has served more than 100 countries, one of which is Indonesia. Netflix is a subscription-based service provider that allows its users to access ads-free movies and/or TV shows that can be accessed via smart TV's computers and certain Internet-connected devices [8].

When Netflix's entered Indonesia, Telkom Group decided to block access Netflix services for Telkom users. President

director of Telkom, Alec Janangkih, mentioned the reason for this action is consider that Netflix was in compliance with regulations in Indonesia and there were still many films shown by Netflix that still contained pornographic content [9]. In accordance with the provisions of Law 33 of 2009 concerning Film (Law of Film), every film or advertisement circulated in Indonesia must obtain a Censorship Pass Certificate (STLS) issued by LSF. The Head of Information Center and Public Relations of the Ministry of Communication and Informatics suggested 3 (three) recommendation that could be an option for Netflix to operate in Indonesia [10]:

- a. Netflix must be a Permanent Business Entity (BUT);
- b. Netflix must have a ministerial permit; or
- c. Netflix must register as an electronic system operator that is subject to Law Number 19 of 2017 concerning Amendments to Law Number 11 of 2009 concerning Electronic and Transactions (UU ITE)

While the Ministry of Communication and Information (Kemkominfo) attempted to find a legal umbrella for Netflix, the Indonesian Broadcasting Commission (KPI) is also working on regulations that can become the legal basis for monitoring the content and performance of streaming platforms in Indonesia [11]. KPI is a state institution that stands alone in the center and regions which has a function to accommodate aspirations and also to represent the interests of community in terms of broadcasting [12]. The duties, obligations and authorities of KPI are regulated in Law Number 32 of 2002 concerning Broadcasting. According to the Chairman of KPI for the 2019-2022 period, Agung Suprio, Netflix or other streaming platforms are included in the realm of broadcasting. In 2020, Telkom Group had opened access for its users to access Netflix [13], although there are still pornographic elements in the films shown by Netflix.

1.1. Problem Formulation

Based on the information described above, the author has found several issues. There were several issues that had been formulated as following:

- a. What is the authority of Indonesian Broadcasting Commission (KPI) in selecting content that is suspected to contain pornographic element in Netflix streaming platform based on the applicable laws in Indonesia?
- b. What is the form responsibility of the parties for the existence of content that is suspected of containing pornography on the Netflix streaming platform based on the applicable laws in Indonesia?
- c. What legal remedies can be taken to minimize the presence of content that is suspected to contain pornographic elements in the Netflix streaming platform based on the rules that apply in Indonesia?

2. METHOD

Peter Mahmud Marzuki explained that legal study is a process to find the rule of law, legal principles in order to answer the legal issues that was encountered [14]. This study was a normative or doctrinal legal research method. The main focus of this research was the legislation that applied in Indonesia, especially considering Law Number 32 of 2002 concerning Broadcasting. The nature of this research was descriptive which aims to generate a systematic, factual and accurate description. This study used descriptive research because the researcher want to describe the authority of KPI in selecting content suspected of containing pornographic content and legal remedies that can be taken to minimize the circulation of content suspected of containing pornographic elements on the Netflix streaming platform in terms of Law Number 32 Year 2002 on Pornography.

This study used secondary data. Secondary data is data obtained through literature study or review of various literatures and/or library materials related to research issues [15]. The researcher collected primary data and secondary data by reviewing literature from library and online. Data that had been collected, was analyzed by using a qualitative analysis method, which is all secondary data collected was analyzed systematically and classified into patterns and themes, then categorized and classified between one data and other data. The approach used in this study was Legislative Approach (Statue Approach) which is a study of legal products [16].

