

# **Criminological Overview Of Immoral Group In Social Media Connected With Law Number 19 Of 2016 Regarding Amendment To Law Number 11 Of 2008 Concerning Information And Electronic Transactions Juncto Law Number 44 Of 2008 Concerning Pornography**

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**ABSTRACT:** *The development of information technology and social media has caused changes in human life activities which have a direct impact on the birth of new forms of legal action. The live video streaming feature can be used as an alternative choice for users to interact on social media, so that it is possible for the live video streaming feature to be used for negative things such as pornographic content and sexual activity uploaded or broadcast live via social media. There are also groups of perpetrators of immoral acts who use social media as a networking tool. The impact of the Covid-19 pandemic has also caused many people to lose their livelihoods, including commercial sex workers who use various methods to maintain their businesses, such as offering online sex services. This is the phenomenon of immorality that develops around us.*

*The results of the study can be concluded that the cause of group immoral crimes in the form of consensual and non-money oriented sexual fantasies is a form of anomie (absence of norms) and cultural deviations that develop in community groups. The occurrence of immoral crimes in groups that use social media facilities and carried out for a fee is due to socio-economic factors. This crime also develops along with technological developments, learning processes and the skills of perpetrators in using technology to commit immoral crimes in order to earn money. The presence of the ITE Law and the Pornography Law is a form of preventive effort to protect against violations of the norms of immoral cases and pornographic cases committed through information technology facilities. However, when there is a violation of legal norms, the ITE Law and the Pornography Law immediately change their power to become repressive.*

**KEYWORDS:** *social media, cybercrime, pornography, sexual fantasy, porn site.*

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## **I. INTRODUCTION**

Advances in information technology have changed people's lives with new habits. It is almost certain that everyone already has a smartphone, and has social media accounts such as Facebook, Twitter, Instagram, and so on. The development of information technology has led to changes in human life activities in various fields which directly affect the birth of new forms of legal action. The rapid development of today's social media is caused by everyone who feels like they can have their own media. Social media is about being ordinary people who share ideas, work together, and collaborate to create creations, think, debate, find people who can be good friends, find partners, and build a community (Wikipedia, 2023). The development of social media was followed by the live video streaming feature which developed in 2016. The trend of live video streaming can be used as an alternative choice for users to interact on social media. Interaction between users via live video streaming will take place in real time. Live video streaming can also be a medium used to deliver videos to large audiences. Live video streaming can be described as the ability to broadcast video to audiences that are far away (Lidya Agustina, 2018).

Live video streaming feature on social media can increase user engagement, because when live is in progress broadcasters/hosts and viewers can interact directly and carry out two-way communication through comments or chat features. This live video streaming feature can be used for positive things, but it cannot be separated from negative uses. Content produced through the live video streaming feature is included in user generated content where full control over production rests with the control of the user as the producer. So it is possible that the live video streaming feature is used for negative content such as pornographic content. Among them, there are various kinds of sexual activity that are uploaded or broadcast live through social media applications and there are groups of perpetrators who commit immorality by using social media as a means of

networking, this is an immoral phenomenon that is developing around us. The impact of the Covid-19 pandemic has also made many people lose their livelihoods, including commercial sex workers. In the midst of worries about their income and health, commercial sex workers use various ways to keep their business going. Some of them offer online sex services, but there are also those who rely on assistance from charitable institutions (Kompas, 2020).

Sex is in the basic human needs that are equated with the needs to eat, drink, sleep, and defecate. These basic needs must be channeled to release energy. The release of sexual energy requires proper mediation so that it is accepted normally and healthily (deepapsikologi.com, 2018). With regard to sexual needs, of course everyone has sexual fantasies, even though they are often considered taboo. Sexual fantasy is an expression of everyone's freedom to develop imagination related to sexual matters. Someone can find their own pleasure and preoccupation, which can be followed up with sexual activity, according to the rich variety of sexual fantasies.

Several ways are used to fulfill a person's sexual fantasies, sometimes contrary to the norms of decency, especially for sexual fantasies that are carried out in groups (more than 2 people). Immorality is an act or behavior that deviates from the norms or rules of decency which currently tend to occur a lot in society. Today, there are more and more criminal acts that occur, especially regarding criminal acts of decency (Alisya Fahrani et al., 2019). According to Moeljatno, all acts that violate morality or heinous acts are related to sexual desire. Moeljatno focuses more on actions committed by people based on their sexual lust, which directly or indirectly constitute acts that violate morality and can be punished (Moeljatno, 2003).

The increasing prevalence of immoral crimes in society which has an impact on the social life of the Indonesian people is in line with the adage *het recht think achter de feiten aan*, the law is always teetering behind the reality of society (Dudu Duswara, 2013), it is necessary to have the presence of a law which also functions as a social controller, namely the Law Number 44 of 2008 Concerning Pornography (Pornography Law) which was made to meet legal needs and community development. In addition to enacting the Pornography Law, the state has also made prevention efforts through Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (Amendments to the ITE Law) and Minister Of Communications and Informatics Regulation Number 5 Of 2020 Concerning Private Scope Electronic System Operators.

