

## “Mini Trial” Model on Case Resolution Student Morals

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### Abstract

*Morality is a principle of life based on the values of divinity, humanity and justice, as essential values in human life. This behavior can occur by anyone and anywhere, including among students. In Indonesia's positive law, immoral acts are implicitly regulated in the Criminal Code, the Pornography Law. However, because in the aspect of decency concerning ethical rules, placing criminal law as the ultimum remedium is more appropriate, because if it can still be carried out with social sanctions, then restorative justice will be achieved, in addition to placing criminal law as primum remedium. . Efforts to resolve student immoral cases would be better done with the concept of a minitrial or mini trial, involving the University Ethics and Law Committee (KEHU), students of perpetrators, students of victims, parents/guardians, and witnesses. KEHU acts as a mediator for the parties involved. The completion of the case is when the agreement is signed, and for students, coaching is carried out. The case with the minitrial is as in the Student Code of Ethics. If there is a case related to a criminal act, the minitrial decision can be taken into consideration by the competent authorities.*

### Keywords

mini trial; settlement of  
immoral cases; student



## I. Introduction

Philosophically, Indonesia was built based on the values of God, humanity, unity, deliberation, consensus, and justice. These values are as stated in the precepts of Pancasila as a view of life and the foundation of Indonesian law. Divinity values animate other values. Including when in the life of students on campus, which in its development are prone to being trapped in the flow of immoral behavior.

The formation of decency values is dealing with the dynamics of civilization mixed with global values, which are not entirely able to be sorted out by the younger generation. The need for affection and sexuality which in pre-modern society was controlled within the framework of community society, in the post-modern era is characterized by unlimited freedom in terms of expressing affection and fulfilling sexual desires.

The appreciation of human values is not autonomous, but is influenced by the social environment in which individuals live and develop. The religious community environment will form sensitive and responsive individuals to the life of the community. In contrast to individuals who grew up in an environment with a deviant culture (deviant culture) will tend to behave differently. Immoral behavior among students can occur as a result of being in a deviant cultural environment, or because of habitual behavior resulting in aggressive behavior, or because of families that are not harmonious, causing an inability to recognize ethical values so that they fall into harmful and dangerous actions. .

Indonesian positive law, namely UU no. 1 Th. 1946 Regarding the Criminal Law Regulations (hereinafter KUHP) and Law no. 44 Th. 2008 Regarding Pornography (hereinafter the Pornography Law) limits actions that are categorized as criminal acts of decency, which are closely related to ethical values, so that in sentencing, the existence of violations of ethical rules that live in a community should also be considered. In this paper, the community is students, namely an academic community that should rely on the Student Code of Ethics as a code of conduct in addition to state law.

## **II. Research Methods**

The approach used in this paper is the approach conceptual approach (conceptual approach) to the nature of decency cases where the perpetrators are students, as well as the statutory approach of Law no. 1 Th. 1946 Regarding Criminal Law Regulations, Law no. 44 Th. 2008 Regarding Pornography, Law no. 19 Th. 2016 Regarding Amendments to Law No. 11 Th. 2008 About Information and Electronic Transactions.

Research by Yuliananingsih, Fetty Novianti and Anwar Rube'i. Regarding the Effect of the Implementation of the Student Code of Ethics on Student Discipline in the IKIP PGRI Pontianak Campus, concluded that with the introduction and socialization of ethics from an early age, the student's discipline can be achieved well. Halimatus Sa'diyah and Zaiful's research on the Code of Ethics and Student Morals (Study of the Role of the Code of Ethics Team in Fostering Student Morale at IAIN Madura) concluded that the code of ethics team overcomes the moral problems of IAIN Madura students by fostering student morale and providing sanctions according to the level of violations committed by students at IAIN Madura. The two studies have not explained specifically about student decency cases and their solutions. The novelty of this paper is a model of ethical and legal settlement of decency cases through a Mini Trial.

## **III. Results and Discussion**

### **3.1. Criminal Cases**

Morality, etymologically, the word "morals" means manners, manners, civilized, orderly. A decency case is a case that arises as a result of an immoral act, an act that violates the decency that lives in society. Specifically, the intended immoral act is an act that is closely related to right and wrong in relation to their sexual events. Morals are traits and souls that are inherent in an individual to become a full or complete person and unite in that individual so that eventually it is reflected through behavior in daily life and even become a character or customs. (Alwan Khoiri in Haidir, et al, 2020)

The Criminal Law perspective views that decency cases are criminal acts related to ethics. This limitation of decency is very dependent on the values that live in society. A case of decency is a crime if: perpetrators who in this case are students who consciously expose immoral acts. The perpetrator must know that his action violates decency or at least the perpetrator should suspect or predict a reaction from the community towards his action. The case of decency is carried out on a conscious mental attitude (*men rea*) that will display something (*actus rei*).

