

## Transformation of Islamic Law into Positive Law within Pornography Legislation

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### **Abstract**

*As the country with the largest Muslim majority in the world, it is only natural to frame Islamic law as the legal framework for pornography legislation. The reality is that Indonesia is a unitary state, so the establishment of an Islamic state is not feasible. This article falls under the category of literature research with a qualitative approach. The methodology used is normative legal studies with a content analysis approach. The research concludes that the transformation of Islamic legal values can be manifested in positive law by implementing Islamic law in Indonesia without establishing an Islamic state. The transformation of Islamic law into positive law in national politics regarding the Pornography Law has had a significant impact on the process of accommodating Islamic law within Indonesia's legal system. The pattern of transformation in Islamic law is substantive (essential). Although not exactly the same as what exists in the concept of Islamic law, the substance or essence is in line with Islam or not contradictory to Islamic teachings, as seen in Law No. 44 of 2008 concerning pornography.*

**Keyword:** Legal Transformation, Legislation, Pornography.

### **Abstrak**

Sebagai negara dengan mayoritas Muslim terbesar di dunia, sudah sewajarnya jika menjadikan Hukum Islam sebagai kerangka perundang-undangan pornografi. Kenyataannya, Indonesia adalah negara kesatuan sehingga bentuk negara Islam tidak mungkin diwujudkan. Artikel ini

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tergolong dalam penelitian pustaka dengan pendekatan kualitatif. Metodologi yang digunakan adalah studi hukum normatif dengan analisis komparasi hukum. Hasil penelitian menyimpulkan bahwa transformasi nilai-nilai hukum Islam dapat dimanifestasikan kedalam hukum positif dalam bentuk melaksanakan hukum Islam di Indonesia tanpa mendirikan negara Islam. Transformasi hukum Islam menjadi hukum positif dalam politik nasional pada UU Pornografi memiliki pengaruh yang begitu besar dalam proses akomodasi hukum Islam dalam sistem hukum Indonesia. Pola transformasi hukum Islam secara substantif (esensial). Walaupun tidak persis sama dengan yang ada dalam konsep hukum Islam, namun substansi ataupun esensinya sejalan dengan Islam atau tidak bertentangan dengan ajaran Islam, sebagaimana pada UU No. 44 Tahun 2008 tentang Pornografi.

**Kata Kunci:** Transformasi Hukum, Legislasi, Pornografi

## Introduction

Indonesia is currently implementing a sustainable national legal reform program. As an integral part of the national legal system, Islamic law stands as one of the main pillars that require careful attention. Therefore, within the agenda of national legal reform, emphasis is also placed on the reform of Islamic law itself. In this process, it is not only a matter of consideration but also of integrating factors of the Islamic legal system into the framework of national law (Sulistyoko et al., 2017). The goal is to ensure that Islamic law will be the supreme foundation within the framework of the Unitary State of the Republic of Indonesia (NKRI) that we aspire to.

The values and principles of Islamic law have significant potential to become an integral part of positive law in Indonesia. However, the realization of this potential heavily depends on the political stance taken by the government and the DPR (People's Consultative Assembly) in formulating national legal policies. Over time, the implementation of Islamic law in Indonesia has become an integral part of the national legal system, particularly through the transformation of these values into positive law as enshrined in legislation. The longstanding journey of Islamic law in Indonesia has been influenced by the values reflected in fiqh literature and the fatwas issued by scholars (Kamarusdiana, 2016). This provides a strong foundation for Islamic law to be recognized as a legal source in this country. Therefore, the participation of Muslims in adhering to Islamic law, which has evolved into positive law, becomes an unavoidable necessity.

The importance of transforming legal values into positive law in Indonesia can be realized through in-depth studies by various parties, including legal academics, experts in Islamic law (especially Islamic criminal law), and also the Indonesian society, particularly those who are Muslim. This transformation allows Islamic law to remain relevant and beneficial in the context of modernity, without altering the essence of the state into an Islamic state. A concrete example of this transformation can be seen in the enactment of Law No. 44 of 2008 on Pornography. This law is evidence that Islamic law can be implemented concretely into national positive law without altering the form of the state, but rather as an

effort to create harmony between Islamic values and the contemporary context faced by Indonesia as a pluralistic and democratic nation.

