

LEGAL STUDIES REGARDING PORNOGRAPHY ON LIVE STREAMING THROUGH SOCIAL MEDIA IN THE ERA OF DIGITAL DISRUPTION

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Abstract

Technology in human life lately is increasingly needed and continues to develop. One form of development that occurs is the emergence of the Live Streaming feature. This feature appears on various social media platforms. There are even new applications that are intended to do Live Broadcasting—unfortunately, not only positive things that emerged due to this development. There have been several cybercrimes (cyber laws) that have negatively influenced internet users. Among them is the emergence of internet pornography. There is much Live Streaming that contains pornography in Live Broadcasting applications. The approach method used in this research is normative juridical, by examining the literature and reviewing positive law, which relates to the Law of Technology, Information and Electronic Transactions, and the Law of Pornography. This research will study the most appropriate way to regulate how Live Streaming containing pornography is viewed from Law Number 11 of 2008 jo. Law Number 19 of 2016 concerning Information and Electronic Transactions (ITE act) and Law Number 44 of 2008 concerning Pornography (Pornography act) and actions that the Government can take to minimize pornographic content on Live Streaming on social media in Indonesia.

Keywords : Live Streaming; Pornography; Social Media.

A. INTRODUCTION

In this era, the internet is a familiar thing. Humans in this era cannot be separated from the internet to fulfill their needs, both for work, as a medium of entertainment, for communicating and socializing, shopping, and others. The internet, in this case, provides all kinds of information, both social communication and other information. This includes social media. From various backgrounds

and ages, almost all Indonesians own and use social media to obtain and convey information to the public.

Social media or social networking sites are media or means for sharing personal data or information, communicating with each other, sharing stories, posting writings, pictures or

videos.¹ Social media can be accessed by anyone and can connect people worldwide. There are various kinds of social media present, ranging from social networks (Facebook, Twitter, Linked-In, Whatsapp, Line, Instagram), streaming sites (bigoo, BeLive, Tik Tok, etc.), content sharing sites (YouTube, flicker), blogs (bloggers, word press) and others. Through this social media network, people in Indonesia can share information.

In Indonesia, based on research conducted by HootSuite, a content management service site that provides online media services connected to various social networking sites, as many as 160 million people out of the 272.1 million Indonesian population will use social media actively in 2020.² Based on Article 23 paragraph (2) of Law Number 39 of 1999 concerning Human Rights, it is stated that everyone is free to have, issue, and disseminate opinions according to his conscience, orally and or in writing through print and electronic media with due regard to religious values. Morality, order, public interest, and the integrity of

the state. This regulation then becomes the legal basis for human freedom to use social media to express opinions and share stories or other activities that can be uploaded on their own social media networks.

As time goes by and technology develops, a live broadcasting feature appears or is commonly referred to as Live Streaming. Live broadcasting in this era is increasingly being used. Various social media have recognized this and have started to support this feature on their respective platforms. Live streaming or live broadcasting in question is a feature provided by social media for account owners to use anytime and anywhere without exception. This feature is interactive. The audience can later comment or provide other reactions during the live streaming. In his book entitled "The social media bible: tactics, tools, and strategies for business success," Safko describes livecasting (live broadcasting / live video streaming) as a continuation of the trend of video content on social media. Initially, people used livecasting to share about their personal

¹ Mutma, F. S. (2019). Deskripsi pemahaman cyberbullying di media sosial pada mahasiswa. *Jurnal Komunikasi*, 13(2), 165-182

² Reportal, D. (2020, February 18). *Digital 2020 : Indonesia*. Retrieved from DataReportal: <https://datareportal.com/reports/digital-2020-indonesia>

lives on the internet by using multiple devices by relying on video cameras and personal computers (PCs). However, currently, the devices used for livecasting are more accessible and can use smartphones.³

Account users do not need to edit and process videos to do so. Those who wish to broadcast live simply need to turn on the camera and start recording whenever and wherever. In addition, live streaming is interactive so that later viewers can immediately leave comments and reactions during the broadcast. Due to the ease with which the live streaming feature is used, it is not surprising that problems often arise. Internet content contains not only positive content but also contains harmful content and has a severe impact, causing various kinds of issues. The adverse effects of the internet can be in the form of addiction to the internet (addiction), cyberbullying (cyberbullying), cyber pornography (cyber pornography), health risks, fraud, etc. This is no exception for live streaming content on social media.

³ Agustina, L. (2018). Live Video Streaming sebagai Bentuk Perkembangan Fitur Media Sosial. *Diakom: Jurnal Media dan Komunikasi*, 1(1), 17-23.

The negative impact that is often a source of public unrest is how easily pornography can be displayed. According to the Big Indonesian Dictionary, what is meant by pornography is the erotic depiction of behavior by painting or writing to arouse lust.⁴ Meanwhile, according to Article 1 point 1 of Law Number 44 of 2008 concerning Pornography, it is explained that:

“Pornography is pictures, sketches, illustrations, photographs, writings, sounds, sounds, moving images, animations, cartoons, conversations, gestures, or other forms of messages through various forms of communication media and public performances, which contain obscenity or sexual exploitation that violates the norms of decency in the society.”

