



## QUESTIONS ON THE APPLICATION OF THE LATEST LAW NUMBER 12 OF 2022 CONCERNING ONLINE MEDIA-BASED CRIMINAL ACTS OF SEXUAL VIOLENCE

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### ABSTRACT

Sexual harassment has become a social problem that is still widely encountered, both directly and through online media such as Instagram, Twitter Facebook, Youtube, Whatsapp, and TikTok. How the form of application of the crime still seems to have multiple interpretations even though the crime continues to occur. Based on this background, this research focuses on how the law on sexual harassment through online media is applied in Indonesia. The type of analysis used is normative legal analysis using a legal approach and a conceptual approach. The legal materials used consist of primary legal materials and secondary legal materials. The technique of collecting legal materials is done by using library techniques. The legal material analysis technique used is descriptive analysis, this analysis uses materials that have been obtained and then systematically arranged which will then be analyzed. The results of this study are that prior to the existence of the TPKS Law, the application of the criminal act of sexual harassment through online media was not specifically regulated in existing laws. So that in its completion it can use several laws and regulations such as the Criminal Code, the Pornography Law, and the ITE Law. This is what causes the occurrence of two or more similar cases that may differ in the statutory rules used in each case. So that the existing laws can overlap with each other in their application to cases of sexual harassment through online media.

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**Keywords:** Crime, Sexual harassment, Online media.

### INTRODUCTION

In fact, a crime of decency can be interpreted as a crime related to moral values, including moral values related to sexuality and desire. However, this decency cannot be easily interpreted. This is due to the vast territory of Indonesia and various types of decency norms that develop in society. In this sense, moral norms can be obtained and interpreted differently by people in different communities (Budde et al., 2022). Basically, all the crimes in it have a moral value. It can even be said that the value of morality is the law itself. There is still a gray understanding after handling decency cases in Indonesia, because there is no clear explanation of the meaning of

decency in criminal law, making it difficult to uphold the decency law, in this case verbal sexual harassment.

Sexual violence is a form of violence caused by sexual problems, and minor sexual violence is a form of verbal sexual harassment. B. Verbal criticism, pornographic jokes, jokes such as facial expressions and gestures, or other behavior that requires unwanted sexual attention from the victim (Budde et al., 2022; Intania & WPW, 2022). This is harassment or humiliation of the victim. Harassment itself is often seen as a violation because it forces someone to do something harmful, namely having sexual intercourse, and also causes someone to be harassed. Sexual harassment is sexual activity carried out through direct

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physical or non-physical contact (Xue et al., 2023). The victim feels uncomfortable and then humiliated again. Most sexual harassment is carried out verbally through the mass media, and verbal harassment is carried out verbally by making one-sided comments on other people, on their body, appearance, often jokes and sexuality, carried out through jokes containing content. Sexual harassment with words in the mass media (Pevac, 2022; Rahmi, 2022). This is usually done via WhatsApp chat, direct message (DM), email, or video call. Sexual harassment with this word is in the form of expressions and words directed at the victim, and the victim also feels humiliated and intimidated.

The development of information technology is growing day by day, and social media is increasing or expanding (Stelzmann et al., 2022). This social media is a website that actually someone can create a personal web page and provide a lot of information and information to connect and communicate with other people who have media on the same social media. In the end, various kinds of social media users make social interactions through online media in the form of social networks. The forms of interaction that occur on social media have exactly the same characteristics as face-to-face interactions, but this norm allows members who interact to act so that these actions do not exceed general standards. But with interactions carried out through Internet technology networks, it is very effective by people who are less responsible.

In deviant societal behavior an interaction appears on social media in which this action interferes with social interaction that is carried out directly, deviant societal behavior through social media is in the form of sexual harassment, fraud, bullying, distribution of immoral photos or videos and others (Thulin et al., 2023). Technology is increasingly advanced and rapidly will indeed have a positive impact but will also have a negative impact. Because sexual harassment can not only be done by rape or acts of physical violence but by taking actions that prove an unwanted sex-related approach that this can be expressed in acts of sexual harassment. In the form of solicitation via chat

that seduces is a form of sexual harassment through online media because currently there are many victims of sexual harassment through online media.

