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CRIMINOLOGICAL REVIEW OF THE CRIME OF PROSTITUTION IN A GROUP OF SEXUAL FANTASY PERFORMER ON SOCIAL MEDIA

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ABSTRACT

The development of information technology has changed people's lives with new habits. Almost everyone has a smartphone and social media accounts. Such rapid evolution has changed human life in various fields and has given rise to new forms of legal action. Among them, there is a group of sexual fantasies who use social media as a means of networking and looking for partners. Sexual fantasies are normal and can have a positive impact if applied correctly. However, currently many people use social media to find partners for sexual fantasies by uploading vulgar photos or videos and requiring them to give money, gifts and provide facilities if they want to carry out sexual fantasies with them. This research uses empirical juridical methods and analytical descriptive research specifications. Based on the research results, it can be concluded that the cause of criminal acts of pornography and prostitution in the form of sexual fantasies using social media is the negative impact of the development of information technology, social media, a manifestation of cultural deviation, deviation from norms, and a manifestation of the absence of norms (anomie). Efforts that can be made to overcome this problem are by carrying out cyber patrols, cutting off access to electronic systems that violate laws and regulations, and carrying out repressive efforts against the perpetrators.

Keywords: sexual fantasy; social media; prostitution

INTRODUCTION

The development of information technology has changed people's lives with new habits. Almost everyone has a smartphone and has a social media account. Conditions like this have become a habit that has changed the way of communicating in the digital era. The rapid evolution of information technology has caused changes in human life activities in various fields, which have directly influenced the birth of new forms of legal action. The rapid development of social media today is caused by everyone feeling like they can have their own media. Social media is about being ordinary people sharing ideas, working together and collaborating

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to create, thinks, debate, find people who can be good friends, find partners, and build a community.¹

Along with the development of technology, the types of criminal acts also develop. Among them, there are groups of sexual fantasy perpetrators who use social media as a means of networking and to find partners who have similar sexual fantasies. They use social media to find partners so they can carry out sexual fantasies together, such as sexual activities carried out by 3 or more people, exchanging husband and wife partners, or holding sex parties.

Sexuality is a basic human need which is equated with the need 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 can be received normally and healthily.² When sexual needs are not met sufficiently it can cause frustration, depression, self-confidence problems, and even heart disease.³ Regarding sexual needs, of course everyone has sexual fantasies, even though they are often still considered taboo. Sexual fantasies are an expression of everyone's freedom to develop imaginations related to sexual matters. A person can find their own pleasure and preoccupation, which can be followed up with sexual activity, according to a variety of sexual fantasies. According to psychologist Defryansyah Amin, M.Psi., it is natural for someone to have sexual fantasies. Research shows that it is very rare for people to not have sexual fantasies. Sexual fantasies are something that is natural for everyone to have and can have a positive impact if applied correctly.⁴ When channeled correctly, normal sexual fantasies can increase sexual satisfaction and sexual relations with a partner.

The author has made observations and interviews with several perpetrators of sexual fantasy who he knows through social media, especially through Twitter. The first resource person, a husband-and-wife couple with the initials Haarys, husband and wife who are around 30 years old, likes to engage in threesome activities (sexual activities involving three people at the same time)⁵. The second resource person has the initials Tiara, a husband-and-wife couple aged around 35 years who like to carry out sexual fantasies of threesomes, swapping partners (swingers), and even cuckolding (a man whose wife has sex with another man)⁶. They use social media Facebook and Twitter as

¹ https://id.wikipedia.org/wiki/Media_sosial#Perkembangan_Media_Sosial_2, accessed September 30, 2023.

² <https://deepapsikologi.com/kebutuhan-seksual-sebagai-kebutuhan-dasar-manusia>, accessed September 30, 2023.

³ Firmansyah, Andan (et. al). (2021). Pemenuhan Kebutuhan Seksual pada Jomlo. *Bina Generasi: Jurnal Kesehatan*, 13(1), pp. 78-86.

⁴ <https://www.halodoc.com/artikel/kata-psikolog-fantasi-seksual-yang-normal>, accessed October 1, 2023.

⁵ <https://id.wikipedia.org/wiki/Threesome>, accessed October 1, 2023.

⁶ https://www.oxfordlearnersdictionaries.com/definition/english/cuckold_1, accessed April 20, 2024.

“promotional” media and to network with fellow sexual fantasy fans. Apart from social media, they also use other conversation applications as a means of further communication with potential partners, such as WhatsApp and Telegram applications.

