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Regulating Video on Demand Platforms as Digital Business Actors: A Non-Penal Approach to Platform Accountability and Consumer Protection

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Abstract

The rapid growth of digital technology and internet penetration has transformed media consumption patterns in Indonesia, particularly through the emergence of Video on Demand (VoD) platforms such as Netflix, Disney+ Hotstar, and Amazon Prime Video. However, the algorithm-driven and borderless nature of these platforms has also intensified the dissemination of sexually explicit content categorized as pornography under Indonesian law. Existing regulations, including the Pornography Law, the Electronic Information and Transactions Law, and the Indonesian Criminal Code, remain predominantly oriented toward penal enforcement and morality-based regulation. These approaches are increasingly inadequate for addressing digital streaming ecosystems operating through algorithmic recommendation systems, personalized content distribution, and transnational digital infrastructures. This study therefore examines the limitations of Indonesia's penal-oriented framework and formulates a non-penal governance model based on techno-regulation. This research employs normative legal research combined with empirical and comparative approaches. The study analyzes Indonesian legal regulations, legal doctrines, academic literature, and comparative governance models from the European Union, India, Malaysia, and Singapore. Empirical data were obtained through interviews with relevant institutions and observations of content moderation practices on VoD platforms. The findings demonstrate that pornographic content dissemination on VoD platforms occurs through algorithmic systems that amplify content visibility based on user engagement and platform architecture. Existing regulations remain fragmented, overlapping, and technologically outdated. This study introduces the Prevent–Protect–Govern model as a non penal framework emphasizing digital literacy, age verification, parental control systems, victim centered protection, co regulation, and algorithmic accountability. As a conceptual novelty, this research integrates techno regulation and Lawrence Lessig's "Code as Law" approach into Indonesia's legal framework, marking a shift from criminal law of morality toward preventive digital governance law oriented toward consumer protection and platform responsibility.

1. Introduction

Over the last decade, Indonesia has experienced rapid growth in internet penetration and digital connectivity. Recent data indicate that more than 212 million Indonesians were connected to the internet in 2023, representing nearly seventy seven percent of the national population[1]. The expansion of broadband infrastructure, widespread smartphone ownership, and the acceleration of digital transformation have fundamentally reshaped the way

[1] Simon Kemp. 'Digital 2023: Indonesia', DataReportal – Global Digital Insights, 9 February 2023. https://datareportal.com/reports/digital-2023-indonesia.

Indonesian society accesses information, communicates, and consumes entertainment.[2] Internet access has become increasingly integrated into everyday life, particularly among urban and semi urban populations, while digital services continue to expand across social, economic, and cultural sectors.[3] The development of digital ecosystems has simultaneously generated new opportunities and new legal challenges, particularly concerning the governance of online content distributed through transnational digital platforms.

One of the most significant developments in the digital entertainment industry is the rise of Video-on-Demand (VoD) platforms such as Netflix, Disney+ Hotstar, Amazon Prime Video, Viu, Catchplay, and Vidio. Unlike conventional broadcasting systems that rely on scheduled transmission, VoD services allow users to access films, television series, and other audiovisual content at any time through internet connected devices.[4] This transformation has shifted media consumption patterns from passive broadcasting toward personalized and algorithm driven streaming systems.[5] Through recommendation algorithms, data analytics, and subscription based business models, VoD platforms actively shape consumer preferences and viewing behavior.[6] In this regard, VoD services function not merely as entertainment providers but also as digital business actors operating within a broader platform economy characterized by algorithmic governance and cross border digital distribution

The rapid expansion of digital streaming platforms has also intensified concerns regarding the dissemination of pornographic and sexually explicit content in online environments. The accessibility, flexibility, and borderless nature of VoD services create substantial challenges for content regulation, particularly in countries such as Indonesia where public morality and decency remain important legal considerations.[7] The integration of personalized recommendation systems further complicates this issue because algorithmic mechanisms may unintentionally expose vulnerable users, including children and adolescents, to mature or sexually explicit content.[8] Empirical studies in Indonesia have shown that increasing internet usage among adolescents correlates with greater exposure to pornographic material through digital platforms and mobile devices.[9] The ease of access to

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[2] Kementerian Komunikasi dan Digital. 'Direktorat Jenderal Infrastruktur Digital', Postel.go.id, 2026. https://www.postel.go.id/berita-terus-genjot-infrastruktur-digital-pemerintah-digital-jadi-tujuan-utama-komdigi-27-6540.

[3] Digital 2026: Indonesia — DataReportal – Global Digital Insights. 'DataReportal – Global Digital Insights', DataReportal – Global Digital Insights, 5 November 2025. https://datareportal.com/reports/digital-2026-indonesia.

[4] Hyunmi Baek, Moonkyoung Jang, and Seongcheol Kim. 'Strategies to mitigate the cannibalization effect between subscription video-on-demand and transactional video-on-demand', *Digital Business* 4, no. 1 (1 January 2024) : 100073–73. https://doi.org/10.1016/j.digbus.2024.100073.

[5] Ibid.

[6] Nurvi Apriana Yusuf and Indrawati Indrawati Indrawati. 'Analisis Faktor yang Memengaruhi Pembentukan Minat Berlangganan di Industri Video-On-Demand di Indonesia', *Almana: Jurnal Manajemen dan Bisnis* 3, no. 1 (2019).

[7] Daniel Yedijaokto Sulaiman and Viany Utami Tjhin. 'Continuance Intention To Subscribe To A Video-On-Demand Service: A Study Of Netflix Users In Indonesia', *Journal of Theoretical and Applied Information Technology (JATIT)* 101, no. 5 (2023). https://www.jatit.org/volumes/Vol101No5/18Vol101No5.pdf.

[8] Ibid.

[9] Ferinda K Fachri. 'Komdigi Tegur Ketiga Platform X atas Denda Konten Pornografi, Pakar: Langkah Tegas, tapi Tidak Represif', hukumonline.com (PT Justika Siar Publika, 23 October 2025).

explicit content through streaming services and online media has therefore become a growing public concern.