In the Pornography Law, it is stated that the scope of pornography includes information that explicitly contains sexual intercourse, including deviant acts, sexual violence, masturbation or masturbation, nudity, or display that suggests nudity, genitalia, or child pornography.

⁴ Depdikbud. (1990). *Kamus Besar Bahasa Indonesia*. Jakarta: Balai Pustaka

According to Article 4 paragraph (1) of Law Number 44 of 2008 concerning Pornography (Pornography Law), everyone is prohibited from producing, making, reproducing, making, reproducing, distributing, broadcasting, importing, exporting, offering, trading, renting out, or providing pornography that explicitly contains:

- a. intercourse, including deviant intercourse;
- b. sexual violence;
- c. masturbating;
- d. nudity or an impressive display of nudity;
- e. genitals;
- f. child porn.

The world that is so wide has now become so narrow and borderless due to the existence of information technology supported by the internet, which in its concrete form, in this case, is present in the form of social media applications.⁵ The presence of social media through the internet network contributes significantly to the spread of pornography because the internet has offered diversity and freedom of access to

information for its users without having to be bound by restrictions and censorship. Moreover, sites with user-generated content sources will not be separated from the risk that users will upload various content as they please, including pornographic content. The Indonesian government must act to reduce harmful content in cyberspace. The government, in this case, must comply with the principles of limitation, as regulated in Article 19 (3) of the ICCPR, which reads:

"The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary"

This article states that freedom of opinion and expression must respect the rights or reputation of others and do not pose a threat to national security, public order, health, and morals. These international instruments stipulate that freedom of opinion and expression are derogable rights, namely rights that can be limited or reduced.⁶

⁵ Puluhalawa, M. R. U., & Husain, R. (2021). Body Shaming Through Social Media As a Digital Crime In The Era of Disruption. *Jambura Law Review*, 3(1), 112-123.

⁶ Ardani, H., & Nasution, M. M. (2019). Memilih Dan Dipilih, Hak Politik Penyandang Disabilitas Dalam Kontestasi Pemilihan Umum: Studi Daerah Istimewa Yogyakarta. *Jurnal HAM Badan Penelitian dan Pengembangan Hukum dan HAM*, 2, 166.

Likewise with Live streaming in Indonesia. The regulation of live streaming is being debated. Concerning cyber pornography, a form of cybercrime, all crimes and things prohibited in cyberspace in Indonesia is regulated in Law Number 11 of 2008 concerning Information and Electronic Transactions. Regarding pornography, the ITE Law stipulates in Article 27 paragraph (1) that:

“Every person intentionally and without rights distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that have content that violates decency.”

In this Article, pornography is alluded to in the term “content that violates decency” as an extension of pornography. Thus, it can be seen that there are still minimal regulations regarding cyberpornography, including live streaming activities.

Pornography in the live streaming feature keeps popping up on different platforms, even though the regulations regarding blocking and the obligations of Electronic System Operators (PSE) in maintaining content on their media are already regulated in Indonesian laws and regulations. This shows that the existing arrangements are still not efficient in

minimizing the spread or ongoing live streaming containing pornographic content.

B. Problem Research

This study will answer 2 (two) questions as the formulation of the problem, namely first, how is the qualification of pornographic legal actions on live streaming through social media applications in the era of digital disruption based on Law Number 11 of 2008 Juncto Law Number 19 of 2016 concerning Information and Electronic Transactions and Law No. -Law Number 44 of 2008 concerning Pornography? and second, what legal action can the Government take in reducing pornographic content on live streaming based on Law Number 11 of 2008 Juncto Law Number 19 of 2016 concerning Information and Electronic Transactions and Law Number 44 of 2008 concerning Pornography?

C. Research Method

This study uses a normative juridical approach which is carried out by examining library materials or secondary

data as the primary research material.⁷ This study will analyze and examine secondary data in the form of positive law, legal principles, theories, and legal regulations related to the Law of Technology, Information, and Communication and the Law of Pornography. The research specifications in this study are descriptive-analytical by analyzing the facts that exist in society and the regulations that apply in legal theories, and the practice of implementing positive law regarding the above problems.⁸

ANALYSIS and DISCUSSION

A. Legal Qualification of Pornography on Live Streaming Through Social Media Applications in Indonesia

The emergence of the internet can result from the information revolution, which is impressive and proud because it contains practical characteristics and makes it easy, both for use by individuals and organizations or institutions, in various aspects of life. These

characteristics cannot be separated from the strength and speed of the internet in its operational setting, which among other things, can penetrate space and time. The development of the internet as a medium of unlimited information has touched various aspects of people's lives, including creating a new living space known as cyberspace or cyberspace. All forms of benefits in it bring their negative consequences. The easier it is for criminals to carry out their actions, the more disturbing the community. The abuse that occurs in cyberspace is then known as cybercrime, or in other literature, the term computer crime is using.⁹

These characteristics should be observed that the misuse of the internet impacts the emergence of crimes such as pornography using social media accounts.¹⁰ Pornography can use various media such as written and spoken text, photographs, engravings, moving images (animation), and sound. Porn movies or videos combine these, such as moving images, spoken erotic text, and other

⁷ Soekanto, S. (2007). Penelitian hukum normatif: Suatu tinjauan singkat.

⁸ Sumardjono, M. S. (1989). Pedoman Pembuatan Usulan Penelitian.