The crime of electoral elections of regional heads is one of the special crimes whose criminal arrangements are outside the provisions of the Criminal Code. This is given the urgency of the implementation of the general sorter of the head of the region itself, so it is no longer relevant to use the provisions of the Criminal Code. The crime of regional head

elections is also a special rule because the forms of election violations regional head itself have a variety of things that can be done by various parties. (Lubis, M. 2020)

This mental attitude that consciously commits immoral acts is what drags students to be determined as criminals. In fact, students are in a period of education that transforms ethics as a guide for daily behavior. Some of the sexual acts that are often done by students include: making intimate videos, free sex, cohabitation, abortions performed as a result of unwanted pregnancies (unwanted pregnancies) performed on fellow students, students with lecturers, students with educational staff at universities. Such actions, in the perspective of criminal law, are divided into several categories, namely: Acts of violating decency openly (Article of the Criminal Code), distributing immoral material (Article 282 of the Criminal Code), Actions of facilitating access to immoral material (Article 283 of the Criminal Code), Acts of rape (285-288 of the Criminal Code), Acts of obscenity (289-296 of the Criminal Code).

In the Information and Electronic Transactions Act and the Pornography Law, the terminology of criminal acts of decency is used. Article 1 number 1 of the Pornography Law stipulates that: "Pornography is pictures, sketches, illustrations, photographs, writings, sounds, sounds, moving images, animations, cartoons, conversations, gestures, or other forms of messages through various forms of communication media and / or public performances, which contain obscenity or sexual exploitation that violates the norms of decency in society."

The meaning of this terminology is multi-interpretative, because pornography involves moral values which differ in various cultures, especially when it is associated with works of art. The ability of students to use information technology, and transactional freedom in the internet world, supported by financial needs, can be a trigger factor for the emergence of decency cases as regulated in the Pornography Law, namely: Produce, create, reproduce, reproduce, disseminate, broadcast, import, export, offering, trading, renting, or providing pornography (article 4), Borrowing or downloading pornography (Article 5), Playing, displaying, utilizing, possessing, or storing pornographic products (Article 6), Financing or facilitating pornography (Article 7),

Expansion of the meaning of pornography, including: Sexual pornography and the provision of pornographic services. The issue of sexual intercourse was expanded to include deviant intercourse, various forms of sexual violence, exhibitionism and child pornography. Meanwhile, the provision of pornographic services includes the explicit presentation of nudity or the appearance of nudity, the exploitation of social activities, and the direct or indirect advertisement of sexual services. This can be easily done by students, especially together peer group. Modifications of the mode also vary, so that the domino effect of this ethical issue extends to legal issues.

Positive law is made to achieve its goals. There are two streams of criminal law, namely, first, to frighten everyone not to commit bad deeds (classical school), and secondly, to educate perpetrators to be good and acceptable again in their environmental life (modern school). However, if the crime is then used as an excuse as a *primum remedium*, even though this problem actually contains ethical issues and sexual desire control, which is expected not to be repeated, in the sense that students are properly nurtured, of course it would be better to make criminal law the *ultimum remedium*, except in the case of violence has occurred which has resulted in loss, physical disability, and psychological trauma for the victim.

### **3.2. Code of Ethics as a Standard/Guideline for Student Ethics and Law**

Every community needs rules as ethical standards of behavior, so do students. The code of ethics is a tool to support the achievement of the goals of an organization or sub-organization or even groups that are not yet bound in a company an organization, so basically a code of ethics is a law of ethics, where the law of ethics is usually made by an organization

or group as a benchmark for mental attitudes that must be obeyed by its members in carrying out their duties. An ethical code is a guide on what is good and bad to do. The legality of the guidelines used by the professional community as well as students, can be in the form of a code of ethics. The code of ethics is a system of written norms that contains the rules and obligations of a community, which relies on what is right and good, as well as prohibitions from doing things that are contrary to the vision and mission of a community. In this case the community in question is the student community.

The Code of Ethics as a written rule, systematically deliberately made, based on existing moral principles and when needed can function as a tool that can be used to judge various kinds of actions that are generally considered to deviate from the existing code of ethics. In its formation, the code of ethics certainly has a purpose in it, namely, to provide instructions for the behavior of members of the community. Example: in the UNY student code of ethics it is written that every student has the right: to use academic freedom responsibly to demand and study knowledge in accordance with norms and immoral prevailing in the academic environment.

