

Harmonization of Criminal Offenses Against Morality and the ITE Law after the New Criminal Code

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Abstract. *This study aims to analyze the harmonization of the rules of criminal offenses against morality after the enactment of Law Number 1 of 2023 concerning the Criminal Code (New Criminal Code) and its adjustment through Law Number 1 of 2026. The main focus of the study is to review the shift in the paradigm of punishment from the regime of the Pornography Law and the ITE Law to the new codification system, using a case study of the Surabaya District Court Decision Number 860/Pid.B/2023 (Red Kebaya Case). The research method used is normative juridical with a statutory approach and a case approach. The results of the study indicate that the transition of reference to the article on morality to Article 407 of the New Criminal Code brings more humanistic legal flexibility, but on the other hand raises concerns regarding the degradation of the deterrent effect. The reduction in the maximum prison sentence to two years and the imposition of a Category III fine (Rp 50,000,000) are considered to not fully accommodate the differentiation of perpetrator roles—between producers, distributors, and planners—which could potentially open up loopholes for organized crime costing practices. This study recommends the need for more specific implementing regulations regarding the classification of perpetrator roles and periodic adjustments to fines to maintain legal certainty and substantive justice.*

Keywords: *Category III Fines; Harmonization of Law; New Criminal Code; Pornography; Red Kebaya.*

1. Introduction

The viral phenomenon of pornography crimes in 2022 began in early November 2022 when a 16-minute obscene video clip was widely circulated on Twitter (X) and TikTok. The distinctive appearance of the female actor, who wears a traditional red kebaya and a blindfold, was the main trigger for the video's

massive viral popularity. The use of cultural attributes (the kebaya) in the obscene content sparked public unrest and anger, as it was deemed to demean the national dress symbol.¹Police investigations revealed that the video was not an accidentally leaked private recording, but rather a planned product. The suspects (ACS and AH) produced the content to fulfill orders through certain Twitter/Telegram accounts for around Rp750,000. This indicates the commercialization of pornographic content in the digital realm, organized by individuals. One aspect that complicates the background of this case is the psychological condition of one of the suspects (AH). The discovery of a yellow card (mental disorder patient card) from Menur Mental Hospital in Surabaya sparked debate regarding criminal liability for people with multiple personality disorders or bipolar. This is an important background in the judge's considerations to determine whether the perpetrator was fully conscious when committing the crime.

The regulation of criminal acts against morality in Indonesia was initially dominated by the Criminal Code, a colonial legacy.² However, Law No. 1 of 2023 concerning the New Criminal Code, which adopts the principles of essential justice, victim protection, and corrective justice, was enacted in response to the need for reform of the national criminal code. Chapter XV of the new Criminal Code, Articles 411–420, regulates morality, particularly pornography and immorality.

Legally, this case stems from the government's efforts to tighten oversight of the distribution of negative content on the internet. This case sets a precedent for law enforcement against independent producers and creators of immoral content who use global social media platforms to transact illegal content in Indonesia.³Compensation is an important element in the process of restoring the

¹Tribun Jogja Official, "New Facts Behind the Red Kebaya Video", <https://www.youtube.com/watch?v=P4bQJObjCms>, accessed February 5, 2026

²Mohammad Khairul Muqorobin, "A New Chapter in Indonesian Criminal Law: The History of the Development and Future of the Criminal Code in Indonesia," *marinews*, <https://marinews.mahkamahagung.go.id/artikel/sejarah-perkembangan-dan-masa-depan-kuhp-di-indonesia-0eN>, accessed January 3, 2026

³Suara-publik.com, "Red Kebaya Pornography Case Sentenced to Two Cases, Aryarot Sentenced to 28 Months, Anisa to 24 Months, Chavia to 12 Months in Prison and Fines of Rp 250 Million Each", <https://suara-publik.com/news-15521-kasus-pornografi-kebaya-merah-dihukum-dua-perkara-aryarot-dihukum-28-bulan-anisa-24-bulan-chavia-12-bulan-bui-dan-denda-masing-masing-rp-250-juta#:~:text=KASUS%20PORNOGRAFI%20KEBAYA%20MERAH%20DIHUKUM,SING%20%2D%20MA SING%20Rp%20250%20JUTA.>, Accessed February 5, 2026

victim's condition to its original state, although not all losses can be fully recovered.⁴

The case of the distribution of the pornographic video "Kebaya Merah" in Indonesia in 2022 demonstrates the increasing trend of unfiltered information flow. Individuals can easily create, upload, and distribute content that violates ethics and national criminal law in today's digital ecosystem.⁵The New Criminal Code introduces a restorative justice paradigm, which prioritizes victim recovery and social reconciliation over simply punishing perpetrators. In the context of digital pornography, restorative justice can be an innovation that prioritizes victim mental recovery, perpetrator education, and social rehabilitation efforts without reducing the deterrent effect on perpetrators of the distribution of immoral content.