The challenge of implementing Law No. 44 of 2008 on Pornography in Indonesia is closely related to the fact that Indonesia is a unitary state that is unlikely to formally transform into an Islamic state (Yanti et al., 2023). In this context, understanding Islamic law as part of national law must accommodate the diversity of Indonesian society, which includes religious and belief pluralism. The impossibility of formally making Indonesia an Islamic state complicates the implementation of Pornography Law inspired by Islamic values. Nevertheless, the law attempts to reconcile Islamic moral values and ethics with the pluralistic and democratic national legal context.

One of the main challenges is how to interpret the concept of pornography within different frameworks of Islamic law in society. While Islamic law sets clear boundaries on pornographic content, the interpretation and application of these boundaries may vary depending on the accepted interpretations within Islamic communities (Ariyanti, 2010). Furthermore, the impossibility of formally establishing an Islamic state also influences the approach to law enforcement regarding violations of the Pornography Law. Law enforcement must be carried out while considering principles of democracy, freedom of expression, and justice, without excessively intervening in individuals' private lives. Another challenge is how to maintain a balance between Islamic moral values and ethics with the principles of human rights (Andaryuni, 2012). The implementation of the Pornography Law must take into account that Indonesian society holds diverse views and beliefs, thus law enforcement efforts must be carried out wisely without infringing upon individual rights.

### **Literature review**

Research on the transformation of pornography law is not a new discourse. Several authors have examined and discussed it using various methods and approaches. Vivi Ariyanti, in the journal titled; *"Pornografi dalam Perspektif Hukum Islam dan Hukum Positif,"* has structuredly discussed how Islamic Law and Positive Law provide different legal proportions. Both have their respective advantages in their sectors, especially when associated with modern phenomena (Ariyanti, 2010). Vivi Ariyanti's research above shares similarities with the author's study in the context of Islamic Law and Positive Law. The difference lies in Vivi's attempt to present the comparative dimensions of law, while the author focuses more on the process of its transformation.

Nasaruddin Umar, in the publication titled; *"Urgensi Transformasi Hukum Islam dalam Pemajuan Hak Asasi Manusia di Indonesia,"* has described very constructively the dynamics of legal change that are susceptible to rejection. Although rejection may fluctuate depending on the time and environment, the essential benefit of legal transformation still needs to be highlighted and socialized (Umar, 2015). This publication shares similarities with the author's study, particularly in the variable of 'transformation of Islamic law.' The difference lies in Nasaruddin Umar's focus on transforming Human Rights regulations, while the author is more focused on the transformation of pornography regulations. This

reality indicates that there is a significant difference in objects despite both examining legal legislation in Indonesia.

Gusti Ayu Christina Ira Yanti et al., in their work titled; *"Implementasi Undang-Undang Nomor 44 Tahun 2008 Tentang Pornografi Dan Undang-Undang Nomor 19 Tahun 2016 Tentang Informasi Dan Transaksi Elektronik Dalam Penanggulangan Tindak Pidana Pornografi Oleh Polres Buleleng,"* have sharply explored the necessity of pornography regulations given the prevalence of digital-based pornography phenomena. This work shares similarities with the author's study, especially in the regulation of pornography used as a research foundation. The difference lies in Gusti Ayu's field study, which focuses on the implementation of pornography regulations at the Buleleng Police Resort. Meanwhile, the author conducts a general literature review (not a case study).

Ahmad Yani and Megawati Barthos, in their publication titled; *"Transforming Islamic Law in Indonesia from a Legal Political Perspective,"* have impressively discussed how the changes in Islamic law are viewed from a legal-political perspective. This research presents to readers that politics plays a vital role in the formulation of Islamic law as well as positive law in Indonesia (Yani & Barthos, 2020). Artikel ini memiliki persamaan dengan kajian penulis khususnya dalam dimensi transformasi hukum Islam di Indonesia. Perbedaannya, jika Ahmad Yani mengkaji perubahan hukum dalam sudut pandang politik hukum, penulis lebih konsen pada perubahan regulasi hukum mengenai pornografi. Berdasarkan beberapa tinjauan pustaka di atas, serta setelah melakukan eksplorasi mendalam, sejauh pengamatan penulis belum ditemukan satu karya pun yang fokus dan totalitas mengkaji tentang transformasi hukum Islam terkait UUD Pornografi di Indonesia. Hal ini menunjukkan bahwa apa yang penulis teliti memiliki originalitas dan novelti.