3. DISCUSSION

3.1. the Authority of the Indonesian Broadcasting Commission (KPI) in Selecting Content Suspected Containing Pornographic Elements in the Netflix Streaming Platform

In accordance with the definition of pornography according to Law number 44 of 2008 concerning Pornography, films on Netflix can be categorized as films whose content contains pornographic elements. The circulation of films containing pornographic elements creates unrest for users and the government, this has led to the government's desire to monitor the content broadcast on Netflix. Although the Government wants to supervise streaming platforms circulating in Indonesia, this has not been realized because there are no rules specifically regulating streaming platforms. In accordance with what is written in Law 32 of 2002 concerning Broadcasting, KPI has the authority to supervise broadcast program standards and broadcasting operations [17]. KPI is an institution that has the authority to oversee the course of broadcasting and to hear complaints and aspirations from the public regarding programs broadcast by Broadcasting Institutions that broadcast in Indonesia. Broadcasting institutions are broadcasting providers which in carrying out their broadcasts are subject to the applicable rules. Broadcasting institutions that will

broadcast in Indonesia must first obtain a broadcasting operation permit granted by the state through KPI. The state will issue an operating license after KPI provides a feasibility recommendation taken from the evaluation conducted by the applicant with the KPI and an agreement from a special meeting between KPI and the Government, this is stated in Article 33 paragraph (4) of Law Number 32 of 2002 concerning Broadcasting.

Law Number 32 of 2002 concerning Broadcasting stipulates that KPI has an obligation to distribute broadcasting behavior guidelines to Broadcasting Institutions and to the general public; supervise the implementation of community guidelines; accommodate and follow up on any complaints given by any person or group that complains about violations committed against broadcasting behavior; and submit the results of the assessment to the party giving the complaint and to the relevant Broadcasting Institution. In the Regulation of the Indonesian Broadcasting Commission Number 01/P/KPI/-7/2014 concerning the Institutionalization of the Indonesian Broadcasting Commission, the functions, duties and obligations of the KPI consist of several areas, namely:

- a. Broadcasting System and Structure Management Division;
- b. Broadcast Content Supervision Division;
- c. Institutional Sector.

Article 7 of Law Number 32 of 2002 concerning Broadcasting stated that KPI has a duty to ensure that broadcasting in Indonesia perform properly and Indonesian people can get proper information from broadcasting, and prohibit to broadcast the contents that are prohibited by law. One of the shows that is prohibited from broadcasting according to Law Number 32 of 2002 concerning Broadcasting is any show that highlight obscene elements, this is written in Article 36 paragraph (5) of Law Number 32 of 2002 concerning Broadcasting. Netflix, which is a digital broadcasting service, is deemed to have to comply with Law 32 of 2002 concerning Broadcasting so that it can be monitored by KPI. However, broadcasting through digital media has not been regulated in Law Number 32 of 2002 concerning Broadcasting, therefore KPI has not been able to oversee the operation of Netflix in Indonesia. Besides Netflix not being regulated in Indonesian regulations, another reason that cause KPI unable to monitor is due to the status of Netflix is a foreign business entity which until now does not have a representative office in Indonesia [18]. KPI desire to monitor Netflix because they are expected that people could watch an educative and moral shows to fulfill the values of Pancasila.

Law Number 32 of 2002 concerning Broadcasting, which is currently unable to regulate the operation of Netflix in Indonesia, creates an empty legal. The Ministry of Communication and Information (Kemkominfo) also feels that currently KPI does not have the authority to supervise Netflix broadcasting in Indonesia, since KPI does not have a legal umbrella to supervise Netflix. Therefore, in order for KPI to monitor broadcasting through Netflix, the government should revise Law Number 32 of 2002 concerning Broadcasting.

3.2. The Liability of Parties to the Content Which Was Suspected of Containing Pornography in the Streaming Platform Netflix Based on the Laws Applicable in Indonesia

In tackling problems for several parties who have responsibilities, one of which is the Ministry of Communication and Information (Kemkominfo). The Ministry of Communication and Informatics (Kemkominfo) has duties in the field of communication and informatics, this can be seen from Article 2 of Presidential Regulation Number 54 of 2015 concerning the Ministry of Communication and Information. The Ministry of Communication and Informatics (Kemkominfo), in this case the Directorate General of Information Applications (Ditjen Aptika), makes the ITE Law the basis for enforcing the law. The Director General of Informatics Applications (Ditjen Aptika) not only regulates pornographic content but regulates it more broadly than pornography, in accordance with Article 27 paragraph (1) of the ITE Law, therefore the Ministry of Communication and Information Technology also has responsibility for Netflix's broadcasting because it contains content that violates morality.

