

Producing Pornographic Content from the Perspective of Islamic Criminal Law: A Study of the Decision of the Banda Aceh District Court Number 6/Pid.B/2026/PN. Bna

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Abstract

This study aims to analyze the considerations of the panel of judges in Decision Number 6/Pid.B/2026/PN. Bna and examine the perspective of Islamic criminal law on the act of producing pornographic content. This study uses a normative juridical research method with a statutory approach and a case approach. The data used are in the form of primary, secondary, and tertiary legal materials which are analyzed qualitatively. The results of the study indicate that the regulation of the crime of pornography in Indonesian positive law is regulated in Law Number 44 of 2008 concerning Pornography and Law Number 1 of 2023 concerning the Criminal Code. In Decision Number 6/Pid.B/2026/PN. Bna, the panel of judges imposed a sentence based on Article 407 paragraph (1) of the Criminal Code in conjunction with Law Number 1 of 2026 with the consideration that the defendant's actions have fulfilled the elements of violating morality and were carried out intentionally. However, normatively the provisions in the Pornography Law should be used as *Lex specialis*. From an Islamic criminal law perspective, this act is prohibited because it violates the principles of maintaining honor and privacy as stipulated in the Qur'an, Surah Al-Isra', verse 32, Surah Al-Hujurat, verse 12, and the Hadith of Arba'in Nawawi, number 35. It falls under the category of ta'zir crimes. Therefore, both legal systems view this act as a violation of morality worthy of punishment.

Keywords: Production, Pornography, Islamic Criminal Law, Positive Law

Introduction

In decision Number 6/Pid.B/2026/PN. Bna, it was revealed that the defendant recorded pornographic content against the victim without consent in a private space, which was essentially a violation of the individual's right to privacy and honor. The act was done deliberately without the victim's knowledge, causing psychological impacts in the form of shame, trauma, and fear of possible misuse of content in the future. Although there was no element of dissemination in the facts of the trial, this

recording still had legal consequences because it had met the elements of “creating” or “producing” content that violated morality. In this case, Law Number 44 of 2008 concerning Pornography, especially Article 4 paragraph (1) juncto Article 29, expressly prohibits everyone from making or producing pornography, which can be subject to criminal sanctions (Law No. 44 of 2008 concerning Pornography, Statute Book of the Republic of Indonesia No. 181 of 2008, n.d.).

Previous studies have shown that research on pornography-based content-based crime generally focuses more on the distribution aspect, which is often associated with the phenomenon *revenge porn*. Most of the research uses a normative approach that refers to Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, especially Article 27 paragraph (1) which regulates the distribution or transmission of content that violates morality (Scott, 2024; Atqia, 2024; Khotimah, 2020; Sinaga & Lidya, 2024). In addition, there is also research related to Law Number 44 of 2008 concerning Pornography, but it is more focused on the aspect of disseminating or performing content (Marsha Aziza, 2020; Rahmawati, 2021; Salsabila & Salwa Maharani, 2024; Tria Rejeki, 2021). This condition shows that the study of the initial stage in the form of recording without consent is still relatively limited. In fact, normatively the act has met the elements of a criminal act. The limitations of this study then open up space for a more comprehensive analysis, including by looking at the relevance of other norms outside the Pornography Law.

In the context of the development of information technology-based crime, the existence of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions is also relevant to be studied in the context of the development of information technology-based crime. Although no element of content dissemination was found in this case, the provisions of Article 27 paragraph (1) of the ITE Law basically regulate the prohibition of distribution, transmission, or access to electronic information that has content that violates morality. This shows that the ITE Law focuses more on the aspect of content circulation in the digital space, in contrast to the Pornography Law which has regulated from the creation or production stage. Thus, even though it is not directly applied in the decision, the existence of the ITE Law is still important as a comparative normative framework to affirm that the act of recording without consent is an initial stage that has the potential to develop into a broader criminal act in the digital realm. Therefore, it is necessary to have an analytical approach that is not only normative, but also theoretical to examine this problem in more depth.