## **Research method**

This article falls under literature research with a qualitative approach. The methodology used is normative legal research and comparative legal studies. The primary data in this research are Law No. 44 of 2008 concerning Pornography and Islamic legal sources (the Qur'an and hadith). The secondary data consist of relevant scholarly journals, particularly publications from the last 5 years. The tertiary sources in this research are bibliographic references other than scholarly articles, such as websites, online magazines, and other supporting literature. Data analysis is conducted thematically, starting from the discourse of Islamic law and moving towards transformation into positive law. To minimize the occurrence of data dualism, the author verifies data gradually and involves digital applications to facilitate obtaining accurate data.

## **Pornography in Islamic Law**

Pornography is the visual representation, writing, or other media that displays explicit and obscene sexual content. Pornographic content typically refers to images or videos depicting sexual scenes, private parts (body parts that should be covered according to religious teachings), or vulgar and indecent sexual acts. The primary purpose of pornography is to excessively arouse sexual desires or sensations and violate moral and ethical norms. The definition of pornography

may also involve the exploitation or portrayal of objects or individuals in a demeaning manner, reducing their dignity and degrading them as sexual objects (Firdaus et al., 2019).

This includes the vulgar display of the human body, exposure of private parts, or explicit and inappropriate sexual scenes. In legal contexts, pornography is often considered as an expression that can harm morality, societal well-being, and the sustainability of family values. Therefore, many countries have laws that prohibit the production, distribution, and consumption of pornography as an effort to protect public morality and respect religious and cultural values. In Islamic law, pornography is regarded as a highly condemnable act and violates religious moral and ethical norms.

Pornography refers to any form of images, writing, or other media that display content exposing the human body indecently, excessively, or obscenely. This includes images displaying private parts (body parts that should be covered according to Islamic teachings) openly and explicitly, including explicit sexual scenes. Islamic law, or Sharia, has clear regulations regarding pornography and strictly prohibits all forms of content that expose private parts or spread moral depravity. This is because the main purpose of Islamic law is to preserve purity, morality, and societal well-being. Pornography is seen as a serious threat to morality and social stability in society, as it can influence family values, community life, and individual character development. (Gani, 2018).

In Islamic law, individuals involved in the production, distribution, or consumption of pornography may face strict punishment. This punishment can include physical penalties, fines, or other appropriate sanctions commensurate with the offense committed. Law enforcement against pornography is considered part of safeguarding the honor, morality, and protection of society. However, it is important to note that interpretations and enforcement of Islamic law regarding pornography may vary across different countries and Muslim communities. Some countries may impose harsher penalties, while others may have more moderate approaches. Additionally, there are ongoing studies and interpretations among Islamic scholars and intellectuals regarding how Islamic law adapts to modern times and technology, including in the context of the dissemination of pornography through digital media.

In Islamic law, emphasis on pornography is crucial and is an integral part of the values strongly upheld in this religion. Pornography is considered a serious threat to morality and purity, and can damage family relationships and the overall well-being of society. *Firstly*, Islamic law is based on principles of preserving morality and purity. Pornography is seen as a threat to the moral values that must be upheld in Islam. The human body is considered a trust from Allah that must maintain its dignity, and pornography undermines the sacred values upheld in Islamic teachings.

*Secondly*, the importance of protecting families and the well-being of society is also a primary reason for the emphasis on pornography in Islamic law. Pornography is seen as a factor that damages family relationships, creates imbalance in marital relationships, and can influence the mindset and behavior of the younger generation. Islamic law emphasizes the importance of maintaining family stability and social well-being. *Thirdly*, pornography is viewed as a gateway

to deviation and sexual crimes. Witnessing or engaging in pornography consumption can trigger uncontrollable sexual desires and may lead to sexual offenses. Therefore, Islamic law emphasizes the importance of avoiding all forms of pornography as a step to protect individuals and society from such crimes.

*Lastly*, Islamic law also emphasizes the importance of respecting individual dignity. Pornography often degrades the dignity of individuals, using their bodies as objects displayed in a vulgar manner. In Islam, every individual has the right to be respected and protected from abuse and violation through pornographic content. Thus, the emphasis on pornography in Islamic law aims to preserve morality and purity, protect families and communities, prevent deviation and sexual crimes, and respect individual dignity. Islamic law seeks to create a healthy, dignified, and just environment for all individuals in society (Abbas, 2017).

