

Criminal Policy in Preventing Cyberbullying as a Negative Impact of Technology

Wenggedes Frensh^{1*} Mahmud Mulyadi² Muldri Pudamo James Pasaribu³

¹Student of Doctoral Program in Law, University of Sumatra Utara, Jl. Abdul Hakim No. 4, Medan, Indonesia

²Lecturer of Doctoral Program in Law, University of Sumatra Utara, Jl. Abdul Hakim No. 4, Medan, Indonesia

³Lecturer in Law Faculty at Simalungun University, Jl. Sisingamangaraja Barat, Pematangsiantar, Indonesia

Keywords: Criminal Policy, Cyberbullying, Preventing, Technology

Abstract: Information and communication technology is developing rapidly nowadays. The advance of technology causes cybercrime. Cybercrime is a term that refers to criminal activities using computer and its network. One of the developing cybercrimes today is cyberbullying. *The National Conference of State Legislatures* describes this crime as an act of harassing and threatening others intentionally and repeatedly. In developed countries, serious efforts have been made to combat cyberbullying. While the awareness of cyberbullying threat as a crime is still low in Indonesia, there is no clear legal rule regarding this crime. This study used the theory of criminal policy and theory of criminal law reform. The result of the research showed that in terms of a penal policy, Indonesia applies the Electronic Information and Transactions Law No.19 of 2016 in dealing with cyberbullying with cyberharassment type in article 27 paragraph 3 and cyberstalking in article 27 paragraph 4 after comparing with Louisiana 2011 LA Rev Stat § 14:40.7. In terms of a non-penal policy, ethics education approach, technological approach, technological education approach, government roles and media control roles are used.

1 INTRODUCTION

As a developing country, Indonesia needs to absorb science and high technology from developed countries. These steps will open a vast new horizon for the life of the nation, because the progress of a nation is also marked by the level of development of science and technology (Hamza, 1990).

Globalization creates relationships between countries around the world getting closer. The linkage of all countries in the world will lead to the development of information and communication technology. We have entered the Fourth Industrial Revolution. The fourth industrial revolution is building on the third and is characterized by a fusion of technologies that is blurring the lines between the physical, digital, and biological sphere (Hoek, 2014).

The development of technology will create a bad impact with the emergence of cybercrime. Cybercrime is a crime where a computer or a computer network is a necessary tool to complete the crime or is the target of the crime (Roddel, 2011).

The types of a cybercrime include cyber attacks such as hacking and computer viruses, cyber theft

such as identify theft, fraud, online sexual predator, prostitution, sextortion, and child pornography (Flowers, 2013).

One of the developing cybercrimes is cyberbullying.

Cyberbullying as willful and repeated harm inflicted through the use of computers, cell phones, and other electronic devices (Hinduja & Patchin, 2009).

The number of internet users in 2017 has reached 143.26 million people, equivalent to 54.68 percent of the total population of Indonesia. The number shows an increase of 10.56 million people from the results of the survey in 2016. It was announced by the Association of Internet Service Providers Indonesia (APJII) after a survey of Internet user's penetration and behavior in Indonesia (en.industry.co.id/read/3943/internet-users-in-indonesia-reach-143-million-people-in-2017).

The internet users in Indonesia will increase through a demographic bonus. Indonesia will receive a demographic bonus 2020-2030 with many productive young people alive (Wiseno, 2017).

Based on the data obtained by UNICEF in 2016, it is shown that 41 to 50 percent of teenagers in

Indonesia, in the age range 13 to 15 years, have experienced cyberbullying measures. And, the most used social media sites by cyberbullying perpetrators were Facebook, Instagram, Snapchat, and Twitter (<http://kumparan.com/41-persen-remaja-indonesia-pernah-alami-cyberbullying>).

Cyberbullying has a harmful effect on its victims such as a psychological harm, low self-esteem, depression, anger, school failure, and school avoidance. In more drastic case, the victim can even contemplate suicide (Rosen, 2007).

Therefore, a comparison is done with one of the countries that has complete rules and definition of cyberbullying action. Louisiana which is one of the states in America has a cyberbullying rule in Louisiana 2011 LA Rev Stat § 14:40.7. In addition, technological and communication developments exist in America, so of course America has a policy and cyberbullying crime that uses technology as a means of crime.

In relation to legislation, Indonesia still has no specific rules on cyberbullying. The rules on this matter are still generally accommodated in Law No. 19 of 2016 on Electronic Information and Transactions.

There is a need to compare how other countries apply such legislation to be a reference. Indonesia needs to learn the best practice of other countries in coping with cyberbullying and criminal policies to protect the children.

2 FORMULATION OF PROBLEM

The problem of this research was: how should Indonesia adopt Criminal policy in preventing cyberbullying as a negative impact of technology?