To be able to carry out sexual fantasy activities with Haarys, partners are asked to provide a hotel, food, alcoholic drinks and a tip of at least 1 million rupiah. Meanwhile, Tiara requires the couple to provide a hotel, food, alcoholic drinks and tips of between 1 million and 3 million rupiah for the wife. They often upload several sexy photos or videos, even pornographic photos or short pornographic videos during sexual intercourse on their social media accounts, this aims to attract the attention of potential partners. Tiara's Twitter account biography says: “*akun dipegang suami, bukan akun cwe single, bukan nyari pacar atau kenalan, fantasi 3s mmf, ffm, swing, partner mmf yg ngerti yg siap aja, terapis jauh2* (account held by husband, not a single girl account, not looking for a boyfriend or acquaintance, fantasy 3s mmf, ffm, swing, understanding mmf partner who is ready, therapist far away)”. The biographies describe the types of sexual fantasies they enjoy and carry out for a fee.

Crime has been known since the existence of human civilization, the higher the civilization, the more rules, and the more violations. It is often said that crime is the shadow of civilization. To determine which actions are desirable and undesirable depends entirely on the overall organization and culture of the society concerned.⁷ The rapid development of crime in society which has an impact on the social life of Indonesian society is in line with the adage *het recht hink achter de feiten aan* (the law always teeters behind the reality of society)⁸, for this reason, the presence of laws that also function as social controls are needed, such as the Criminal Code (KUHP) and other statutory regulations.

Criminal provisions for group sexual activity have been regulated in Article 296 of the Criminal Code which strictly regulates prohibited acts and sanctions for obscene acts, that anyone whose livelihood or habit is to deliberately carry out or facilitate obscene acts with other people is threatened with imprisonment at most one year and four months or a maximum fine of fifteen thousand rupiah. Article 506 of the Criminal Code states that anyone who makes a profit from a woman's obscene acts and makes a living is threatened with imprisonment at most one year. Generally, Article 296 of the Criminal Code and Article 506 of the Criminal Code are charged with pimps, perpetrators of sex party activities carried out directly or conventionally. Apart from the Criminal Code, the

⁷ Beridiansyah, (2019), *Kajian Kriminologi dan Hukum Pidana terhadap Perilaku Vigilantisme pada Masyarakat, Wajah Hukum*, Volume 3 No. 1 p. 93.

⁸ Machmudin, Dudu Duswara. (2013). *Pengantar Ilmu Hukum Sebuah Sketsa*. Bandung: Refika Aditama, p. 86.

state has also regulated criminal sanctions through Law Number 44 of 2008 concerning Pornography (Pornography Law) and Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (Amendments to the ITE Law) which was created to meet legal needs and community development.

Criminology is the science of crime, or more precisely, criminology studies all aspects of crime. Criminology cannot be separated from criminal law. Criminology was born because of the existence of crimes in the social community and describes the actual reality of society. However, criminology is unable to provide the final word in realizing crime prevention.⁹ Satjipto Raharjo defines legal sociology as legal knowledge of patterns of people's behavior in a social context. Sociology of law has the object of studying legal phenomena, as written by Curzon, that Roscou Pound shows the study of legal sociology as a study based on the concept of law as a tool of social control.¹⁰

Sexual fantasy activity using social media is a phenomenon, social problem and legal problem that continues to grow rapidly around us. By knowing and studying the root of the problem, the reasons or causes for someone to carry out sexual fantasy activities using social media can be found. After knowing the cause, we can find out what efforts can be made to overcome this problem.

RESEARCH METHODS

The method used in this research is empirical juridical, in other words, it is a type of sociological legal research or field research. This type of research examines applicable legal regulations and what actually happens in society.¹¹ Or research carried out on actual conditions or conditions occurring in society with the aim of knowing and finding the facts and data needed. After the required data is collected, it then proceeds to problem identification which ultimately leads to problem solving.¹² The research specifications used in this research are analytical descriptive, namely analyzing the research object by describing the situation and problem to obtain an overview of the situation and circumstances, by presenting the data obtained as it is, which is then analyzed to produce several conclusions.¹³

⁹ Widodo, Wahyu. (2015). *Kriminologi & Hukum Pidana*. Semarang: Universitas PGRI Semarang Press, pp. 17-18.

¹⁰ Shalihah, Fithriatus. (2017). *Sosiologi Hukum*. Depok: PT Rajagrafindo Persada, p. 4-6.

¹¹ Waluyo, Bambang. (2002). *Penelitian Hukum dalam Praktek*. Jakarta: Sinar Grafika, p. 15.

¹² *Ibid.*

¹³ *Ibid.*, p. 10.

DISCUSSION

A. Sexual Needs and Sexual Fantasies

Sex is essentially a natural instinct for sexual satisfaction. But many people say that sex is another term for gender that differentiates between men and women. If these two types of sex come together it is called sexual behavior. Meanwhile, sexual behavior can be interpreted as an act to express love and unite one's life intimately. The hierarchy of needs theory proposed by Abraham Maslow states that every human being has five basic needs, namely:

- a. Physiological needs, are the most basic needs of humans, including: fulfilling the need for oxygen and exchange of gas, fluids, nutrition, rest and sleep, activity, balance of body temperature, and sexual;
- b. The need for security and protection, which is divided into physical protection and psychological protection;
- c. Love needs, namely the need to have and be owned, to give and receive affection, warmth, friendship and kinship;
- d. Self-esteem and feeling appreciated by others and recognition from others;
- e. Self-actualization needs, 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.