Exposure to pornographic content at an early age may have significant implications for the sexual socialization of adolescents. Research on sexual media consumption suggests that repeated exposure to sexually explicit materials may shape perceptions of sexuality, reinforce permissive or stereotypical sexual attitudes, and influence expectations concerning sexual relationships.[10] A meta-analysis by Hald et al[11] further identified a significant association between pornography consumption and attitudes supporting violence against women, particularly in relation to sexually violent pornography. More recent systematic evidence also indicates associations between adolescent pornography exposure and several forms of sexual behavior, although the available evidence remains heterogeneous and does not consistently establish causal relationships.[12] These risks are particularly significant for younger users with limited digital literacy and parental supervision, as algorithmic recommendation systems can shape the visibility and circulation of sexually suggestive content by determining what users are more likely to encounter, making recommendation itself a form of platform governance.[13]

The relationship between pornography and VoD platforms reflects broader tensions between global digital culture and national legal norms. Films and television series distributed through international streaming services frequently contain explicit sexual scenes or sensualized narratives that may be accepted as artistic expression in one jurisdiction but classified as pornography under Indonesian law. Differences in cultural values, censorship standards, and legal definitions of obscenity create significant challenges for regulating digital content across borders.

In practice, global streaming platforms operate according to transnational commercial standards that do not necessarily align with Indonesia's legal and moral framework. As a result, the dissemination of sexually explicit content through VoD services cannot merely be understood as an issue of individual morality or criminal conduct, but rather as a structural

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https://www.hukumonline.com/berita/a/komdigi-tegur-ketiga-platform-x-atas-denda-konten-pornografi--pakar--langkah-tegas--tapi-tidak-represif-lt68fa97087908b/ ; Keputusan Menteri Komunikasi dan Informatika Nomor 522 Tahun 2024 tentang Perubahan atas Keputusan Menteri Komunikasi dan Informatika Nomor 172 Tahun 2024 tentang Petunjuk Pelaksanaan Penerimaan Negara Bukan Pajak yang Berasal dari Pengenaan Sanksi Denda Administratif Atas Pelanggaran Pemenuhan Kewajiban Penyelenggara Sistem Elektronik Lingkup Privat User Generated Content untuk Melakukan Pemutusan Akses.

[10] L. Monique Ward. 'Understanding the role of entertainment media in the sexual socialization of American youth: A review of empirical research', *Developmental Review* 23, no. 3 (September 2003) : 347–88. https://doi.org/10.1016/s0273-2297(03)00013-3. ; Jochen Peter and Patti M. Valkenburg. 'Adolescents and Pornography: a Review of 20 Years of Research', *The Journal of Sex Research* 53, no. 4–5 (30 March 2016) : 509–31. https://doi.org/10.1080/00224499.2016.1143441.

[11] Gert Martin Hald, Neil M. Malamuth, and Carlin Yuen. 'Pornography and attitudes supporting violence against women: revisiting the relationship in nonexperimental studies', *Aggressive Behavior* 36, no. 1 (January 2010) : 14–20. https://doi.org/10.1002/ab.20328.

[12] Pranujan Pathmendra et al. 'Exposure to pornography and adolescent sexual behaviour: A systematic review ', *Journal of Medical Internet Research* 25, no. 1 (30 September 2022). https://doi.org/10.2196/43116.

[13] Tarleton Gillespie. 'Do Not Recommend? Reduction as a Form of Content Moderation', *Social Media + Society* 8, no. 3 (July 2022) : 1–13. https://doi.org/10.1177/20563051221117552.

problem embedded within digital platform governance and algorithmic distribution systems.[14]

Several international controversies illustrate the complexity of regulating sexual content on VoD platforms. The release of the film *Cuties* by Netflix generated widespread criticism after promotional materials were accused of sexualizing young girls despite the film's stated intention as a critique of hypersexualization in contemporary culture.[15] Similarly, the Polish film *365 Days* received criticism for allegedly romanticizing sexual violence and coercive relationships while remaining widely accessible on streaming platforms.[16] These controversies demonstrate how digital platforms often prioritize market considerations, user engagement, and content classification systems over broader ethical concerns and local normative sensitivities. The moderation of sexual content on VoD services is therefore heavily influenced by commercial algorithms and internal corporate policies rather than comprehensive public governance mechanisms.

Despite the growing influence of VoD platforms in Indonesia, the national legal framework regulating digital streaming services remains fragmented and insufficiently adaptive to technological developments. Existing regulations concerning pornography and digital content dissemination continue to rely predominantly on penal and morality based approaches. Several legal instruments are commonly invoked in this context, including Law Number 44 of 2008 concerning Pornography, Law Number 1 of 2024 concerning Electronic Information and Transactions, and the Indonesian Criminal Code of 2023. However, these legal instruments were largely formulated within conventional legal paradigms that are not fully responsive to the operational characteristics of transnational digital platforms and algorithm driven ecosystems.[17]

The Indonesian Broadcasting Law primarily regulates conventional broadcasting institutions and does not explicitly recognize internet based streaming platforms as digital broadcasting entities. Meanwhile, the Electronic Information and Transactions Law prohibits the distribution and transmission of content violating decency norms through electronic systems, yet it does not clearly distinguish between user generated content and licensed streaming services operating under subscription based commercial models. The Pornography Law similarly adopts broad and ambiguous definitions of pornography without adequately differentiating between exploitative sexual content, artistic expression, consensual representation, and audiovisual storytelling within digital film distribution. Consequently, the

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[14] Milladina Kamilia Yasmin and Agus Riwanto. 'Urgensi Pengawasan Layanan Siaran Video On Demand (Vod) Di Indonesia Dan Perbandingannya Dengan Singapura', *Res Publica Jurnal Hukum Kebijakan Publik* 8, no. 2 (29 October 2024) : 216–16. https://doi.org/10.20961/respublica.v8i2.85549.