⁹ Maskun, S. H. (2014). *Kejahatan Siber (Cyber Crime) Suatu Pengantar*. Prenada Media.

¹⁰ Suharyo. (2012). *Penerapan Bantuan Timbal Balik Dalam Masalah Pidana Terhadap Kasus-Kasus CyberCrime*. Jakarta: Badan Pembinaan Hukum Nasional Departemen Hukum dan Ham

erotic sounds. Print media often combine photos and written text. In contrast, in social media, it is usually referred to as cyberporn (cyber pornography), which is pornography that is spread through internet media by uploading pornographic videos, moving animations, and erotic images.

The crime of pornography in Indonesia is not only regulated in the Pornography Law but is also regulated in the Criminal Code. The crime of pornography in the Criminal Code is categorized as an offense of morality. Especially for pornography in cyberspace is known as Cyber pornography. The distribution of pornographic content through the internet is not explicitly regulated in the Criminal Code. There is also no known term/crime of pornography in the Criminal Code. However, the articles of the Criminal Code that can be imposed for this act are Article 282 of the Criminal Code regarding crimes against decency, as described above.¹¹ Meanwhile, the term pornography cannot be found in the ITE Law and its amendments, but the sentence "content that violates decency"

is found. The action is regulated in Article 27 paragraph (1) of Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE), which states that:

"Every person who knowingly and without rights distributes and/or transmits and/or makes accessible electronic information and/or electronic documents that have content that violates decency."

In the Criminal Code, pornography is categorized as a moral offense carried out directly and openly by broadcasting, showing, pasting, making, bringing in, and providing writing and sending it now. Then, the Pornography Law provides a more explicit definition of pornography and its distribution. Meanwhile, Article 27 paragraph (1) of Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE) states that pornography is categorized as a moral offense disseminated explicitly through social media.

Article 1, number 1 of the Pornography Law, as *lex specialis* in the crime of pornography through the internet, has more clearly defined

¹¹ Hasanah, S. (2019, 2 12). *Aturan tentang Cyber Pornography di Indonesia*. Retrieved from HukumOnline.com:

<https://www.hukumonline.com/klinik/detail/ulasan/lt4b86b6c16c7e4/aturan-tentang-icyber-pornography-i-di-indonesia/>

pornography, namely pictures, sketches, illustrations, photos, writings, sounds, sounds, moving images, animations, cartoons, conversations, gestures, or other forms of messages through various forms of communication media and/or public performances, which contain obscenity or sexual exploitation that violates the norms of decency in the society. Based on the comparison of the three laws above, there is no contradiction in regulating pornography crimes on the internet, especially between the Pornography Law and the ITE Law. On the contrary, the three complement each other. The definition or definition of pornography is regulated in the Pornography Law, and how to disseminate pornography on the internet is held in the ITE Law. The Pornography Law is a *lex specialis* of the ITE Law and the Criminal Code in crimes against pornography via the internet. Article 44 of the Pornography Law also states that when this Law comes into force, all laws and regulations governing or relating to the crime of pornography are declared to remain in effect as long as they do not conflict with this Pornography Law.

Therefore, in the case of cyberporn, Article 27 of the ITE Law can be used

against perpetrators. In the ITE Law, the focus of prohibited acts is the act of transmitting, distributing, and/or making accessible information and/or electronic documents charged with violating decency and not on the action of morality itself. This law complements pornographic acts as regulated in the Pornography Law, which is carried out or distributed in cyberspace. This is because pornography is regulated explicitly in the Pornography Law, which is the *lex specialis* of pornography. Thus, legal harmonization can be achieved. Harmonization of law itself is a form of a process and formation of rules and regulations to overcome contradictory matters and irregularities between legal norms, in-laws, and limitations so that national laws and regulations are formed that are harmonious, in the sense of being cooperative, harmonious balanced, with integrity, consistency, and adherence to principles.

However, another opinion arises. Information technology policy and legislation expert Danrivanto Budhijanto believes that internet-based broadcasting still requires convergence norms, which have not been fully accommodated in Law No. 11 of 2008 on Information and

Electronic Transactions, Law No. 36 of 1999 on Telecommunications, and law No. Number 32 of 2002 concerning broadcasting to prevent digital colonialism. In other countries, broadcasting and telecommunications are combined as a single entity or legislation. However, according to him, the constitution in Indonesia does not state that. Danrivanto argues that there is no need for new regulations to regulate the new media. However, it is enough to add the phrase Internet as a technology platform instrument, so that future technological advances can still be controlled within the scope of the Broadcasting Law.¹²

Like other laws and regulations, regulations regarding pornography in Indonesia, of course, also have some drawbacks. In a country where citizens tend to be conservative and coexist with a progressive urban crowd, there is no consensus on what constitutes pornography. In addition, what is meant by disturbing the public and disturbing public order is still not clear in scope. This

ambiguity has led several ministries, agencies, and law enforcement agencies to develop their definitions of controlling content on internet platforms. This gives rise to different and confusing interpretations.