Abraham Maslow was of the view that physiological needs (lower level needs) must be met or at least sufficiently met before higher level needs are met.¹⁴ If these physiological needs are not met, the human body cannot function optimally.¹⁵ In humans, sexuality is related to biological, physiological, psychological, social and applicable norms. Human sexual relations can be said to be sacred and noble so that they are naturally only justified within the bonds of marriage.¹⁶ In line with Abraham Maslow's theory, Nicole Galan (registered nurse specializing in women's health and infertility issues) says "scientific research has highlighted several possible benefits besides procreation that come with sexual intercourse. These pluses include preserving heart health in some people, reducing blood pressure, and boosting immunity. Sex can also improve mood, relationships, and mental well-being".¹⁷

Sexual fantasies are dreams about sexual relations that are usually outside a person's real experience. This fantasy can arise from one's own imagination, it can also

¹⁴https://id.wikipedia.org/wiki/Hierarki_kebutuhan_Maslow, accessed October 3, 2023.

¹⁵Rahmawati, Dina. <https://www.sehatq.com/artikel/mengenal-konsep-kebutuhan-dasar-manusia>, accessed October 3, 2023.

¹⁶Kasiati, NS. & Ni Wayan Dwi Rosmalawati. (2016). *Kebutuhan Dasar Manusia I*. Jakarta: Kementerian Kesehatan Republik Indonesia, pp. 17-18.

¹⁷<https://www.medicalnewstoday.com/articles/316954#reducing-blood-pressure>, accessed October 4, 2023.

be stimulated by books, films, photos, conversations, or previous sexual experiences.¹⁸ Sexual fantasies are a normal thing, in fact this can make the lovemaking session hotter and have great orgasms for both of them. If you and your partner feel comfortable and don't hurt each other in practicing your sexual fantasies, it means you have normal sexual fantasies. As long as your partner also wants to do it without coercion, this is also normal.¹⁹

In the case of sexual fantasies carried out by Haarys and Tiara, they have carried out various kinds of sexual fantasies such as:

- a. Threesome, a form of group sex, but involving only three people. In threesome activities, there are 2 types of FFM, means female-female-male, meaning a threesome composition of two women and one man. Meanwhile, MMF means male-male-female, namely two men and one woman.²⁰ They have threesomes both FFM and MMF.
- b. Swinger, sexual activity by exchanging partners. Swinger is also known as swinging. Wikipedia provides a definition 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.²¹ According to psychologist Ikhsan Bella Persada, M.Psi., there is a possibility that swinger desires arise due to feeling bored with their household's sexual life or because they want to have an alternative sexual style, aka they want to try something new.²²
- c. Cuckold, a practice where a man, in this case the husband, enjoys (sexually) and sees his wife being intimated by another man. Urban dictionary define cuckold as a man who willingly encourages his wife to sleep with other people because it brings him pleasure.²³ In cuckolding, the husband is the only man the wife loves. The husband allows his wife to enjoy this forbidden relationship but does not allow her to fall in love (cheat) with another man.²⁴

Sexual relations are a sacred and noble activity, so naturally they are only justified if carried out by a couple within the bonds of marriage. However, several different opinions say that sexual fantasy activity is normal, as long as what the couple does is

¹⁸<https://www.alodokter.com/memiliki-fantasi-seksual-normalkah>, accessed October 4, 2023.

¹⁹<https://hellosehat.com/seks/tips-seks/asal-munculnya-fantasi-seksual/>, accessed October 4, 2023.

²⁰<https://pekanbaru.tribunnews.com/2017/12/17/tentang-threesome-peneliti-banyak-responden-menyukai-komposisi-2-perempuan-1-pria?page=2>, accessed October 4, 2023.

²¹[https://en.wikipedia.org/wiki/Swinging_\(sexual_practice\)](https://en.wikipedia.org/wiki/Swinging_(sexual_practice)), accessed October 4, 2023.

²²<https://www.klikdokter.com/info-sehat/read/3642468/swinger-apakah-tanda-tak-puas-dengan-pasangan-atau-gangguan-mental#>, accessed October 5, 2023.

²³<https://www.urbandictionary.com/define.php?term=Cuckold>, accessed October 5, 2023.

