

# CHAPTER I

## INTRODUCTION

### A. Reason for Selection of Titles

Japanese government policy in regulating porn industry is an interesting case to research for several reasons: Firstly, Japanese government regulation on porn industry is rather different compared to many countries that also have some regulation on porn industry such as United States, French, and Russia, albeit not as open and direct. This research aims to examine the regulation of the Japanese government on porn industry which is in fact a unique industry. Secondly, the porn industry in Japan is one of major industries that have significant effect in the country's income. Total revenues of the porn industry could reach up to \$19,98 billion in 2006<sup>1</sup>. The large of inflow indicates that this industry is something which is economically profitable and gives effect to the flow of goods and services. Thirdly, Human Rights Now, international human rights NGO, conducted an investigation and revealed that there have been a number of cases in which young women, who never intended to appear in pornographic videos, were forced participate in the industry after signing contracts with their production companies. It shows that porn industry also has problems and has gained international attention.

From the above explanation can be seen some interesting reasons regarding porn industry and deserves to be further examined in the study of international relations and expected result of this research, the authors can get an explanation of the

---

<sup>1</sup> TopTenREVIEWS, available at [http://www.familysafemedia.com/pornography\\_statistics.html](http://www.familysafemedia.com/pornography_statistics.html), accessed on April 15, 2016

policy of the Japanese government and the issue of the porn industry in a comprehensive explanation.

## **B. Background**

Presently in Japan, sexually explicit materials which cater to all sorts of erotic interests and fetishes are readily available. These include video tapes, books, and magazines as well as sexually obvious comic books without age restrictions as to availability. However, this availability of modern pornography is relatively new. Essentially post World War II with imposition by the American military rules, which lasted until 1951, there was prohibition of any sexually explicit material. In Japan almost all sexually explicit visual material was seen as legally obscene. This continued under the Japanese government until into the late 1980.

The history of pornography in Japan itself experienced a fairly long periodization where the depiction of sex became known in the Muromachi era (1336-1537) are realized with a depiction of the painting on a woodcut called Ukiyoe. Ukiyoe itself is not a painting that depicts sexual activity alone, but among the many Ukiyoe paintings, some of which feature erotic images of exposed parts of the genital body known as Shunga that circulating widely in the community and was listed as one a work of art. Along with advances in technology, pornography becomes more attractive and communicative through the medium of film.

At the end of the Taisho era and early Showa era (1926-1927), the artistic movement named Eroguronansensu, which means "erotic-grotesque-nonsense" occurs because it is influenced by the debauchery of works of European and American porn like novels and movies. Openly sexual expression allowed in novels and comics, but close supervision given to works of photography and film. During

the second world war, the materials of pornography is prohibited as a whole, "since the end of the second world war on Article 175 of Criminal Code of Japan, known as the obscenity law, has represented the legitimate restrictions on freedom of expression, which should be guaranteed in article 21 of the constitution in 1947".<sup>2</sup>

During this time, foreign films introduced female nudity into international cinema and were imported to Japan without problem. In general, overseas films and literatures have been treated better by the censorship agencies, probably because of the threat forced by the performers, directors, or the government itself while Japanese filmmakers struggle not to violate Article 175 of Criminal Code of Japan.<sup>3</sup>

In the early 1960s, several movie studios began producing "pink films (pinku eiga),"<sup>4</sup> to be exclusively viewed in adults-only movie theaters. Pink film is a cinematic genre without exact equivalent to the west.<sup>5</sup> Even though pink films may be concerned with sex, but tend to focus more on the story. Because of the censorship laws ban genitals from being shown but granted to reveal anything else, these films rapidly varied to satisfy other genres, including rape-play and bondage. During the 1960s, the "pink films" were generally created on very limited budget by amateur filmmakers. However, with their audience being lost to television and the importation of American films including its porn film, Japan's major film studios were struggling to keep their market share. To oppose this, the producers of pink films created an organization to manage the distribution and laws regarding the censorship which had to be able to compete with foreign films. It is called The

