

## APPLICATION OF LEGAL RULES RELATED TO DEVIANT SEXUAL BEHAVIOR (EXHIBITIONISM)

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### Abstract

This study aims to examine and analyze the phenomenon of the birth of deviant sexual behavior exhibitionism and the application of legal rules related to deviant sexual behavior exhibitionism. The research method used in this study based on the focus of the study is empirical legal research, namely legal research that conceptualizes law as a social phenomenon that is influenced by other social variables and at the same time is a determinant of influencing behavior in individuals or community groups in the direction of desired behavior. The results showed that The application of laws related to exhibitionism may use the offenses of Article 281 of the Criminal Code, Article 10, and Article 36 of the Pornography Law. The judge has the right to determine whether the defendant's actions can be accounted for or not, whether his soul is sick or not, and whether he can be convicted or not. If the panel of judges believes that the defendant is incapable of responsibility and is convicted, then the defendant is free from punishment but is ordered to be treated in a mental hospital. In determining whether the defendant can be responsible or not, the judge usually asks for the help of a psychiatric expert to examine the condition of the defendant, which is commonly referred to as an expert witness in the trial as evidence listed in Article 184 paragraph (1) of the Code of Criminal Procedure.

**Keywords:** Legal Psychological Behavior, Exhibitionism, Sexual Behavior

## INTRODUCTION

Speaking of legal issues, it means talking about an issue that is very broad in scope. Knowledge of law covers an endless area, or according to Curzon quoted by Satjipto Rahardjo, legal boundaries cannot be determined. It touches on social, economic, cultural, historical, political, management, philosophical, and so on. Law as a branch of science has an object, namely law itself. Law has an interdisciplinary nature because various disciplines try to explain various aspects related to the presence of law in society. The rule of law is aimed at concrete actors, namely the offenders who do, not to perfect people, but for public order to be orderly and no crime occurs.

Several matters in legal science have received great attention in recent years about whether citizens of a country have a moral obligation to obey the law. But this difference looks very thin in the eyes of non-professionals. No one has ever said that duty is absolute, so sometimes morally a person can break the law. A person has a strong moral reason for doing what is commanded by the law such as not to insult, lie, or steal from others. People must obey the law if there is already a rule of law that comes with the threat of punishment, such as driving on the left in the UK. It is believed that disobedience can be committed if a person does not have a moral reason to obey. Those who believe in the law should do so with the help of the government and they are sure to have the support of the citizens of the community.

Crime cases that are currently crowded are no longer conventional cases that have been often heard and discussed through various print and electronic media. Science and technology that are growing rapidly today require everyone to be good at classifying a case that occurs. One of the things worth noting lately is that sexual preference disorder is one of the cases that is being highlighted in criminal law. People with sexual preference disorders not only experience abnormal behavior but also experience abnormalities in sexual orientation. Sufferers who suffer from sexual preference disorders are very likely to commit actions that violate the law, and this will cause unrest in society.

Sexuality is one of the most private and generally private spheres in an individual's life. Everyone is a sexual being with interests and fantasies that can surprise or even surprise us from time to time. It is a normal sexual function. However, when fantasia or desire begins to harm ourselves and others, then the fantasy or desire can be classified as abnormal.

Exhibitionism is rarely an attempt to make contact with its victim. Sexual arousal occurs by fantasizing about showing off his genitals or doing it, and exhibitionists masturbate when fantasizing or when showing them off. In the overwhelming majority of cases there is a desire to shock or embarrass the victim.

People with exhibitionism in Indonesia are not difficult to find because they often roam public places to find targets in carrying out their actions. Most perpetrators of "exhibitionism" encountered are men and they carry out their actions without looking like someone who has a psychiatric disorder, in general they look neat but they will show off their genitals when they find the right victims, namely women, ranging from children, adolescents, to adult women.

The urge to show off his genitals seems to be very strong and almost uncontrollable for exhibitionists, or *flashers* and seems to be triggered by anxiety and restlessness, and sexual arousal. An exhibitionist can continue to practice even after a serious injury. Because the impulse is impulsive, the casting can be done quite often and even in the same location and at the same time of day. They usually do not care about the social and legal consequences of their actions.