**Pornography in Positive Law**

In Indonesian positive law, pornography is tightly regulated and considered a violation of the law. Law Number 44 of 2008 concerning Pornography serves as the main legal basis regulating pornography in Indonesia. This law defines pornography as any depiction, whether in the form of images, sounds, writings, voices, texts, videos, films, animations, cartoons, or any other form, that is lewd and contains pornographic elements. The essence of this law is to uphold morality, mental health, and the welfare of society from the negative impacts caused by pornographic content. Here are the essential points of Law Number 44 of 2008 concerning Pornography (Yanti et al., 2023):

| No | content          | Content of Contents   |
|----|------------------|---|
| 1  | Definitions      | Pornography is regulated as any depiction, whether in the form of images, sounds, writings, voices, texts, videos, films, animations, cartoons, or any other representation that is lewd and contains pornographic elements. This includes content that exposes nudity indecently, explicit sexual scenes, or other content that undermines morality. |
| 2  | Prohibition      | It prohibits the production, distribution, transmission, and/or trade of pornographic materials. This aims to prevent the spread of content that can damage the morality and mental health of society.  |
| 3  | Judging Criteria | There are objective standards used in the assessment process of questionable content.   |
| 4  | Penalty          | Imprisonment, fines, or other sanctions in accordance with applicable regulations.  |
| 5  | Child Protection | Pornographic material involving children is considered a serious criminal act, and harsher penalties may be given to the perpetrators involved.   |

*Table 01, essential points of Law No.44 of 2008 concerning Pornography*

In the context of positive law in Indonesia, the importance of emphasis on pornography is explained as follows: *First*, the Pornography Law regulates the prohibition of production, distribution, transmission, and/or trading of pornographic materials. This is done to protect the morality and honor of individuals, maintain family welfare, and preserve the cultural and religious values recognized in Indonesia. *Second*, penalties for violating the Pornography Law are also firmly regulated. Offenders may face imprisonment, fines, or other sanctions as stipulated by applicable provisions. The aim is to deter and prevent individuals from engaging in activities that undermine morality and mental health.

*Third*, the implementation of the Pornography Law also considers a balance between the protection of morality and freedom of expression. Therefore, clear criteria exist to determine whether certain content falls under the category of pornography or not. These criteria serve as a reference in the assessment process of contested content (Fajrin & Triwijaya, 2020). In addition to the Pornography Law, there are also other regulations governing pornography in the context of positive law in Indonesia, such as the Information and Electronic Transactions (ITE) Law, which prohibits the digital dissemination of pornography. In Indonesian positive law, the emphasis on pornography is aimed at preserving morality, protecting society, and maintaining a balance between freedom of expression and the protection of recognized religious and cultural values within Indonesian society.

### **Efforts of Islamic Law Transformation within the Legal System of the State**

Legislation, in terminology, refers to the process of creating legal rules by state administrative officials. These rules are expected to serve as guidelines for implementing policies to enforce a provision or law that has been widely publicized. In a more specific sense, legislation also reflects the application of legal rules by state institutions that wield high authority and represent the general public adequately (Utomo, 2016). On the other hand, Islamic Law is a normative system based on revelation (nash), with the primary goal of realizing the welfare of humanity in this world and the hereafter. Conceptually, the purpose of formulating Islamic law is inseparable from the five objectives which include: preserving religion, life, intellect, lineage, and property.

Therefore, the rules in Islam always refer to these objectives, serving as guidelines for individuals in their worldly activities. For individuals who violate these provisions by engaging in actions that threaten the principles of the five objectives mentioned above, they will face sanctions in the afterlife and in the worldly life. The sanction in the afterlife is the reward or punishment for deeds that deviate during life on Earth. It is executed by being placed into the torment of Hell, where there are various punishments tailored to the type and quality of sins and mistakes committed by the individual. Conversely, worldly sanctions are punishments determined by judges and carried out in the world. These punishments are a concrete form of enforcing the rules of Islamic law within society. With the existence of worldly sanctions, it is hoped that the rules of Islamic

law will be sincerely obeyed, thereby creating a socially just and civilized order in society (Dianisa & Suprobowati, 2022).

Speaking of the process of legal transformation, it cannot be separated from the methods and legal constructs as a foundation. The methodology of Islamic law has constructions that can be outlined in several main patterns (Ummah, 2004). *Firstly*, the Bayani Pattern (semantic study) is a pattern that emphasizes the study of language, especially in the form of grammatical interpretation. This pattern includes understanding when a word has literal or figurative meaning, as well as how to choose the shared meaning of a word, which is qath'i (definite) and which is zanni (presumptive) in the context of legal verses. The Bayani Pattern helps in establishing a more accurate understanding of Islamic legal verses.