---

<sup>2</sup> da Silva, Joaquín. (2009). *Obscenity and Article 175 of the Japanese Penal Code: A Short Introduction to Japanese Censorship*. retrieved from <http://es.geocities.com/eiga9/articulos/obscenity.html#volver5>, accessed on April 12, 2016

<sup>3</sup> The Penal Code, translated into English by the Japanese Cabinet Secretariat

<sup>4</sup> "The term pink eiga was first coined in 1963 by journalist Murai Minoru. But it did not come into general use until the late 1960s. In the early years the films were known as 'eroduction films' (erodakushon eiga) or 'three-million-yen-films' (sanbyakuman eiga)."

<sup>5</sup> Domenig, Roland. (2002). *Vital flesh: the mysterious world of Pink Eiga*.

Nihon Ethics of Video Association (NEVA).<sup>6</sup> NEVA requires makers to put in large checkered mosaics over pubic hair and genitals.

In the 1980's, the production of porn video which commonly known as AV (Adult Video) were sold more because most families in Japan have two television sets and VCRs at least. It is said that the VHS format became popular rather than Betamax because many pornographic videos sold in the VHS format. This eventually led to the shrink of the market for porn film theaters because rental video chain-stores offered porn films at a very low price compared to the price of movie theaters tickets.

Despite the large number of obscene material produced by the porn industry, Japanese society itself is not so concerned about this matter. They consider sex is part of human nature so there is no problem regarding the development of porn industry in Japan. Japan's native religion, *Shinto* (*Kami-No-Michi*), is founded on animism, with teachings that mystical beings live in nature. The gods and goddesses of Shinto are not the origins of goodness or rightness, they are living inside of the nature. Therefore, sexuality is an essential part of life itself. Hence, religious attitudes are no obstacle to the presence of pornographic material in Japan's secular society, nor are pornography blasphemous in any way, not even when it depicts religious persons (mostly shrine maidens).<sup>7</sup>

Right now porn video's CD and DVD can be found in movie store easily, in the Adult Section. Even though that individuals who sell or distribute indecent materials can be punished by fines or imprisonment, according to Article 175 of the

---

<sup>6</sup> <http://www.viderin.jp/>, accessed on April 10, 2016

<sup>7</sup> Perper, Timothy & Martha Cornog. (2002). *Eroticism for the Masses: Japanese Manga Comics and Their Assimilation into the U.S.*

Criminal Code of Japan. But recently it has been only interpreted to make that all pornography must be at least partly censored and not prohibiting someone owning and/or distributing porn video.<sup>8</sup>

Pornography is a multi-billion business in Japan. Tsutaya, Japan's largest video rental chain, offers over 1,000 new pornography titles every month. Approximately 14,000 porn-only videos are made in Japan every year (compared to 2,500 in the United States). Most regular video shops have "adults-only" corners, pornography sections with explicit material behind a sliding door.<sup>9</sup>

While it's true that this kind of industry not only just contribute but also become one of big income raiser in Japan, however this industry also share many bad feedbacks such as the perspective of how people sees Japan and this industry needs regeneration. Its rival research outfit, Net Ratings, tracks the number of visitors to porn web sites. It says that in April 2001, there were 22,9 million unique visitors to porn sites. This says nothing about how long each visitor stayed or whether they spent a dime. In any event, the number of visitors is less than the number who visited news sites (41,1 million), finance sites (34,2 million) or greeting card sites (25,5 million).<sup>10</sup>

The porn industry in Japan although had disappeared at the beginning of the First World War re-emerged and was at the peak of its glory after the Second World War. This is influenced by the influx of pornographic novel books and literature, as well as pornographic films made by United States and European countries as a

---

<sup>8</sup> Weisser, Thomas & Yuko Mihara Weisser. (1998). *Fogging, Editing and Censorship: Japanese Cinema is a Dichotomy of Artistic Freedom and Repression. Japanese Cinema Encyclopedia: The Sex Films*. Miami: Vital Books.