This is certainly troubling for many people, this practice is increasingly widespread found in the field, and more and more people have activities and fetishes that harm individuals and society. Fetishes that were originally only in an order that was considered normal, now reincarnate into something more complicated and dangerous, not only mentally and psychologically detrimental but most likely to cause a lot of physical harm. Bandura recognizes at least 3 (three) techniques from distorting or obscuring the adverse consequences of one's actions. First, humans can "minimize the consequences of their behavior". Second, man can "ignore the consequences of his actions." Lastly, humans can "distort or misinterpret the consequences of their actions."

Incidents like this have occurred a lot in Indonesia, but if there are cases of sexual deviance committed this is very difficult to investigate. There is a lack of national law to cover this problem and most of these problems are followed up or resolved by customary means or the perpetrator is only given mental advice to be aware of his actions and not to repeat them. The actions committed by the perpetrator are very dangerous for themselves and others. Of course, this is very troubling for the community.

If it is related to the legal vacuum that exists in the above case and similar cases, then the necessary criminal law reform is criminalization. Criminalization is the process of determining an act that was originally not a criminal act or was not regulated in criminal law, because the development of

society then became a criminal act or was contained in criminal law, meaning that the final stage of the criminalization process is the formation of criminal law. Therefore, before focusing on how the criminalization process is needed, an analysis is needed related to this event, one of the important things to analyze is how the causes and reasons for someone to carry out exhibitionism actions.

The weak rule of national law can be one of the causes of this happening again in the field. The problem has no regulation, so the author considers it an empty norm, or in other words, the rules that overshadow it are not clear. Remember, everyone has the will to realize a just society rule so that justice is the main focus of the formation of laws, which must follow the principles of justice on the one hand and the other with the same goal then a court is established. The court's task is to settle cases arising from differences of views between citizens, following the principles of justice.

## RESEARCH METHODS

The research method used in this study based on the focus of the study is empirical legal research, namely legal research that conceptualizes law as a social phenomenon that is influenced by other social variables and at the same time is a determinant of influencing behavior in individuals or community groups in the direction of desired behavior. Based on its nature, this research is descriptive research, which explains existing phenomena, both natural and man-made. Based on the point of purpose, this research is a problem solution research that aims to find solutions to problems. Based on the science used, it is a multidisciplinary research, which focuses on the combination and contradictions of various sciences, namely law and psychology. Secondary data collection will be carried out by studying documents, namely legislation, draft legislation, official records or minutes in making legislation, and judges' decisions. The form of data analysis that will be used in this study is qualitative analysis, namely, data analysis used for normative aspects through descriptive analysis methods, namely by describing a picture of the data obtained and relating it to each other to obtain clarity on truth or vice versa by conducting a discursive correlation between correspondence data and data based on normative analysis.

## RESULTS AND DISCUSSION

### Indonesian Laws And Regulations Governing Exhibitionism

Criminal CodeThe Indonesian Criminal Code, which is used as a principal reference for practitioners or legal professionals to arrest perpetrators of sexual violence violations, contains significant shortcomings as far as protecting victims of violations. Victims on this juridical side do not get special guarantees.

The paradigm of the Criminal Code no longer recognizes crimes of decency and violations of decency. The idea of the Criminal Code regulates the criminal act of decency into one titled "Criminal Acts Against Moral Violations". Exhibitionism is generally not considered a truly righteous problem (moral transgression). It also covers issues of anger and brutality, which are seen as violations and denial of fundamental freedoms, particularly the privileges of women and children.

The legal basis that has been regulated by the Criminal Code is an Article that can be used to follow up on exhibitionism crimes, namely Article 281 number 1 and Article 281 number 2 of the Criminal Code. Article 289 of the Criminal Code can also trap exhibitionists because this Article contains elements of filth, especially brutality or danger of cruelty to force someone to commit or permit a disgusting demonstration. Assuming that the perpetrators of exhibitionism commit acts that violate fairness such as assault on minors, then at that time the protest can rely on the standards in Article 290 of the Criminal Code, and in the event of extraordinary guidelines (*lex specialis*), child guarantee regulations can be used.