The absence of a clear definition of prohibited content results in the increasing complexity of content moderation by private PSEs. Based on the Legal Development Theory, the law should always appear in front, anticipate changes, show direction and provide a way for development, where the means used are legislation. The law can then be put forward to guide the direction of development goals. However, based on the Progressive Legal Theory initiated by Satjipto Rahardjo, the law is said to be an expressive element. According to him, in direction, there is a balance to channel a thought or work, of course, based on law. The law should be able to answer the developments and requirements of the times.¹³

Therefore, it is natural that many activities occur in cyberspace, and new

¹² Herdiyan. (2020, 10 4). *OTT Manfaatkan Celah Hukum, Pakar Peringatkan Kolonialisme Digital*. Retrieved from Bisnis.com: <https://teknologi.bisnis.com/read/20201002/84/1299684/ott-manfaatkan-celah-hukum-pakar-peringatkan-kolonialisme-digital>

¹³ Puluhalawa, F. U., Puluhalawa, J., & Katili, M. G. (2020). Legal Weak Protection of Personal Data in the 4.0 Industrial Revolution Era. *Jambura Law Review*, 2(2), 182-200.

things will continue to emerge in the future. As a result, the law cannot 100% regulate all human movements, especially on the Internet. It takes self-awareness from everyone regarding the norms of decency, decency, and morals. Humans must know their limits in behavior, not least in the Internet world. Each individual must regulate himself and influence behavior by regulating his environment, creating cognitive support, and providing consequences for his behavior. Therefore we need what is called self-regulation. Social Media must provide facilities that support self-regulation.

Human rights in expression and opinion have been guaranteed in Article 28F of the 1945 Constitution, which reads:

"Everyone has the right to communicate and obtain information to develop their personal and social environment and the right to seek, obtain, possess, store, process, and convey information using all available channels."

Likewise in Article 19, paragraph 2 of the International Covenant on Civil and Political Rights, which Indonesia has ratified into Law Number 12 of 2005 concerning the International Covenant on Civil and Political Rights which has stated

in the main points of the Covenant that the right of people to obtain opinion without interference from other parties and the right to freedom of expression, of course with some conditions. Based on Article 40, paragraph 2(b) of Law Number 19 of 2016 concerning Information and Electronic Transactions (ITE), which reads:

"The government has the authority to cut off access and/or order electronic system operators to cut off access to electronic information and/or electronic documents that have unlawful content."

The government still has the authority to block and close an application. Based on the International Covenant on Civil and Political Rights, which the Indonesian government ratified on October 29, 2005, the government can also restrict freedom of expression for purposes of national security and protection of human dignity against racism, hoaxes, hate speech, and blasphemy as regulated in Article 19 (3) of the ICCPR which reads:

"The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but

these shall only be such as are provided by law and are necessary”

Keep in mind that this limitation needs to be carried out through clear laws and regulations accompanied by clear reasons.

Regarding the implementation of Live Streaming, the Government of Indonesia has tried to accommodate application services and/or content via the internet, which has grown massively through the SE Kemkominfo OTT, which was set on March 31, 2016. Unfortunately, the position of SE Kemkominfo OTT certainly cannot be on a legal basis. Like statutory regulations. If this is explained again, the Circular does not contain behavioral norms (prohibitions, orders, permits, and releases), authority (authorized and not authorized), and stipulations.¹⁴ The materials outlined in the form of such Circulars do not contain any regulation elements at all. They are merely administrative stipulations (beschikking).

Including content on OTT broadcasts, there is no explanation regarding what categories of content should be blocked. It can be seen in Article 43 paragraph (5) of Law Number 19 of 2016 concerning Electronic Information and Transactions (ITE) itself. It does not explain what categories or content can be blocked, for what reasons content can be stopped, how the blocking mechanism includes the mechanism recovery, and so on.¹⁵ This ambiguity and legal vacuum then lead to a problem. The lack of rules regarding internet content has resulted in many blocking actions being carried out arbitrarily. It is arbitrary because Indonesia does not yet have regulations regarding transparent and accountable procedures for stopping internet content. The ITE Law is like giving a blank check to the Government to block it without having the obligation to explain what the real reason for the blocking is¹⁶ The article is considered a dangerous precedent that will drown out public aspirations and bind the right to

¹⁴ Lubis, M. S. (1975). *Pergeseran garis politik dan perundang-undangan mengenai pemerintahan daerah*. Bandung: Alumni.

¹⁵ JNP. (2018, 7 10). *Blokir Tak Efektif, Kominfo Didesak Buat Aturan Konten Negatif*. Retrieved from CNN Indonesia: <https://www.cnnindonesia.com/teknologi/2018071>

0081813-192-312870/blokir-tak-efektifkominfo-didesak-buat-aturan-konten-negatif

¹⁶ PSP. (2020, 9 24). *Aturan Blokir Internet UU ITE Digugat ke MK*. Retrieved from CNN Indonesia: <https://www.cnnindonesia.com/nasional/20200924162845-12-550553/aturan-blokir-internet-uu-ite-digugat-ke-mk>

expression, including being able to quickly silence critical people who disagree with the government's views. This provision also has the opportunity to silence information by affecting the press's performance by blocking the internet and blocking sites.

The norms in the law should provide certainty about how rights restrictions are carried out so that citizens or institutions affected by the restrictions on social media rights know the basis or considerations of the government in deciding and/or taking action to limit the right to information. On this basis, the government is expected to form new flexible and 'technology neutral' regulations so that they are not impervious to further technological developments. The new rule will provide legal certainty to internet-based broadcasters, and there will be no different from a practical perspective or regulation.