For this, public awareness and law enforcement in dealing with cases of sexual harassment are still lacking because cases of sexual harassment still occur frequently, and these cases ultimately end peacefully. Currently, there are cases of verbal sexual harassment that are very widespread through online media; this verbal sexual harassment is also through online media with limited human resources, which is more apparent to law enforcement officials that they enforce it according to the law. Laws and the Criminal Code. This crime of sexual harassment can be categorized as cyber harassment.

However, the article to Ensnare is not pure, but it discusses crimes of decency because it is unclear in the law. In cases of sexual harassment, it is not easy for victims to report that it was a case due to limited evidence and the article's constraints, which did not fulfill an element. Articles that regulate criminal acts of sexual harassment are contained in the Criminal Code regarding crimes of decency and violations of decency; however, the criminal law code does not recognize the term sexual harassment; the Criminal Code only recognizes obscenity, namely what is regulated by Articles 289 to 296 of the Criminal Code (MacKinnon & Mitra, 2019; Rahmi, 2022).

The existence of an electronic information trading law is expected to be able to ensnare criminals who have committed reasonable crimes, including sexual harassment, through social media. Indeed, Indonesia does not recognize the meaning or term of sexual harassment, and the ITE law limits regulations on sexual harassment, making it difficult for plaintiffs or victims to seek justice through law enforcement (Budiman et al., 2020). While unclear legal provisions on sexual harassment create legal uncertainty, the government has stated that sexual harassment is a severe form of harassment regulated by law to hold victims accountable. You have to remember that you have to do it. According to law enforcement officials, they believe that regulations

regarding sexual harassment in online media already exist and are detailed in the criminal code, the information and e-commerce law, the pornography law, and acts of pornography (Harefa, 2022).

In the TPKS Law, this is a regulation that can accommodate KBGO provisions. The TPKS Law contains various types of sexual violence, such as sexual harassment, sexual abuse, forced contraception, forced abortion, rape, prostitution, etc., for the victims. From what has been explained through the background mentioned above, this research focuses on how "Implementation of the Criminal Act of Sexual Harassment Through Online Media in Indonesia."

## MATERIALS AND METHOD

In writing a journal that used is to use method, the method used is a normative juridical research method, namely this research is carried out based on legal materials and by using references by looking for theories and concepts from legal materials to be used; the legal materials are related to legal principles, laws, and regulations that are related to this research. As well as using a library approach with books, journals (Sugiyono, 2018).

The method used in this research is to use a statute approach, which is an approach that mainly uses legal materials in the form of laws and regulations, which will serve as a reference in conducting research; this approach is used by examining all laws and regulations. Related to the problems (legal issues) that are being faced. This study also uses a conceptual approach that provides a point of view of problem-solving analysis from legal research, which is seen through the aspects of the legal concept that lies behind it and also seen from the values contained in the normalization of regulation concerning the concepts contained in it (Abubakar, 2019). Related to the normalization of law, whether it follows the legal concept underlying it.

The technique of collecting types of legal material in this study is on primary legal material, which uses the first source of legal material produced, which becomes the primary legal material, namely the literature related to the writing that will be examined. In

secondary and tertiary legal materials, the collection uses library research by using materials from the literature to look for theories or concepts which are expert opinions related to the subject under study. The legal data analysis method is collecting data by conducting literature searches and literature studies related to the problem to be solved. The legal material analysis method used is descriptive analysis. This analysis uses materials obtained, arranged, and analyzed systematically.