*Secondly*, the Ta'lili Pattern (determination of illah or legal factors) focuses on determining the illah or legal factors that serve as the basis or hindrance for a law. In this pattern, procedural discussions are conducted on how to determine the illah, the conditions of the illah, the use of the illah in qiyas (analogical reasoning), and how legal changes can occur if a new illah is discovered. The Ta'lili Pattern helps in understanding and applying Islamic law accurately according to its context. *Thirdly*, the Istilahi Pattern (consideration of public interest or societal welfare) emphasizes studies related to new issues that are not explicitly explained in the Qur'an and the Sunnah of the Prophet. These issues often arise due to advancements in science and technology that bring about changes in society. In this pattern, efforts are made to find solutions or legal views that are suitable for the contemporary context, considering the welfare or interests of society.

From the outlined constructions of Islamic law, legal experts play an important role in the exploration and discovery of law. However, in its application, this is not as easy as it seems. It requires deep understanding and courage from the mujtahids, as legal issues that arise in society are often very complex. The existing textual evidences (legal sources) are limited, while the legal issues that need to be addressed are unlimited. This is due to ongoing socio-cultural changes, influenced by the development of science and technology. Therefore, Islamic law must be able to continuously adapt and provide answers to the issues faced through the development and renewal of Islamic legal methodologies themselves. Islamic law is not just a set of rules, but also a means aimed at changing the behavior of Muslim citizens. The position of Islamic law as a means follows the principle that "law is the tool of social engineering." In society, law becomes an instrument used to achieve specific goals. The use of law must be done with the awareness that law is not only used to reinforce existing patterns of behavior but also to guide society towards desired goals (Amarodin, 2019).

In other words, Islamic law not only aims to maintain order and justice, but also to shape a better society. The law must be able to guide the patterns of society's behavior towards desired goals, while eliminating incompatible habits. Thus, Islamic law plays a dynamic role as an instrument in creating new behavioral patterns that are more in line with the values and demands of the society at that time. From a methodological perspective, Islamic legal thought presents two distinct approaches. *Firstly*, there is a liberal approach to Islamic law thinking, which arises from the view that traditional Islamic legal thought is insufficient to address contemporary issues. On the other hand, there is also a conservative



textual approach in Islamic legal thinking that tends to uphold past views and existing norms. This approach believes that Islamic law from the past is already complete and can address all the issues of the community (Khatimah, 2017).

The conservative textual approach can be found in several Islamic countries such as Saudi Arabia and the northern regions of Nigeria. There, Islamic law is still highly regarded as a legal system governing all aspects of life and tends to be closed to other legal systems, especially those from the West. Conversely, the liberal approach is more commonly found in other Islamic countries, where Sharia is sometimes replaced by secular law or even unified by interpreting both. Issues in implementing Islamic law are related to the diversity of schools of thought and religions that influence the process of *ijtihad* (legal reasoning) in a country. Additionally, although Islamic law has written sources such as the Quran, Sunnah, and jurisprudential doctrines, this law is not always codified in clear legislation. This results in each *ijtihad* often producing new legal differences, not always in line with the provisions in the jurisprudential books (Warren, 1988).

Another challenge is the perception of Islamic law as something sacred and not subject to interpretation. However, if the divine revelation is studied using the method of *istimbath*, its laws will still reflect the objectives of equal distribution of benefits, justice, and well-being based on the Quran and Hadith, always under God's protection and shielded from interventions that could undermine its sanctity. The process of transforming Islamic law into the national legal system is the result of interaction between Islamic political elites (scholars, leaders of Islamic organizations, religious officials, and Muslim intellectuals) and the ruling elites (politicians and government officials). Therefore, for Islamic law to be applicable universally, adaptation to the existing environmental conditions must be undertaken. In the context of pornography, the transformation of Islamic law into positive law is reflected in the legislation of Law No. 44 of 2008 concerning Pornography. This law is an example of efforts to accommodate Islamic law into the national positive legal system (Saputra & Laksana, 2020).

By taking steps such as formulating the principles of Islamic law as guidance in developing a comprehensive legal system, discussing based on the hierarchy of meanings and jurisprudential principles to determine legal issues that need to be regulated and enforced, and distinguishing between Islamic law specific to Muslims and those that can be applied universally, the process of transforming Islamic law into positive law becomes a necessity in efforts to create a legal system that is in line with the values and demands of society today.