3 RESEARCH METHODS

This research was a normative legal research. Normative legal research is the study of positive legal norms, principles, principles and legal doctrines. In addition, it also used a comparative juridical study by conducting comparative studies of criminal law regulations in other countries in governing cyberbullying. The data of this study was the secondary data consisting of (a) main legal materials in the form of a legislation, and (b) secondary legal materials including books and journals. The data were collected using literature reviews and document analysis relating to penal and non-penal policies. A criminal policy theory was applied in considering that

the prevention of cyberbullying uses both penal and non-penal efforts.

4 RESULT AND DISCUSSION

4.1 Penal Policy on Cyberbullying

The term cyberspace was coined by Canadian science fiction writer William Gibson in his 1982 short story *Burning Chrome* and later popularized in his debut novel, *Neuromancer*, published in 1984. John Barlow the person who first used the word cyberspace when we connect to the internet (Thomas, 2013).

Bullying is the use of force, threat, or coercion to abuse, intimidate or aggressively dominate others. The behavior is often repeated and habitual (Juvonen & Graham, 2014).

Bullying is defined as intentionally aggressive behavior that can take many forms (verbal, physical, social/relational/emotional, or cyberbullying or any combination of these) (Carpenter & Ferguson, 2009).

Cyberbullying is any behavior performed through electronic or digital media by individuals or group that repeatedly communicates hostile or aggressive messages intended to inflict harm or discomfort on others (Tokunaga, 2010). Williard (2006) describes the following types of cyberbullying: (Williams, 2010).

- *Flaming* : Online fights using angry, vulgar electronic messages.
- *Harassment* : Repeatedly sending offensive, rude, and insulting messages.
- *Denigration* : Dissing someone online with insulting, denigrating gossip or rumors.
- *Impersonation* : Getting a person's password and posing as him or her online.
- *Outing and trickery*: Sharing someone's secrets or embarrassing information online.
- *Exclusion* : Intentionally keeping someone out of an online group.
- *Cyberstalking* : Repeatedly sending unwanted messages that way include threats.

4.1.1 Law No. 19 of 2016 on Electronic Information and Transaction

Based on the provisions of the articles of Chapter XI concerning the criminal provisions of the EIT Law, some prohibited acts (elements of criminal offense) that are closely related to cyberbullying in each article can be identified as follows:

Article 27 Paragraph 3 stipulates the prohibition to distribute, transmit and make accessible any form of Electronic Information or Electronic Document which has contents of an insult or defamation. The word insult or defamation categorized in cyberspace comes under the type of *harassment* and *denigration cyberbullying*.

The elements of crime contained in the Law are as follows:

- *Deliberately*. Deliberately means doing an action with consciousness and knowing the action consequences. In harassment and denigration cyberbullying, action is done by sending insulting messages to attack ones honor. Action is done continuously. The action explain that the perpetrator performed his actions deliberately and knew the consequences of his action. In this case, the element is intentionally fulfilled.
- *Rightless* is an unlawful act that violates the provisions of the law. In cyberharassment, rightless means offenders do not have the legal permission to do so.
- *Distribute and/or transmit and/or make accessible any form of Electronic Information and/or Electronic Documents*. Distributing means sharing or submitting something. Distributing here means sending electronic information or electronic documents, either to someone or some party by utilizing information and communication technology. Other elements, transmitting, including sending or forwarding electronic information or electronic documents to a person. Distributing shared things to many people, while transmitting to only one person.
- *Having contents of an insult and defamation in the EIT Law* refers to the provisions of an insult or defamation set forth in the Criminal Code (Penal Code). The essence of an insult or defamation in the EIT and the Penal Code is an act of attacking the honor or reputation of others in order to be known by the public.

Article 27 Paragraph 4 stipulates the prohibition to distribute, transmit and make accessible any form of Electronic Information or Electronic Document that has blackmailing or threatening contents. The word blackmail or threat used in the cyberspace is categorized into cyberstalking.

The elements of a crime contained in the Law are as follows:

Article 27 Paragraph 4 of the Law on EIT refers to the blackmailing and threatening acts regulated in Chapter XXIII Book II of the Penal Code. Blackmailing and threatening in cyberspace are not

done physically but by giving a forceful threat to somebody to defame or discolore his secret by utilizing information technology as an implement. This type of cyberbullying is referred to as cyberstalking.

4.1.2 Louisiana 2011 LA Rev Stat § 14:40.7

Comparative law the comparatist consciously tries to find another system to which their own legal system could be compared and it would be possible to look for certain commonalities or differences (Husa , 2014). Comparative law provides an understanding of the nature of a law and its development (McCaffrey , 2006). Cyberbullying legislation is regulated in one of the American States called Louisiana. The definition of cyberbullying and what kind of actions categorized into cyberbullying can be found in Louisiana 2011 LA Rev Stat § 14:40.7. So, it is necessary to know the rules of cyberbullying in Louisiana as part of a comparative law study, given that the information and knowledge have connected people around the world (Husa , 2015).