The first case is that there is a forum with immoral content called the Dunia Sex 2 forum (DS2 forum). In this DS2 forum, members are more focused on carrying out sexual fantasies in groups, besides that they can network, can publish in the form of writing, photos and videos of their sexual activity in the appropriate category. Members can also see the publication results of other members, can provide comments, and can interact through the private message feature as in social media applications in general. The author has conducted preliminary research related to this immoral crime by conducting several interviews with perpetrators who use social media in building a community of immoral activities. First source, a woman with the initials Mc who is married and her husband also played a role in carrying out sexual activities on the DS2 forum by carrying out threesome activities or sexual activities involving three people at the same time (Wikipedia), exchanging partners (swinger) to sex parties. Second source with the initials MH is a widow aged around 50 who engage in sexual activity using social media facilities with the aim of seeking sexual satisfaction by taking turns with several men. The first case can be described in the figure below:

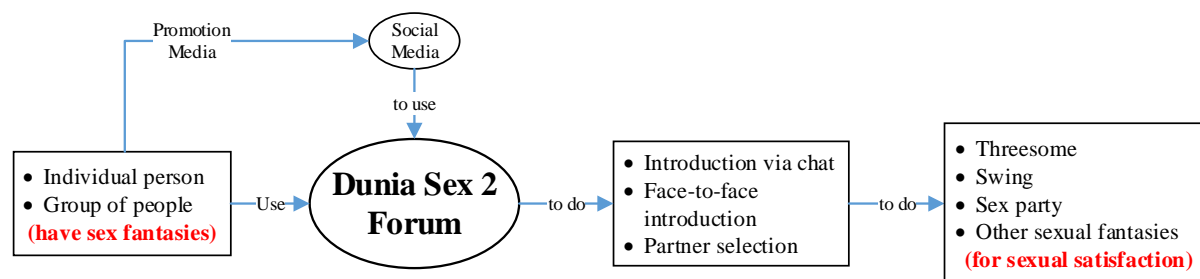


Figure 1. First case chart

The second case is that there are several groups of immoral actors who carry out sexual fantasies through social media such as Twitter until now. Through this Twitter facility, users can network with fellow sex fantasy fans, can upload photos and videos of their sexual activity, and connect with other applications that have live video streaming features such as *Bigo Live* and *MLiveU*. The *Bigo Live* application has been launched since March 2016 in Indonesia and has become one of the most favorite applications for users. Basically the application is intended for virtual interaction between people and sharing content by displaying one's expertise, especially sex activities/scenes with the intention of getting a large audience. The popularity of *Bigo Live* or *MLiveU* among the public is not without cause, one of the features of this application is getting money from

broadcasting live. More and more people come to the broadcast channel and give gifts. The more people who give us the more *Beans* we have and these *Beans* can be exchanged for cash. With the feature of exchanging *Beans* for cash, this is what causes many broadcasters to be willing to do unique things, even immoral things. The author has conducted interviews with a third source, with the initials DenPass, this 35-year-old married couple from Bandung often holds sex parties with a minimum rate of 1 million rupiah per person. DenPass uses Twitter and WhatsApp as a means to find partners and promotional media. The second case can be described in the figure below:

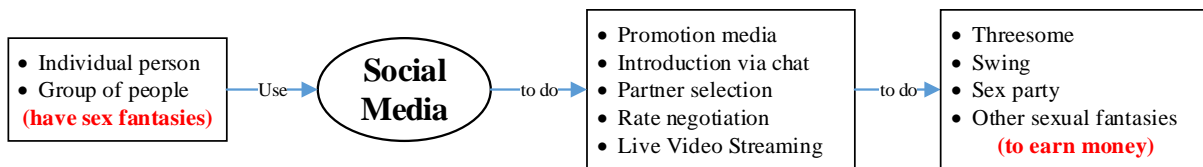


Figure 2. Second case chart

Nowadays, immoral crimes online are growing rapidly. Regarding the development of crime, Jan Remmelink said that without certain external tendencies, crime cannot arise. At the same time it is also accepted that without favorable conditions it is impossible for an asocial tendency to develop into an act. The outline of the research can be seen in the schematic below:

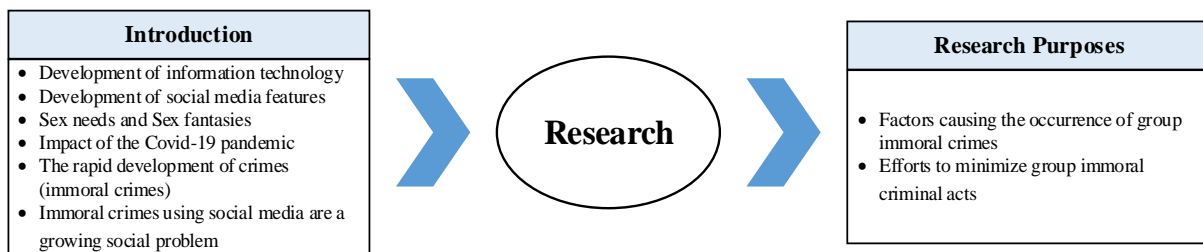


Figure 3. Research outline

## II. RESEARCH METHOD

### 2.1 Approach Method

The method used in this research is empirical juridical, which in other words is a type of sociological legal research and can also be called field research, which examines the legal provisions that apply and what actually happens in society (Bambang Waluyo, 2002). Or a research conducted on the actual situation or real situation that occurs in society with the intention to find out and find the facts and data needed, after the required data is collected then leads to problem identification which ultimately leads to problem solving.