### **Debates in the Legislation of Pornography Law**

Discussions regarding Law No. 44 of 2008 concerning Pornography were neither brief nor easy. The process of drafting this law took quite a long time and was filled with controversies that permeated each stage. Since its draft form, complex polemics and debates have characterized its discussion process among the parliament (DPR) and Indonesian society. At least three perspectives emerged from both the public and the DPR at that time, illustrating the diversity of views on this Pornography Bill (Yanti et al., 2023); *First*, there was a group that fully supported this bill. Among them were political parties such as PPP, Golkar Party, Democratic Party, PAN, PKB, PKS, and PBR, as well as various elements of society

that identified with religious values. They argued that the Pornography Bill was crucial in efforts to uphold morality and social justice in society. Their views were based on a strong desire to protect religious and cultural values perceived to be threatened by pornographic content.

*Second*, there was a group that also agreed with regulation, but they believed that this bill needed fundamental changes. This stance was reflected in the views of PDIP and PDS, as well as some intellectuals and academics. They wanted the Pornography Bill to not only regulate legality and sanctions but also consider broader social and cultural aspects. Their debate emphasized the need for a bill that was not only legally effective but also more comprehensively supportive of social welfare. *Third*, there was a group that rejected the Pornography Bill on the grounds that moral regulation did not need to be specifically legislated. They argued that rules governing societal behavior already existed in the Criminal Code (KUHP) and other regulations. This group, consisting largely of artists, intellectuals, and some members of society concerned with freedom of expression, argued that this bill could potentially restrict creativity and freedom of speech.

With such striking differences of opinion, the process of passing the Pornography Law became one of the moments that showcased the complexity of efforts to reach consensus at the legislative level. The lengthy and open polemics within society illustrated the importance of open and in-depth discussions in formulating laws relevant to the values and demands of society at that time. The PDIP has three strong reasons for rejecting the Pornography Bill (Khakim, 2016): *First*, they oppose this bill because it still encompasses veiled pornography in the definition of pornography mentioned in the phrase "body movements or other forms of messages through various forms of communication media and/or public display" (Article 1 and Article 10 of the Pornography Bill). According to the PDIP, this contradicts the principle that the content of a law must be consistent with its title, as stated in Law No. 10/2004.

*Second*, they highlight the description of sexual behavior considered pornographic in the Pornography Bill, especially in Article 4. This view makes the PDIP feel that this bill contains material that is pornographic, which does not align with the moral values held steadfastly by Indonesian society. *Third*, the PDIP also expresses concern about the broad regulation of community participation in this bill, as mentioned in Articles 21-23. They feel that these rules could open the door to uncontrolled or anarchic actions, especially with the provision still existing regarding body movements and public displays (Article 1 paragraph 1), as well as the prohibition of public performances (Article 10).

In this context, the debate surrounding the Pornography Law also extends to society. The groups that provide support mainly come from religious circles such as the MUI. The MUI strongly prohibits pornography and all its derivatives, such as depictions or paintings depicting erotic behavior, tight clothing or exposed aurat for photography or filming, scenes or sexual relationships displayed in front of people, duplication and distribution of images of people with exposed aurat or wearing tight clothing, intimate actions between men and women who are not mahram, exposing aurat, wearing see-through or tight clothing, and actions or statements that encourage extramarital sexual relations (Muhammad Syariful Mar'i, 2011).

The Indonesian Ulema Council (MUI) asserts that any form of pornography, whether in the form of images, actions, or speech, is not in line with the high moral values upheld in society. The support provided by MUI in prohibiting pornography and all its forms reflects their efforts to maintain moral and religious purity, as well as to guide society towards a better and cleaner direction free from damaging content. The Indonesian Ulema Council (MUI) bases its rejection of pornography on legal grounds derived from the Quran. Verses from the Quran that serve as references include those related to adultery, extramarital sex, promiscuity, Islamic dress codes, women's aurat, the use of hijab, and other actions that have the potential to tempt the opposite sex. These verses form the crucial foundation for MUI in reaffirming their rejection of pornography, as through these verses, Allah provides clear guidelines regarding morality, social interactions, and dressing that must be followed by Muslims (Gani, 2018). MUI believes that adhering to these guidelines will lead society towards a better and cleaner direction, free from content that can damage morality and religion.