B. Legal Actions that the Government Can Take to Reduce Pornographic Content on Live Streaming in Indonesia

¹⁷ Winata, D. K. (2018, 1 7). *Penyedia Layanan Media Sosial Harus Tunduk Aturan*. Retrieved from Media Indonesia:

The Electronic System Organizer (PSE), as the organizer, has its standards, systems, and regulations, including regarding the content in it. Most Electronic System Operators (PSE) have provided a feature called the Safe Search feature, which will filter content based on keywords and a report button that functions as an initial action for the public to report directly if they find harmful content. These features were created as a form of social media moderation to make it easier for PSE to filter out harmful content against each platform's regulations.

In addition to improving the features for safe search and the report button, which must be provided by the platform so that the public can actively prevent and report if they find harmful content,¹⁷ An effort that PSE can make is to block accounts and restrict content. In Indonesia, this blocking has not been regulated in any legal regulations. As previously explained, this action limits human rights, especially the right to information, freedom of opinion, and expression. The presence of the Minister of Communication and Informatics

<https://mediaindonesia.com/humaniora/139622/penyedia-layanan-media-sosial-harus-tunduk-aturan>

Regulation No. 19 of 2014 concerning the Handling of Internet Sites with Negative Content, which the government intended to answer the legal vacuum, has given rise to its polemic. The government provides blocking authority to Internet Service Providers (ISPs) to tackle crimes based on electronic media content. The policy basis is not sufficient because no institution is trusted to guarantee accountability and transparency as part of protecting the rights of consumers or internet content users so that in overcoming crimes based on electronic media content, the government does not yet have an independent body.

Then, the government has also made other efforts to overcome harmful content on the internet, including pornography, namely by making the Decree of the Minister of Communication and Information Number 290 of 2015 concerning the Forum for Handling Internet Sites with Negative Content. Based on the Decree of the Minister of Communication and Information Number 290 of 2015 concerning the Forum for the Handling of Internet Sites with Negative

Content. The Ministry of Communications and Information Technology has determined the establishment of a Forum for Handling Internet Sites with Negative Content, which consists of several assessment teams with the structure set out in the same decision, namely: Panel on Pornography, Violence Against Children, and Internet Security; Panel on Terrorism, SARA and Hate; Panel on Illegal Investment, Fraud, Gambling, Drug & Food, and Drugs; and the Intellectual Property Rights Panel. The task of each assessment panel team is only to provide recommendations and verify internet sites that need to be blocked, which determines which areas will then be blocked. and also some famous figures.¹⁸

In response to this, The Institute for Criminal Justice Reform (ICJR) views that this forum's establishment has no legal basis. The Minister of Communications and Informatics does not have the authority to establish such a Forum, let alone add to this illegal forum's management to assess whether a site is unlawful or not. considered unlawful or not.¹⁹ ICJR emphasizes that the act of

¹⁸ Anam, K. (2015, 4 5). *Blokir Situs Negatif, Keputusan Ada di 11 Orang*. Retrieved from Tempo.co: <https://nasional.tempo.co/read/655362/blokir->

[situs-negatif-keputusan-ada-di-11-orang/full&view=ok](https://nasional.tempo.co/read/655362/blokir-situs-negatif-keputusan-ada-di-11-orang/full&view=ok)

¹⁹ Institute For Criminal Justice Reform. (2015, 4 3). *ICJR Kritik Pembentukan Forum Penanganan Situs Internet Bermuatan Negatif*. Retrieved from

closing, blocking, and/or screening an internet site is a limitation on the right to access information, and based on the provisions of Article 28 J of the 1945 Constitution, all restrictions on human rights must be carried out by law. Until now, the law as referred to in Article 28 J of the 1945 Constitution to deal with blocking/closing/filtering internet sites has never been enacted by the Government together with the DPR, therefore the actions taken by the Minister of Communications and Informatics issued Minister of Communication and Informatics Regulation No. 19 of 2014 concerning the Handling of Internet Sites with Negative Content and the Decree of the Minister of Communication and Informatics No. 290 of 2015 concerning the Forum for the Handling of Internet Sites with Negative Contents are entirely contrary to the 1945 Constitution and violate the principle of people's sovereignty.²⁰

The explanation above shows that the Indonesian Government in regulating digital media has implemented a

'deregulation' or 'self-regulation' strategy, where the principal regulations only provide limits, then the detailed rules are returned to each platform.²¹ If you pay attention, platforms like YouTube, TikTok, and Instagram have Community Guidelines, one of which regulates details regarding content. This is done because, unlike conventional media, digital media is an unlimited source of information and involves many parties, countries, and cultures, so regulating it in detail is difficult and even almost impossible to do. The rise of pornographic content, terrorism, and endless cyber-bullying in digital media makes the government rethink whether the deregulation strategy is still relevant at this time, significantly to regulate live streaming, which we never know what will happen in the future. There.

Indonesia needs to follow international standards. For example, Electronic System Operators in the United States can freely expand their business and innovate without fear of lawsuits. The existence of Section 230 of

ICJR: <https://icjr.or.id/icjr-kritik-pembentukan-forum-penanganan-situs-internet-bermuatan-negatif/>

²⁰ *Ibid*

²¹ Rachmawaty, M. (2020, 9 2). *Meninjau Kembali Strategi Regulasi Media Digital di Indonesia*.