This research is expected to be a real contribution in providing constructive criticism, encouraging the upholding of the rule of law that is adaptive to social and technological changes, and becoming a reference for the formulation of effective public policies. Harmonization of Rules on Criminal Offenses Against Morality and the ITE Law after the New Criminal Code (Case Study: Surabaya District Court Decision Number: 860/Pid.B/2023/PN.Sby). After the ratification of Law Number 1 of 2023 concerning the New Criminal Code, which will come into effect in 2026, harmonization of criminal law in the context of crimes against morality and information technology has become a very important issue.⁶This harmonization is not merely intended to establish standards. The public must be provided with adequate digital literacy regarding the risks and legal pitfalls of indecent content; the legislature must standardize regulations and simplify legal procedures; and law enforcement must understand the characteristics of each case and be able to use a proportionate and just approach.

2. Research Methods

This research is a normative legal research, which focuses on the study of positive legal norms that regulate the rules of criminal offenses against morality and the ITE law after the new Criminal Code as regulated in Law Number 1 of 2023 concerning the Criminal Code (National Criminal Code). To obtain a comprehensive understanding, the statute approach, case approach, historical

⁴Sitholabi, Heriamariaty, et al. "The Implementation of Restitution for Victims of Sexual Assault Against Children in Palangka Raya City". *Journal of Legal Sovereignty* Vol 9, No 1 (2026). p. 95, url : <https://jurnal.unissula.ac.id/index.php/RH/article/view/51483>

⁵"The Criminal Investigation Unit of the Indonesian National Police Reveals 47 Child Pornography Cases from May to November 2024", YouTube, <https://www.youtube.com/watch?v=WwizfY5Z8Vg&t=274s>, accessed January 3, 2026

⁶Law Number 1 of 2023 concerning the Criminal Code. (2023).

approach, comparative approach, and conceptual approach are used.⁷This research is descriptive-analytical, describing the legal regulations regarding the criminal liability of perpetrators of theft within the family while analyzing them critically based on criminal law theory and the principles of justice. The data used in this study consists of primary legal materials, including Law Number 1 of 2023 concerning the National Criminal Code and related laws and regulations, secondary legal materials, in the form of criminal law textbooks, scientific journals, research results, and opinions of legal experts, tertiary legal materials, in the form of legal dictionaries, encyclopedias, and other sources that support the understanding of legal terms. Data collection was carried out through library research by tracing and reviewing primary, secondary, and tertiary legal materials relevant to the research problem.

3. Results and Discussion

3.1. Harmonization of regulations on criminal offenses against morality and the ITE Law after the new Criminal Code

One of the causes is life and social life in big cities which are full of pressure and demands for the growth and development of adolescents (Jochen & Patti, 2016). Based on the 2013 Basic Health Research, it was found that 1.6% of the population of West Java experienced severe mental disorders, while emotional mental disorders in the population of West Java reached 9.3%, exceeding the national prevalence (6%) (Risksdas, 2013). Mental health problems occur in 15-22% of adolescents, but those who receive treatment are less than 20% (Kusumawati & Hartono, 2011). The high rate of psychosocial disorders in adolescents needs to be a concern.⁸The dangers of pornography that plague students today are very terrible, ranging from addiction, brain damage, the desire to try and imitate what they have seen, to mental damage.⁹

In Law of the Republic of Indonesia Number 1 of 2023 (New Criminal Code), the interpretation of pornography is adjusted to the standards applicable to society at a particular time and place (contemporary community standards). This provision does not include making pornography for oneself or one's own benefit. In CHAPTER XV Criminal Offenses Against Morality Part Two concerning Pornography, Article 407 paragraph (1) explains that Any Person who produces, makes, reproduces, duplicates, distributes, broadcasts, imports, exports, offers, sells, rents, or provides Pornography, shall be punished with a maximum