Based on this description, this study uses two main theoretical foundations, namely legal protection theory and theory *Finger* in Islamic criminal law. The theory of legal protection is used to analyze the extent to which positive law provides protection to victims from the early stages of the act, especially in the context of the

implementation of Law Number 44 of 2008 concerning Pornography Article 4 paragraph (1) which prohibits pornographic acts (Fuady, 2013). Meanwhile, the theory *Finger In* Islamic criminal law, it is used to assess the act of recording without consent as a form of violation of honor (*hifz al-'ird*) which falls under the category of reprehensible acts that can be sanctioned *ta'zir* (Wardi Muslim, 2004). This approach is important to see the compatibility between positive law and Islamic law values in protecting the dignity of individuals. Based on this, the formulation of the problem used in this study is, how the judge considers the decision Number 6/Pid.B/2026/PN. Bna; and what is the perspective of Islamic criminal law on the recording of pornographic content.

Research Methods

This research uses a type of normative juridical research, which is research that focuses on the analysis of applicable legal norms and their application in court decisions. The approach used in this study includes the legislative approach (*statute approach*) and case approach (*case approach*) (Wijaya et al., 2025). The legislative approach is carried out by examining the provisions in the Pornography Law related to the recording of content with moral content, while the case approach is carried out through an analysis of the Decision of the Banda Aceh Syar'iyah Court Number 6/Pid.B/2026/PN. Bna as the main object of study (Ali, 2022).

The types of data used in this study consist of primary legal materials, secondary legal materials and tertiary legal materials. Primary legal materials include laws and regulations such as Law Number 44 of 2008 concerning Pornography, especially Article 4 paragraph (1) juncto Article 29, as well as the Decision of the Banda Aceh Syar'iyah Court Number 6/Pid.B/2026/PN. Bna as the main object of study. Secondary legal materials in the form of books, scientific journals and relevant research results, Criminal Law and Islamic Criminal Law. The tertiary legal materials include legal dictionaries and other sources that support the understanding of the terms used in this study (Ali, 2022). Data collection techniques are carried out through literature studies (*library research*), Namely by tracing and reviewing various literature, laws and regulations, and court decision documents related to the problem being studied. Furthermore, the data analysis technique used is qualitative analysis with a descriptive-analytical approach, which is to describe and interpret existing legal norms, then relate them to legal facts in the decisions being studied to obtain systematic conclusions (Ali, 2022).

Discussion

A. Legal Regulation for the Crime of Producing Pornographic Content

The regulation of criminal acts related to pornography in Indonesian positive law is regulated in several complementary laws and regulations, with the main

purpose of protecting human decency, honor, and dignity. The legal instrument that specifically regulates pornography is Law Number 44 of 2008 concerning Pornography, especially Article 4 paragraph (1) which states *"Everyone is prohibited from producing, creating, reproducing, duplicating, disseminating, broadcasting, importing, exporting, offering, selling, renting, or providing pornography that explicitly contains: a. sexual intercourse, including deviant intercourse; b. sexual violence; c. masturbation or masturbation; d. nudity or the impression of nudity; e. genitals; or f. child pornography"*. This provision shows that the act of "producing" is a stand-alone offense, without having to be accompanied by an element of spread. The legal consequences of violating these provisions are regulated in Article 29, namely imprisonment for a minimum of 6 (six) months and a maximum of 12 (twelve) years, and/or a fine of at least Rp250,000,000.00 (two hundred and fifty million rupiah) and a maximum of Rp6,000,000,000.00 (six billion rupiah). Thus, the act of recording pornographic content without consent has basically fulfilled the elements of a criminal act as stipulated in the provision.

In addition, in the context of the development of information technology, regulations regarding immoral content are also regulated in Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions. In Article 27 paragraph (1) it is stated that *"every person is deliberately and without rights prohibited from distributing, transmitting, or making accessible electronic information that has content that violates morality"*. This provision is strengthened by Article 45 paragraph (1) which regulates the threat of imprisonment for a maximum of 6 (six) years and/or a maximum fine of Rp1,000,000,000.00 (one billion rupiah). However, the regulations in the ITE Law focus more on the aspect of disseminating or distributing content in the digital space. Therefore, in cases that only stop at the recording stage without distribution, the application of this provision becomes limited, although it remains relevant as a form of further legal consequences if the content is disseminated.