Retrieved from Kompas.com: <https://www.kompas.com/tren/read/2020/09/02/091903265/meninjau-kembali-strategi-regulasi-media-digital-indonesia?page=all>

the Communications Decency Act of 1966 causes PSE to gain immunity from legal liability arising from user content that does not comply with the rules. Through these regulations, the US government intends to safeguard innovative solutions for online providers and allow them to create their standards for UGC.²² In Indonesia, regarding accountability, the Minister of Communication and Informatics Regulation Number 5 of 2020 concerning the Implementation of Private Scope Electronic Systems indirectly recognizes the principle that UGC is ethically and legally owned by the content creators concerned. Ownership also remains with the individual content creator, regardless of whether the content created offers a product or service or contains news, general information, analysis, or opinion. Regulation of the Minister of Communication and Information (Kominfo) Number 5 of 2020 also prohibits certain types of content in Article 9, paragraph 4, which reads:

“Electronic Information and/or Electronic Documents that are

prohibited, as referred to in paragraph (3), are classified as:

- a. violate the provisions of laws and regulations;
- b. disturbing the public and disturbing public order, and
- c. notify the way or provide access to Electronic Information and/or Electronic Documents that are prohibited.”

According to the article, what is meant by prohibited content is content that violates the provisions of laws and regulations, disturbs the public, and disturbs public order. Unfortunately, this Ministerial Regulation does not provide a clear definition, especially for those deemed to be "disturbing the public and disturbing public order."²³

This article provides a comprehensive interpretation and has the potential to be misused. Without clear definitions for prohibited content, filtering and moderating content on the PSE platform in line with government regulations becomes even more complicated. This risks causing PSE to

²² Setiawan, I. (2021, 4 20). *Siapa yang Bertanggung jawab Atas Konten Buatan Pengguna (UGC) Pada Platform Digital di Indonesia?* Retrieved from CIPS Indonesia: <https://id.cips->

indonesia.org/post/siapa-yang-bertanggung-jawab-atas-konten-buatanpengguna-ugc-pada-platform-digital-di-indonesia

²³ *Ibid*

block content excessively because of doubts about the legality of the content.²⁴

International cooperation in eradicating cybercrimes is a consequence of the expansion of criminal jurisdiction because a country cannot freely exercise its power in the territory of another country. The implementation of jurisdiction over cybercrimes is pursued through international cooperation to maintain law and justice without violating sovereignty between nations. International cooperation that can be carried out is extradition, mutual legal assistance, cooperation between law enforcers, the police and the police, and others.²⁵ International cooperation in the form of mutual legal assistance in eradicating cybercrimes related to accurate time information, requirements for requests for help without applicable international agreements, confidentiality, and limitations in use, accelerating the maintenance of stored computer data, accelerating the attitude of maintained traffic data, service to access stored data, cross-border access to stored computer data with permission or generally

available, assistance in direct traffic data collection, assistance in retrieval of data content by interception, and point of contact.²⁶

This self-regulation causes PSE to be free from responsibility for the content on its platform. UGC-based PSE has immunity from duty with the existence of a safe harbor policy. A safe harbor policy is a government policy that separates the responsibilities of providers of online trading sites with a User Generated Content (UGC) based marketplace concept from sellers who use their services. The first safe harbor policy was regulated in the United States copyright law of 1976, which was last updated on June 30, 2016, and the Digital Millennium Copyright Act (DMCA) of 1998. In principle, the safe harbor provisions regulated in America relieve the responsibility of electronic system operators if the system is a means of control to anticipate illegal content. However, if the electronic system operator does not have a plan (technological power), vicarious liability

²⁴ *Ibid*

²⁵ Suseno, S. (2012). *Yurisdiksi Tindak Pidana Siber*. Bandung: Refika Aditama.

²⁶ *Ibid*

may be imposed on the electronic system operator.

On that basis, the government, through the Ministry of Communication and Information Technology, issued a Circular Letter of the Minister of Communication and Information of the Republic of Indonesia Number 5 of 2016 concerning Limitations and Responsibilities of Platform Providers and Traders (Merchant) for Trading Through Electronic Systems (Electronic Commerce) in the form of User-Generated Content. This policy aims to provide guidelines for Platform Providers or Electronic System Operators and Merchants (Merchant) in terms of limitations and responsibilities in operating on the Internet. This circular also regulates prohibited content and the obligations and duties of UGC platform providers and traders. Content that is not permitted from uploading on the UGC platform, including:

- Goods and/or services that contain harmful content (pornography, gambling, violence, and content of goods and services that violate laws and regulations)

- Goods and/or services that do not have a license to be traded following statutory provisions

Meanwhile, the obligations and responsibilities of the UGC platform provider include providing terms and conditions for UGC platform users and reporting facilities and mechanisms for removing and blocking prohibited content. Unfortunately, the Minister of Communication and Informatics Regulation No. 5 of 2020 only exempts online organizers from their responsibilities towards UGC if they ensure their platforms do not contain and facilitate prohibited content. There is no bad intention from any PSE to reduce banned content. All use of the platform depends on how the user uses it. PSE cannot control the content of its platform 100%. The Regulation states that UGC-based private PSEs “may be released” from liability only if they meet all content moderation requirements. As stated in Article 11, User Generated Content Private Scope PSE can be released from legal responsibility regarding prohibited Electronic Information and/or Electronic Documents transmitted or distributed through its Electronic System in the case of Private Scope PSE:

- a. Have performed the obligations as referred to in Article 9 paragraph (3) and Article 10;
- b. Provide Electronic System User Information (Subscriber Information) who uploads Electronic Information and/or Electronic Documents that are prohibited in the context of supervision and/or law enforcement;
- c. Termination of Access (takedown) to Electronic Information and/or Electronic Documents that are prohibited.