Law Enforcement Officials are also one of the parties responsible for the circulation of pornographic content on Netflix. Law Enforcement Officials have the duty to implement the prevailing laws and regulations in Indonesia by upholding the values of justice [19]. Law Enforcement Officials have a role to implement the laws and regulations in force in Indonesia, one of which is the application of pornography laws. Law Enforcement Officials may conduct investigations into content broadcast by Netflix if they receive complaints from users who are uncomfortable with the circulation of pornographic content on Netflix.

Wireless operators also have a role in taking responsibility for streaming platforms in Indonesia. Wireless Operators able to block films that are considered pornographic which are broadcast by Netflix in Indonesia. As has been currently performed by Wireless Operators who have blocked several sites that contain pornographic videos or films. When Netflix's entered Indonesia, Telkom Group had already blocked Netflix to prevent users of the network provided by Telkom Group access Netflix. Currently, Telkom Group has unblocked the Netflix application which still broadcasts pornographic content.

Besides Ministry of Communication and Information (Kemkominfo), Law Enforcement Officials and Wireless Operators, the Film Censorship Institute (LSF) also has responsibility for the distribution of films containing pornographic elements broadcast by Netflix in Indonesia. Article 47 of Law Number 32 of 2002 stated that all broadcast contents must first obtain a censorship pass from the authorized institution, in this case the authorized institution is the Film Censorship Institute (LSF). The Film Censorship Institute (LSF) has responsible in censoring films before circulated or shown to the public; and conduct evaluation towards title, image of a film to be broadcast in Indonesia.

Article 8 letters (a) and (b) stated that the Film Censorship Institute (LSF) may return a film and re-censor a film if after checking the film it turns out that there are elements that incompliance with the censorship criteria. The censorship criteria itself is regulated in Article 29 paragraph (2) of the same Law, where in the article it is stated that one of the criteria seen in censorship is in terms of pornography. As noted in Article 2 of Law Number 18 of 2014 concerning Film Censorship Institutions (LSF), basically all films shown in Indonesia must be selected through the Film Censorship Institute (LSF) and must obtain a Censorship Pass Certificate (STLS).

3.3. Legal Efforts That Can Be Taken to Minimize the Presence of Content That Is Suspected to Contain Pornographic Elements in The Streaming Platform of Netflix in Indonesia

Netflix itself has filtered films that will be broadcast in Indonesia by selecting some films on Netflix which can only be accessed in certain countries. In addition, Netflix also has a feature called the "Netflix Kids Experience" which limited the shows that allow for children to watch therefore children unable to view films that contain pornographic elements. This feature can be used by adding a new profile on Netflix and assigning films with a certain maturity rating in the profile, so the films in the profile recommended in that profile are only those that match the rating that has been set. But actually, this feature is insufficient to limit someone from browsing the movies on Netflix because other people can still access profiles that has not been set with the "Netflix Kids Experience" feature. Legal remedies that can be taken referring to Law Number 44 of 2008 concerning Pornography are to apply sanctions to all parties involved in broadcasting pornographic content on Netflix. As stated in Article 4 paragraph (1) of Law Number 44 of 2008 concerning Pornography, that everyone is prohibited from producing, distributing, broadcasting, trading and providing pornography, and in paragraph (2) of the same Article it is stated that pornography services what is prohibited is when presenting nudity or the appearance of showing nudity or explicitly showing genitals, exhibiting sexual activity and directly or indirectly offering sexual services. Article 17 states that the Government and Regional Governments have an obligation to prevent the spread of pornography. Article 29 states that anyone who violates the provisions of Article 4 of Law Number 44 of 2008 concerning Pornography must be subject to imprisonment for as long as it is regulated by law and must also pay a fine as long as it is regulated in the law. In carrying out prevention, the Government has the authority to cut off the networks used in the distribution of pornography, as well as work with parties who can help spread pornography. According to the law, the public can also participate in preventing the distribution and use of pornography. This can be done by reporting if the public finds a violation of Law Number 44 of 2008 concerning Pornography. People who report violations of pornography

are entitled to protection in accordance with applicable laws. From the articles in Law Number 44 of 2008 concerning Pornography, it can be understood that efforts to minimize the spread of pornographic content can be carried out by monitoring networks carried out by the Government and Regional Governments as well as imposing sanctions on those who distribute such content,

Administrative sanctions according to law are given to Broadcasting Institutions that are proven to have violated broadcast program standards. In accordance with Article 78 and Article 79 of the Regulation of the Indonesian Broadcasting Commission Number -2/P/KPI/03/2012 concerning Broadcast Program Standards, before giving administrative sanctions, KPI must first give 2 times warning to the relevant Broadcasting Institution, if the warning is ignored by the Broadcasting Institution, then KPI may impose administrative sanctions in accordance with those stipulated in the regulation.