[15] Kate Knibbs. 'How "Cuties" Got Caught in a Gamergate-Style Internet Clash', WIRED, 15 September 2020. https://www.wired.com/story/cuties-netflix-internet-clash.

[16] Reuters. 'Netflix stands by hit film 365 Days despite Duffy's sex trafficking criticism', *The Guardian*, 4 July 2020. https://www.theguardian.com/media/2020/jul/04/netflix-stands-by-hit-film-365-days-despite-duffys-sex-trafficking-criticism.

[17] Komnas Perempuan. 'Kajian Terhadap Kerentanan Pelanggaran Hak Asasi Perempuan Dalam Pelaksanaan Undang-Undang Pornografi', 2023. ; Louisa Yesami Krisnalita and S Rahayu. 'Analisis Yuridis Mengenai Tindak Pidana Pornografi Secara Berlanjut', *Justice Voice* 1, no. 2 (2 January 2023) : 71–80. https://doi.org/10.37893/jv.v1i2.187.

current legal framework creates uncertainty regarding the regulatory status and legal obligations of VoD providers operating in Indonesia.

This fragmented regulatory structure has also generated overlapping authority among state institutions, particularly between the Ministry of Communication and Digital Affairs, the Indonesian Broadcasting Commission, and the Film Censorship Board. In practice, global streaming platforms continue operating in Indonesia without being fully integrated into formal broadcasting licensing or censorship mechanisms. Most VoD providers rely solely on internal rating systems and parental control features rather than external regulatory supervision. This situation reflects a broader condition of regulatory fragmentation in which national legal institutions struggle to exercise effective jurisdiction over global digital corporations operating through transnational technological infrastructures.

The limitations of Indonesia's penal oriented approach have also attracted criticism from human rights and gender perspectives. The implementation of the Pornography Law has frequently been criticized for conflating morality, decency, and criminal conduct. Rather than focusing primarily on exploitative digital networks or platform accountability, legal enforcement often contributes to the criminalization of women and vulnerable groups, particularly in cases involving the non-consensual dissemination of intimate images. Feminist legal scholars argue that morality-based regulations frequently reproduce patriarchal forms of social control by regulating women's bodies and sexuality through criminal law mechanisms. From this perspective, punitive approaches risk transforming victims into offenders while failing to address the structural dynamics of digital exploitation and technological governance.

More fundamentally, penal regulation remains structurally inadequate for addressing the technological dimensions of digital content dissemination. Criminal law mechanisms primarily operate through punishment after violations occur, whereas the circulation of online content is increasingly determined by automated systems, recommendation algorithms, and platform architecture. Penal enforcement cannot effectively regulate the technological infrastructure through which digital content is distributed and amplified. Furthermore, criminal jurisdiction remains territorially bound, while VoD platforms operate through cross border systems involving foreign servers, international licensing arrangements, and transnational corporate structures. As a result, traditional criminal law approaches are insufficient for governing digital streaming ecosystems characterized by algorithmic distribution and platform-based content moderation.

These conditions highlight the urgency of reconstructing pornography governance through non-penal and technologically adaptive approaches. Contemporary digital governance scholarship increasingly emphasizes that regulation within online ecosystems cannot rely solely on punitive legal instruments.[18] Digital behavior is regulated not only through law but also through norms, markets, and code, with technological architecture functioning as a powerful mechanism of behavioral control.[19] Within this framework, platform design, recommendation systems, age verification mechanisms, content classification technologies, and parental control features become central instruments of governance.

[18] Barda Nawawi Arief, *Masalah Pencegahan Hukum Dan Kebijakan Hukum Pidana Dalam Penanggulangan Kejahatan* (Kencana, 2007).
[19] Lawrence Lessig, *Code and other laws of cyberspace: Version 2.0* (New York : Basic Books, 2006).

Regulation therefore shifts from punishment after harm occurs toward prevention embedded directly within technological systems.

The emergence of techno regulation approaches reflects this broader transformation in digital governance. Techno regulation emphasizes the integration of legal principles into technological infrastructure through mechanisms such as automated filtering systems, algorithmic accountability, safety by design principles, and digital compliance obligations for platform providers.[20] Several jurisdictions have begun adopting such approaches in regulating online content and digital intermediaries. The European Union's Digital Services Act, for example, imposes obligations upon digital platforms to monitor systemic risks, strengthen transparency mechanisms, and implement due diligence procedures in content moderation without entirely sacrificing freedom of expression principles.[21] These developments demonstrate an important shift from purely morality based criminalization toward governance models centered on platform responsibility, risk prevention, and consumer protection.

This article seeks to address that gap by reconstructing non penal policies for pornographic content governance on VoD platforms through a techno regulation and digital consumer protection approach. This study argues that VoD platforms should be understood as digital business actors with legal responsibilities grounded in co-regulation, algorithmic accountability, and design based governance mechanisms. Accordingly, this article examines the limitations of penal oriented regulation in Indonesia and explores how non penal approaches may strengthen digital consumer protection and platform governance within contemporary streaming ecosystems.

2. Methods

This study employs normative legal research with statutory, conceptual, empirical, and comparative approaches. The statutory approach examines Indonesian laws and regulations related to pornography, broadcasting, electronic information, and digital platforms, including Law Number 44 of 2008 concerning Pornography (Law No. 44/2008), Law Number 1 of 2024 concerning Electronic Information and Transactions (Law No. 1/2024), and Law Number 32 of 2002 concerning Broadcasting (Law No. 32/2002). The conceptual approach is used to analyze theories of techno regulation, platform governance, intermediary liability, and digital consumer protection, while the comparative approach examines regulatory frameworks in the European Union, India, Malaysia, and Singapore to identify relevant non penal governance models for digital content regulation.