<sup>9</sup> <http://factsanddetails.com/japan/cat19/sub127/item674.html>, accessed on April 10, 2016

<sup>10</sup> Ackman, Dan. (2001, May). *how big is porn* retrieved from Forbes website <http://www.forbes.com/2001/05/25/0524porn.html>

result of globalization. Japan also began to imitate the regulations made by the United States and European countries in regulating the porn industry. Along with the times, technological advances and the availability of internet connection makes it easy for people to access and spread pornographic content including Japanese porn film that makes it famous to the whole world. At the same time as the demand for porn industry services increases, business people in the porn industry (in this case the Yakuza) take the initiative to look for women who will be employed either as hostesses, dancers and entertainers, or commercial sex workers from outside Japan that mostly come from poor countries such as Philippines and Columbia. As a result, along with the development of the porn industry, more and more women are trafficked to Japan.

The porn industry is one of the largest industries in Japan. Annually, Japan's porn industry is worth up to ¥500 billion (\$4.4 billion)<sup>11</sup>. As part of a large industry certainly porn industry very closely linked with the policy of the Japanese government. Regulatory policy of the Japanese government against porn industry necessarily expected to go hand in hand in accordance with the interests of the state, therefore it is necessary that proper rules and regulations in porn industry in Japan.

Article 175, which was originally written in 1907, codifies Japan's obscenity law. In its entirety it states:

"A person who distributes, sells or displays in public an obscene document, drawing or other objects shall be punished by Imprisonment with work for not more than two years, a fine of not more than 2,500,000 yen or a petty fine. The same shall apply to a person who possesses the same for the purpose of sale."<sup>12</sup>

---

<sup>11</sup> <http://www.japantimes.co.jp/news/2016/03/04/national/social-issues/rights-group-japan-needs-law-moves-force-young-women-appear-porn-videos/>, accessed on May 7, 2016

<sup>12</sup> The Penal Code, translated into English by the Japanese Cabinet Secretariat

This short segment only delivers for criminal sanctions without describing precisely what constitutes the crime of obscenity. It is vital to note that the Penal Code does not even describe the term "obscene". By leaving the term vague, it has been given to the courts to describe the term and decide how Article 175 applied to the public. However, the courts have difficulty in describing the term "obscene" and have even more problems in constantly applying the Code to the various genres of artistic expression.

This led to uncertainty between creators in how to avoid violating the Penal Code and consequently led to several cases of creators accidentally violating the law. As a result of the interpretation of article 175 Criminal Code of Japan that prohibits the distribution of material that is pornographic, later appeared an assumption that most pornography material have to be censored in Japan, by provide digital mosaic on the genital area. In this paper, I would like to explain more details about the regulation of Japanese Governments on porn industry as one of the largest industries in Japan after “pink film” era.

### **C. Research Question**

How do the Japanese Governments regulate on porn industry after pink film era in Japan?

### **D. Theoretical Framework**

#### **Demonstration Effect of Globalization**

Globalization itself is defined as an increase in the intensity of social relations in the world that connects far-flung localities which resulted in the emergence of a social event in a place that is caused by the social events in other regions. Globalization according to Anthony Giddens's concept can be defined as

the intensification of worldwide social relations which link distant localities in such a way that local happenings are shaped by events occurring many miles away and vice versa. Globalization covers various aspects of human relations, such as economics, politics, ideology and culture.<sup>13</sup>

According to Robert Spich, Globalization is a conceptualization of the international political economy which suggests and believes essentially that all economic activity, whether local, regional or national, must be conducted within a perspective and attitude that constantly is global and worldwide in its scope.<sup>14</sup> While David Steingard and Dale Fitzgibbons describe that globalization as an ideological construct devised to satisfy capitalism's need for new markets and labor sources and propelled by the uncritical 'sycophancy' of the international academic business community.<sup>15</sup>

James S. Duesenberry explained that Demonstration Effects is imitation effect by society in consuming goods because it is affected by the pattern of consumption of other communities' richer or high income. Demonstration effects are effects on the behavior of individuals caused by observation of the actions of others and their consequences. The term is particularly used in political science and sociology to describe the fact that developments in one place will often act as a catalyst in another place. Countries and local governments often adopt laws and policies similar to those that appear to demonstrate success elsewhere. The proven success of the policies provides a demonstration effect that impels other

---

<sup>13</sup> Giddens, Anthony. (n.d.). *The Consequences of Modernity*. (p. 64)

<sup>14</sup> Spich, Robert. (1995). Globalization Folklore: Problems of Myth and Ideology in the Discourse on Globalization. *Journal of Organizational Change Management*, 8.4, 6-29.