²⁴<https://jeda.id/stories/cuckold-adalah-saat-suami-berfantasi-istri-disetubuhi-3776>, accessed October 5, 2023.

comfortable, without coercion, and no one feels hurt. The perpetrator's act of inviting another married couple to have sexual relations by swapping partners (swingers) is generally due to the sensational urge to satisfy the libido. The results of the psychological diagnosis show that the mental health of the swingers, as well as the couples who are invited to exchange partners (swingers), are still sane.²⁵ A similar opinion was also expressed by psychologist Zoya Amirin, M.Psi., variations of threesome or foursome sex have now become a lifestyle for some couples who are relatively open-minded. Threesomes or foursomes are becoming a trend because they are not considered a form of infidelity and are not sexual deviations.²⁶

B. Sexual Fantasy Activities Viewed from Norms and Morality

Of course, sexual fantasy activities such as those carried out by Haarys and Tiara cannot be separated from the norms and morality that apply in Indonesia. Norms are provisions or rules that bind members of a group in society, used as a guide, order and control of appropriate and acceptable behavior.²⁷ The existence of these norms really depends on how far these values are crystallized by society. However, this does not mean that understanding values eliminates the validity of norms. Differences in understanding norms will actually create variations in people's recognition of a good life, rather than indicating the absence of norms.²⁸ Legal regulations in the field of morality reflect the existence of moral norms enforced in society which recognize the existence of an order of moral values regarding what is considered good and bad.²⁹ For the Indonesian people, this understanding of moral values is hundreds of years old, it could even be said that it has become the personality of the Indonesian people which continues to develop over time. In this case, the realization of moral values is carried out more seriously in the form of moral norms that apply to every group of society, including various tribes and nations, but have the same recognition of the importance of protecting and maintaining moral values as the identity of the Indonesian nation.³⁰

Morality is the totality of norms, values and moral attitudes of a person or society. So morality is the moral complexity in human life as individual creatures and social

²⁵Saputra, Reza Aditya (et. al). (2024). Pertanggungjawaban Pidana Pelaku Tukar Pasangan (Swinger) Berdasarkan Pasal 296 KUHP. *Jurnal Ilmiah Wahana Pendidikan*, Volume 10 No. 4, p. 719.

²⁶Amirin, Zoya. (2017). Sexpedia: Dampak Variasi Seks Threesome bagi Pasutri, https://www.liputan6.com/health/read/2970144/sexpedia-dampak-variasi-seks-threesome-bagi-pasutri#_=, accessed April 22, 2024.

²⁷<https://kbbi.kemdikbud.go.id/entri/norma>, accessed October 5, 2023.

²⁸Christianto, Hwian. *Op. Cit.*, p. 30.

²⁹*Ibid.*, p. 1.

³⁰*Ibid.*, p. 7.

creatures.³¹ Determining an act as a violation of a norm really depends on how far the scope of the understanding of the norm of decency itself is. If decency norms are seen as a value system that contains an assessment of the good and bad of an action based on an individual's morals, then pornography as an act that places inappropriate sexuality is clearly a violation of decency norms. In pornography, there is an element of rebellion against the established order of sexuality, such as nudity is something that is secret for individuals but it changes when pornography is understood differently from carrying out naked acts in public with poses or styles that insult or do not respect human dignity. In conditions like this, acts of pornography violate moral norms and are a form of immoral act.

A basic understanding was obtained, that pornography is a form of action which essentially violates the values of decency and morality in society. According to R. Soesilo, there are three types of acts that violate feelings of decency in ways:³²

- a. Broadcasting, showing or posting openly writings, pictures, etc. that violate feelings of decency;
- b. Create, bring in, send directly, bring out or provide writing, pictures, etc., to be broadcast, displayed or posted openly;
- c. Openly or by broadcasting a piece of writing that makes an offer to someone who is not asked for it, or shows where the writing or picture can be obtained.

Viewed from the perspective of norms and morality, sexual fantasy behavior and uploading pornographic photos or videos on social media accounts is a violation of norms and morality. Moreover, those related to moral norms are norms that must be maintained and protected as part of the identity of the Indonesian nation.

C. The Crime of Prostitution among Groups of Sexual Fantasy Perpetrators on Social Media Viewed from Criminal Law

Criminal law is a translation of the Dutch word *strafrecht*, *straf* means criminal, and *recht* means law. Moeljatno defines criminal law as part of the overall law that applies in a country, which provides the basics and rules for:³³ (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 those who violate the prohibition, (b) determine when and in what cases those who have violated the prohibition can be imposed or subject to criminal sanctions as threatened, (c) determine in what manner the

³¹Sidharta. (2009). *Moralitas Profesi Hukum Suatu Tawaran Kerangka Berpikir*. Bandung: PT Refika Aditama, p. 43.

³²Soeslilo, R. (1991). *Kitab Undang-Undang Hukum Pidana (KUHP) Serta Komentar-komentarnya Lengkap Pasal Demi Pasal*. Bogor: Politeia, p. 57.

