



Juridical analysis of immoral content on tiktok social media

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Abstract

This research examines the Juridical Analysis of Immoral Content on Tiktok Social Media *Cyber crime* that has developed in recent times, one of which is the Tiktok social media application, which is an application that is currently popular with users, especially from Indonesia. Videos lasting 15-60 seconds spread very quickly on TikTok, exceeding the spread on Facebook. TikTok has a different feature from other social media such as Facebook and Twitter. That way, when you swipe the screen, any video will automatically play without any warning. In addition, other sensitive content can also be easily accessed intentionally. By searching for content using hashtags, sensitive content will appear without any filtering. One example of sensitive content flooding TikTok is videos of behaviour deemed pornographic. Videos of many people practising sexual behaviour are easily available. This research aims to analyse how the form of criminal sanctions against the perpetrators of the spread of immoral content on TikTok social media, and the problems of proving the criminal act of spreading immoral content on TikTok social media.

Keywords: Criminal, indecent content, tiktok

Introduction

The development of technology, especially in the field of digital media communication at this time has caused the world to become borderless, wherever and whenever a person is, he can also connect with anyone without meeting directly in the real world and this has led to changes in the current world order of life both legally, socially, culturally, habits, lifestyles and economically which are significantly developing so rapidly. Looking at the world's population data at the end of 2023, Indonesia is the fourth most populous country in the world with 277 million inhabitants, occupied by various tribes, races, ethnicities and religions that have many social changes and legal changes ^[1].

Indonesia is one of the countries that has the most social media users in the world with 167 million active digital social media *platform* users or 60.4% of the total population of Indonesia, while the widely used *platforms* are Whatsapp, Instagram, Facebook, Tiktok, Telegram, X (twitter), Facebook Messenger, and Pinterest ^[2].

Digital social media users in Indonesia are undoubtedly due to the habits of Indonesian people who like to hang out or interact with other people, be it family, relatives, friends or with people from various regions and other parts of the country. Mandibergh defines social media as a medium that accommodates cooperation between users who produce content, social media has the following characteristics ^[3]:

1. The message is not just for one person but for many;
2. Messages are delivered freely, without having to go through a *gatekeeper* ^[4].
3. The recipient of the message determines the interaction.
4. Social media is a set of internet-based applications that are built on

As said by Mandibergh above, social media is an online media where users can easily participate, share information, create content that they want to convey to others, comment on feedback received through social media networks.

In addition, digital social media can also be a livelihood for people in finding jobs that make a lot of money so that they can improve the economy and social strata and can become a profession that is currently in great demand among all circles of society, especially among Indonesian teenagers such as *TikTokers*. These activities are made with creative and innovative ideas so that they have their own appeal to the audience, this is what makes their video content watched by many people, the more people watch the more income they get.

The presence of social media as a new technology, of course, the way of life will also change where it is more effective and efficient for humans to obtain information so that it is not hindered by time, place and costs that are too expensive. The emergence of social media also creates positive and negative sides in it, on the positive side, it can easily get the rate of information exchange both in the context of science, increase friends, means of developing skills, promoting goods and services quickly and usefully. While the negative aspects are the disruption of one's interaction in socialising in the real world, the emergence of *cybercrime*, pornography, immorality, and gambling.

The TikTok social media *platform* is used, because it does not require high costs, and can be accessed anywhere and anytime, of course, using compatible gadget or smartphone facilities and supported by the internet network, this allows amateur video makers to freely upload their video content to be published. If their videos are well received, the number of viewers will increase and make their video content more popular, so that it can be accessed by people around the world.

Regarding negative video content, some time ago there was a case in Jakarta that ensnared a woman and a man who was her friend in the video content, they made video content eating ice cream accompanied by a sensual style similar to sexual activity, the video was made and uploaded on the TikTok platform, so *Tiktokers* and a male friend were

reported and they were successfully secured by the Central Jakarta Metro police.

In the investigation process, the content creators allegedly did not violate the pornography law and the ITE Law because their actions were deemed not to meet the elements of the prohibited norms in the pornography law and the ITE Law so they were only given a light sanction in the form of a warning, but if you look at the content of the video content, it meets the elements of immoral violations. This indicates that there are still legal weaknesses in the pornography law and the ITE Law so that there are many immoral video contents made scattered on TikTok social media.

Looking at the legal facts above, information technology is still a means to commit criminal acts that often violate the norms that exist in criminal laws and regulations, even those governing immoral offences^[5].

A criminal offence is an act of doing or not doing something that has a fault factor, where the error is prohibited and threatened with criminal sanctions for the perpetrator, with the aim of creating legal order, legal protection and public interests that can be guaranteed^[6]. In addition, a criminal offence is a "deliberate" act committed by someone where the act has been determined in the law as a punishable act and must be accounted for^[7].