The university is an institution that educates human resources for the sake of the survival of a nation, which makes intelligent humans not only cognitively intelligent but also affectionate and has high morality, so that in the wider community, they are able to exist with excellent quality. Therefore, every university, ideally, has a Code of Ethics that functions as a system of norms that have binding power, if approved by the Chancellor. So far, there are no standard rules regarding student ethics such as the Indonesian Medical Ethics Code (KODEKI) or the Advocate's Code of Ethics. However, considering that the potential for decency cases is quite large among students, especially at the age of teenagers, of course it is necessary to make improvements in enforcing ethics and law for students.

Based on the Rector's Decree Number 236/SK/R/X/2013 concerning the Student Code of Ethics of the University of 17 August 1945, Surabaya, for students a student code of ethics is applied which consists of 8 chapters and 22 articles. This Student Code of Ethics is a written guideline as a standard of behavior for the academic community in the scope of learning, extracurricular, and other activities as well as interaction with society in general. Students referred to here are students who are registered and pursuing undergraduate or postgraduate education at the University.

Morality is very important in student life. Morality is closely related to the conscience which guides inner behavior in life. Moral includes the order of religious rules held by society that develops and shapes personality. The development of moral morality is related to the development of conventions regarding what humans should do in their interactions with other people properly.

Regarding the Enforcement of Ethics, at IAIN Madura an Ethics Team was formed to supervise student ethics. The Code of Ethics development activities are carried out since the orientation of new students and in the enforcement of the code of ethics carried out by the Code of Ethics Team in collaboration with lecturers and the Head of the Study Program to provide sanctions for violations committed by students on campus.

Ethics is often seen as a set of rules related to self-discipline, so the existence of a Code of Ethics is a legal instrument for students. Socialization is carried out starting at an early stage, with the main focus that:

- a) Self-awareness as self-understanding that discipline is considered important for his good and success, besides self-awareness is a strong motive for the realization of discipline.
- b) Adherence and obedience as steps to apply and practice the rules that govern individual behavior.

- c) Educational Tool for influence, change, foster and shape behavior in accordance with the values determined or taught.
- d) Punishment as effort awakening, correcting and correcting what is wrong so that people return to the expected behavior

The Student Code of Ethics often does not explicitly include decency violations. However, in the student code of ethics, for example in the code of ethics for students at the University of 17 August 1945, Surabaya, it is regulated regarding standards of ethics for relations between humans, in Article 9, namely: not to threaten or act violence against fellow students both inside and outside the university. ; maintain the good name of the university and do not take any disgraceful actions that damage the good image of the university. Furthermore, in Article 13 concerning ethics in artistic activities, it is regulated that: to maintain the good name and image of the university and to avoid actions that can damage the good name and image of the university; do not take actions that are contrary to the law and other norms that live in the community.

In connection with the positive legal rules in the Criminal Code, the ITE Law, and the Pornography Law where moral offenses can be interpreted widely, and for the purpose of enforcing student ethics, the authors propose the establishment of a University Ethics and Law Committee (KEHU) which is independent and accountable to the rector . KEHU consists of faculty representatives, student councils, law enforcers (advocates and/or mediators).

Guidance and supervision can be carried out by the Ethics and Law Committee of the University (KEHU), with the scope of tasks to resolve ethical and legal cases based on the Code of Ethics and applicable legislation. Violation of student ethics is not necessarily a violation of the law, but if left unchecked it can be a violation of the law. For example, students make scientific speeches criticizing the government. If it is done on campus as an academic platform, this is ethically and legally correct. But if it is then carried away in its environment, it will certainly have the potential to violate the law. Another example, students make intimate videos with their fellow students, ethically it is not right but because it is stored properly and not circulated it does not become a crime.

### **3.3. “Mini Trial” Model**

#### **a. Conventional Mini Trials**

Mini Trial which is literally interpreted as a mini trial, is actually a form of Alternative Dispute Resolution (ADR) which is commonly used in the business field. This Mini Trial does not result in a formal decision but is a vehicle for the parties to reach a solution through a structured and most effective settlement process to resolve complex problems but still want to maintain a friendly relationship.

The difference between a trial court and a mini trial is that the rules of evidence do not apply in a mini trial except for the rules governing preferential communications and the product of attorney work. Another difference is that the minitrial is not recorded, so no transcript can be generated. Finally, the process is strictly confidential and any offer or statement made in the process will not be admissible in court proceedings.

In the business world, the Mini Trial involves an ADR facilitator. Prior to the implementation of the mini-trial, the parties first appointed a facilitator as an advisor, whose position was not impartial. The ADR facilitators provide dispute materials and exchange information with each other.