³³Moeljatno. (2002). *Asas-asas Hukum Pidana*. Jakarta: Rineka Cipta, p.1.

criminal can be implemented if there is a person who is suspected of having violated the prohibited act. Criminal law is the legal rules of a sovereign country, containing prohibited acts or ordered acts, accompanied by criminal sanctions for those who violate or do not comply, when and in what cases criminal sanctions can be imposed and how to carry out these crimes. its implementation is enforced by the state.³⁴

There are several terms for offenses (criminal acts) in foreign languages such as *strafbaar feit* (Dutch language), *delictum* (Latin language), *criminal act* (English).³⁵ Moeljatno defines a criminal act as an act that is prohibited by law and is punishable by a criminal offense if anyone violates that prohibition.³⁶ In this definition, Moeljatno does not mention criminal responsibility, because criminal responsibility should not be part of the definition of a criminal act. A view that separates criminal acts and criminal responsibility is known as a dualistic view.³⁷ Simons defines a criminal act as an act that is punishable by law, contrary to law, committed by a guilty person and that person is considered responsible for his actions.³⁸ It can be seen that the definition of criminal acts put forward by Simons is a translation of *strafbaarfeit*, includes the criminal act itself and criminal liability. Meanwhile, Pompe's opinion regarding *strafbaarfeit* can be formulated as a violation of norms intentionally or unintentionally by the perpetrator.³⁹

Nowadays, sexual fantasy activities are not just for seeking sexual satisfaction, but have become a criminal act. The sexual fantasies carried out by Haarys and Tiara required their partners to give them money, hotel facilities, food and alcoholic drinks in return. They often carry out conditions like this, and even use it as a form of livelihood by carrying out obscene activities together with other people to earn money. This activity is classified as a form of criminal act as regulated in Article 296 of the Criminal Code and Article 506 of the Criminal Code, especially for people who coordinate sexual fantasy activities such as threesomes, swingers or cuckolds.

Talking about obscene acts and using them as a livelihood, of course it is closely related to prostitution activities. Prostitution is defined as the exchange of sexual relations for money or gifts as a trade or prostitution transaction.⁴⁰ Generally, prostitution activities will involve pimps, namely people who act as caregivers,

³⁴Hiariej, Eddy O.S. (2015). *Prinsip-Prinsip Hukum Pidana Edisi Revisi*. Yogyakarta: Cahaya Atma Pustaka, p. 18.

³⁵Yahman. (2014). *Karakteristik Wanprestasi & Tindak Pidana Penipuan*. Jakarta: Prenadamedia Group, p. 109.

³⁶Hiariej, Eddy O.S., *Op.Cit.*, p. 121.

³⁷*Ibid.*, p. 122.

³⁸*Ibid.*, p. 124.

³⁹Lamintang, PAF. (2011). *Dasar-dasar Hukum Pidana Indonesia*, Bandung: PT. Citra Aditya Bakti, hlm. 173-174.

⁴⁰<https://kbbi.kemdikbud.go.id/entri/prostitusi>, accessed October 3, 2023.

intermediaries, and/or owners of commercial sex workers.⁴¹ Several definitions of prostitution according to experts, namely:

- a. According to James A. Inciardi, prostitution is the provision or service of sexual relations to earn money or other benefits.⁴²
- b. According to Soejono Soekanto, prostitution is a sexual act carried out by submitting oneself to the public with the aim of obtaining compensation.⁴³
- c. According to Bonger, prostitution is a social phenomenon where women sell themselves and perform sexual acts as a means of livelihood.
- d. According to Amstel Cit Kartono, prostitution is the surrender of a woman to many men for payment. Looking at several of these definitions, it is clear that prostitution is work that involves selling oneself to men and is used as a source of income because they are given compensation in the form of money.⁴⁴

Referring to the definitions above, sexual fantasies carried out by giving tips or gifts to women or married couples are considered a crime of prostitution. One of the keys to the crime of prostitution is that there is an exchange of money or gifts in return for sexual activity. Confirmation regarding sexual fantasy activities that must be paid for is written on Tiara's Twitter account "*Biar ga banyak yg nanya syarat-syarat nge-dm trus udh gitu pada ngilang, syarat jadi partner tuh yg pasti siapin room hotel atau apartemen yg nyaman dan aman, akomodasi kita, minuman alkohol, sama gift aja buat wife* (So that not many people ask about the conditions for sending a direct message and then just disappear, the conditions for being a partner are to prepare a comfortable and safe hotel room or apartment, our accommodation, alcoholic drinks, and just a gift for the wife)". Through a chat conversation, Haarys conveyed this to the author "*biasa nya partner M siapin room, makanan sm cemilan, sm minuman gitu, sama gift buat F nya* (Usually the male partner prepares a room, food and snacks, drinks, and gifts for the female)". A gift is defined as a gift from a partner to their wife, usually in the form of money. Prostitution activities in Indonesia are still considered a form of crime that is contrary to religious and moral norms as well as applicable legal regulations. However, because of the government's relaxed supervision and action against perpetrators, online prostitution can thrive online and is easily accessed using certain keywords.⁴⁵

⁴¹ <https://id.wikipedia.org/wiki/Muncikari>, accessed October 3, 2023.