The research relies primarily on library research through the examination of primary, secondary, and tertiary legal materials, including legislation, court decisions, academic literature, journal articles, and institutional reports. To complement the normative analysis, limited empirical data were obtained through interviews with representatives from the Ministry of Communication and Digital Affairs and the Film Censorship Board, as well as observations of content moderation and classification mechanisms on several Video on Demand platforms operating in Indonesia. The collected materials were analyzed qualitatively

[20] Ibid.
[21] European Union. 'The final text of the Digital Services Act (DSA)', Eu-digital-services-act.com, 2016. http://eu-digital-services-act.com/Digital_Services_Act_Preamble_81_to_90.html?

through juridical interpretation to identify regulatory fragmentation, legal gaps, and the limitations of penal oriented regulation in governing pornographic content within digital streaming ecosystems.

3. Results and Discussion

3.1. VoD Platforms as Digital Business Actors

The development of VoD platforms reflects a transformation in the digital economy, particularly in the organization of the global entertainment and media industries. Unlike conventional broadcasting institutions that primarily rely on scheduled transmission and advertising based revenue, VoD platforms operate as digital businesses whose commercial activities depend on subscription revenues, user data, content personalization, and sustained consumer engagement.[22] The rapid expansion of digital consumption has reinforced the commercial significance of streaming services in Indonesia, where internet connectivity and digital media consumption continue to grow.[23] Research on transactional VoD in Indonesia likewise demonstrates that the use of these services is increasingly embedded in consumer behavior and digital consumption practices.[24] Netflix, Disney+ Hotstar, Amazon Prime Video, Viu, and similar services should therefore not be understood merely as technological intermediaries that distribute audiovisual content. They are profit oriented digital enterprises that organize, monetize, and optimize the circulation of content within data driven business ecosystems.

This distinction is important because the commercial value of a VoD platform does not lie solely in the ownership or licensing of audiovisual content, but also in its capacity to transform user attention and behavioral data into economic value. Platform businesses are fundamentally organized around the extraction, processing, and utilization of data. In streaming environments, user interactions such as viewing history, watch duration, searches, clicks, ratings, and browsing behavior generate valuable behavioral information that can be used to optimize content distribution and sustain commercial performance.[25] The platform consequently operates as both a marketplace for audiovisual content and an infrastructure for managing consumer attention.[26] The economic function of content circulation is therefore inseparable from the technological systems through which platforms determine what consumers see, when they see it, and how long they remain engaged with the service.[27]

Algorithmic recommendation systems are central to this process. Content on VoD platforms does not simply become available to consumers; it is actively organized, ranked,

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[22] Nick Srnicek, *Platform Capitalism* (Cambridge : Polity Press, 2017). https://mudancatecnologicaedinamicacapitalista.wordpress.com/wp-content/uploads/2019/02/platform-capitalism.pdf.

[23] We Are Social. 'DIGITAL 2024', 2024. https://wearesocial.com/wp-content/uploads/2024/02/Digital_2024_Global.pdf.

[24] Yasmin Amalia et al., 'Actual Use of Transactional Video on Demand: The Extended of Technology Acceptance Model', *2021 International Conference on Informatics, Multimedia, Cyber and Information System (ICIMCIS*, ahead of print, 28 October 2021, https://doi.org/10.1109/icimcis53775.2021.9699327.

[25] Nick Srnicek, *Platform Capitalism* (Cambridge : Polity Press, 2017). https://mudancatecnologicaedinamicacapitalista.wordpress.com/wp-content/uploads/2019/02/platform-capitalism.pdf.

[26] Ibid.

[27] Ibid.

personalized, and recommended through algorithmic systems. These systems perform a commercial function by reducing search costs, increasing content consumption, and encouraging users to remain within the platform ecosystem. Recommendation systems in streaming markets can contribute to consumer acquisition and retention.[28] While Netflix's recommendation architecture is closely connected to the platform's strategy of reducing user churn.[29] Recommendation therefore constitutes more than a technical convenience. It is part of the economic infrastructure through which platforms maximize the value generated from their subscriber base. Also, user behavior within streaming environments is closely connected to the commercial organization of digital advertising and audience attention.[30] These findings reinforce the proposition that the technological architecture of VoD platforms must be understood within the broader economic logic of digital business.

This commercial dimension is particularly important when examining the circulation of sexually suggestive or explicit content. The persistence of such content within streaming ecosystems cannot be separated entirely from market incentives. Content capable of generating attention, prolonged viewing, repeated interaction, or audience curiosity may contribute to the commercial objectives of a platform by increasing engagement and supporting subscriber retention. This does not mean that VoD platforms intentionally distribute pornography for its own sake, nor does it establish that every sexually suggestive work is promoted because of its sexual content. The relevant issue is structural. When platform performance is measured through engagement, retention, and continued consumption, algorithmic systems have an economic incentive to identify and prioritize content capable of sustaining user attention. The circulation of sexually suggestive content must therefore be examined not only as a matter of content regulation but also as a consequence of commercial strategies embedded within the platform business model.

The findings of this study demonstrate that this dynamic is particularly relevant to the dissemination of sexually explicit content through VoD services in Indonesia. Dissemination no longer occurs primarily through conventional open distribution systems but through algorithm driven digital architectures that operate according to user behavioral patterns. Recommendation systems can amplify content based on engagement indicators such as clicks, viewing duration, interaction, and viewing history. Consequently, content containing sexual scenes, sensualized narratives, or other sexually suggestive elements may achieve substantial visibility even when it is not formally classified as explicit pornography under platform standards. The issue is therefore not limited to whether a particular film legally constitutes pornography. It also concerns how the platform's commercial architecture determines which forms of sexualized content become visible, recommended, and repeatedly encountered by consumers.

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[28] Marc Bourreau and Germain Gaudin, 'Streaming Platform and Strategic Recommendation Bias', *SSRN Electronic Journal*, ahead of print, 2018, https://doi.org/10.2139/ssrn.3290617.

[29] Niko Pajkovic. 'Algorithms and taste-making: Exposing the netflix recommender system's operational logics', *Convergence: the International Journal of Research into New Media Technologies* 28, no. 1 (17 May 2021) : 214–35. https://doi.org/10.1177/13548565211014464.

[30] Marco Furini. 'Viewers" behavior when exposed to overlay advertising on AVoD platforms', *Computers in Human Behavior* 148 (1 November 2023) : 107905. https://doi.org/10.1016/j.chb.2023.107905.