In Indonesia's positive law, many regulations regulate the criminal act of decency, especially exhibitionism as well as in the Criminal Code (KUHP), Law Number 44 of 2008 concerning Pornography, and also in the reform of criminal law in Indonesia, namely the Draft Criminal Code (RUU KUHP). This means that exhibitionism has been criminalized as a criminal act in Indonesia's positive law.

The concept of *mens rea* teaching is very important because basing it on one's deeds cannot be blamed if one's thinking is not good. That is, there are mandatory requirements so that a person can be convicted, including criminal acts and evil souls.

Exhibitionism is not a category of criminal acts because health science itself classifies exhibitionism as a disease that is carried from birth. Therefore, those who suffer from this sexual disorder cannot distinguish that the actions they commit are crimes like normal people. The inability to distinguish is what makes the perpetrator continue to do it because the act can fulfill their sexual desires. This reflects that based on the teachings of *mens rea*, acts committed by someone who has a sexual

disorder cannot be held accountable so that they cannot be criminalized. However, the determination of whether or not a person can be convicted is the decision of the judge as a law enforcer who determines the verdict of the perpetrator based on his conviction based on evidence at trial and because the perpetrator has fulfilled the elements as charged by the Public Prosecutor.

Exhibitionism is an act that can disturb and cause harm to anyone who is a victim. However, if the act is committed by someone who has a sexual disorder or disorder of exhibitionism, then it cannot be qualified as a criminal offense. This is because the perpetrator of exhibitionism has a psychiatric disorder that results in him being unable to account for his actions. This must be proven by a letter in the form of a written report from a doctor or expert showing that there is a disorder in his soul. Therefore, the judge must assess whether the perpetrator's mental condition has influenced his actions or not. With the judge's assessment, only then can it be determined about the criminal responsibility of the perpetrator.

### **Pornography Law**

**Pornography Regulation** The Pornography Law is the *lex specialis* of the Criminal Code. Compared to the guidelines of exhibitionism, in the Pornography Law Number 44 of 2008 the guidelines for moral violations are focused on indecent demonstrations whose purpose is to arouse or animate desires. Related articles that can be used to ensnare exhibitionists are Article 4 number 1 and number 2 of the Pornography Law. In addition, Article 10 of the Pornography Law can also be used to ensnare selfish people.

There are still weaknesses in Article 4 and Article 10 of the Pornography Law because Article 4 does not explain the importance of the word introducing nudity. Article 10 also does not explicitly state what is meant by the depiction of the *aurat*. Such things require a further understanding of the implementation of regulations.

### **Regulation of Criminal Liability of Exhibitionist Perpetrators**

Exhibitionism is a demonstration whose activities can be represented considering the element of blunder or blame on the perpetrator, especially the existence of unlawful acts, the existence of *dolus* or deliberate which is equated with "*willen en wetens*" which is willing. and understanding or understanding, the existence of a capacity to be reliable, in particular a typical state of mind, to be more specific: the presence of a psyche that can recognize activities that can be skipped and prohibited and variables of desire that can change the behavior that may and should not be carried out and there is no justification for forgiveness because exhibitionism is seen as a type of sexual perversion such as pedophilia and not a disease like everyone else. Crazy individuals who do not understand, understand and control what they do and have no specific reason for their activities. Arrangements that can trap exhibitionist entertainers in the 2013 Draft Criminal Code, directed at Chapter XVI on Decency Crimes, Part One on Decency in Public Places, must be seen in Articles 467 to 505 of Chapter XVI of the Draft Criminal Code.

The term exhibitionism is not yet known in the clarification of the Bill, but clarification regarding the conditions for a person to be represented and cannot be represented that is not regulated in Article 44 of the Criminal Code, has been written in the clarification of the 2013 Criminal Code. Public authorities for this situation should make ideal regulations in the future to address emerging problems related to the vagueness of the standards of Article 44 of the Criminal Code. and the lack of the term exhibitionism in Indonesia's positive regulations and 5 Draft Criminal Code.

### **Prevention of Exhibitionism and Its Regulation in Indonesian Law**

Exhibitionism is a disease of sexual unrest over an unknown person, even before the person does not want it, and can also occur or be perpetrated by criminals in front of children. Exhibitionism usually begins in adolescence and progresses into adulthood and some exhibitionists are arrested for other offenses involving contact with their victims.