Supporters of the Pornography Law firmly state that its existence serves a very important purpose. *Firstly*, this law is seen as a form of protection for public order and decency. By regulating circulating content, the law aims to shield children and underage individuals, who are considered vulnerable and inexperienced, from exposure to potentially harmful behaviors, images, writings, and audiovisual content that could damage their morality and mental well-being. *Secondly*, the Pornography Law is also viewed as a means to protect women from inhumane treatment. By establishing clear boundaries on pornographic content, the law is expected to prevent women from becoming objects of pornography and protect them from exploitation, abuse, and sexual violence that often occur in the industry. *Lastly*, another goal of this law is to prevent and enforce legal actions against moral violations in society. By regulating and sanctioning those who breach moral boundaries, especially in the context of extramarital sexual activities, the Pornography Law aims to create a society that is more morally responsible and respects the values of decency (Sulistiyoko et al., 2019).

The group opposing the Pornography Law has various reasons, one of which is the belief that pornography and actions deemed pornographic are part of artistic expression. For example, they refer to traditional dances of indigenous Papuan communities that feature women with bare chests, which are considered part of their culture rather than pornography. However, this perspective contradicts views from other regions that consider such acts as pornography. During the discussion of this law, demonstrations emerged under the banner of the "*Unity in Diversity Parade*" rejecting this bill.

In this context, J.E. Sahetapy stated that this law is difficult to implement. According to him, a law should have support from all Indonesian people, from Sabang to Merauke, where human rights are the dominant principle, and the law should be responsive to the needs of society rather than autonomous law. Additionally, there are issues with the socialization of this law, which tends to be conducted only in areas that do not show resistance to the bill. Sahetapy also stated that this law is not supported by a strong and objective academic manuscript draft, based on detailed research, and they violate Article 121 of the

House of Representatives Regulations-RI Chapter 17 along with Article 6 paragraph (1) of Law Number 10 of 2004 (Marantika et al., 2022).

There are concerns that this law could be used as a tool to limit freedom of expression, especially regarding issues of sexuality. However, this is only prohibited if done in public (through media) or involves elements of exploitation, such as exploiting sexual vulgarity and erotica for material or non-material gain for oneself or others. The strong dynamics surrounding the Pornography Law were evident several months before it was passed on October 30, 2008, by the Indonesian House of Representatives (DPR-RI). Debates in parliament led to changes in the wording of several articles and even changed the substance of those articles, with four amendments occurring before approval (on July 17, 2008, August 24, 2008, September 4, 2008, and October 30, 2008) regarding the definition of pornography, prohibition of production, distribution, import, export, trade, and the role of the government and society in preventing pornography. Below is a comparison table of the reasons for support and opposition to the Pornography Law;

| No | Pro   | Contra  |
|----|---|---|
| 1  | Protection of Children and Vulnerable Individuals | Freedom of Expression and Artistic Interpretation |
| 2  | Protection of Women's Dignity                     | Criticism of Implementation                       |
| 3  | Control of Moral Boundaries in Society            | Concerns about Policies Framing Sexuality         |

*Table 02, Motives Behind Pros and Cons of the Pornography Law*

**Substantial Transformation of Islamic Law in the Legislation of the Pornography Law**

The Pornography Law No. 44 of 2008 has undergone a lengthy process, spanning over ten years, involving various debates and revisions before finally being enacted. Prior to becoming law, it was known as the Anti-Pornography and Pornoaction Bill, a name that remained unchanged when the bill began to take effect (the Anti-Pornography Bill). Throughout its drafting process, this law underwent several revisions until it was eventually recognized as the Pornography Bill, which was then approved by the DPR session and enacted as the Pornography Law (Yanti et al., 2023).

There is a strong connection between the development of the Pornography Law and the pornography industry in Indonesia. With the growth of the reform era, which brought about freedom, pornography and its related industry began to thrive. In the name of freedom of speech, those involved in pornography were allowed to conduct their business unhindered, ultimately having a negative impact on the nation's morality. According to Haryatmoko, the consumption of pornography material at least leads to four negative effects: depersonalization, loss

of truth demands, loss of emotions and activity in the body and face of subjects, and the prevalence of ugly face aesthetics.

Pornography and pornoactions increase the risk of risky sexual behaviors such as adultery, rape, and even murder or abortion. These impacts not only affect adults but also children of various genders. Perpetrators and victims can come from various backgrounds, including family relationships, employment, public relations, professions, and education. Based on the damage caused by pornography, society demands the need for a clear normative framework to regulate it. With the emergence of controversial boundaries and the definition of pornography itself, the Pornography and Pornoactions Bill was created. (Muhammad Syariful Mar'i, 2011). In 2006, the Indonesian House of Representatives (DPR) and the government took the initiative to draft a law that would criminalize pornography and pornographic acts (the Pornography and Pornoactions Bill or RUU APP). "Pornography" was proposed to encompass media materials conveying sexual concepts that exploit, while "pornoactions" referred to public sexual exploitation.