This finding also exposes the regulatory of the relationship between economic incentives and algorithmic governance. Algorithmic recommendation systems are not neutral technological mechanisms. They constitute part of the commercial infrastructure through which platforms manage consumer attention and optimize the value of their content catalogues.[31] Recommendation is itself a form of platform governance because algorithmic systems determine which content becomes more or less visible to users.[32] In commercial streaming environments, this governance function operates simultaneously as a business strategy. The platform does not merely host content; it actively structures the conditions under which consumers encounter and consume that content. Thus, when sexually suggestive content is repeatedly surfaced through personalized recommendations, its dissemination reflects not only the existence of such content within the catalogue but also the operation of a commercial system that determines its visibility.

The commercial nature of VoD platforms also distinguishes them from conventional broadcasters and raises questions concerning their regulatory classification in Indonesia. Traditional broadcasting regulation is generally structured around identifiable broadcasters operating within national territorial and licensing frameworks. VoD platforms, by contrast, operate through digital infrastructures that enable cross border content distribution and allow foreign corporations to provide services directly to Indonesian consumers.[33] The absence of adequate supervision over VoD services in Indonesia and highlight the regulatory challenges arising from the differences between conventional broadcasting and digital streaming services.[34] The difficulty is therefore not simply that existing law lacks provisions concerning particular types of content. It is also that the institutional architecture of broadcasting regulation has not fully adapted to business actors whose commercial activities are organized through digital platforms rather than conventional broadcasting infrastructures.

This regulatory ambiguity becomes more significant because VoD platforms exercise substantial informational and technological power over consumers. Users generally possess limited knowledge concerning how recommendation algorithms determine content visibility, how behavioral data are processed, and why particular content is repeatedly presented to them. The platform, by contrast, possesses extensive data and technical capacity to monitor and predict consumer behavior. This creates a structural information asymmetry that places consumers in a weaker position within the digital streaming ecosystem. The problem is particularly serious where sexually suggestive content is involved because children and adolescents may lack the capacity to understand or control the technological systems shaping their exposure.

The vulnerability of younger consumers is further intensified by weak age verification, limited parental controls, and inconsistent content classification. Although VoD platforms commonly provide rating systems and parental supervision features, these mechanisms

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[31] Tarleton Gillespie. 'Do Not Recommend? Reduction as a Form of Content Moderation', *Social Media + Society* 8, no. 3 (July 2022) : 1–13. https://doi.org/10.1177/20563051221117552.
[32] Ibid.
[33] Milladina Kamilia Yasmin and Agus Riwanto. 'Urgensi Pengawasan Layanan Siaran Video On Demand (Vod) Di Indonesia Dan Perbandingannya Dengan Singapura', *Res Publica Jurnal Hukum Kebijakan Publik* 8, no. 2 (29 October 2024) : 216–16. https://doi.org/10.20961/respublica.v8i2.85549.
[34] Ibid.

frequently depend on user activation and individual supervision. Children and adolescents may nevertheless encounter mature content through shared accounts, personalized recommendations, or inadequate verification procedures. From a digital consumer protection perspective, such arrangements raise a fundamental question concerning the allocation of responsibility. It is insufficient to place the entire burden of preventing harmful exposure on consumers when the platform itself possesses greater technological capacity and substantially controls the digital environment in which consumption occurs.

Taken together, these findings demonstrate that the dissemination of pornographic and sexually suggestive content through VoD platforms is not merely a matter of individual morality, unlawful user behavior, or technological malfunction, but a structural issue arising from the interaction between platform architecture and commercial incentives. By organizing, recommending, and monetizing audiovisual content through data driven systems, VoD platforms actively shape consumer exposure and derive economic value from user attention and engagement. They should therefore be recognized as digital business actors rather than passive intermediaries, with corresponding responsibilities to ensure consumer safety, transparency, and accountable content governance. This recognition shifts the regulatory focus from regulating content alone toward regulating the commercial and technological systems through which such content is circulated.

3.2. Weaknesses of Penal Policies in Regulating Pornographic Content on VoD Platforms

The findings of this study indicate that Indonesia's current legal framework for regulating pornographic content on VoD platforms remains dominated by penal and morality-based approaches that are structurally inadequate for addressing the characteristics of digital streaming ecosystems. Existing regulations primarily emphasize criminal prohibition, censorship, and punitive enforcement after violations occur, while providing limited mechanisms to regulate the technological and commercial infrastructures through which content is distributed, recommended, and monetized. This limitation is particularly significant because digital pornography is no longer disseminated solely through intentional acts of individual users. It increasingly circulates through algorithmic recommendation systems, personalized interfaces, and commercially driven content distribution mechanisms. The problem is therefore not simply whether particular content violates a criminal prohibition, but whether the legal framework is capable of regulating the systems and business practices that facilitate its circulation.

The regulation of morality and obscenity in Indonesia remains dispersed across several legal instruments, including Law No. 44/2008, Law No. 1/2024, and Law No. 1/2023. Although these instruments address related concerns regarding morality, decency, and pornographic content, they do not establish sufficiently clear conceptual boundaries concerning the scope of prohibited sexual content in digital environments.[35] This condition creates legal uncertainty and overlapping interpretations concerning the distinction between pornography, artistic expression, sexualized representation, and other forms of audiovisual content.

[35] Hwian Christianto. 'Norma Kesusilaan Sebagai Batasan Pornografi Menurut Undang-Undang No. 44 Tahun 2008', *Jurnal Hukum & Pembangunan* 40, no. 1 (3 March 2010) : 23. https://doi.org/10.21143/jhp.vol40.no1.212.

The problem is not merely terminological. Vagueness in legal norms may create uncertainty regarding their interpretation and application, particularly where the boundaries of prohibited conduct remain insufficiently determined.[36] In the Indonesian context, this uncertainty becomes more significant when applied to audiovisual content distributed through global streaming platforms, where cultural standards, content classifications, and regulatory approaches may differ substantially across jurisdictions.