## RESULT AND DISCUSSION

Legal Study of Sexual Harassment Crime Through Online Media Since the development of the current era of technology in this modern era, there have been many inventions of a new problem that the problem appears in a society where in this era humans use the internet facility or use social media where social media to communicate and also to carry out other activities. Social media is now something new for today's society because social media or the internet can connect people with other people. From the current technological advances, this technology is high-speed because today's technology can create a social order in which distance and time are no longer a communication barrier (Marzouk & Vanderveen, 2022; Messinger & Koon-Magnin, 2019). However, in the current technological developments from the emergence of social media, many irresponsible people misuse social media intending to commit crimes against the law.

For many people today, communication technology greatly facilitates community activities. It is undeniable that modernization will continue to occur and is needed in people's lives. One is the development of information technology with the internet, which has supported almost all social activities. The emergence of social media followed this. Some of the most frequently used social media platforms are; YouTube, Twitter, Facebook, Line, Instagram, Telegram, Whatsapp, and more. The community's widespread use of social media has created a social interaction where the new social interaction is in the form of social networks.

From there emerged a behavior that has deviated from ongoing social interactions, such as sexual harassment through social media, fraud, bullying, and others. At this time in the era of modernization with the advancement of a technology that is increasing in number, it will not only bring something that has a positive impact but also has a negative impact, which must be watched out for.

Social media can now be a means for someone to commit a crime, one of which is an immoral crime or sexual harassment; this problem regarding sexual harassment is a problem that continues to occur every year (Marzouk & Vanderveen, 2022). Current sexual harassment is limited to treatment that uses physical violence, where coercion or rape committed by someone carries out the violence, and actions or behaviors that show an approach related to immoral acts and sexual relations. Unwanted, from the things that have been done that the action is classified as an act of sexual harassment. However, that crime of decency or sexual harassment does not come suddenly, but with the stages of a process that is not criminal, harassment is considered a normal act but will arise as a crime. Sexual harassment is an abuse of the relationship between two people which harms one of the parties whose dignity has been humiliated because he has been harassed (Subramanian & Sharma, 2022).

This sexual harassment does not only happen to a woman but can also happen to men. Internet abuse is hazardous for women, especially because many people commit fraud against victims by harassing women online, hacking, and creating content that is not good; that content is illegal content that generally targets women and children (Juliansyahzen, 2022). Tricking victims (web grooming), harassing victims online (web abuse), hacking, creating illegal content (illegal content), and privacy. Breach (invasion of privacy) and even threats, resulting in the spread of individuals. Photos and videos (malicious spread), slander (online defamation), online recruitment, and terrorist activities via the internet (cyber terrorism).

The activities carried out often lead to cyber crimes and sexual violence. Even worse,

it is used to intimidate partners or for personal gain by exposing genital and facial records by sending pornographic material to the perpetrator, where the victim is abused and misunderstood (MacKinnon & Mitra, 2019). By sending pornographic material to the perpetrator, the victim is abused and misunderstood. Naked photos and films, as sex tenders often do. Regulatory and law enforcement agencies are now seducing criminals in sectoral actions which constitute harassment in cyberspace. This sector is a cyber-based sex crime that involves internet networks and technology and is inseparable from the provisions of the ITE Law.

Sexual harassment that is carried out through social media is known as online-based sexual violence (KSBO) cases which are a form of online gender-based violence (KBGO). KBGO is gender-based violence in the real world but occurs in cyberspace. KBGO, which has occurred by social media users, has the same goal and purpose, namely to fight against the body, have sex, and someone's gender identity that already exists in information technology (Messinger & Koon-Magnin, 2019).

KBGO is included in cybercrime. Cybercrime is various kinds of illegal access to data transmission. In other words, cybercrime is an illegal activity on a computer system or is included in the category of crimes in cyberspace. Various kinds of KBGO cases have occurred in Indonesia, such as; cyber hacking, cyber surveillance, cyber harassment, cyber recruitment, impersonation, malicious content distribution, non-consensual dissemination of intimate images, sexting, morphing, and scammers (Panggwa et al., 2023). The perpetrators of cyber crimes, especially KBGO, generally target weak people or someone they make a sexual object. Women are objects that are vulnerable to experiencing this violence, although it does not rule out the possibility that KBGO also occurs in men. Based on Komnas Perempuan's 2021 annual records (Catahu) reported that there were 281 complaints of KBGO cases in 2019 which increased to 942 cases in 2020.