### 2.2 Research Specification

The specification of the research used in this research is analytical descriptive in nature, namely analyzing the object of research by describing the situation and problems to obtain an overview of the situation and circumstances, by presenting the data obtained as they are, which are then analyzed to produce several conclusions.

### 2.3 Stages of Research

The research phase is carried out through:

- a. Literature study, which aims to obtain secondary data. Secondary data consists of primary legal materials, secondary legal materials, and tertiary legal materials i.e.:
  - 1) Primary legal materials, namely binding legal materials in the form of laws and regulations, including the 1945 Constitution, the Criminal Code, the ITE Law, Amendments to the ITE Law, the Pornography Law, and Minister Of Communications And Informatics Regulation Number 5 Of 2020 Concerning Private Scope Electronic System Operators.

- 2) Secondary legal materials, are materials that are closely related to primary legal materials and can help analyze and provide explanations of primary legal materials, which include books, scientific papers, and research results.
  - 3) Tertiary legal materials, other materials that are relevant to the subject matter that provide information about primary legal materials and secondary legal materials, such as encyclopedias, dictionaries, articles, newspapers and the internet.
- b. Field studies, namely obtaining primary data by conducting interviews and observations or collecting data by direct observation to obtain information that will be processed and studied based on applicable regulations.

## **2.4 Data Collection Technique**

The data collection technique used in this research is document study techniques and field studies. Document study, that is, a literature study was conducted to collect all documents in the form of primary legal materials, secondary legal materials, and tertiary legal materials. These data were studied and obtained using documentation techniques. Field studies were carried out using informal interviews and observation (direct observation).

## **2.5 Data Analysis**

The data analysis used in this research is qualitative normative. Qualitative normative is carried out by describing the data obtained based on legal norms, theories, and legal doctrines and rules that are relevant to the subject matter (Soerjono Soekanto dan Sri Mamuji, 2010). In this research, informal interviews, observations, and document review will be carried out, using various secondary data such as laws and regulations, court decisions, legal theory, and can be in the form of opinions of scholars. This type of normative research uses qualitative analysis, namely by explaining existing data with words or statements, not with numbers.

# **III. LITERATURE REVIEW**

## **3.1 Criminal Law and Criminal Acts**

Criminal law is a translation of the Dutch term *strafrecht*, *straf* means criminal, and *recht* means law. Moeljatno provides a definition that criminal law is part of the overall law that applies in a country, which provides the basics and rules for:

- a. Determine which actions may not be carried out, which are prohibited, and accompanied by threats or sanctions in the form of certain penalties for anyone who violates the prohibition.
- b. Determine when and in what cases those who have violated these prohibitions can be imposed or sentenced to punishment as has been threatened.
- c. Determine in what way the punishment can be carried out if there are people who are suspected of having violated the prohibition.

Moeljatno defines a criminal act as an act that is prohibited by law and is punishable by crime whoever violates the prohibition. In this definition, Moeljatno does not mention criminal responsibility at all, because criminal responsibility should not be part of the definition of a criminal act. Moeljatno's view that separates criminal acts and criminal responsibility is known as a dualistic view. Another definition of a criminal act put forward by Simons is an act which is punishable by law, contrary to law, committed by a person who is guilty and that person is held responsible for his actions. It can be seen that the definition of a criminal act put forward by Simons is a translation of *strafbaarfeit* which includes the criminal act itself and criminal responsibility. Meanwhile, Pompe's opinion regarding *strafbaarfeit* is that *strafbaarfeit* can be formulated as a violation of norms that is intentionally or unintentionally carried out by the perpetrator.

## **3.2 Elements of a crime**

Every criminal act contained in the Criminal Code is generally translated into elements which basically can be divided into two kinds of elements, namely subjective elements and objective elements. What is meant by these subjective elements are the elements that are attached to the actor or related to the actor, and include everything that is contained in his heart. Meanwhile, what is meant by objective elements are elements that have to do with the circumstances in which the actions of the actor must be carried out (P.A.F. Lamintang, 2011).

According to Moeljatno, regarding criminal responsibility there is a principle, namely not being punished if there is no mistake (*Geen straf zonder schuld; Actus non facit reum nisi mens sit rea*). According to Jan Rammelink, it can be interpreted that a person can be sentenced to a crime, so that person has not only committed a criminal act, but also has an element of error in his actions and also a perpetrator of the criminal act has fulfilled the element of ability to be responsible. However, it is not right to cause suffering to other people,

just because that person has committed a crime, unless he is sure that he is indeed to blame for that action. An act must be punishable (*strafwaardigheid*) – in other words it must be relevant from the point of view of criminal law *De minimis non curat praetor* (the law does not deal with trivial matters).