Prior to the enactment of special regulations related to immoral offences or pornography, the Criminal Code (KUHP) had already regulated these acts, this can be seen in Article 281 paragraph (2) and Article 282 paragraph (1) of the Criminal Code. Regarding Article 282 paragraph (1) and paragraph (2) of the Criminal Code, according to R. Soesilo, the criminal offence regulated in Article 282 paragraph (1) of the Criminal Code is basically the same as the criminal offence regulated in Article 282 paragraph (2) of the Criminal Code, while what distinguishes the two paragraphs is the subjective element, because in Article 282 paragraph (2) of the Criminal Code only requires the element of negligence (*culpa*) in the perpetrator^[8]. The regulation of criminal offences of decency is not only regulated in the Criminal Code, but has also been specifically regulated in Law Number 11 Year 2008 on Electronic Information and Transactions and Law Number 44 Year 2008 on Pornography. In Article 27 paragraph (1) of Law Number 11 Year 2008 on Electronic Information and Transactions, which was later amended by Law Number 19 Year 2016 on the Amendment to Law Number 11 Year 2008 on Electronic Information and Transactions, the amendments include clarifying the meaning of the substance of the phrases and describing the form of the object of action which is accompanied by intent (*dolus*) or without the right of the legal subject such as distributing, transmitting and making accessible (paving the way) to others for the purpose of notifying that there are videos that are interesting to watch, where the video is in the form of electronic information and electronic documents that contain video content violating decency.

In addition to being regulated in the ITE Law, acts of violation of decency are also regulated in Law Number 44 of 2008 concerning Pornography, but there are differences in the substance of the prohibited acts as mentioned in Article 4 which regulates specifically with regard to crimes or violations of decency at a clear and open level where the act is displayed publicly so that people understand the meaning of the act, such as deviant or non-deviant sexuality

activities, and acts relating to matters that violate the values of decency and human dignity and religious values^[9].

However, in practice, it is difficult to prove based on the elements of the actions in the articles regulated, this is what wants to be seen more deeply regarding whether or not content creators who make immoral videos can be subject to criminal offences of decency according to the ITE Law. If we look at the facts of the acts committed by the content creators above, then they have directly committed acts that are morally not allowed to be done and shown, because this can directly violate the norms of decency that live in society.

Although immoral offences in this case have been expressly regulated in the Criminal Code, the law on Pornography and also in the law on Information and Electronic Transactions as described in several articles above, there are still many content creators or content creators who make videos containing immoral offences that can affect the morale of the nation's successors and violate the value of decency in using social media, this is what makes social media behaviour in Indonesia still tend to be less good and damage the order of decency in society.

Research Method

In conducting research, accurate data is needed, both primary data and secondary data. In order to obtain the data required for this writing that meets the requirements, both quality and quantity, certain research methods are used. The research method in this writing is a normative juridical method, where normative juridical research is legal research carried out by researching library materials or secondary data.^[10] Based on the background above, the problem formulation in this research focuses on Juridical Analysis of Immoral Content on Tiktok Social Media.

Result and Discussion

Criminal Sanctions for Immoral Content on Tiktok Social Media According to Law Number 44 of 2008 concerning Pornography

Pornography in Indonesia has grown rapidly, especially after the start of the reformation period. Pornography in Indonesia is a serious problem for the government, where the Chairman of the *Associated Press* once stated that "Indonesia will become the next heaven of pornography, The Next Heaven of Pornography after Russia and Sweden"^[11]. The mode of pornography crime at this time is very diverse, including the sale of *compact disc videos* in the middle of the community, the sale of pornographic tapes on the roadside, the circulation of pornographic videos via mobile phones and the internet and singing performances where the singer sways his hips with movements as if having sex. All of this is a reality that we can see together in the community and is very contrary to the norms of decency.

For people who have a tiktok account that presents pornographic content, nude photos, pornographic films, and various other information containing pornography, the perpetrator can be subject to criminal liability in the form of imprisonment and/ or fines based on the Pornography Law and ITE Law. Article 4 paragraph (1) of the Pornography Law states: "Every person is prohibited from producing, making, reproducing, duplicating, disseminating, broadcasting, importing, exporting, offering, selling, leasing, or providing pornography that explicitly contains:

intercourse, including deviant intercourse; sexual violence; masturbation or masturbation; nudity or the appearance of nudity; genitals; or child pornography".