In the Criminal Code, an act that is a criminal act of sexual harassment is categorized as a crime against decency

because it contains elements of pornography and violates elements of decency. Of the provisions that have regulated the crime of sexual harassment or decency offenses contained in the Criminal Code, the second book, Chapter XIV concerning crimes against decency Article 282, paragraph (1) and (2) explains the prohibition to broadcast, show, or pasting pictures, writings, objects that contain content that violates decency in public with the intention of broadcasting, performing or posting in public, taking pictures, writings, or objects that contain content that violates decency and importing them into the country, forwarding them, releasing them domestically, or having supplies, and openly circulating letters without being asked, offering them or showing them as available, is punishable by a minimum imprisonment of 9 months and a maximum of one year and six months or a maximum fine of four thousand five hundred rupiah.

The Electronic Transaction Information Law is a criminal law structure outside the criminal law rules regulating all social media crimes. One is criminal activity and sexual harassment through social media or cyber pornography. Provisions regarding the crime of sexual harassment on social media are regulated in Article 27, paragraph (1), which reads, "Anyone who intentionally and without rights distributes, transmits, and makes accessible electronic information or electronic documents that have elements of violating decency."

The system of criminal responsibility in Article 27 (1) is clearly defined concerning a clearly and deliberately stated error, and this term contains an element of intention or intention of the person. Doing it purposefully is against the law to be willing to do something shameful. In this case, what is meant by "breaking the law" is an act or action contrary to the law. The word distribute means sending and distributing electronic information and documents to many people through mass media. Also, the word "make accessible" means actions that can gain access to electronic information and documents and are known to many people and the general public.

Where there is society, there is the law (*Ius Societas Ibius*). As per the rule of law, Indonesia also has a Law on Social Interaction in Cyberspace, Law Number 19 of 2016, concerning Information and Electronic Transactions ([Saputra et al., 2022](#)). A legal umbrella is a means to discipline the social media community. The amount of sexual harassment on social media must be thoroughly investigated from a criminal liability perspective. The principle of "no crime without fault" applies to criminal liability. In other words, it is a "guilty criminal." The meaning of this principle is that even if someone commits an unlawful act if it turns out that person has made a mistake, which is a condition for sentencing, that mistake is a condition for automatically imposing it. Punishment breeds crime. In addition, legal responsibility determines whether a person can be held criminally responsible if he commits a crime.

Not all criminal acts can be held accountable. The only criminal acts that can be held accountable are those with an element of error in the execution of their actions. Therefore, if someone commits a crime with guilt, the act can be prosecuted. However, concerning the problem of sexual harassment, legal accountability to perpetrators of criminal acts of harassment in Indonesia can be based on favorable legal provisions. Criminal law (KUHP) contains provisions regarding responsibility for punishing sexual harassment. Sexual harassment is an obscene act whose legal responsibility is regulated in Chapter XIV for unethical crimes.

The effectiveness of something in law is closely related to something related to law or legal validity. Legal validity means that legal norms are very binding; every legal subject must act following what is required by legal norms and apply legal norms already in effect. From the meaning of legal validity, it can be understood that every legal subject must act following legal norms and comply with and apply them. A law on behavior, whether it is following the objectives that have been determined. The law is effective if the community has complied with the applicable legal rules. Efforts so that a law can be said to be effective are carried out by including

sanctions that give rise to thoughts so that legal subjects do not do things that have been prohibited.

Enhanced online gender-based violence (KBGO) through the world of technology, such as behavior related to crimes committed based on gender in real life, which must intend to commit crimes of decency utilizing harassment of victims based on gender or sexuality. Otherwise, violence falls into the general category of online violence. Regarding KBGO cases, Komnas Perempuan published KBGO issues with several categories based on the types of cases reported. However, many cases are not reported because various internal and external factors influence them. One of the factors is that the victim is unaware of the violence occurring, which is a factor of pressure, and the victim cannot report it.