### **3.3 Principle of Legality**

In order to be punished for a disgraceful act, there must be a provision in the criminal law which defines an act as a crime and provides sanctions for that act. This principle of legality is considered as a manifestation of the agreement between the ruler and the individual. In a sense, individual freedom as a legal subject is guaranteed contractual protection through the principle of legality (Agustinus Pohan et al., 2012). The principle of legality, known in Latin as "*Nullum delictum nulla poena sine praevia lege poenali*" (no offense, no crime without prior regulations). This theory explains that the imposition of a sentence can only be justified if a warning has been given to everyone about the prohibitions that may not be carried out. Precisely if the prohibition is violated, and the punishment is not imposed, the criminal threat will lose its power (Romli Atmasasmita, 2009).

The legality principle was coined by Paul Johan Anselm von Feuerbach in his book entitled *Lehrbuch Des Penlichen Recht* in 1801. What Feuerbach formulated contains a very basic meaning which in Latin reads: *nulla poena sine lege* (no punishment without criminal provisions according to law); *nulla poena sine crimine* (no crime without a crime); *nullum crimen sine poenalegali* (no crime without punishment according to law). These three phrases then become the adage *Nullum delictum, nulla poena sine praevia legi poenali* (Jan Rimmelink, 2003). The principle of legality taught by Feuerbach actually requires deterrence not through the imposition of criminal sanctions but through criminal threats in legislation so that crimes and penalties must be stated clearly (Eddy O.S. Hiariej, 2015). The principle of legality is essentially about the scope of the application of criminal law according to the time and source/legal basis on which an act can be punished.

### **3.4 Immoral Crimes**

The word immoral comes from Sanskrit, can be interpreted as something that is not good, impolite, unpleasant, or bad behavior (KBBI, 2023). Moral norms are norms that provide a basis or measure for an act that is good or not. If it is associated with other norms such as politeness norms and legal norms, decency norms provide more of a basis for judgment that applies to a person's personality. Sudikno explained the nature of this decency norm by means of decency in dealing with humans as individuals because it concerns human personal life. The origin or source of decency rules is from humans themselves, so they are autonomous and are not aimed at external attitudes but are aimed at human inner attitudes as well. According to Sudikno, the essence of decency is more a personal problem for individuals when they see an act that is evil, for example fraud, theft or rape, whether they feel remorse, shame, fear or guilt (Hwian Christianto, 2017).

According to R. Soesilo, the word politeness or decency is a feeling of shame associated with sexual lust. For example intercourse, touching the female genital area, showing female or male genitalia, kissing and so on. Long before the Pornography Law came into effect, the act of disseminating immoral material was known as a crime. The existence of immoral material that circulates very freely is a threat to the interests of society, especially in respect of prevailing decency. The availability of immoral material originally came from the actions of individuals who made immoral material. As long as the immoral material is not disseminated, it remains the right of the maker to fulfill his sexual needs. Article 282 of the Criminal Code actually emphasizes the act of disseminating immoral material as a crime of decency because it is considered to disturb public order in matters of decency. Production of immoral material for oneself is permitted but distribution is prohibited. An attitude that is very confusing if one imagines that an individual has immoral material in a society then inevitably it becomes a habit that will be accepted by society.

The act of violating decency which is prohibited by law is also contained in Article 27 paragraph (1) of the ITE Law, while the sanctions are contained in Article 45 paragraph (1) of the ITE Law. Prohibition of dissemination of pornographic content, including via the internet, is regulated in Article 4 paragraph (1) of the Pornography Law. The ITE Law and the Pornography Law apply as special criminal regulations (*lex specialis*).

### **3.5 Pornography and Prostitution Crimes**

Pornography is the depiction of erotic behavior by means of arousing paintings or writing or reading material which is intentionally and solely designed to arouse sexual desire. To prevent the development of pornography and the commercialization of sex in society, the Pornography Law was enacted. This law also aims to provide legal certainty and protection for citizens from pornography, especially for children and women as written in Article 3 of the Pornography Law. Article 1 paragraph (1) of the Pornography Law defines pornography as pictures, sketches, illustrations, photos, writing, sound, sounds, moving images, animations, cartoons, conversations, gestures, or other forms of messages through various forms of communication media and/or performances in public, which contains obscenity or sexual exploitation that violates the norms of

decency in society. In paragraph (2) it is explained that pornographic services are all kinds of pornographic services provided by individuals or corporations through live shows, cable television, terrestrial television, radio, telephone, internet and other electronic communications as well as newspapers, magazines and printed matter other.

According to R. Soesilo in his book *Criminal Code and Complete Commentary Article by Article*, there are three kinds of acts that violate decency by:

- a. broadcast, show or post openly writing, pictures, and so on that violates the feeling of decency;
- b. create, bring in, send directly, take out or provide writing, pictures, and so on, to be broadcast, shown or pasted openly;
- c. openly or by broadcasting an article that offers it to someone who is not asked, or indicating where the text or picture can be obtained.