⁴² Dewi, Bunga. (2021). *Prostitusi Cyber (Diskursus Penegak Hukum dalam Anatomi Kejahatan Tradisional)*, Bali: Udayana University Press, p. 11.

⁴³ Soekanto, Soerjono. (2018). *Sosiologi Suatu Pengaturan, Cet. Ke 4*, Jakarta: Raja Grafindo Persada, p. 74.

⁴⁴ Sukardi, Ellora (et. al.). (2021). Memberantas Prostitusi Online Pada Masa Pandemi Covid-19 Melalui Sosialisasi Hukum Perspektif Teori Keadilan Bermartabat. *Jurnal Lembaga Ketahanan Nasional Republik Indonesia*, Volume 9 No. 1, p. 101.

⁴⁵ Ichsan, Muhammad Nur (et. al.). (2023). Media Sosial Undercover (Mengungkap Praktik Prostitusi Online pada Media Sosial Twitter), *Jurnal Ilmu Siber*, Volume 2 No. 3, p. 119.

D. The Crime of Prostitution among Groups of Sexual Fantasy Perpetrators on Social Media Viewed from the ITE Law and the Pornography Law

Law as social engineering or a means of social engineering is a prominent phenomenon in the 20th century. The use of law as a means of social engineering cannot be separated from the assumption and understanding that punishment is a means (instrument) used to achieve clear goals. The use of law as a means of social engineering brings us to research regarding the relationship between law making or the methods used by law and the results or consequences that emerge.⁴⁶ Law should be at the forefront, but that does not mean law should leave society. In developing law, mental understanding and thoughts are needed which must be cleaned and reshaped as an effort to be willing and able to accept the fact that law works together in society as is the adage of *ubi societas ibi ius* (where there is society, there is law). From this adage, it can be understood that the law will always be with society. Regulations made by law must also follow developments in society. If the law does not want to be said to be lagging behind the development of society, then the law must respond to the social life that surrounds it.⁴⁷

The development of social media is increasingly accelerating the occurrence of latent prostitution. Social media has also become a space for sellers of sexual services for self-exhibition, freedom of access, as well as providing a new dimension for presenting themselves. Latent sex workers use Twitter as a place to promote vulgar photos and videos.⁴⁸ The use of social media like this, of course, cannot be separated from cyber crime. Cyber crime is a new form of contemporary crime that has received widespread attention internationally.⁴⁹ On the other hand, cyber crime is also one of the dark sides of technological development and has a very broad negative impact on all areas of modern life today.⁵⁰ Cyber crime is a term that refers to criminal activity by means of computers or computer networks which are used as tools, targets or places where crimes occur.⁵¹ Although cyber crime generally refers to criminal activity with computer media or computer networks as the main element, this term is also used for traditional crimes committed with tools in the form of computers or computer networks as a means to facilitate or enable the crime to occur.

⁴⁶ *Ibid.*, pp. 83-84.

⁴⁷ *Ibid.*, p. 121.

⁴⁸ Abdi, Yuyung. (2019). *Prostitusi Kisah 60 Daerah di Indonesia*, Surabaya: Airlangga University Press, pp. 39-40.

⁴⁹ Arief, Barda Nawawi. (2010). *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana dalam Penanggulangan Kejahatan*, Jakarta: Kencana Prenada Media Group, p. 244.

⁵⁰ *Ibid.*

⁵¹ https://id.wikipedia.org/wiki/Kejahatan_siber, accessed October 3, 2023.

The Ministry of Communication and Information through the Regulation of the Minister of Communication and Information of the Republic of Indonesia Number 5 of 2020 concerning Private Electronic System Operators (Permenkominfo 5/2020) in Article 9 Paragraph (3) states that electronic system operators (PSE) are private (including social media services) are obliged to ensure that their electronic systems do not contain prohibited electronic information and/or electronic documents and their electronic systems do not facilitate the dissemination of prohibited electronic information and/or electronic documents. Article 9 Paragraph (4) Permenkominfo 5/2020 confirms that electronic information and/or electronic documents are prohibited as intended in paragraph (3) with the classification: violating the provisions of statutory regulations, disturbing the public and disturbing public order, and informing how or providing access to electronic information and/or electronic documents is prohibited. Article 9 Paragraph (6) Permenkominfo 5/2020 confirms that private sector PSEs that do not carry out the obligations as intended in paragraph (3) will have access to their electronic systems cut off (access blocking) in accordance with the provisions of this ministerial regulation.