⁷Sheyla Nichlatus Sovia et al., 2022, Various Legal Research Methods, Criminal Law Study Institute, Kediri pp. 25-31

⁸Mariyati, Khusnul Aini, 2018, Case Study: The Impact of Pornographic Shows on Psychosocial Changes in Adolescents, <https://journal.uwhs.ac.id/index.php/jitk/article/view/189/184>

⁹Solihin, I., et al. (2021). Education on the Dangers of Pornography for Students of Muhammadiyah Parung Vocational School, Bogor Regency. PADMA Journal: Community Service, 1(2), 1–4. <https://doi.org/10.32493/jpdm.v1i2.10663>

imprisonment of 10 (ten) years or a fine of at least category IV and a fine of at least category VI which was later amended in Law of the Republic of Indonesia Number 1 of 2026 concerning Criminal Adjustments which reads "The provisions of paragraph (1) of Article 407 are amended, so that Article 407 reads as follows: paragraph (1) Any Person who produces, makes, reproduces, duplicates, distributes, broadcasts, imports, exports, offers, sells, rents, or provides Pornography, shall be punished with a maximum imprisonment of 10 (ten) years or a fine of at most category VI. paragraph (2) The act as referred to in paragraph (1) shall not be punished if it is a work of art, culture, sport, health, and/or science.

The provisions of the Article regarding Criminal Acts of Pornography as referred to in paragraph (1) letter t refer to Article 29 of the relevant Law, the reference is replaced with Article 407 paragraph (1) of this Law. In the case of the provisions of the article regarding Criminal Acts against informatics and electronics as referred to in paragraph (l) letter r being referred to by the provisions of the relevant article of the Law, the reference is replaced with the article in this Law with the provision (a). Article 27 paragraph (1) and Article 45 paragraph (1) are replaced with Article 407.

Meanwhile, the Criminal Threat after the Adjustment of the Republic of Indonesia Law Number 1 of 2026 concerning the Adjustment of Criminal Article 407 concerning Pornography is punishable by a maximum imprisonment of 2 (two) years or a maximum fine of category III which before the adjustment was made reads "Any person who produces, makes, reproduces, duplicates, distributes, broadcasts, imports, exports, offers, sells, rents, or provides Pornography, shall be punished by a maximum imprisonment of 10 (ten) years or a maximum fine of category VI".

The pornography case in which in the Directory of Decisions of the Supreme Court of the Republic of Indonesia Number: 860 / Pid.B / 2023 / Pn.Sby. the author found a fact that in the case of the crime of pornography, namely the making of an immoral video film that went viral with the name "red kebaya" there is an element of intent that clearly accepts orders for immoral videos and gets results from the process. However, in terms of the decision that has been determined and has permanent legal force by the Surabaya District Court, the two defendants were sentenced to 1 (one) year 2 (two) months and 1 (one) year in prison and a fine of Rp. 250,000,000, - (two hundred and fifty million rupiah) which is the minimum punishment and fine in accordance with the criminal provisions of Article 29 of the Republic of Indonesia Law Number 44 of 2008 concerning pornography. If there is a clear element of intent in the criminal act of imprisonment of at least 6 (six) months and a maximum of 12 (twelve) years and/or a fine of at least Rp250,000,000.00 (two hundred and fifty million rupiah) and a maximum of Rp6,000,000,000.00 (six billion rupiah). Reflecting on the viral

case of "red kebaya" which clearly shows intent in the criminal act of making pornographic videos and is only subject to imprisonment and the lowest fine.

If it is clear and obvious that there is an element of intent to gain financial gain, the sanctions given are only 1 (one) year and 2 (two) months and a fine of Rp. 250,000,000 (two hundred and fifty million rupiah) respectively, then who is the maximum sanction for committing a criminal offense? The results of the investigation have clearly stated that during the process it was clearly prepared thoroughly, and there was a transaction process in it.

Legal justice doesn't mean that someone is found guilty and meets the elements of a violation and is then given a minimal punishment. This will undoubtedly create controversy in society if similar cases are encountered in the future but with different criminal sanctions and fines imposed. Legal justice should be tailored to the offense, with minimum sanctions and fines for those who have committed minor offenses, while moderate to severe sanctions can be imposed for intentional offenses.