To protect the public interest from internet content that has the potential to have a negative and/or detrimental impact, the Regulation of the Minister of Communication and Information Number 5 Of 2020 has regulated the following matters:

- a. Article 9 paragraph(3) confirms that private electronic system operators are required to ensure: the electronic system does not contain electronic information and/or electronic documents that prohibited and the electronic system does not facilitate the dissemination of prohibited electronic information and/or electronic documents.
- b. Article 9 paragraph (4) confirm that electronic information and/or electronic documents which prohibited by classification: violating the provisions of laws and regulations, disturbing the public and disturbing public order, and notifying methods or providing access to prohibited electronic information and/or electronic documents.
- c. Article 14 paragraph (1) confirms that applications for termination of access to electronic information and/or electronic documents that are prohibited can be filed by: community, ministries or agencies, law enforcement officials, and/or judicial institutions.
- d. Article 18 paragraph (1) confirm that internet service providers are required to terminate access to electronic systems for private scope of electronic system operators (access blocking) ordered by the minister to cut off access as referred to in Article 15 paragraph (6), paragraph (8), and paragraph (12)

The author has made observations on several porn sites, such as: pornhub.com, xvideos.com, and xnxx.com which can still be accessed freely by anyone. Only a few internet access service providers block these sites. If the internet access service provider blocks access to the porn site, we can use a virtual private network (VPN) application such as Psiphon to be able to access porn sites freely and not get blocked.

Prostitution is defined as the exchange of sexual relations for money or gifts as a trade transaction or prostitution. In general, prostitution activities involve pimps or pimps who are defined as people who act as caretakers, intermediaries, and/or owners of commercial sex workers. Prohibitions and sanctions on prostitution and group sexual activity are contained in Article 296 of the Criminal Code which regulates sanctions for an obscene act, which emphasizes that anyone whose livelihood or habit is to intentionally carry out or facilitate obscene acts with other people is threatened with a maximum imprisonment of one year and four months or a maximum fine of fifteen thousand rupiahs. Generally, Article 296 of the Criminal Code is charged with pimps, perpetrators of sex party activities that are carried out directly or conventionally.

Yuyung Abdi said that prostitution was rampant and took root in Indonesia. The perpetrators view prostitution as a lucrative business. This business has become one of the fundamentals of the economy and can support many people. Prostitution in Indonesia is very massive, involving both small and large groups. Characteristics of prostitution in Indonesia include: online prostitution, hotel prostitution, localization alias complexes, display room houses, massage parlors, karaoke, coffee shops, and tourist attractions. There is no longer any stigma on latent prostitution. Women are increasingly having the courage to exhibit their bodies so that covert prostitution is increasingly exposed and leads women to become prostitutes without being recognized as prostitutes. Migration of sex workers in the world of prostitution is inseparable from the presence of information technology. Information technology through social media expands sex transactions. Online prostitution teaches women to understand migration and rotation quickly, as well as friendship in the peer group of sex workers as a forum for knowledge transfer. Closing a prostitution place without calculation will not be useful, usually it is only a metamorphosis. Now, prostitution is no longer limited by place, not always in a concentrated medium that places women isolated like in localization complexes, but can take advantage of boarding houses or apartments.

The digital era creates new intelligence in the world of prostitution. Online media makes sex services faster, more varied and descriptive in selecting women's criteria. The development of social media has accelerated the occurrence of latent prostitution. Social media is also a space for sellers of sex services to exhibit themselves, have free access, as well as provide a new dimension to present themselves. Latent sex workers use Twitter as a place to promote vulgar photos and videos. The virtual world can freely open up daily life, let alone

the development of video streaming such as *Bigo Live* or *Camfrog*. Sex business people are keen to find ways to avoid legal regulations on prostitution as much as possible. To keep promotions and regulations safe, prostitutes screen consumers through the member system they create on social media. The stigma that grows in society, prostitutes never declare themselves prostitutes, because what is considered a prostitute is a person who becomes a sex worker in a brothel. One of the highlights of the sex worker profession is that they struggle to support their families.

### **3.6 Cybercrime**

The definition of cybercrime is a term that refers to criminal activity with a computer or computer network being a tool, target or place of crime (Wikipedia). Although cybercrime generally refers to criminal activity with computer media or computer networks as its main element, this term is also used for traditional crimes in which computers or computer networks are used as tools to facilitate or enable the crime to occur. Cybercrime is also one of the dark sides of technological progress which has a very broad negative impact on all areas of modern life today (Barda Nawawi Arief, 2010).

The existence of information and communication technology has also made many changes in people's behavior in the world, coupled with the incorporation of new behaviors between people from various parts of the world. Even on the negative side, this change in behavior involves deviant behavior from humans, which initially could only be carried out in real space and then penetrated the virtual world. Changes in interaction behavior for some people who master this technology then spread to other parts of human life and become new values that are recognized and live in society (living law). These values will form new legal instruments related to legal actions committed by a person. These actions range from correspondence via electronic mail, chatting, commerce to even activities that can be categorized as crimes.

### **3.7 Factor Influencing Law Enforcement**

Law enforcement is the activity of harmonizing the values relationships that are set out in solid rules and attitudes to act as a series of translation of the final stages of value to create, preserve and maintain peaceful social relations (Soerjono Soekanto, 2018). In law enforcement there are main problems that lie in the factors that might influence it. These factors have a neutral meaning, so the positive or negative impact lies in the contents of these factors. These factors are as follows:

- a. The legal factor itself, which in this paper will be limited to the law only.
- b. Law enforcer factors, namely those who form and apply the law.
- c. Factors of facilities or facilities that support law enforcement.
- d. Community factors, namely the environment in which the law applies or is applied.
- e. Cultural factors, namely as the results of works, inventions, and tastes based on human initiative in the association of life.