The morality-based character of existing regulation also raises concerns regarding the proportionality and social consequences of criminalization. The use of criminal law to enforce contested standards of morality remains subject to longstanding debates concerning the legitimate limits of state intervention in individual liberty.[37] This concern is particularly relevant in Indonesia, where the implementation of the Pornography Law has been associated with vulnerabilities to violations of women's rights and the reproduction of gendered forms of control over sexuality.[38] The problem with the existing framework is therefore not simply that it is punitive, but that it directs legal intervention primarily toward individual conduct while insufficiently addressing the structural conditions that enable the production, circulation, and commercialization of sexualized content. As a result, the legal system risks treating pornography predominantly as a problem of individual morality rather than as a phenomenon shaped by technological infrastructures and institutional practices.

These weaknesses are further reinforced by the persistence of conventional broadcasting paradigms within Indonesia's regulatory framework. Broadcasting regulation was principally developed around centralized media institutions, scheduled transmission, and identifiable broadcasters. VoD platforms operate differently through internet-based infrastructures, individualized access, subscription systems, and personalized recommendation mechanisms. The development of VoD services therefore raises specific regulatory questions because these services do not fit neatly within the institutional framework traditionally developed for conventional broadcasting.[39] This regulatory ambiguity places VoD platforms in an intermediate position. They exercise substantial control over audiovisual content and its distribution, yet their activities are not fully integrated into the conventional broadcasting supervision framework. The resulting gap contributes to fragmented oversight among the Ministry of Communication and Digital Affairs, the Indonesian Broadcasting Commission, the Film Censorship Board, and law enforcement institutions.

The problem becomes more complex because major VoD platforms operate through transnational corporate and technological infrastructures. Their licensing arrangements, corporate structures, content libraries, and technical systems may extend across multiple jurisdictions, while their services remain directly accessible to Indonesian consumers. National

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[36] Lorenzo Sacconi, *The Social Contract of the Firm* (Springer Science & Business Media, 2012).
[37] Massimo Renzo. '"Law, Liberty and Morality": Fifty Years On', *Criminal Law and Philosophy* 7, no. 3 (10 July 2013) : 417–18. https://doi.org/10.1007/s11572-013-9244-7.
[38] Komnas Perempuan. 'KAJIAN TERHADAP KERENTANAN PELANGGARAN HAK ASASI PEREMPUAN DALAM PELAKSANAAN UNDANG-UNDANG PORNOGRAFI', 2023.
[39] Milladina Kamilia Yasmin and Agus Riwanto. 'URGENSI PENGAWASAN LAYANAN SIARAN VIDEO ON DEMAND (VOD) DI INDONESIA DAN PERBANDINGANNYA DENGAN SINGAPURA', *Res Publica Jurnal Hukum Kebijakan Publik* 8, no. 2 (29 October 2024) : 216–16. https://doi.org/10.20961/respublica.v8i2.85549.

authorities may regulate access to digital services within Indonesian territory, but their ability to directly control recommendation systems, content-ranking mechanisms, and corporate decision-making structures located outside Indonesia remains limited. This creates a structural mismatch between territorial regulation and transnational digital business operations. Penal law may target unlawful content or individual conduct within national territory, while the technological architecture responsible for organizing and amplifying content remains embedded within corporate systems operating across borders. The findings of this study further demonstrate that the limitations of penal regulation cannot be fully understood without examining the economic logic of VoD platforms. This perspective is particularly relevant to streaming services because the commercial value of the platform depends not only on the availability of content, but also on its ability to continuously direct users toward content that sustains their participation in the service.[40]

Recommendation systems must therefore be understood as commercial instruments as well as technological mechanisms. Streaming platforms use personalized recommendations to attract consumers and increase retention, while the design of these systems may also reflect the platform's own economic interests.[41] Recommendation systems in streaming markets can be used strategically by platforms to influence consumption and steer users toward content that is more economically advantageous to the platform.[42] The analysis shows that recommendation is not necessarily a neutral process of matching consumers with their preferences.[43] It can also become part of the platform's profit-maximizing strategy.[44] This finding is significant for the regulation of sexually suggestive content because content that generates substantial attention and continued consumption may acquire commercial value within engagement-driven streaming environments.

Accordingly, the circulation of sexually suggestive content cannot be separated from the economic incentives embedded within platform business models. Content that attracts attention, increases viewing duration, stimulates repeated interaction, or strengthens user retention may contribute to the commercial performance of a platform even when it does not fall within the legal definition of pornography. The persistence of such content may therefore reflect not only shortcomings in content moderation but also the economic logic of engagement-driven platforms. The issue is not necessarily that platforms intentionally seek to distribute pornography. Rather, the concern is that commercial architectures designed to maximize user engagement may create incentives that favor the visibility and circulation of content capable of sustaining attention. This transforms pornography regulation from a question of prohibited content into a broader question of how commercial platform design influences consumer exposure.

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[40] Nick Srnicek, *Platform Capitalism* (Cambridge : Polity Press, 2017). https://mudancatecnologicaedinamicacapitalista.wordpress.com/wp-content/uploads/2019/02/platform-capitalism.pdf.

[41] Marc Bourreau and Germain Gaudin. 'Streaming Platform and Strategic Recommendation Bias', *SSRN Electronic Journal*, 2018. https://doi.org/10.2139/ssrn.3290617.

[42] Ibid.

[43] Ibid.

[44] Ibid.

The foregoing analysis demonstrates that the limitations of Indonesia's penal policy arise from its inability to intervene in the technological and commercial structures that shape digital content circulation. Recommendation systems, platform design, engagement-driven business models, and transnational corporate structures operate largely beyond the reach of conventional criminal enforcement. Although penal law remains necessary to address serious forms of sexual exploitation and unlawful dissemination, it is inherently reactive because intervention generally occurs after prohibited conduct has taken place. It therefore cannot adequately prevent harmful exposure, regulate algorithmic amplification, or impose systematic duties on digital business actors before harm occurs.