The Criminal Code has provisions regarding the crime of rape which are regulated in the Chapter on Good Moral Crimes. In cases of lawful crimes, more emphasis is placed on protecting moral values in society, placing the crime of rape and underhanded acts, including the nature of sexual violence in cases of lawful crimes, in several articles. The principle of sexual violence as a criminal act that violates the honor of the victim's body. As a result of social immorality there will be problems because of customers (Shandy & Sari, 2023). This allows the TPKS law to fix more specific norms than criminal law. Sexual harassment or sexual violence that is not regulated in the criminal law is used as a guideline for enforcing punishments based on the TPKS Law. Therefore, the TPKS Law is a provision of the Indonesian Special Criminal Code, and if the provisions of this law contain a form then it is called Lex Specialis. Legal guarantees related to disgraceful acts, namely acts of sexual violence or sexual harassment against women or men are strictly regulated in the TPKS Law.

Forms of sexual violence under Article 11 (2) of the TPKS Law include harassment, sexual exploitation, forced contraception, abortion, rape, sexual slavery, and sexual torture. The TPKS Law is a lexspecialist criminal law guideline because it contains matters relating to sexual violence that are not mentioned in the criminal law. The TPKS Law

does not only cover professions and activities decided by judges, but also several additional criminal sanctions imposed on the basis of the acts committed.

The crime of sexual violence is regulated in Articles 11-20 of the TPKS Law, a comparison between the TPKS Law and the Criminal Procedure Code includes, firstly, the Criminal Code does not regulate the medical needs of victims (Shandy & Sari, 2023). Psychologically accompany them and prepare themselves to be meaningful in criminal proceedings. Second, the Criminal Code does not explain the responsibilities of law enforcement agencies or regulate matters relating to maintaining the confidentiality of identities, and publishing cases experienced by the mass media without the consent of the victim is prohibited from doing so. Third, the Criminal Code contains law enforcement regulations regarding the behavior of hunting victims, asking various questions that make them feel hunted, and burdening victims while attending trials, which is also not included. When presenting evidence under criminal law, it is made clear that testimony can be more difficult for victims of sexual assault, as it is not a basis for proving the guilt of a suspect.

Whereas the TPKS Law is a lexspecialis which creates something new in the criminal justice system, the purpose of which is for the victim to participate in the judicial process which is aimed at fulfilling the rights of the victim and efforts so that the victim gets justice. Whereas the TPKS Law has guaranteed that the justice system will focus on the victim, will guarantee the confidentiality of the victim's identity, will guarantee that this victim will be protected from victimization, stigma or revenge and other guarantees (Shandy & Sari, 2023).

## CONCLUSION

Cases of sexual violence/sexual harassment in Indonesia often occur and most of those who are vulnerable to becoming victims are women. From the development of technology which is also increasing rapidly and is indeed very developed in this era, sexual violence crimes can occur online, from online sexual harassment victims they

experience something that makes them lose and will also experience protection that will protect them under legal protection. The regulations in Indonesia are still insufficient to provide legal protection in fulfilling the rights of victims of sexual harassment/violence, because the Criminal Code itself only regulates the crime of rape.

In Indonesia, there is no law that specifically identifies the types of sexual violence. Therefore the TPKS Law is really needed, the point is to guarantee the fulfillment of the rights of these victims. Everything contained in the TPKS Law is urgently needed to protect victims of sexual harassment, bearing in mind that in Indonesia cases of sexual violence have increased and the majority of victims of sexual violence are women.

### Author declaration

### Author contributions and responsibilities

The authors made major contributions to the conception and design of the study. The authors took responsibility for data analysis, interpretation, and discussion of results. The authors read and approved the final manuscript.

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### Availability of data and materials

All data is available from the author.

### Competing interests

The authors declare no competing interests.

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