Of course, seen in the current era, the Republic of Indonesia Law Number 1 of 2023 or better known as the New Criminal Code provides Flexibility in the criminal provisions of the Law other than Law Number 1 of 2023 concerning the Criminal Code which contains a single criminal threat in the form of imprisonment is changed with the provision that if the imprisonment is less than 6 (six) months it is changed to a maximum fine of category I and for imprisonment of 6 (six) months or more it is changed to a maximum fine of category II. This can give rise to a perception that later a law/punishment that should be able to be ensnared with corporal punishment and fines becomes a fine only.

The process of determining fines is adjusted based on the category whose maximum limit can lead to a wider sale and purchase of cases. With the new Criminal Code that has been in effect, pornography crimes can potentially increase due to the punishment in the form of increasingly lighter fines. In Category III, the substitute prison sentence is a maximum fine of IDR 50,000,000, or a substitute prison sentence of 50 (fifty) days, equivalent to less than 2 (two) months. Compared to the psychological impact according to Dr. Maria Ulfah Anshor in her book entitled *The Impact of Media with Pornographic Content on Children* "the worst possibility will occur, such as free sex, sexual harassment or coercion" which will give rise to new crimes. In contrast, perpetrators of criminal acts who intentionally produce and sell or even distribute pornographic content for the purpose of seeking personal gain will be more easily free from the clutches of punishment because the short sentence period can be converted into a fine that is not commensurate with the impact it causes.

3.2. Harmonization of the rules on criminal offenses against morality and the ITE law after the new Criminal Code in the future

The presence of the New Criminal Code brings a breath of fresh air to the legal world, especially in determining more humane sentences and fines by prioritizing criminal law that is consistent, adaptive, and responsive to social change, so that adjustments are needed to criminal law norms that have the potential to cause uncertainty and injustice both between Laws outside Law Number 1 of 2023 concerning the Criminal Code and Regional Regulations with Law Number I of 2023 concerning the Criminal Code and within Law Number I of 2023 concerning the Criminal Code itself.

However, in case studies related to pornography crimes, they should be divided into several categories, for example: the length of sentences and fines are adjusted to the severity of the crime. The creators, distributors, planners, disseminators, actors, and those who assist in the process.

The division of each category provides greater legal certainty, guaranteeing justice for perpetrators of criminal acts. If only one category were determined with a maximum and minimum penalty, victims who were forced by circumstances could be named suspects, or perpetrators who intentionally created and distributed the information for financial gain could be subject to the same penalty. This would undoubtedly lead to overlapping decisions, even the trading of decisions, and the creation of the New Criminal Code, with its flexibility, creates loopholes for more planned and structured criminal acts. Criminals could have already calculated the amount of fines required if the crime is not committed. This could reduce the deterrent effect for criminals who intentionally violate the law.

4. Conclusion

Producing, editing, and trading pornographic content on a commissioned basis for financial gain, however, law enforcement is now faced with the challenge of a striking disparity in sentencing due to highly dynamic regulatory changes. Although initially the defendants were sentenced based on the minimum limit of the Pornography Law with a fine of hundreds of millions of rupiah, the presence of Law Number 1 of 2026 concerning Criminal Adjustments has brought a drastic paradigm shift by converting the criminal threat of Article 407 to a much shorter prison sentence or a maximum fine of Category III of IDR 50,000,000. This flexibility has sparked deep concern among legal practitioners and academics regarding the potential degradation of the deterrent effect, because it is feared that increasingly lighter sentences will not be able to stem the growth of the digital immoral content industry, but instead open up opportunities for the practice of compromising cases or "legal trading" more widely. Although this transition is considered a humanist and adaptive step to create a consistent legal

codification, there are serious challenges related to the certainty of substantive justice if the regulation is unable to accommodate a more specific classification of roles for makers, dealers, planners, disseminators, and actors who assist the process. The main concern arises from the potential for "calculation of the cost of crime" by organized perpetrators, where the low nominal fines of Category III and the short substitute prison terms can trigger the practice of buying and selling sentences and degrade the deterrent effect systematically, so that the legal objective of maintaining public morality is actually threatened by the normalization of sanctions that are considered too light compared to the impact of social damage caused.

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