The Indonesian National Police has a Cyber Crime Directorate, which is a work unit under the National Police Criminal Investigation Unit which is tasked with enforcing the law against cyber crime. In general, Dittipidsiber handles two groups of crimes, namely computer crime and computer-related crime. Computer crime is a cyber crime group that uses computers as the main tool. The forms of crime are hacking electronic systems, illegal interception, changing the appearance of websites, system interference, data manipulation. Computer-related crime is cyber crime that uses computers as a tool, such as online pornography, online gambling, defamation, online extortion, online fraud, hate speech, online threats, illegal access, and data theft.

The use of social media facilities to facilitate sexual fantasy activities is classified as a computer-related crime, because it is related to criminal acts of pornography and prostitution on the network. The use of social media is a tool to facilitate crimes in committing crimes of pornography and prostitution. Apart from that, social media services such as Facebook and Twitter which contain pornographic content in the form of pornographic photos or videos have violated statutory provisions, in particular violating the provisions regulated in the ITE Law and Minister of Communication and Information Regulation 5/2020. Until this research was conducted, the author was still able to freely access social media accounts, especially on Twitter, where there is still a lot of pornographic content. The social media accounts and sites have not been access blocked by the PSE concerned.

In connection with the existing case example, Haarys and Tiara often upload pornographic photos and videos on their Twitter accounts. These pornographic photos and videos can still be accessed by anyone online. Generally, the photos uploaded are photos of them carrying out sexual fantasy scenes and covering/not showing their faces. Meanwhile, the videos uploaded are short videos of them carrying out sexual fantasy scenes. With several photos and videos on their Twitter account, they can describe the types of sexual fantasies they like, so that they can easily be understood by potential partners. If there are potential partners who are interested and feel they match the terms offered, they will communicate via the message feature on Twitter. Sometimes they also provide long-form porn videos via the Telegram chat application and they sell their videos to interested people. In this case, content containing immoral elements is included in the prohibited acts in the ITE Law, as stated in Article 27 paragraph (1), namely every person who intentionally and without right distributes and/or transmits and/or makes electronic information accessible and/or or electronic documents that contain content that violates decency.

Regarding vulgar photos or videos uploaded by perpetrators on their Twitter accounts, Article 1 paragraph (1) of the Pornography Law defines pornography as images, sketches, illustrations, photos, writing, sounds, sounds, moving images, animations, cartoons, conversations, movements. body, 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. Paragraph (2) explains that pornographic services are all types of pornographic services provided by individuals or corporations through live performances, cable television, terrestrial television, radio, telephone, internet and other electronic communications as well as newspapers, magazines and other printed materials. Article 10 of the Pornography Law states that every person is prohibited from exposing themselves or others in performances or in public that depict nudity, sexual exploitation, sexual intercourse or other pornographic content. In the explanation of Article 10 of the Pornography Law, it is stated that what is meant by "other pornography" includes sexual violence, masturbation.

Long before the Pornography Law came into effect, the act of disseminating immoral material was already known as a crime. The existence of immoral material circulating freely poses a threat to the interests of society, especially in respect of prevailing decency. The availability of immoral material initially comes from the actions of individuals who create immoral material. As long as immoral material is not disseminated, the immoral material remains the right of the creator to fulfill his sexual

needs.⁵² Haarys and Tiara's uploading of pornographic photos and videos can also be charged under the Pornography Law as regulated in Article 4 paragraph (1), namely that every person is prohibited from producing, creating, multiplying, duplicating, distributing, broadcasting, importing, exporting, offering, selling, renting or providing pornography that explicitly contains: sexual intercourse, including deviant sexual intercourse; sexual violence; masturbation; nudity or display of nudity; genitals; or child pornography.

E. Causes of Groups of Sexual Fantasy Perpetrators on Social Media Becoming Criminals Viewed from Criminology

In discussing the causes of criminal acts, one cannot ignore the science of criminology. The word criminology comes from English which has Latin roots, namely *crimen*, which means crime or criminal and *logos* which means science.⁵³ Criminology can be defined as the science that studies crime. W.A. Bonger defines criminology as a science that aims to investigate all crimes as widely as possible. Edwin Sutherland defines criminology as a body of knowledge that discusses juvenile delinquency and crime as a social phenomenon.⁵⁴

The birth of criminology is the scientific study of crime and is something unexpected or unintentional. These criminological investigations are only intended for the benefit of the development of science, especially the study of crime. The birth of several crime study paradigms in the 1970s in relation to legal perspectives and social organization means that criminology has been linked to and cannot be separated from the development of societal structures. In short, it can be said that crime which is the focus of every discussion of criminological theory is no longer value-free from the influence and interaction of several factors such as social, cultural, economic and political.⁵⁵ In criminology there are several theories, namely:⁵⁶

1. The theory that seeks the causes of crime from physical characteristics or also called criminal biology. This theory, pioneered by Cesare Lambroso, essentially states that crime is that criminals represent a type of physical oddity, which is different from non-criminals. In his development, Lambroso discovered the fact that evil humans could be characterized by their physical characteristics. Lambroso classifies criminals into 4 groups, namely: born criminal (born as a

⁵²Christianto, Hwian. (2017). *Kejahatan Kesusilaan Penafsiran Ekstensif dan Studi Kasus*. Yogyakarta: Suluh Media, p. 46.