The ambiguity in the use of the word in Article 11 of the Minister of Communication and Informatics Regulation Number 5 of 2020 shows that exemption is only an option for PSE. PSE in the private sphere is still liable to be held accountable. Although the Circular Letter of the Minister of Communication and Information of the Republic of Indonesia Number 5 of 2016 concerning Limitations and Responsibilities of Platform Providers and Traders (Merchant) Trading Through Electronic Systems (Electronic Commerce) in the form of User Generated Content and Government Regulation Number 71 of 2019 concerning the Implementation of

Electronic Transaction Systems (PSTE) has been issued, Indonesia still needs more robust regulations to regulate content on social media in the form of laws, which have higher legal force.

Due to the absence of strong legal guidelines, there is uncertainty and loss for the private sector PSE and ignoring safe harbor standards, which state that the organizers cannot be held responsible. The Safe Harbor Policy, which is part of the Digital Millennium Copyright Act (DMCA) in the US, provides PSE protection, especially in the marketplace, the market platform for UGC, and both news and product profiles for both news and product profiles E-marketplaces. In the Circular Letter of the Minister of Communication and Information of the Republic of Indonesia Number 5 of 2016 concerning Limitations and Responsibilities of Trading Platform Providers and Merchants (Merchant) Through Electronic Systems in the Form of UGC, it is stated that PSE can only be released from liability if it can be proven that errors and/or omissions have occurred. Merchants or Platform users. This Circular means to explain that PSE can still be responsible for the content on

its platform, which ignores the safe harbor principle.

However, when we talk about obligations, there is also something called responsibility. Responsibility must be carried out if the deficit is not fulfilled, namely in sanctions and or compensation, so that justice can be achieved. Based on the existing provisions, PSE has obligations that must be fulfilled to operate in Indonesia. So, in theory, there should be sanctions for social media platforms or companies if they fail to carry out their obligations mentioned in the previously mentioned regulations, including if PSE fails to monitor and allow harmful content to circulate in their sanctuary.²⁷

As has been done in Germany since 2018 with its law known as the Network Enforcement Act (NetzDG), this law regulates several regulatory concepts, such as definitions that include hate speech and fake news referencing the applicable criminal law, as well as strictly regulates harmful content on social media platforms and provides sanctions in the form of fines if the platform does

not immediately remove harmful content. This law applies to social media companies with more than two million users in Germany. The principal obligation of social media platforms is that they must have a content violation mechanism through community standards. In addition, the action taken must be within 24 hours, except in complicated cases, a maximum of seven days.²⁸ The regulation also requires PSE to establish clear procedures for filing complaints related to content and removing illegal content. Companies that fail to comply with this rule can be fined a maximum of 50 million EUR or around 860 billion rupiah. A fine for individuals who upload illegal content is 5 million EUR, equivalent to 86 billion rupiahs.²⁹

However, the primary step in protecting the platform from harmful content is self-regulation, namely by reporting (report) and blocking content or accounts (Block). The control mechanism is needed to ensure that the private sector PSE can comply with all applicable laws and regulations in the territory of Indonesia. In Indonesia,

²⁷ Rachmawaty. *Loc.Cit*

²⁸ Rizkinaswara, L. (2019, 2 21). *Pro dan Kontra UU Media Sosial (NetzDG) di Jerman*. Retrieved from Direktorat Jenderal Aplikasi Informatika

Kementerian Komunikasi dan Informatika RI: <https://aplika.kominfo.go.id/2019/02/pro-dan-kontra-uu-media-sosial-netzdg-di-jerman/>

²⁹ Rachmawaty. *Loc.Cit*

regarding the control mechanism, PSE is required to provide reporting facilities based on Article 10 Paragraph (1) Permenkominfo Number 5 of 2020, which reads:

“To fulfill the obligations as referred to in Article 9 paragraph (3), PSE Private Scope User-Generated Content must: a. have governance regarding Electronic Information and/or Electronic Documents and b. provide reporting tools.”

Unfortunately, the deregulation or self-regulation strategy that the Indonesian government has implemented for digital media is still not able to manage content traffic effectively, so the government needs to adapt by thinking about the following strategy. Of course, the regulations cannot be equated with conventional media (radio and television) because their characteristics are different.³⁰ Due to the above reasons, the Government of Indonesia should consider using UGC's co-regulation method with the private sector.