The weakness of the penal approach is further compounded by fragmented institutional authority and the absence of an integrated framework connecting content regulation, platform accountability, and digital consumer protection. Treating VoD platforms primarily as channels through which prohibited content is transmitted overlooks their role as commercial actors that actively organize, recommend, and monetize content. The regulatory challenge is consequently not limited to determining which content should be prohibited, but also concerns how platforms should design their systems, manage foreseeable risks, protect vulnerable consumers, and account for the commercial consequences of algorithmic content distribution.

These findings establish the need for a regulatory shift from punishment-oriented intervention toward preventive and system-oriented governance. Rather than relying predominantly on criminal sanctions after dissemination, regulation should intervene directly in the technological architecture and business practices through which content becomes accessible and visible. The following section therefore develops a non-penal policy framework based on techno-regulation, which reconceptualizes law as an instrument not only for prohibiting harmful conduct but also for embedding prevention, protection, and accountability within the digital systems operated by VoD platforms.

3.3. Regulating Non-Penal Approach to Platform Accountability and Consumer Protection

Pornographic content on VoD platforms requires a shift from punitive and morality-based regulation toward preventive, technology-oriented, and incentive-compatible governance. Existing legal approaches in Indonesia continue to treat technology primarily as an object of legal control, while digital pornography increasingly circulates through platform architectures, recommendation systems, and algorithmic distribution mechanisms. As Lessig argues through the concept of *Code as Law*, technological architecture itself can regulate behaviour by determining what users can access, how they interact with digital environments, and which forms of conduct are facilitated or constrained.[45] Accordingly, technology should not merely be regulated by law but should also become part of the regulatory mechanism.[46] In the context of VoD, this means embedding legal obligations within platform design through age verification, parental controls, content classification, recommendation safeguards, and other forms of safety by design. Such an approach is consistent with Kusumaatmadja's conception of law as an instrument of social engineering, whereby law operates not merely to prohibit conduct but to shape social behaviour and institutional practices toward socially

[45] Lawrence Lessig, *Code and other laws of cyberspace: Version 2.0* (New York : Basic Books, 2006).
[46] Ibid.

desirable outcomes.[47] Applied to digital platforms, this perspective requires law to influence the technological and organizational structures through which digital behaviour is produced.

This study therefore proposes a non-penal framework based on the Prevent–Protect–Govern model. The model responds directly to the limitations of criminal law identified in the preceding section by shifting intervention from the individual act of disseminating prohibited content toward the systems that create, amplify, and sustain digital risks. The Prevent dimension places preventive obligations within platform architecture through digital literacy, effective age verification, default-active parental controls, risk-based content classification, restrictions on the recommendation of sensitive content to child accounts, and periodic assessment of recommendation systems. The Protect dimension focuses on protecting users and victims through accessible reporting mechanisms, rapid takedown procedures, privacy and personal-data safeguards, and non-criminal remedies capable of reducing and repairing digital harm. The Govern dimension establishes continuing oversight through co-regulation, algorithmic transparency, platform compliance assessments, and independent auditing. The model thus operationalizes the transition from criminal law as a reactive instrument toward preventive-regulatory governance capable of intervening before technological systems produce or amplify harm.

However, techno-regulation cannot be effective if it assumes that profit-oriented platforms will voluntarily prioritize public interests over commercial objectives. The effectiveness of regulatory intervention depends on whether regulatory obligations are aligned with the economic incentives governing platform behaviour. Research on platform governance demonstrates that platform owners make governance decisions according to their economic interests and the value generated through their control over recommendations, information, and user interactions.[48] Similarly, content moderation is itself a strategic business decision: platforms balance moderation against user acquisition, retention, revenue models, and the economic consequences of losing users.[49] This finding is particularly relevant to VoD platforms because the willingness to implement costly safeguards cannot be assumed merely from the existence of legal obligations. Where stronger moderation increases compliance costs or reduces engagement, platforms may have economic incentives to maintain less restrictive systems unless regulation changes that calculation. The implication is clear: techno-regulation must make compliance economically rational and non-compliance economically costly.

The regulatory framework must therefore incorporate tangible legal, financial, and reputational consequences for inadequate platform safeguards. A platform that fails to implement effective age verification, recommendation controls, or content moderation should face consequences that exceed the cost of compliance. Such consequences may include administrative sanctions, mandatory remediation, independent compliance audits, restrictions on particular platform functions, and, where appropriate, financial penalties. This approach is supported by the economic literature on content moderation, which shows that

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[47] Mochtar Kusumaatmadja, *Konsep-konsep hukum dalam pembangunan* (Bandung : Alumni, 2006).
[48] Tat-How Teh. 'Platform Governance', *American Economic Journal: Microeconomics* 14, no. 3 (2022) : 213–54. https://doi.org/DOI: 10.1257/mic.20190307.
[49] Yi Liu, Pinar Yildirim, and Z. John Zhang. 'Implications of Revenue Models and Technology for Content Moderation Strategies', *SSRN Electronic Journal* 41, no. 4 (2021). https://doi.org/10.2139/ssrn.3969938.

platforms respond not only to direct regulatory requirements but also to reputational and commercial risks. Platform moderation decisions are affected by the reputational risks associated with unsafe content and the interests of other market participants, while binding regulatory intervention can alter the platform's moderation incentives.[50] More recent research likewise shows that platforms strategically balance the benefits of engagement against moderation costs and reputational consequences when determining how aggressively to moderate controversial content.[51] Thus, regulation should not merely instruct platforms to behave responsibly; it must restructure the incentive environment in which corporate decisions are made.

This incentive-based approach also clarifies the meaning of platform accountability within digital business regulation. VoD platforms are not passive intermediaries that simply transmit content generated by others. Their recommendation systems, interface design, subscription structures, data practices, and moderation policies actively organize the conditions under which consumers encounter and engage with content. Platform governance is therefore simultaneously a technological and economic form of governance. Recent scholarship similarly emphasizes that platform governance involves strategic decisions concerning the design of platform mechanisms, incentives, and control, while regulatory intervention may be necessary where governance design produces outcomes inconsistent with public interests.[52] The legal responsibility of VoD platforms should consequently extend beyond removing unlawful content after dissemination. It should encompass a broader duty of care concerning foreseeable risks generated by their technological architecture and commercial practices.