One example of a tiktok account containing pornographic elements obtained from the source kaskus.co.id. is a viral video of teenagers allegedly having sex recorded in the TikTok application with an account called toxicvirusid. The police explained that the perpetrators in the viral TikTok video were underage. In the viral video circulating, a teenage girl is seen making a post on TikTok. The teenager appears to be wearing orange clothes while singing and dancing. But behind the teenage girl was a teenage couple on a bed. They appear to be alone together while covered by a blanket, allegedly committing perverted acts.

The general requirements of an act that can be categorised as criminal are: (1) unlawfulness,

(2) guilt, (3) culpability (toerekeningsvatbaarheid). However, despite these requirements, there are some acts that are difficult to formulate as an offence. There are certain types of criminality that are ultimately formulated very vaguely. This is inevitable because there are various types of behaviour that can be included in the substance of the offence and cannot be specified concretely. This type of criminality is pornography on social media, especially the TikTok application.

One example of the above offences is the offence of breach of decency. The offence of breach of decency is regulated in Article 281 of the Criminal Code which reads: (1) Any person who intentionally in public violates decency (2) Any person who intentionally and in front of another person against his will violates decency. The punishment under Article 281 is a maximum imprisonment of two years and four months and a maximum fine of four thousand five hundred rupiahs.

According to Andi Hamzah, decency raises various interpretations and in line with what has been said before is a vague offence. However, according to the Hoge Raad in the Netherlands, decency must be seen from the opinions that live in Dutch society and must be checked against public morals. For Indonesia, the solution is to use sociological interpretation. Of course the definition of violating decency is adjusted to local customs that differ from one society to another ^[12]. It is also said by Rimmelink, that the judge is in charge of concretising this in judicial practice ^[13].

Thus, the State should not impose a certain "value of decency" to be adopted in a legislation. This is where the role of the State should be emphasised. When the State takes a certain thing, the State has actually committed an offence and imposed a will. Although criminal law is part of public law, the active role of society remains paramount in the formulation of offences of decency. It is society that will formulate itself what decency really is, without the role of the State.

The different arrangement in the Pornography Law in Article 1 paragraph (1) explains that: Pornography is images, sketches, illustrations, photographs, writings, 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 ^[14]."

From this arrangement, the State has formulated a strict decency in its various forms and types. The forms are

pictures, sketches, illustrations, photographs, writings, sounds, moving pictures, animations, cartoons, conversations, gestures, or other forms of messages through various forms of communication media and/or public performances. And the type is obscenity or sexual exploitation.

The state in this law has narrowed the meaning of decency and has the potential to violate a person's rights. Society is restricted to interpreting decency only to the extent set out in the article. Not only the public, judges who naturally concretise vague norms of decency based on community values are also restricted. When judges are limited by such a formulation, judges will no longer be able to make interpretations that are biased by judges and more people will easily be ensnared by this article. Here the State has forced its will in the formulation of the article on society, so that society is forced to follow the will of the State.

Related to the example of the case above, the perpetrator is subject to a criminal sanction of 1 year imprisonment or a fine of Rp300,000,000. These criminal sanctions are in accordance with the formulation of Article 1 paragraph (1) and Article 10 of the Pornography Law, in addition to being more detailed, firmer, and clearer, as well as the penalties specified in Chapter VII Article 29 to Article 38 of Law No. 44 of 2008, especially Article 36 which determines the penalties for perpetrators of criminal acts of pornography are more deterrent than Article 281. 44 of 2008, especially Article 36 which determines the punishment for the perpetrators of the criminal act of pornoaction is more deterrent than Article 281 of the Criminal Code, namely in the form of imprisonment for a minimum of 6 (six) months and a maximum of 6 (six) years and/or a fine of at least Rp 250,000,000,000.00 (two hundred and fifty million rupiah) and a maximum of Rp 3,000,000,000.00 (three billion rupiah).

Problems in Proving the Crime of Disseminating Indecent Content

Indecent acts are acts related to sexual crimes. When discussing immorality, we will encounter problems with violations of the norms of decency and moral values imposed by society. Talking about offences, especially in the case of the criminal act of spreading indecent content, the perpetrator should get a sentence based on the evidence obtained by police investigators to prove the perpetrator is guilty or not. However, in terms of evidence, there are many differences of opinion between one person and another, so that problems arise in proving the "KUHAP" and "ITE Law".

The problem of proving criminal offences, especially in cases of dissemination of immoral content, is contained in the Criminal Procedure Code and Law Number 19 of 2016 Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE). There are differences between the two regulations, including:

KUHP	Law Number 19 Year 2016 on Electronic Information and Transactions
1. Witness Statement 2. Expert Statement 3. Instructions 4. Letter 5. Defendant's statement	1. Witness Statement 2. Expert Statement 3. Instructions 4. Letter

Police investigators immediately handle if there is evidence through links / or webside that is spread, screenshots, or videos related to immoral crimes. In the trial, digital forensic experts will be brought in to provide information related to the case. The criminal offence of dissemination of indecent content in Indonesia is increasingly rampant.