The conditions for determining that a person's act is considered a criminal offense are that there must be a person's act if the person's act is contrary to the law, the act is rejected by law, and the act is contrary to the law. Acts committed by people who can and should be held accountable must be held accountable by victims.

For criminal acts against an individual, it is important to have more specific conditions, namely: first, there must be guilt on the perpetrator, including the issue of criminal risk for the perpetrator, second, acts that are contrary to the law the act is also denied by law and should be punished against the perpetrator. Acts on a legitimate occasion are unlawful, an investigation can be carried out whether the demonstration has fulfilled the elements specified in certain criminal regulations. Therefore, changes

or alterations (parts/events) of the event must be made to the components of the offense charged. If it is considered reasonable, then it is very likely that it can be decided that the incident was unlawful, then at that time the perpetrator can be held responsible for the demonstration, but if one of the components is missing or not proven, it can be concluded that the fault did not or did not occur.

Exhibitionism contains a vulgar component. Dirty demonstrations are referred to as a type of violation of tolerance, disgusting demonstrations are usually displayed for obscene demonstrations that cannot lead to pregnancy. Exhibitionism demonstrations are regulated in Article 281 of the Criminal Code which reads:

"Shall be punished with imprisonment for not more than two years and eight months or a fine of not more than four thousand five hundred rupiahs: Whoever willfully and openly violates decency; Whoever willfully and in front of others who are there against his will violates decency."

According to Article 281 of the Criminal Code, criminal acts against decency can be punished if they meet the following conditions:

- 1) Whosoever  
What is said to be a person is proven to have fulfilled the requirements of a criminal act where following Article 281 of the Criminal Code, the person can be known as a perpetrator of a violation of justice.
- 2) Intentionally  
A person can be called intentionally committing a criminal act if, at the time of committing the act, a person has understood and understood that an act can be said to be an act prohibited by laws and regulations.
- 3) Open  
What is meant by open is that it is not expected to be known by the perpetrator, what matters is whether people in general can see/hear from a place or another place or whether people in general can come to that place, and then about its application to the general public. Thus whether others are insulted by their feelings of being humiliated, belittled, or moved by it. So this thing is whether acceptance is compared to the truth around it.
- 4) Destroying/abusing Decency  
A person can be said to be injured/ignoring decency if the debate has ignored sexual offenses (genderism) by showing *aurat* or showing oneself in the open or overtly as a partner. husbands and couples who perform vulgar demonstrations in the open, and young couples who hug in the open to enliven the desires of those who see them, where they cause sensations of disgrace, humiliation, shock and strengthen the desires of others.

Furthermore, the article discussing pornography in Article 36 refers to the acts discussed in Article 10 of the Pornography Law which says as follows:

*"Everyone shall not display themselves or others in any performance or in public depicting nudity, sexual exploitation, sexual intercourse or other pornographic content."*

Assuming the definition of a criminal act regulated following the provisions of Article 10 of the Pornography Law is the elements and there are accompanying components: The element of each individual, the act that is restricted is only the act of showing, the item is themselves or others depicting nudity, sexual double intercourse, sexual intercourse or other explicit substance, at a performance or in a public place.

Based on the description described, it can be judged that there is: The objective component of the criminal act of exhibitionism must have been demonstrated, specifically conventional activities of a person contrary to the law and causality, to the specific causes and outcomes that occur because of the acts of exhibitionist entertainers. In addition, it meets three initial conditions that a demonstration can be called a criminal act, namely the existence of a criminal act, a human act that is contrary to the law, and the act is prohibited and violated by a regulation.

The existence of nudity committed by the creator is a violation of moral norms, therefore by attributing the act to legal provisions following moral norms, the act fulfills the elements contained in the provisions of Article 281 of the Criminal Code, Article 10, and Article 36 of the Criminal Code.

Law No. 44 of 2008 concerning Pornography. As referenced, this Article governs violations of honor. Article 281 of the Criminal Code recently clarified that exhibitionist demonstrations are carried out by a person deliberately according to his will and realize that the demonstration violates conventionality. Looking at the details of Article 36 of Law No. 44 of 2008 concerning Pornography, although it does not pay attention to exhibitionism, it turns out that the draft in the Article is equivalent to elements of exhibitionism behavior, especially "Any individual who presents himself or others in an exhibition or broad daylight depicts nudity, is eligible to be detained."