The existence of dialogue between the government and the private sector

and the division of responsibilities will help the legal process be more relevant and able to continue to develop in line with the rapid development of a very dynamic digital landscape and remain open to innovation and technological developments. This action is in line with what has been described in the Center for Indonesian Policy Studies (CIPS) research, which recommends co-regulation or co-regulation in the regulatory formulation process to provide options to increase the effectiveness of preventing prohibited content. Co-arranging is a regulatory approach that focuses on the dialogue between government and the private sector and the broad division of responsibilities between government and non-government. It focuses on collaboration to create, adopt, implement, and evolve policies and regulations. This collaboration facilitates the implementation of rules and considers the interests of the private sector. Or in other words, it provides space and impetus for innovation and growth.³¹

³⁰ *Ibid*

³¹ Bisnis.Com. (2021). *Definisi Konten Negatif di Permenkominfo No. 5/2020 Perlu Diperjelas*. Retrieved from Bisnis.Com:

<https://kabar24.bisnis.com/read/20210425/15/1385880/cips-definisi-konten-negatif-di-permenkominfo-no-52020-perlu-diperjelas>

Wessels Manggut, Chair of the Indonesian Cyber Media Association (AMSI), encouraged the Indonesian government to follow the example of what the German government has done through the NetzGD Law that regulates the social media platform. Wens believes that the ITE Law regulates social media users, not social media platforms. Social media platforms must also be responsible for harmful content, namely if their obligations are not fulfilled.³² It should be emphasized that the critical point of imposing criminal penalties on corporations operating electronic systems is not disciplinary. This is aimed at ensuring compliance with the Electronic System Operator.

Another effort that the Government can make to minimize pornography on social media, including the Live Broadcasting application, is to expand the definition in the ITE Law. Digital and Social Media Expert, Anthony Leong, said, "Regarding the misuse of the ITE Law, there are many factors. One of the reasons is that the settings are too broad and not well defined." He believes that the ambiguous existence of the ITE Law and

rubber articles makes this law vulnerable to misuse. Indeed, sometimes discussions on social media need to be handled with maturity. Currently, the digital world is very developed, and people are increasingly using social media to disseminate information. The revision of the ITE Law will later regulate clear blocking procedures, including categories of prohibited content. This is done so that PSE is protected from government arbitrariness. In this way, PSE can avoid being afraid to sort out the content on each platform without going against the norms of decency in Indonesia.

CONCLUSION

The crime of pornography in Indonesia is not only regulated in the Criminal Code but is also regulated in the Pornography Law and the ITE Law. These three laws are complementary, but it should be noted that based on Progressive Legal Theory, the law is said to be an expressive element. In the law, there is a balance to channel a thought or work, of course, based on the law. Therefore, it is natural that there will be a lot of new activities that occur in cyberspace that will appear in the future,

³² Susanto, V. Y. (2021, 2 23). *Pemerintah didorong terapkan regulasi soal media sosial dalam revisi UU ITE*. Retrieved from NewsSetup:

<https://newssetup.kontan.co.id/news/pemerintah-didorong-terapkan-regulasi-soal-media-sosial-dalam-revisi-uu-ite>

both positive and negative. As a result, the law cannot 100% regulate all human movements, especially on the internet.

Therefore, everyone must have self-awareness regarding the norms of decency, decency, and morals. Each individual must regulate himself and be aware of the consequences of his behavior on the internet. Therefore we need what is called self-regulation. Social Media must provide facilities that support self-regulation and follow up quickly. Unfortunately, the Circular Letter of the Minister of Communications and Information Technology of the Republic of Indonesia Number 5 of 2016 concerning the Limits and Responsibilities of Platform Providers and Traders (Merchant) through Electronic Commerce in the Form of UGC, which is the primary basis for UGC-based PSEs in Indonesia, provides opportunities for PSE is responsible for user-uploaded content. In contrast, PSE should not be liable for liability because of the safe harbor principle. On this basis, the Government is expected to form new, more transparent, more flexible regulations, have permanent legal force, and are 'technology neutral' to not be

impervious to further technological developments.

The deregulation or self-regulation strategy that has been implemented by the Indonesian Government based on Permenkominfo Number 5 of 2020 for digital media is still not able to regulate content traffic effectively. Action that the Government of Indonesia can take is to consider using the UGC co-regulation method together with the private sector. The existence of dialogue between the government and the private sector and the division of responsibilities will help the legal process be more relevant and able to continue to develop in line with the rapid development of a very dynamic digital landscape and remain open to innovation and technological developments. This action is in line with what has been described in the Center for Indonesian Policy Studies (CIPS) research, which recommends co-regulation or co-regulation in the regulatory formulation process to provide options to increase the effectiveness of preventing prohibited content.

The suggestions that can be given in this study are:

First, the government is expected to form new, more precise, more flexible regulations, have permanent legal force, and are 'technology neutral' so that they are not impervious to further technological developments regarding live streaming. These regulations can discuss the structured blocking process, content that can be circulated, etc.

Second, the effort that the Indonesian government can make to minimize the occurrence of pornography on live streaming in Indonesia is to consider using the UGC co-regulation method together with the private sector. The existence of dialogue between the government and the private sector as well as the division of responsibilities will help the legal process to be more relevant and able to continue to evolve in line with the rapidly changing digital landscape, which is very dynamic and to remain open to innovation and technological developments in making new regulations. The use of co-regulation or co-regulation in the regulatory formulation process can provide options to increase the

effectiveness of preventing harmful content.

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