In addition to these two laws, regulations regarding acts that violate the law are also regulated in Law Number 1 of 2023 concerning the Criminal Code as a new national Criminal Code. In this provision, criminal acts of morality are regulated more broadly, covering various forms of acts that violate the norms of decency and individual honor. In practice, the provisions of the Criminal Code are used as a legal basis (*lex generalis*) in ensnaring acts related to moral violations. This is as seen in the decision Number 6/Pid.B/2026/PN. Bna, where the Public Prosecutor used the provisions in the Criminal Code as the basis for prosecution of the defendant. The use of the Criminal Code shows that in law enforcement practice, law enforcement officials still tend to use general provisions in assessing acts related to morality, including in the case of recording pornographic content.

However, if studied normatively, the acts committed by the defendant are basically more appropriately qualified as criminal acts as regulated in the Pornography Law, because they directly meet the elements of “producing” or “creating” pornographic content as referred to in Article 4 paragraph (1). In this context, the principle of *lex specialis derogat legi generali* applies, which means that regulations of a special nature override regulations of a general nature. Therefore, although the Criminal Code can be used as a legal basis, the application of the Pornography Law should be prioritized because it has more specific and relevant provisions for the acts committed by the defendant.

Overall, the three legal instruments show that the Indonesian criminal law system has regulated pornographic crimes in layers, starting from the stage of production, distribution, to the impact caused in society. However, the effectiveness of its implementation depends heavily on the accuracy of law enforcement officials in choosing and interpreting the legal basis used. Mistakes in choosing legal grounds, such as prioritizing general provisions over specific provisions, have the potential to reduce the accuracy of juridical analysis and optimize protection for victims.

From the perspective of criminal law doctrine, the act of recording without consent has met the elements of a criminal act, both objectively and subjectively. The objective element is fulfilled through the active action in the form of recording intimate content, while the subjective element in the form of intentionality can be seen from the intention of the perpetrator to carry out the action. In this case, the perpetrator knew that the act was carried out without the victim's permission, thus fulfilling the element of error in the form of *Dolus*. Therefore, there is no juridical reason to delay or disregard criminal liability simply because there has been no dissemination. Such an approach is contrary to the basic principles of criminal law which places acts as the main basis of criminalization (O.S. Hiarij, 2009).

Furthermore, from a legal protection perspective, recording without consent is a form of violation of the individual's right to privacy and honor. Law Number 44 of 2008 concerning Pornography basically not only aims to regulate public morality, but also protects individuals from personal exploitation. Therefore, law enforcement against unauthorized recording should be seen as part of preventive protection efforts for victims. If the law only moves after the spread occurs, then the protective function becomes too late and ineffective. This shows that law enforcement must be directed at prevention from the early stages, not just on enforcement after losses have occurred (Mahfud MD, 2019).

B. Analysis of the Judge's Considerations in Decision Number 6/Pid.B/2026/PN. Bna

In decision Number 6/Pid.B/2026/PN. However, the facts of the trial show that the defendant knowingly recorded pornographic content involving the victim without

consent. The recording was carried out in a private situation, where the victim did not know or give permission for the action. In this case, the element of the act of violating morality was considered fulfilled because the defendant recorded the victim in a state of undressing because of a bath/scrub in the bathroom, which is a private space with a high level of moral protection. Based on the evidence submitted at the trial, including witness statements, the defendant's confession, and evidence in the form of recordings, it was proven that the act was actively carried out by the defendant. There was no indication of coercion against the defendant, so the act was entirely a personal will. Although there is no evidence of widespread dissemination of the recorded content in this case, the recording act itself has caused harm to the victim, especially related to privacy violations and potential future abuse. And in this decision, the judge sentenced the defendant to death using the provisions of Law Number 1 of 2023 concerning the Criminal Code, especially Article 407 paragraph (1) Jo of Law Number 1 of 2026 concerning the Adjustment of Laws and Regulations in the Criminal Field. This provision is used to ensnare the defendant's actions which are considered to be acts of violation of morality.