<sup>15</sup> Steingard, David & Dale Fitzgibbons. (1995). Challenging the Juggernaut of Globalization: A Manifesto for Academic Praxis, *Journal of Organizational Change Management*, 8.4, 30-54. As cited in Kelly, P.(1999). The Geographies and Politics of Globalization. *Progress in Human Geography*. 23.3, 379-400.



governments toward similar policies in order to emulate that success. It also influences on the behavior of individuals cause a low observation of others.<sup>16</sup>

Historically, Japanese administration officials have been accorded and have implemented much broader administrative decision in regulating the content of media than their western counterparts, like the United States. Japanese courts, however, have established and used descriptions of obscenity similar to those found in other societies. It is educational to discover the application of obscenity law in Japan's unique cultural and political circumstances.

In Japan, there has been a history of governmental scrutiny of public portrayals of a number of topics, such as those considered integral to the maintenance of national identity, pride, and values. As a matter of public policy, public discussion or portrayal of topics considered integral to social stability and the maintenance of national values was considered appropriate only if it was respectful and reinforced mainstream cultural and political values.

The slow adoption of notions of private or individual rights culminated in the promulgation of Articles 19 through 23 of the 1947 Japanese Constitution. These rights and freedoms of the spirit, however, were considered integral only within the context of the needs of the greater community. Individuals were prohibited from exercising those rights in an abusive manner, i.e., at the expense of the public welfare. Mindful of the constitutional guarantee under Article 21 that "no censorship shall be maintained," government authorities typically used public hygiene laws to restrict the sale and distribution of obscene materials under Article 175 of the revised 1907 Criminal Code, which specified that:

---

<sup>16</sup> Duesenberry, James S. (1967). *Income, Saving, and the Theory of Consumer Behavior*. New York: Oxford University Press. (p. 28)

"A person who distributes, sells or displays in public an obscene document, drawing or other objects shall be punished by Imprisonment with work for not more than two years, a fine of not more than 2,500,000 yen or a petty fine. The same shall apply to a person who possesses the same for the purpose of sale."<sup>17</sup>

Under enforcement of Article 175 of the Criminal Code, obscenity displayed in any form could not be sold, loaned, or passed to the public in any fashion for any reason. Neither government administrators nor the courts were legally compelled to specify what constituted "obscene" material and how it offended public decorum, since their authority in this realm was subsumed under their general responsibilities to protect the public welfare in ways they deemed appropriate. This pattern tended to mirror western definitions of obscenity. Japanese officials had tried to emulate as closely as possible European and American standards as part of an effort to reestablish Japanese sovereignty and make Japan a more acceptable international trading partner with western industrialized nations.

### **Rational Choice Theory**

Rational choice theory, also known as choice theory or rational action theory is a framework for understanding and often formally modeling social and economic behavior. The "rationality" described by rational choice theory is different from the colloquial and most philosophical use of the word. For most people, "rationality" means "sane," "in a thoughtful clear-headed manner," or knowing and doing what's healthy in the long term. Rational choice theory uses a specific and narrower definition of "rationality" simply to mean that an individual acts as if balancing costs against benefits to arrive at action that maximizes personal advantage. The

---

<sup>17</sup> The Penal Code, translated into English by the Japanese Cabinet Secretariat

theory states that there are two phases affecting decision-making: 1) framing, where perception or presentation of the situation in which decisions must be made affect the disposition towards some alternatives over others; and 2) evaluation, where the decision-maker assesses gains and losses relative to a movable reference point depending on the perspective of the decision-maker. It helps focus on how utilities are formed rather than how they are maximized.<sup>18</sup>