### **3.8 Social Media**

Social media is an online medium that is used by each other where users can easily participate, interact, share and create content for blogs, social networks, wikis, forums and virtual worlds without being limited by space and time (Wikipedia). Social media is a major revolution that is able to change human behavior, where all friendship relations are carried out through online media (internet) which are operated through social networking sites. The development of existing features on social media has provided a role for the development of immoral crimes. Until now, there is still a lot of pornographic content in the form of photos, videos or live video streaming which continues to circulate on social media and can be freely accessed by the public.

### **3.9 Criminology**

W.A. Bonger defines criminology as a science that aims to investigate all crimes as broadly as possible. Edwin Sutherland defines criminology as a collection of knowledge that discusses juvenile delinquency and crime as a social phenomenon (Wahyu Widodo, 2015). 20th century criminology must be a social control over policies in the implementation of criminal law. In other words, criminology must have an anticipatory and reactive role towards all policies in the field of criminal law so that in this way the possibility of harmful consequences can arise, both for the perpetrator, the victim, and society as a whole (Romli Atmasasmita, 2009).

Studying criminology is studying crime and its causes, perpetrators of crimes and the reaction of society to crimes that have been committed. Criminology is important to study because its scope is not limited to finding the causes of crimes committed but more towards crime prevention (Tholib Effendi, 2017). There are several theories in criminology, namely:

- a. The theory that looks for the causes of crime from the characteristics of the physical aspect (criminal biology), this theory was pioneered by Cesare Lombroso, in essence stating that crime is that criminals represent a type of physical oddity, which is different from non-criminals. In its development,

Lambroso discovered the fact that evil humans can be marked from their physical characteristics. Lambroso classifies criminals into 4 groups, namely: born criminals, insane criminals (people who become criminals as a result of some changes in their brains that interfere with their ability to distinguish between right and wrong), occasional criminals (perpetrators of crimes based on continuous experience that affects his personality), and criminal of passion (perpetrators who commit acts out of anger, love, or out of honor).

- b. The theory of crime from psychological and psychiatric factors (criminal psychology), according to W.A. Bonger, criminal psychology in a narrow sense includes the study of the soul of the individual criminal. In a broad sense, it includes the narrow meaning and the soul of a criminal, the classification, the involvement of a person or group, either directly or indirectly, and the consequences. Criminal psychology is studying the psychological characteristics of healthy criminals, meaning that they are healthy in a psychological sense.
- c. Theory of crime from socio-cultural factors (criminal sociology), his theory is grouped into 3 general categories, namely: *anomie* (absence of norms) or strain (tension), cultural deviation, and social control. The main object of criminal sociology is to study the relationship between society and its members between groups both because of place or ethnic relations and between groups and groups as long as this relationship can lead to crime. The occurrence of a crime is closely related to poverty, education, unemployment, and other socio-economic factors, especially in developing countries, where violations of norms are motivated by these things.
- d. Theories that explain crime from other perspectives, several theories from other perspectives on crime, namely: socialist theory which says that deviance is the result of a learning process. Deviance is a consequence of proficiency and mastery of attitudes or actions learned from deviant norms, especially from subcultural or deviant environments. The second theory is labeling theory by giving a label/stamp to someone who often commits delinquency or crime. Labeling in this sense is labeling as a result of people's reactions.

### **3.10 Legal Sociology**

Satjipto Raharjo defines legal sociology as legal knowledge of people's behavior patterns in a social context. Sociology of law has an object of study of legal phenomena, as Curzon has written, that Roscou Pound shows the study of the sociology of law as a study based on the concept of law as a means of social control (Fithriatus Shalihah, 2017).

Law should be at the forefront, but that doesn't mean law has to leave society. In building the law, mental understanding and thoughts are needed which must be cleaned and reformed as an effort to be willing and able to accept the fact that the law works together in society as the adage *Ubi Societas Ibi Ius*, where there is a community, there is law. From this adage it can be understood that the law will always be with the community. Regulations made by law must also follow the development of society. If the law does not want to be said to be left behind from the development of its society, then the law must respond to the social life that surrounds it.

### **3.11 Sexual Needs**

Sex is essentially a natural instinct for sexual satisfaction. But many people say that sex is another term for sex that distinguishes between men and women. If these two types of sex come together, it is called sexual behavior. While sexual behavior can be interpreted as an act to express love and unite life intimately. According to Zoya Amirin (Kompas, 2012), unfulfilled sexual needs have an impact on the physical and psychological. Emotionally, someone who doesn't express their sexual needs will be irritable, unhappy, cynical, behave negatively, like gossiping. While physical ailments that are often experienced by those whose sexual needs are not met, include psychosomatic, hives, hair loss, and symptoms of stress.