Apart from imposing sanctions, another legal remedy that can be taken is to stipulate that all films shown by Netflix must be screened at the Film Censorship Institute (LSF). In Article 6 of Government Regulation Number 18 of 2004 concerning Film Censorship Institutions, it is stated that Film Censorship Institute (LSF) is responsible to censor films and/or advertisements that will be distributed to public and also to evaluate titles, themes, scenes, images, translated text, or sound shown by a film that will be distributed and/or shown to public.

Another option is to oblige Netflix register as an Electronic System Operator (PSE). By registering as an Electronic System Operator (PSE), Netflix should comply with the ITE Law. This can be an effort to minimize the broadcasting of pornographic content on Netflix because one of the requirements to register as an Electronic System Operator (PSE) is not to violate the laws and regulations applied in Indonesia.

4. CONCLUSION

Law Number 32 of 2002 concerning Broadcasting does not yet regulate digital broadcasting, it still only regulates conventional broadcasting, namely radio broadcasting and television broadcasting. Government and KPI want to monitor the operational of Netflix, however, as long as there are no regulations that serve as legal umbrellas for the streaming platform, KPI has not been able to oversee the operation of Netflix in Indonesia. In addition of implementing changes to Law Number 32 of 2002 concerning Broadcasting, according to the Ministry of Communication and Information, therefore Netflix can be monitored by broadcasting supervisory institutions and comply with the laws applied in Indonesia, Netflix can register itself as a Permanent Business Entity (BUT) and register themselves as Electronic System Operators (PSE) subject to the ITE Law. In tackling the issue of pornography broadcast by Netflix in Indonesia, there are several parties who have responsibility for this. The Ministry of Communication and Information, in this case the

Directorate General of Informatics Applications (Ditjen Aptika), has the responsibility to regulate content that not only contains pornographic elements, but also violates decency, which is in accordance with the ITE Law.

Apart from the Ministry of Communication and Information, Law Enforcement Officials such as the Police also have a role in being responsible for the distribution of pornography on Netflix. Law Enforcement Officials are responsible for investigating complaints made by the public regarding the presence of pornographic elements in content broadcast by Netflix. Wireless Operators such as Telkomsel, XL, Indosat and so on also play a role in being responsible for pornographic content on Netflix, Wireless Operators could take action by blocking films that are considered pornographic. The Film Censorship Institute (LSF) might return the film and re-censor it if after checking the film there are things that do not meet the censorship criteria. Basically, films that are not declared to have passed the censorship unable to be distributed in Indonesia. The "Netflix Kids Experience" feature provided by Netflix is not enough. Referring to Law No. 44 of 2008 concerning Pornography, legal remedies that can be taken are by imposing sanctions on the party who is sharing pornographic content, in this case Netflix. In addition, it can also involve parties who participate in minimizing the presence of pornographic content on Netflix such as Law Enforcement Officials. Law Enforcement Officials could potentially provide counselling about pornography and criminal sanctions that can be imposed on parties related to the circulation of pornographic content. KPI is able to impose administrative sanctions on Broadcasting Institutions after sending 2 times warnings to the relevant Broadcasting Institutions. If the Broadcasting Institution have received 2 warnings and ignores the warning, then, in accordance with the Regulation of the Indonesian Broadcasting Commission Number 02/KPI/03/2012 concerning Broadcast Program Standards, KPI may impose administrative sanctions. Besides impose sanctions, other legal remedies that might be taken are by stipulating that all films shown by Netflix must previously go through the screening agency Sensor Film (LSF) before distributed in Indonesia.

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