To carry out criminal law, several steps must be taken that are considered reasonable efforts or interactions, deliberately wanting to achieve certain goals for the cycle of offenders and convictions. These phases are the definition phase, application phase, and execution phase. The adoption of regulations, as proposed by the Friedman hypothesis, suggests that the implementation of regulations depends on legal entities, legal structures/legal institutions, and legal culture at the stage of definition of exhibitionism.

Exhibitionism is classified as an indecent demonstration, whereas profane demonstration is characterized as any act that ignores norms and unlawful acts such as obscene and includes engaging in sex outside marriage. Exhibitionism is remembered for classifying inappropriate behavior which is also a criminal act according to legal arrangements in Indonesia.

This can be seen from the similarity of the component of selfish behavior with the component contained in the regulation of several articles that lead to violations of justice, for example in Article 281 of the Criminal Code. 44 of 2008 on sexual entertainment. In the details of the Article, it tends to be seen that the behavior contained in the meaning of exhibitionism, although not directly called exhibitionism, but the components of exhibitionism have been noted in the definition of the article above, specifically: The open act of abusing morality by showing their important or intimate organs, the act is deliberately done in a public place designated for viewing by others and contains a nudity component with shows aurat.

The extent to which exhibitionism can be held criminally liable. The regulation of obligations is regulated in Article 44 of the Criminal Code concerning the ability to be trusted. Exhibitionism is the enthusiastic tendency to show body parts, such as the aurat, to gain energy and sexual satisfaction. This exhibitionism depends on several elements, including social behavioral conditions, alcohol abuse, and pedophilia tendencies, then related factors are facing sexual and psychological abuse in adolescence, or sexual pleasure in youth. So it can be presumed that exhibitionism is excluded from the aggravation regulation in Article 44 of the Criminal Code, the things referred to in Article 44 of the Criminal Code are mental problems or problems related to a person's psychological ability to think and act. Where the culprit until now has not been ready to think and act according to his wishes.

The qualification of liability as referred to in Article 44 does not explain what kind of circumstances make a person unable to be responsible for his actions. The Criminal Code Bill as a criminal law reform in Indonesia has mentioned primarily criminal liability, namely in Article 38 of the Criminal Code Bill, namely mental disorders, mental illness, and mental retardation. In the explanation of the Criminal Code Bill, there is a division of definitions of mental disorders and mental illnesses, that is, differences that occur in psychiatric functions to disrupt mental health.

Article 44 of the Criminal Code only determines the biological condition of the perpetrator which means that the perpetrator has no awareness of the actions he committed. Therefore, this situation can be a reason for the perpetrator to be unable to account for his actions. This article can be said to contain conditions for the ability to be responsible negatively. If a person does not comply with Article 44 of the Criminal Code, then it is legal to impose a crime against that person and it is believed that he can be held responsible for his actions.

**Departing from Article 44 of the Criminal Code, it can be interpreted by turning (argumentum a contrario) that a person can be said to be able to be responsible if he does not have the circumstances specified in the Article**

Three conditions refer to a person who cannot be sentenced to a crime, namely that the person is not aware of the purpose of the actions committed, cannot control his abilities, and is not aware that the actions he commits are unlawful. Unconscious about the purpose of the action done is the mental inability of a person to act intentionally with consciousness. Not being able to control his abilities is the mental instability of a person to direct his will or ability. Thus, a person can be considered less able to realize that the act is against the law so that it can be criminalized.

The conditions are not absolute. However, if these conditions have been fulfilled, then he is not said to be able to account for his actions. Therefore, not all psychiatric disorders can cause a person to be unable to carry out criminal liability. Thus, evidence is needed in the trial process. There are also conditions of lack of accountability that result in mental instability of a person to control his will so that he is considered less able to realize the unlawful acts he committed or commit acts that can be criminalized. These conditions can be criminalized or can be returned to the government to take action following applicable law.