In this analogy, the individual through a series of stages of intellectual by applying the sincere reasoning is trying to implement choices on selection of the alternatives that exist. Thus, the unit of analysis is the decision-making choices taken by the government. Therefore, the analysis of foreign policy should focus on the analysis of national interests and objectives of the nation itself. Various alternatives policy guidelines that are usually taken and implemented by the government must take into account the pros and cons of each alternative.<sup>19</sup>

In the model of the rational actor, it described that decision-makers in selecting options or alternatives use the principle of "optimization of results". The decision-makers were described always ready to make a change or adaptation in its discretion. They also assumed to be able to obtain quite a lot of information so it can perform thorough search of all possible policy alternatives and all the resources that can be used to achieve the goals they set.<sup>20</sup>

---

<sup>18</sup> Lohmann, Susanne. (2008). Rational choice and political science. In Steven N. Durlauf & Lawrence E. Blume(Eds.), *The New Palgrave Dictionary of Economics*. The New Palgrave Dictionary of Economics Online.

<sup>19</sup> Mohtar Mas'oed, Ilmu Hubungan Internasional: Disiplin dan Metodologi, Jakarta: LP#ES, 1990, hal. 234

<sup>20</sup> Mohtar Mas'oed, Ilmu Hubungan Internasional: Disiplin dan Metodologi, Jakarta: LP#ES, 1990, hal. 234

Japanese government as rational actor must have been thought the benefit and the loss which Japan will get as its national interest. Legalization of porn industries in Japan must have been planned carefully by its government for the sake of gaining Japan's national interest. Analyzed by the national interest pattern which Japan has in legalized porn industries, it can be proposed the advantage and disadvantage of Japan as rational actor in supporting porn industries. There are some advantage and disadvantage of Japanese government as rational actor in decision making of legalization of porn industry in Japan. The advantage for Japan in supporting its porn industry after the pink film era is that porn industry giving great income to Japan, possibly one of the largest income-making industries. On the other hand, the disadvantage for Japan in supporting porn industry is that this industry will give Japan a negative image, especially on human right's side as the women who involved in the industry can be seen as just a commodity. Meanwhile, if Japanese government decided to not supporting porn industry, Japan will lose one of its largest sources of income.

The essence of rational-choice is when faced with some course of action, humans usually will choose a path that they believe will bring the greatest benefit to humankind. The benefits from the presence porn industry must not be separated from the role of the audience. Porn industry may be analogous to the manufacturer where when there are manufacturers surely there must be consumers who consume products from manufacturers so as to maintain the chain, and product or commodity is sex in this case embodied in the form of porn.

Based on paragraph above, it can be seen that Japan as rational actor have reasons and choices that influenced Japan in making decisions which must be taken based on the advantage and the disadvantage will be gained in legalization of porn

industries in its country. Using this theory is important to analyze the policy settings of the porn industry after the pink film era in Japan, given the decision-making process takes some consideration about what decisions will be taken by the actors to ensure that policies are made right on target and in accordance with the purpose of the formulation.

#### **E. Scope of Research**

Given the issues presented so widely, so to facilitate in analyzing the problems above, the authors focus the problem to the government regulation of adult films in the porn industry in Japan from the year 1980 until 2013.

#### **F. Hypothesis**

Based on the rendition of the above problems, the authors theorized that the Japanese government regulates the porn industry after pink movie era by applying restrictions in the form of censorship in many kinds of media such as magazine, comic, film and video that will be sold into the market and an age limit to consumers who may purchase it.

#### **G. Outline of Writing**

The outline of writing in this research includes five chapters. The divisions of each chapter are as follows:

- Chapter I contains the reason for selection of title, introduction, research question, theoretical framework, hypothesis, and systematic of writing.
- Chapter II describes the Japanese people's cultures toward man-woman relationship.

- Chapter III describes the globalization and the negative effects of porn industry.
- Chapter IV describes the policy taken by the government toward porn industry.
- Chapter V contains the conclusions of this research.