The theory of the hierarchy of needs put forward by Abraham Maslow states that every human being has five basic needs, namely:

- a. Physiological needs, which are the most basic needs in humans. Among other things: meeting the needs of oxygen and gas exchange, fluids (drinks), nutrition (food), elimination, rest and sleep, activity, body temperature balance, and sex.
- b. The need for security and protection is divided into physical protection and psychological protection. Physical protection includes protection from threats to the body and life such as accidents, illness, environmental hazards, psychological protection, and protection from threats from new or foreign events or experiences that can affect a person's mental state.
- c. The need for love, namely the need to belong and be owned, to give and receive affection, warmth, friendship, and kinship.
- d. Self-esteem and feelings of being valued by others and recognition from others.



- e. The need for self-actualization, this is the highest need in Maslow's hierarchy, in the form of the need to contribute to other people or the environment and achieve one's full potential.

### **3.12 Sexual Fantasy**

Sexual fantasies are fantasies about sex that are usually outside one's real experience. This fantasy can arise from one's own imagination, it can also be stimulated by books, films, photographs, conversations, or previous sexual experiences (Alodokter, 2020). Sex fantasies are normal, in fact this can make sex sessions hotter and great orgasms for both. If you and your partner feel comfortable and don't hurt each other in practicing your sex fantasies, it means you have normal sex fantasies. As long as your partner also wants to do it without coercion, this is also normal (Hallosehat, 2021). In group sex fantasy activities there are several terms that are widely known, namely:

- a. Threesomes are a form of group sex, but only involve three people (Wikipedia). In threesome activity, there are 2 types of FFM, namely female-female and male, meaning that the composition of a threesome is two women and with a man. Meanwhile, MMF means male-male-female, namely two men with a woman (Tribun, 2017).
- b. Swinging sometimes called wife swapping, husband swapping or partner swapping, is a sexual activity in which both singles and partners in a committed relationship sexually engage with others for recreational purposes (Wikipedia). According to Psychologist Ikhsan Bella Persada, there is a possibility that the desire for a swinger arises due to boredom with the sexual life of the household or because they want to have an alternative sex style or want to try something new (Klikdokter, 2020).
- c. Gang bang is a sexual activity in which several people, usually more than three, engage in sexual activity with one person in particular, either taking turns or all at once. The term is usually associated with the pornography industry and is usually described as a staged play in which a woman has sexual intercourse with several men in turn (Wikipedia).
- d. Reverse gang bang is an artificial term for sexual activity between one man and many women.
- e. Orgy party, an orgy is a gathering where guests freely engage in open and unrestrained sexual activity or group sex (Wikipedia).
- f. Cuckold, according to sex expert Arianna Jerrett, cuckold is a practice in which a man, in this case the husband, enjoys (sexually) seeing his wife being fucked by another man (fajar.co.id, 2017). The urban dictionary defines a cuckold as a man who willingly encourages his wife to sleep with other people because it brings him pleasure. In cuckold, the husband is the only man the wife loves. In this practice, the husband allows his wife to enjoy the forbidden relationship but does not allow her to fall in love with another man (jeda.id, 2020).

## **IV. RESULT AND DISCUSSION**

### **4.1 Factors Causing Group Immoral Crimes to Occur**

The association of human life is governed by rules or norms, which in essence aim to produce an orderly and peaceful life together, including in fulfilling everyone's sexual needs. The need for sex is a physiological need (the most basic need) which can be equated with the need to eat, drink, rest and breathe. Sex fantasy that appears in a person's mind is a natural thing. Sometimes the methods used by a person in carrying out these sexual fantasies are classified as criminal acts related to decency. The development of immoral crime cases on social media has become a new phenomenon that is around us and will continue to grow along with the development of features on social media, such as the live video streaming feature. In addition, there is also a gift feature that can be used as a source of income for broadcasters. With this live video streaming feature, many broadcasters display their skills such as singing, podcasting, and performing pornographic scenes, such as naked dances and sex scenes.

The first case is the existence of a DS2 forum whose members are fans of sexual fantasies such as threesome, swinger, cuckold, gangbang, and so on. The second case, many perpetrators of immoral crimes carry out their activities through social media. The crimes they committed varied, ranging from posting pornographic photos or videos, forming sex fantasy communities, offering sexual services which included immoral acts and prostitution. Generally, perpetrators post photos or videos of their sexual activity and include what sex services they provide in the biography column of their Twitter account. In applications that support live video streaming features such as *Bigo Live* and *MLiveU*, the perpetrators live stream sex scenes that can be watched by tens to hundreds of viewers from various regions both in Indonesia and abroad.

The causes of the occurrence of group immoral crimes can be viewed from a criminological point of view. The occurrence of group immoral crimes in the form of consensual sex fantasies in a non-money oriented manner is a form of *anomie* (absence of norms) and cultural deviation, where there are people who develop in a group/community of sex fantasy fans and their relationship can lead to an immoral crime. This community grows and develops with the aim of performing sexual fantasies and seeking sexual satisfaction.

Criminal law in Indonesia adheres to the principle of legality, in order to be able to impose criminal sanctions on a criminal act, there must be a provision in the criminal law that formulates an act that becomes a crime and provides sanctions for the act. In a crime, of course there are the interests and rights of the parties who are harmed, both individuals, organizations/companies, the community, and the state. Therefore, when there is a crime, the criminal law will play a role in upholding the rule of law and protecting society.