The judge's consideration in applying Article 407 paragraph (1) of the Criminal Code is based on the fulfillment of the elements of the criminal act, namely the existence of acts that violate morality and are committed intentionally. If dissected in detail, the element of "everyone" in this case has clearly been fulfilled, because the perpetrator is a legal subject who is capable of being criminally responsible. There is no excuse or justification that erases criminal responsibility, so that the perpetrator can be held fully accountable. This is in accordance with the doctrine stated by Moeljatno, the affirmation of the subject of law and the ability to be responsible are an important part in the construction of criminal acts (Imaningrum Susanti, 2019).

Next, the element "intentionally" (*dolus*) It is also considered fulfilled, because the defendant consciously and without the victim's consent carried out the recording act. There was no mistake or coercion, so the act was the result of the defendant's free will. It is impossible for a recording to occur without the awareness and control of the perpetrator, so the actual element of intentionality is relatively easy to prove. With the fulfillment of these two elements, the judge concluded that the defendant could be held criminally liable based on Article 407 paragraph (1) of the Criminal Code. In the perspective of the theory of error, intentionality is the highest form of wrongdoing, so it should be the main basis for criminal imposition (Sriwidodo, 2019).

The most crucial element in this case is "making or producing pornography". In practice, this element is often misunderstood as having to include distribution or distribution. In fact, grammatically and systematically, the act of recording is included in the category of "making". Therefore, since the act of recording was carried out without consent, this element has actually been met. In line with Satjipto Rahardjo's

thoughts, the law must be interpreted progressively in order to be able to answer the needs of justice in society (Fadhila, 2021).

Based on the analysis of these elements, it can be seen that normatively all elements of the crime in Law Number 1 of 2023 concerning the Criminal Code, especially Article 407 paragraph (1) Jo Law Number 1 of 2026 concerning the Adjustment of Laws and Regulations in the Criminal Sector, have actually been fulfilled in this case. The use of juncto stipulation with Law Number 1 of 2026 concerning the adjustment of Laws and Regulations in the criminal sector in this decision is related to the adjustment of the penal system in the new Criminal Code, especially related to the type and amount of the crime imposed. This shows that the judge not only considers the aspects of the act, but also ensures that the punishment imposed is in accordance with the criminal law in force after the renewal of the national Criminal Code.

However, if analyzed critically, the judge's consideration in using Article 407 paragraph (1) of the Criminal Code is general and does not fully reflect the complexity of the acts committed by the defendant. The article basically regulates moral violations broadly, so it tends to provide more flexible interpretation space. In this case, the defendant's actions were not only a violation of morality, but also related to a serious aspect of privacy violation, considering that the recording was made of the victim in a condition of naked in a very private space. In addition, the use of Article 407 paragraph (1) of the Criminal Code also shows that the judge emphasizes on the aspects of apparent acts (*actus reus*) and mistakes (*mens rea*), without expanding the analysis on the possibility of applying other more specific provisions. In fact, in the context of positive Indonesian law, there are special regulations regarding pornography that explicitly regulate the act of recording pornographic content.

Thus, although juridically the judge's formal consideration in applying Article 407 paragraph (1) of the Criminal Code Jo Law Number 1 of 2026 can be justified because the elements of the criminal act have been met, there is still substantive room for deepening legal analysis. the judge should not only focus on fulfilling the elements of the article used, but also consider the accuracy of the qualification of the criminal act so that it is in harmony with the characteristics of the act committed by the defendant. In the end, the application of Article 407 paragraph (1) of the Criminal Code in this case shows that the judge has carried out the law enforcement function normatively, but has not fully optimized a more comprehensive legal approach in providing protection to victims, especially in cases related to violations of morality and privacy.