The illustration of this psychological problem is a state of cretins or depression, while exhibitionism is a sexual problem in which the aggressor can still control himself, so it can be said that exhibitionism is a manifestation that the aggressor can represent. In the provisions of the Criminal Code

that can trap free travelers in the 2019 Criminal Code, which is regulated in Chapter XV on the Criminal Act of Decency, the first part on decency in public places must be considered in Article 412, Chapter XV of the Bill. criminal law. In addition, section five, on demonstrations of disobedience, will be provided for in Articles 420-428. The term exhibitionism is maintained not to clarify the Criminal Code Bill, but to clarify what conditions a person can be held accountable for and cannot be taken into account. nothing is stipulated in Article 44 of the Criminal Code written in the explanation of the 2019 Criminal Code Bill in the explanation of Article 38.

From the perspective of law enforcement officials, in this case, the Prosecutor at the Takalar District Attorney's Office. The author has interviewed Muhammad Cakra Alam Pratama Razzad, S.H., M.H. as Head of the Prosecution, Execution, and Examination Subsection at the Takalar District Attorney's Office which the author documented as follows:

*"Concerning cases involving exhibitionism, it cannot necessarily be applied to the articles charged singly such as Article 281, Article 36, and Article 10 of the Pornography Law. Each case has different legal events so research on each case also cannot necessarily be used for the same offenses. In case research of events or criminal acts that occur, the Prosecutor must match the actions of the accused with the elements contained in the articles of the law".*

Based on the above, the author considers that the issue of exhibitionism perpetrators who can be criminally charged or not has been regulated in Article 281 of the Criminal Code, which stipulates that: *Sentenced to imprisonment for a maximum of two years and eight months or a maximum fine of Rp 4,500,-:*

1. *Whoever deliberately undermines public decency;*
2. *Whoever deliberately spoils decency in the face of others, who is present not of his own volition."*

From the article, exhibitionism can be criminalized if the perpetrator does intentionally commit acts of decency which in this case are related to sexual appetite carried out to damage decency in public places or that can be seen by many people. However, in the case of exhibitionists, they are legal subjects stated based on media or expert information that can convince the judge that the perpetrator may or may not be able to be criminally responsible.

In addition, Article 10 of Law No. 44 of 2008 concerning Pornography, stipulates that everyone is prohibited from showing themselves or others in performances or in public that depict nudity, sexual exploitation, intercourse, or other pornographic content. The article as the *lex specialis* of the Criminal Code proves that there is a criminalization of exhibitionism in Indonesia which makes anyone who commits an offense against the offense can be criminalized. Concerning exhibitionism, the element of *"showing oneself or others in public depicting nudity"* is an implied definition of exhibitionism according to this rule or Indonesian positive law.

The judge has the right to determine whether the defendant's actions can be accounted for by him or not, whether his soul is sick or not, and can be convicted or not. If the judge believes that the defendant is incapable of responsibility and is convicted, then the defendant is free from punishment but is ordered to be treated in a mental hospital. In determining whether the defendant can be responsible or not, the judge usually asks for the help of a psychiatric expert to examine the condition of the defendant, which is commonly referred to as an expert witness in the trial as evidence listed in Article 184 paragraph (1) of the Code of Criminal Procedure.

## CONCLUSION

Exhibitionism is an act that violates the law because it is contained in articles that are not fully regulated, namely Article 281 of the Criminal Code, Article 36, and Article 10 of Law No. 4 of 2008 concerning Pornography following the elements of exhibitionism behavior, especially as a demonstration carried out by someone who deliberately eliminates tolerance by showing off his *aurat* (nudity) in the open. Prevention of exhibitionism in the enforcement of regulations at the formulation stage, exhibitionism is a component error of exhibitionism including the details of Article 281 of the Criminal Code concerning violations that abuse conventionality, Article 10, and Article 36 of the Pornography Law. As far as the responsibility of exhibitionism according to the elaboration of Article 44 of the Criminal Code, exhibitionism does not exclude mental disorders as referred to in Article 44 paragraph (1) of the Criminal Code, exhibitionism is a sexual problem the perpetrator is not been aware of his actions. Its activities and in any case can control the conduct with the aim that exhibitionism can be held criminally responsible.

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