The occurrence of immoral crimes in groups using social media facilities and carried out for a fee, either conventionally or by live video streaming, is motivated by socio-economic factors. This crime also develops through a learning process and the perpetrator's proficiency in using technology to commit immoral crimes in order to earn money. What's more, during the Covid-19 pandemic, many people have lost their jobs and immoral crimes through paid live video streaming have also experienced an increase. Sexual activity in exchange for money can already be qualified as prostitution. From the two examples above, group sex fantasy activity on the DS2 forum and group prostitution using social media are included in criminal acts that can be charged under Article 27 paragraph (1) of the ITE Law and Article 4 paragraph (1) of the Pornography Law.

#### **4.2 Efforts That Can Be Made To Minimize Group Immoral Crimes**

Efforts to minimize group immoral crimes depend heavily on factors that influence law enforcement. In general, there are 5 factors that influence the application of the ITE Law and the Pornography Law in overcoming immoral crimes that use social media facilities, which can be analyzed as follows:

- a. **The legal factor itself**, legislators have enacted the Pornography Law and the ITE Law, as the legal basis for all kinds of immoral crimes and crimes committed using information technology devices. The ITE Law and the Pornography Law are laws within the scope of special criminal law (*lex specialis*). There have been many cases of online pornography crimes that have been successfully charged under the ITE Law and the Pornography Law. However, until now there are still very many people who commit acts that are classified.
- b. **Law enforcement factors**, the role of law enforcers in handling immoral cases involving information technology media can already be implemented. However, the number of immoral cases on social media that have been processed by law enforcement is still very small compared to immoral content on social media. The National Police already has a cyber patrol system whose job is to enforce the law against cybercrimes, including immoral crimes through social media. The Ministry of Communication and Information also has the authority to filter and block immoral content circulating on the internet, but it has not run optimally, because it is still very easy for people to upload, access, watch and download immoral content on the internet. In addition, the majority of internet access service providers have not maximally blocked sites that have immoral content as mandated in Article 18 paragraph (1) of the Minister of Communication and Information Regulation Number 5 of 2020. For sites that have been blocked, users can still access them freely by using free VPN application.
- c. **Factors of facilities or facilities that support law enforcement**, facilities that support law enforcement, especially to prevent the occurrence of immoral crimes, Indonesia already has adequate equipment. Information technology equipment needed to block sites that have immoral content, equipment to search for perpetrators of immoral crimes online and so on are owned by law enforcement agencies and institutions that have authority. However, until now immoral content is still growing rapidly.
- d. **Community factors**, community development is closely related to legal development. The community has a role to make reports to the authorized institutions to request termination of access to prohibited electronic information and/or electronic documents as stipulated in Article 14 paragraph (1) of the Minister of Communication and Informatics Regulation Number 5 of 2020 and can report an alleged cybercrime to the Cyber Patrol. But in reality, more and more people are involved in immoral crime activities, especially through uploading pornographic content on social media. Apart from that, people also enjoy this immoral. The rapid development of group sex activities such as swapping partners (*swinger*), *threesomes*, sex parties, and immoral activities on social media through live streaming is because this activity is a concrete manifestation of the growing crime in society.
- e. **Cultural factors**, the law will have meaning if the law can serve the interests of humans, and can provide benefits for humans. If there are still disturbances or obstacles to the factors affecting law enforcement, then law enforcement will not work properly and will not be able to respond to various community needs. Immoral activities group and immoral activities on social media are still around us and are still growing. Over time, this activity will be accepted by society as an act that is considered good (normal) so that this immoral activity is not considered a taboo/bad act.

The ITE Law, the Pornography Law, and Minister Of Communications and Informatics Regulation Number 5 Of 2020 play a preventive role in preventing the development of pornography and the commercialization of sex in society, as well as providing legal certainty and protection against violations of the

norms of immoral cases and pornography cases committed through information technology facilities. When there is a violation of legal norms, the ITE Law and the Pornography Law immediately change their working power and at the same time become repressive, which is useful for minimizing the occurrence of group immoral crimes that use social media (online) and as social controllers of society.

## V. CONCLUSION AND SUGGESTIONS

Based on the results of the analysis and discussion, several conclusions can be drawn as follows : (1) The cause of the occurrence of group immoral crimes in the form of consensual sex fantasies in a non-money oriented manner is a form of *anomie* (absence of norms) and cultural deviance that develops in social groups. (2) The occurrence of immoral crimes in groups using social media facilities and carried out for a fee, either conventionally or by live video streaming, is motivated by socio-economic factors. This crime also develops along with technological developments, the learning process and the skills of the perpetrators in using technology to commit immoral crimes in order to earn money.

The results of the analysis and conclusions drawn from this study, the authors provide the following suggestions:

1. Internet service providers maximally block sites that contain pornographic content;
2. Law enforcers, especially the National Police, carry out regular and maximum cyber patrols;
3. The Ministry of Communications and Informatics will maximally filter and block immoral content circulating on the internet;
4. The active role of the community is required to request termination of access to prohibited electronic information and/or electronic documents;
5. Providing counseling to groups of people who are prone to immoral acts and pornography;
6. Carry out repressive efforts against perpetrators of immoral crimes and application providers, in accordance with the criminal provisions written in the ITE Law and the Pornography Law.

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