C. Analysis of Recording Pornographic Content Without Consent in the Perspective of Islamic Criminal Law

From the perspective of Islamic criminal law, producing pornographic content without consent is not explicitly mentioned in the *Qur'an* or hadith, but can be

analyzed through the maqasid al-shari'ah approach and the principle of protection of honor (*hifz al-'ird*). This act is basically a form of violation of the honor and privacy of individuals, who in Islam have a very high position. The Qur'an expressly prohibits acts that are close to adultery (QS. Al-Isra: 32) which reads:

وَلَا تَقْرُبُوا الزَّوْجَ إِنَّهُ كَانَ فَاحِشَةً وَسَاءَ سَبِيلٌ

Meaning: "And do not approach adultery. Indeed, it is an abominable deed and the worst way."

As well as actions that violate the honor of others, including *tajassus* (spying) as regulated in QS. Al-Hujurat: 12 which reads:

يَا أَيُّهَا الَّذِينَ آمَنُوا اجْتَنِبُوا كَثِيرًا مِّنَ الظَّنِّ إِنَّ بَعْضَ الظَّنِّ إِثْمٌ وَلَا تَجَسَّسُوا وَلَا يَغْتَبَ بَعْضُكُم بَعْضًا أَيُحِبُّ أَحَدُكُمْ أَنْ يَأْكُلَ لَحْمَ أَخِيهِ مَيْتًا فَكَرِهْتُمُوهُ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ تَوَّابٌ رَّحِيمٌ ⑪

Meaning: "O you who believe, stay away from many prejudices! Actually, some prejudices are sins. Do not look for the faults of others and do not gossip about others. Is there any of you who likes to eat the flesh of his dead brother? Of course you feel disgusted. Fear Allah! Indeed, Allah is the Repentant and the Most Merciful." That is why

This is in line with the hadith of the Prophet Muhammad contained in the 35th Hadith Book of Al-Arba'in An-nawawiyah which states:

عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُ، قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: «لَا تَحَاسَدُوا، وَلَا تَنَاجَشُوا، وَلَا تَبَاغَضُوا، وَلَا تَدَابَرُوا، وَلَا يَبِعْ بَعْضُكُمْ عَلَى بَيْعِ بَعْضٍ، وَكُونُوا عِبَادَ اللَّهِ إِخْوَانًا. الْمُسْلِمُ أَخُو الْمُسْلِمِ، لَا يَظْلِمُهُ، وَلَا يَخْذُلُهُ، وَلَا يَكْذِبُهُ، وَلَا يَحْقِرُهُ. التَّقْوَى هَاهُنَا وَيُشِيرُ إِلَى صَدْرِهِ ثَلَاثَ مَرَّاتٍ - بِحَسْبِ امْرِئٍ مِنَ الشَّرِّ أَنْ يَحْقِرَ أَخَاهُ الْمُسْلِمَ. كُلُّ الْمُسْلِمِ عَلَى الْمُسْلِمِ حَرَامٌ: دَمُهُ وَمَالُهُ وَعِزُّهُ» رَوَاهُ مُسْلِمٌ.

Meaning: "From Abu Hurairah (may Allah be pleased with him), he said, the Messenger of Allah (peace and blessings of Allaah be upon him) said, "Do not envy each other, do not hurt each other in buying and selling, do not hate each other, do not turn your back on each other, and do not sell above your brother's sale. Be a brother servant of God. A Muslim is a brother to another Muslim. Therefore, he must not be unjust, abandon, lie, and insult others. The piety here—he gestured to his chest three times—. It is enough for a person to sin if he insults his Muslim brother. Every Muslim over other Muslims is haram his blood, his property, and his honor." (HR. Muslim)

Based on the above foundation, it is emphasized that a Muslim should not oppress, degrade, or violate the honor of fellow Muslims. It is even emphasized that the honor (*'irdh*) is haram to violate. This shows that any form of violation of the privacy and dignity of individuals, including producing pornographic content

without consent, is contrary to the principles of Islamic criminal law. Thus, although there are no specific provisions regarding recording, the substance of the act is clearly contrary to the basic principles of Islamic sharia(Jamal, 2021).