Furthermore, the parties include a statement and an agreement to choose a minitrial as a dispute resolution institution, and then each selects a management representative to sit on the panel. This representative has the authority to negotiate a settlement. The parties also choose



a "neutral advisor" to sit on the panel. The advisor must be independent and impartial, as this person will moderate the minitrial. If the parties cannot agree on a neutral advisor, the ADR facilitating agency can make a selection. The parties pay an equal share of the advisory fee and bear the costs of their own minitrial. In the exchange of information, each party makes a presentation, and each party has the right to make a rebuttal. Like all other procedures, the parties must agree on the length of their presentation and rebuttal or allow neutral counsel to set a time limit. During this exchange of information, the neutral adviser acts as a moderator rather than a judge. Factual witnesses and expert witnesses can also make presentations. Panel members can ask questions to presenters. In addition to the attorney representing the parties, each management representative may have an advisor present.

The parties must agree on the length of the brief and the due date for the document. The Mini Trial process is continued to build a win-win solution, and then put it in the form of a peace agreement. If the parties are unable to resolve, the process will end 30 days after the date of exchange of information.

### **b. "Mini Trial" on the Settlement of Student Moral Cases**

Settlement of ethical and legal issues for actions committed by students, should be resolved in accordance with the Student Code of Ethics and/or existing legislation. Although the potential for immoral acts will lead to legal problems, considering that universities are educational institutions, sanctions based on punishment should be ultimate remedy. The issue of decency cases is prone to be consumed by the wider community, which is related to the good name of the university as a whole. The decency case must be mapped first so that the position of the case is clearer. Cases can occur due to structural victimization among students and lecturers. At this level, the victim (victim) is in an inferior position and is dominated by the perpetrator, can be under threat. But not infrequently both as perpetrators.

Cases of decency can also occur because of the urge to try and follow trends, modern lifestyles, gender bias, and even the value of commodities. The spread of decency cases on the one hand, if subjected to social sanctions, will have a deterrent effect, but on the other hand, if the deterrent effect is not achieved, the perpetrators will become agents of transmission of deviant sub-cultures.(deviant culture). The spread of decency cases is also a bad precedent in the world of education.

Model Mini Trial This program relies on the Student Code of Ethics as a juridical basis, and involves the University Ethics and Law Committee (KEHU) as ADR facilitator and mediator. Preparation for the settlement of this decency case is carried out in several stages, namely: Pre-Mini Trial stage and Mini Trial stage. The Pre Mini Trial stage consists of:

#### **a. Receiving Reports or findings**

At the stage of receiving reports or findings, they can be submitted directly through the media on-site or online, and proof of reporting will be provided that includes the identity of the reporter. KEHU members examine behavioral records whether there have been ethical and legal violations

#### **b. Mapping of cases whether ethical or legal cases.**

The reported case is mapped whether this is an ethical or legal issue. After mapping, the parties will proceed in a Mini Trial.

Step Mini Trial consists of:

#### **a. Preparation phase**

This stage begins with selecting the management or KEHU members who are considered skilled in handling ethical cases. KEHU is independent and responsible to the chancellor. The KEHU team based on a letter of request from the parties will act as a facilitator,

negotiator, mediator, and can even act as an advocate for the parties if the mediation fails (deadlocks) and will proceed according to the legal process.

b. Negotiation stage

Negotiations are carried out by giving the parties the opportunity to raise problems and KEHU as a neutral party will help resolve it through deliberation between the perpetrator and the victim.

c. Completion stage

At this stage, after an agreement has been reached, a peace deed is drawn up for both parties, which states that there will be no demands or compensation in the future.

The completion process of the preparation, negotiation and settlement stages is completed within 30 working days at the latest.

Mini Trial, can occur as a means of resolving internal decency cases, so that decency issues can be muted or minimized. However, if the perpetrator has been involved in a legal case related to the body and or human life, in terms of case assistance, KEHU can provide assistance. Against serious violations of law and contrary to the university's vision and mission, on the recommendation of KEHU, students are revoked their student status at the university.

#### IV. Conclusion

Positive law regulates decency cases in the Criminal Code, the ITE Law, and the Pornography Law. The issue of decency is a matter of ethical behavior, which to a certain extent becomes a legal issue. Students are very vulnerable to the possibility of decency cases, it is necessary to have an ethical instrument that serves as a behavioral guide as well as an instrument of student protection. the instrument in question is the Student Code of Ethics with the implementation of which is carried out by the University Law Enforcement Code (KEHU) as an independent institution. As an alternative, the settlement of decency cases carried out by students can be used as a mechanism“Mini Trials”(mini trial) which is based on the principle of deliberation for consensus, so it is hoped that this internal settlement will be more responsive to the needs of the community. The mini trial mechanism places criminal law as the ultimum remedium, while still prioritizing the values of divinity, humanity, and justice.

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