Indonesia has a legal instrument that accommodates the recognition of electronic data evidence to decide cases of immoral content distribution. This is enshrined in Law Number 19 of 2016 Amending Law Number 11 of 2008 concerning ITE Law (Article 5 Paragraph (1) states "Electronic Information and / or Electronic Documents and / or their printouts are valid legal evidence". (Article 5 Paragraph (2) of the ITE Law) states "Electronic Information and / or Electronic Documents and / or their printouts as referred to in Paragraph (1) are an expansion of valid evidence in accordance with the applicable Law of Procedure in Indonesia" ^[15]. The expansion in question is:

1. There is an expansion of evidence based on the criminal procedure law in Indonesia that has been regulated, for example (KUHAP) which includes documents or electronic information as additional valid evidence.
2. There is an expansion of the range of evidence that is already contained in the Indonesian criminal procedure law, for example, printed documents and information from electronics can be used as evidence of letters regulated in (KUHAP) ^[16].

The existence of (ITE Law) that accommodates electronic evidence raises pros and cons among academics and legal practitioners regarding the expansion of the meaning of electronic evidence. The 2016 ITE Law contains debates regarding electronic evidence in the amended Constitutional Court Decision No.20/PUU-XIV/2016. Based on the interpretation of electronic evidence in the Constitutional Court Decision No.20/PUU-XIV/2016 through the judges of the Constitutional Court stipulated that "Any electronic evidence can be recognised as electronic evidence in the eyes of the law as long as it is obtained in a way that does not violate the applicable legal rules. However, if electronic evidence is obtained by violating the applicable law, it cannot be used as electronic evidence before the law ^[17]." Based on this, it can be concluded that Article 5 Paragraphs (1) and (2) of the ITE Law, namely the enactment of the provisions of valid evidence for Indonesian criminal procedure law, are not limited to 5 (five) evidence based on (Article 184 KUHAP). However, there is also evidence described in Article 5 Paragraphs 1 & 2 of the ITE Law, namely "Electronic Information and / or Electronic Documents and / or their printouts are valid evidence".

Quoting from Eddy O.S Hiariej's book, one of the cases that was quite widely discussed on social media in 2010 was the spread of indecent videos with suspects similar to Ariel, Cut Tari or Luna Maya. The basis for the determination of Ariel as a suspect is regarding preliminary evidence. Based on the case, preliminary evidence was found which was in a closed room so that it was difficult to get eyewitnesses other than the names mentioned above, then the witnesses at the event in the context of Indonesian criminal law could have the opportunity to be the perpetrator of the crime ^[18]. The evidence possessed for the case was only video footage. Armed with the video footage, police investigators no longer needed a confession from either Ariel, Luna Maya or Cut Tari to state that the perpetrators in the video were

them, but only needed to hear from telematics experts and facial reenactment experts. Telematics experts are needed to determine the authenticity of the video and that the video is not a fabrication along with the date it was made. Meanwhile, a facialisation expert is needed to ensure that the perpetrators in the video are really Ariel, Cut Tari or Luna Maya.

Based on the case of Ariel, Cut Tari and Luna Maya, AKB Sami Waskitha, S. Kom stated that the case occurred due to Ariel's own negligence because Ariel's intention was only for personal data, but the data was copied and transferred to a personal computer via a hard disk by his colleague, so the case entered the trial. The law of evidence is not a regular system. The strength or weakness of the evidence depends on the harmony between the facts with each other that can be proven and convinced to the judge.

Conclusion

The formulation of Law of the Republic of Indonesia No. 44 of 2008 on Pornography in Article 1 paragraph (1) on Pornography is not only more detailed, firmer, and clearer, but also the punishment determined in Chapter VII Article 29 to Article 38 of Law No. 44 of 2008, especially Article 36 which determines the punishment for the perpetrators of criminal acts of pornography/pornoaction is more deterrent than Article 281 of the Criminal Code. The problem in proving the criminal offence of dissemination of indecent content is that there is often a cross-opinion between one person and another regarding the evidence regulated in the Criminal Procedure Code and the "ITE Law". Therefore, the author conducted a personal interview with the Cyber Investigator of Polda Metro Jaya regarding electronic evidence. AKB. Sami Waskitha S. Kom. stated that with evidence in the form of links / or webside that is spread, screenshots, or videos related to immoral criminal acts, police investigators can immediately handle the case. Then in the trial process, digital forensic experts will be brought in to provide information related to the case. It can be seen in the case of Luna Maya, Ariel, and Cut Tari that the only evidence they have is video footage.

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