⁵³Widodo, Wahyu. (2015). *Kriminologi & Hukum Pidana*. Semarang: Universitas PGRI Semarang Press, p. 1.

⁵⁴*Ibid.*, hlm. 1-2.

⁵⁵Atmasasmita, Romli. (2009). *Perbandingan Hukum Pidana Kontemporer*, Jakarta: PT Fikahati Aneska, pp. 15-16.

⁵⁶Widodo, Wahyu. *Op.Cit.*, pp. 53-58.

criminal), insane criminal (people who become criminals as a result of some changes in their brain that interfere with their ability to differentiate between right and wrong), occasional criminal (perpetrator of crimes based on continuous experiences that affect their personality), and criminals of passion (criminals who commit acts out of anger, love, or honor).

2. The theory of crime from psychological and psychiatric factors or also called criminal psychology. According to W.A. Bonger, criminal psychology in the narrow sense includes the study of the souls of individual criminals. In a broad sense, it includes the narrow meaning and spirit of classification of criminals, the involvement of a person or group either directly or indirectly and the consequences thereof. Criminal psychology is studying the psychological characteristics of healthy criminals, meaning healthy in the psychological sense.
3. The theory of crime from socio-cultural factors or also called criminal sociology. This theory is grouped into 3 categories, namely: *anomie* (absence of norms) or strain (tension), cultural deviance, and social control. The main object of criminal sociology is to study the relationship between society and its members between groups, whether because of the relationship between place or ethnicity and its members between group and group as long as this relationship can give rise 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.
4. Theories that explain crime from other perspectives. Several theories from other perspectives on crime, namely: socialist theory which says that deviation is the result of a learning process. Deviation is a consequence of proficiency and mastery of attitudes or actions learned from deviant norms, especially from subcultures or being in a deviant environment. The second theory is the labeling theory by giving a label/brand to someone who often commits mischief or crime. Labeling in this sense is labeling as a result of society's reaction.

The sexual fantasy activities carried out by Haarys and Tiara are a form of criminal acts of online prostitution and pornography. If viewed from a criminological perspective, this act is a manifestation of:

1. Absence of norms (*anomie*), namely the activities of perpetrators of sexual fantasies who deliberately carry out activities such as threesomes, swingers, or cuckolds for a fee, then upload them on social media, and use social media media to continue carrying out these activities without paying attention to norms which applies in Indonesia. *Anomie* is a condition where society does not provide much moral guidance to individuals or society who have lost ethics;

2. Cultural deviations that develop among social groups, especially social media users. This sexual fantasy activity using social media is the result of a process of learning about deviant and developing norms through social media as well, which is learned by the perpetrators so that they have skills in using social media applications. This aims to ensure that they find partners easily, so that they are not blocked by social media application providers, and so that their actions are not detected by law enforcement officials;
3. These perpetrators are classified as occasional criminals, because they commit criminal acts of prostitution and pornography under the guise of sexual fantasy activities based on continuous experiences that affect their personality.

CONCLUSION

From the research and discussions carried out by the author, although sexual fantasy activity is a normal activity, several actions carried out by groups of sexual fantasy perpetrators who use social media constitute violations of norms, morality and criminal acts. Pornography itself is a form of violation of appropriate values, norms and morality in society, especially moral norms. Apart from that, the perpetrators can also be qualified as committing criminal acts of online prostitution and criminal acts of pornography. The causes of criminal acts of pornography and prostitution in the form of sexual fantasies using social media are one of the negative impacts of technological developments, cultural deviations and actions that are learned from deviant norms that develop in social groups, and forms of the absence of norms (*anomie*). Efforts that can be made to overcome this problem include: carrying out cyber patrols, cutting off access to electronic systems that violate statutory provisions, and carrying out repressive efforts against the perpetrators.

Based on the research that has been carried out, the author has several suggestions as follows: first, internet access service providers and PSE need to block sites that contain pornographic content to the maximum extent as mandated in Permenkominfo 5/2020. Second, law enforcers, especially the National Police, need to carry out cyber patrols regularly and optimally. Third, the Ministry of Communication and Information needs to terminate access to private PSE electronic systems that have violated statutory provisions. Fourth, it is necessary to provide education for groups of people who are vulnerable to sexual fantasies and pornography. Fifth, carry out repressive efforts against perpetrators of criminal acts of prostitution and sexual fantasy pornography using social media.

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