This approach is particularly important for digital consumer protection. Consumers generally lack equivalent access to the technological knowledge, behavioural data, and algorithmic information possessed by platform operators. Children and adolescents are even more vulnerable because they may lack the capacity to understand or control how recommendation systems influence their exposure to content. Preventive regulation should therefore require platforms to internalize consumer-safety obligations as part of ordinary business operations rather than treat them as optional corporate social responsibility measures. In this context, Government Regulation Number 17 of 2025 concerning Electronic System Governance for Child Protection provides an important foundation for strengthening preventive digital governance in Indonesia. Its implementation can be developed further to address the specific risks associated with VoD platforms, particularly through stronger age assurance, parental controls, content classification, and system-level safeguards.

The proposed framework also requires regulatory harmonization. The implementation of Government Regulation Number 17 of 2025 should be accompanied by more specific rules under the Electronic Information and Transactions framework concerning platform

[50] Leonardo Madio and Martin Quinn. 'Content moderation and advertising in social media platforms', *Journal of Economics &amp Management Strategy* 34, no. 2 (26 June 2024). https://doi.org/10.1111/jems.12602.
[51] Ruixiao Dong et al. 'Content moderation and creator incentives mechanism amidst controversial content surges', *Omega* 138 (17 September 2025) : 103427. https://doi.org/10.1016/j.omega.2025.103427.
[52] Tat-How Teh. 'Platform Governance', *American Economic Journal: Microeconomics* 14, no. 3 (2022) : 213–54. https://doi.org/DOI: 10.1257/mic.20190307.

obligations, system-based content controls, algorithmic accountability, and digital consumer protection. A more comprehensive statutory framework for digital content and VoD governance would further strengthen the legal basis for these obligations and provide greater certainty concerning institutional authority, compliance standards, and enforcement mechanisms. Such reform would allow Indonesia to move beyond a model in which criminal law functions predominantly as *ultimum remedium* after harm has occurred toward a regulatory system capable of preventing risks at the level of platform architecture and corporate decision-making.

The Govern dimension of the Prevent–Protect–Govern model therefore requires co-regulation rather than either unrestricted self-regulation or exclusive state control. State institutions should establish binding standards and enforcement mechanisms, while platforms should be required to implement those standards through their technological and organizational systems. Independent regulators and civil society can contribute monitoring, auditing, and public accountability. Crucially, however, co-regulation must remain enforceable. Platform participation should not be understood as voluntary cooperation but as a legally structured responsibility in which failure to comply produces measurable regulatory, financial, and reputational consequences. This approach is consistent with the broader development of platform governance scholarship, which recognizes that effective digital regulation must account for the strategic incentives and market power of platform owners rather than presume neutral or benevolent platform behaviour.[53]

Accordingly, the Prevent–Protect–Govern model reconstructs non-penal policy as a form of techno-regulation that combines legal norms, technological architecture, economic incentives, and corporate accountability. Its central contribution is to recognize that digital platforms will internalize public-interest obligations only when those obligations are incorporated into the economic and operational structures of the platform itself. Prevention must therefore be embedded in design, protection must be supported by accessible non-criminal remedies, and governance must be reinforced through enforceable compliance incentives. In this framework, law operates not simply as a mechanism for punishing unlawful content, but as an instrument for restructuring the technological and commercial conditions that determine how such content is produced, circulated, and encountered. This provides a more realistic foundation for protecting digital consumers while ensuring that VoD platforms internalize responsibility for the risks generated by their own business models.

4. Conclusions

Penal-oriented approaches are insufficient to address the dissemination of pornographic and sexually suggestive content within contemporary VoD ecosystems. Indonesia's existing framework remains largely focused on criminalization, censorship, and morality-based regulation, while insufficiently addressing the algorithmic, commercial, and transnational infrastructures that shape content circulation. VoD platforms should therefore be recognized as digital business actors rather than passive intermediaries, given their capacity to influence consumer exposure and derive economic value from user engagement, data, and content

[53] Konrad Degen and Alexander Gleiss. 'Time to break up? The case for tailor-made digital platform regulation based on platform-governance standard types', *Electronic Markets* 35, no. 1 (17 January 2025). https://doi.org/10.1007/s12525-024-00747-7.

consumption. Effective platform regulation must consequently address not only unlawful content, but also the commercial incentives, technological architecture, and corporate responsibilities that shape its circulation.

The principal novelty of this study lies in the formulation of an integrative non-penal Prevent–Protect–Govern model for regulating pornography dissemination through VoD platforms. Grounded in Pancasila values, Development Law Theory, and Non-Penal Policy Theory, the model reconceptualizes law as an instrument for preventive digital governance. Prevent embeds safeguards through age verification, content classification, digital literacy, and safety-by-design; Protect prioritizes victim protection, rapid takedown, data protection, and non-criminal remedies; while Govern establishes co-regulation through algorithmic accountability, transparency, compliance audits, and coordinated institutional oversight. Importantly, the model does not assume voluntary platform compliance. It requires regulatory, financial, and reputational consequences that align platform incentives with consumer safety and encourage corporations to internalize regulatory obligations within their business operations.

The study therefore proposes a shift from a criminal law of morality toward digital governance law, integrating techno-regulation and Lessig's Code as Law into Indonesia's regulatory framework. Technology should function not only as an object of legal control but also as a mechanism through which preventive legal obligations are embedded within platform architecture. This approach provides a more adaptive framework for digital consumer protection, particularly for children and other vulnerable users, while strengthening corporate accountability in the digital economy. The Prevent–Protect–Govern model consequently offers a conceptual foundation for reforming Indonesia's regulation of digital content through a preventive, technologically adaptive, and economically enforceable approach.

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