From a philosophical standpoint, these regulations were deemed necessary as guidelines in facing the era of globalization, although they were not always in line with Pancasila principles. Legally, existing normative measures were deemed insufficient to address the increasingly prevalent issue of pornography. From a sociological perspective, these regulations were expected to help combat the growing issue of pornography, which posed dangers to the younger generation, due to the tendency of engaging in pornography practices involving others without considering their impact, especially on the youth. Considerations regarding pornography in Indonesia, a country where the majority of the population adheres to religion, cannot be disregarded without taking into account religious aspects. In the context of pornography, Islam, the religion followed by the majority of the Indonesian population, has clear regulations. This principle can be seen in teachings that emphasize modesty, rules regarding attire, and the responsibility to avoid exposure to stimuli that may arouse sexual desires.

Two terms commonly associated with this type of pornography are 'genitals' and 'clothing'. *First*, let's examine the concept of genitals. This term refers to the parts of the human body that should not be exposed to others or should be covered, as they are considered shameful. Exposure to genitals can often stimulate sexual desires in individuals who view them (Abbas, 2017). *Secondly*, clothing. This encompasses everything worn by an individual to conceal their genital area. From a religious perspective, such as Islam, preserving the integrity of the human body is a mandatory trust from Allah, and each individual will be held accountable for their actions. Therefore, it is important to protect the body from immoral actions, crimes, or shameful acts that can harm individuals or society at large. Taking care of the body in all aspects, both physical and moral, is a necessity. From a religious perspective, actions that are prohibited or disgusting are for the greater good, both for the owner of the body and society.

*Thirdly*, we have the term '*tabarruj*'. This term is often used to describe someone who dresses differently from the norm or does not adhere to the standards considered respectable. The use of this term is often associated with misogynistic views or to define someone's appearance as disrespectful. In this

context, the questioned appearance often arises from one's awareness of the boundaries of their genitalia and their way of dressing. This highlights the importance of awareness of social norms, religion, and ethics in dressing, as well as efforts to not deviate from the values upheld by society. By maintaining knowledge and understanding of bodily boundaries and dress norms, individuals can ensure that their appearance does not raise doubts or discomfort in society (Sulastri et al., 2020).

In the discussion on pornography, Huzaimah highlights that engaging in such activities can lead one closer to committing adultery (zina). This view is based on the prohibition emphasized in the Quran, Surah Al-Israa verse 32, where Allah SWT forbids Muslims from approaching adultery. Surah Al-Israa verse 32 states: *"And do not approach unlawful sexual intercourse. Indeed, it is ever an immorality and is evil as a way."* This verse provides a clear prohibition against approaching adultery, which is considered immoral and harmful. From this, it can be interpreted that activities that are sensual, tempting, or potentially arousing can be seen as a precursor to adultery.

In Huzaimah's view, this can also be applied to artistic works such as paintings, drawings, writings, as well as direct actions that are sensual. From this perspective, the Pornography Law can be interpreted as having a connection with Islamic teachings because both have different guidelines regarding the preservation of morality. Thus, Islamic principles, which emphasize the importance of maintaining purity and avoiding temptations that can trigger desires, are considered in the enforcement of rules related to pornography. This view emphasizes that the Pornography Law can be seen as part of efforts to uphold morality and honor, in line with Islamic teachings. From this perspective, it is evident that Islamic principles influence the understanding of pornography and its enforcement. The interpretation of the prohibition against approaching adultery and maintaining purity in Islamic teachings is considered as a moral foundation for regulating pornography activities in society.

## **Conclusion**

The transformation of Islamic legal values into positive law in Indonesia can be realized through in-depth studies by legal academics, experts in Islamic law, and all Indonesian citizens, especially those of the Islamic faith. In order to transform the existing Islamic legal values in Indonesia into positive (national) law without compromising dignity or making Indonesia an Islamic state, the transformation of Islamic legal values can be manifested in positive law by implementing Islamic law in Indonesia without establishing an Islamic state. The transformation of Islamic law into positive law in national politics regarding the Pornography Law has a significant influence on the process of accommodating Islamic law within the Indonesian legal system. The pattern of transforming Islamic law substantively (essentially). Although not exactly the same as in the concept of Islamic law, its substance or essence is in line with Islam or not contradictory to Islamic teachings, as seen in Law No. 44 of 2008 concerning Pornography.

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