If classified in Islamic criminal law, this act is more appropriately included in the category *Jarima Ta'jir*, namely criminal acts whose type and sanctions are not definitively determined in the *Nash*, unless submitted to *Ullil Amri* (government/judge). This is because the act of producing without consent does not meet the elements of hudud jarimah such as adultery or *Qazf*. However, it still contains elements of violation of the norms of decency and honor. In this case, the judge has the authority to determine the form and severity of the sanction based on the degree of error and the impact caused. This approach demonstrates the flexibility of Islamic criminal law in responding to the development of modern forms of crime that are not explicitly regulated in classical texts(Hanafi, 1990).

From the perspective of the elements of acts, Islamic criminal law also recognizes the existence of intentional *usur (al-'amd)* which is the basis for criminal liability. Producing pornographic content without consent is clearly a conscious and deliberate act, thus fulfilling the elements of error in Islamic law. In addition, there is a violation of individual rights (*haqq al-adami*) making this act not only moral, but also juridical in dimension. In this context, victims have the right to demand justice, rise in the form of sanctions against the perpetrators and recovery for the losses experienced. This shows that Islamic criminal law is not only oriented towards the perpetrators, but also pays attention to the victims(Wardi Muslim, 2004).

Furthermore, if analyzed using the *Maqasid al-Syari'ah* as developed by Al-Shatibi, the act of producing without consent is clearly contrary to the purpose of the Shari'ah in maintaining honor (*hifz al-'ird*) and take care of the soul (*hifz al-nafs*) in a psychological sense. The impact of this act is not only physical, but also causes trauma, shame, and social pressure for the victim. Therefore, the imposition of sanctions within the framework of *ta'zir* must consider the benefits aspect (*maslahah*) and prevention (*zajr*). In order not only to punish the perpetrators but also to prevent the recurrence of similar acts in society. This approach shows that Islamic law has an orientation that is in line with the principle of victim protection in modern law(Jamal, 2021).

Thus, producing pornographic content without consent from the perspective of Islamic criminal law can be categorized as *jarimah ta'zir* which has the dimension of violation of the honor and privacy of the individual. Although not explicitly regulated in the *Nash*, the general principles in the Shari'ah have a strong basis for judging and punishing such acts. When compared to Law Number 44 of 2008 concerning Pornography, it can be seen that there is a common point in terms of the protection of individual morality and honor. Therefore, the integration between positive law and Islamic criminal law is important to produce a more comprehensive approach to dealing with privacy-based crime in the modern era.

Conclusion

Based on the results of the research and discussion that has been described, it can be concluded that the regulation of pornography crimes in Indonesia's positive law has been comprehensively regulated through several laws and regulations, including Law Number 44 of 2008 concerning Pornography, Law Number 19 of 2016 concerning Information and Electronic Transactions, and Law Number 1 of 2023 concerning the Criminal Code. The provision shows that the act of producing or making pornographic content, including recording without consent, has basically met the elements of a criminal act even though there has been no dissemination. Then, the consideration of the panel of judges in Decision Number 6/Pid.B/2026/PN. Bna also showed that the defendant's actions were considered to be acts that violated morality, so he was sentenced to a criminal offense based on Law Number 1 of 2023 concerning the Criminal Code, especially Article 407 paragraph (1) Jo of Law Number 1 of 2026. Although the judge used a general provision, the substance of his consideration still recognized that the act of recording without consent was an act that was not legally justified. From the perspective of Islamic criminal law, this act is also prohibited because it is contrary to the principle of maintaining the honor and privacy of individuals, as reflected in the Qur'an Surah Al-Isra verse 32, the Qur'an Surah Al-Hujurat verse 12, and the hadith *Arbain Nawawi* Number 35, and is included in the category of *jarimah ta'zir*. Thus, the meeting point between positive law and Islamic criminal law lies in the common view that the act of producing pornographic content is an act that violates the morality, honor, and privacy of individuals, so it deserves legal sanctions.

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