Louisiana 2011 LA Rev Stat § 14:40.7 describes that the cyberbullying is the transmission of any electronic textual, visual written, or oral communication with the malicious and willful intent to coerce, abuse, torment, or intimidate a person under the age of eighteen. Transmitting here means continuing to engage in severe, repetitive or hostile behavior toward others.

Posting communication means the communication of a person's information without any change in the form or content of the information sent and received. Whereas electronic means refers to textual, visual, written, or oral communication through the use of online computer services, internet services, telephone, or other means of communication, which also covers bulletin board services, internet chat rooms, electronic mails, social networking sites and online messaging services.

Transmitting, sending or posting communication by electronic means has been regulated in each criminal provision of the EIT Law. If the act is intended to frighten, force, intimidate and threaten, then the act comes under Article 27 Paragraph 4 on blackmailing and threatening. As to insulting act, it has been regulated in Article 27 Paragraph 3 on insult and defamation.

Performing cyberbullying repeatedly is categorized into the element of deliberately. A deliberate act means doing something well or repeatedly and knowing the consequences arising from the act. The use of electronic means by making textual, visual, written or oral communications in the EIT Law comes under the electronic information. When electronic information enters the virtual world

by using online computer services, internet services, telephones and other means of communication, it becomes an electronic document.

4.2 Non Penal Policy on Cyberbullying

4.2.1 Ethics Educational Approach

Emphasize the importance of communicating in a polite, respectful manner. Ethical education for children is an important thing that must be given by parents (Shore , 2006).

Ethics starts from respecting others and behaving according to moral values. Not only parents, moral education must also involve many parties, such as teachers, schools, government and developing childrens environment. If the child does not get a good ethics education and often mimics negative behaviors such as hating, insulting, and saying harsh words, then this can cause cyberbullying to happen.

4.2.2 Technological Approach

Parental control applications and filters are used to protect children's security on the internet (Hassan , 2017). Parental control applications can be installed such as SafetyWeb, Trend Micros Online Guardian for Families, Net Nanny, My Mobile Watchdog and Cybersynchs Parental Mode. To Protect growing child, mobile apps, social monitoring software, internet browsers, and other web-based products to prevent cyberbullying on computer and cell phones. Parent whoe witnessed kids being cyberbullying started which contains extensive controls (on an easy centralized dashboard) for tracking social networking sites (Twitter, Facebook, Flickr, YouTube, and Myspace), instant messaging management, and malware protection (Sax , 2017). The above software is used to know the activities of the children in a cyberspace when connected to the internet such as what sites they often log in. This software gives a warning if the sites visited have a malicious content. Technological approach is very important to prevent cyberbullying to happen. Some examples of technological approach solutions are email service providers, instant-messaging apps, apps for cyberbullying, and other technological solutions. Parental control and filtering, blocking and account, removing the content, reporting, directing to online resources, and safety centers are the most frequently used technological solutions to cyberbullying.

4.2.3 Technological Educational Approach

Cassare Beccaria said that the most appropriate method to prevent crime is to improve the education system (Tibbetts & Hemmens , 2014).

the technology education approach is an approach that is needed in overcoming cyberbullying. The technology education approach is a strategic approach because it can reduce the potential to do intimidation in cyberspace as much as possible, and will be able to grow awareness of each child to use and utilize technology properly.

4.2.4 Government Roles

Work with government and other partners on managing cyberbullying is important part (Nathan , 2006). There should be an institution formed by the government or outside the government that works with the police to receive complaints about cyberbullying. This is because not all acts of cyberbullying classified into a dangerous category. Some acts of cyberbullying can be dangerous because the perpetrator is not aware of his action. Some cases of cyberbullying can still be confronted or solved peacefully.

The government must also create websites that discuss efforts to overcome cyberbullying and teach internet users, who are primarily children, how they protect themselves from acts of cyberbullying.

4.2.5 Media Control Roles

Television has a large effect on how children and adults view the world around them (Shaw , 2000). Children tend to imitate the aggressive behavior they see in the media (Rathus , 2011). If a child imitates negative things such as abusive, disrespectful, sexual and other negative things, they will trigger actions related to cyberbullying. The reason why many television shows today are less educational. Television shows are often loaded with a lot of harsh word contents. Media is not permissible to broadcast programs that can spread hatred among children. Broadcasting commissions must be more assertive especially toward some sensitive topics that can cause bullying. On internet, social networks must be controlled as well.

5 CONCLUSION

The findings show that the existing criminal policies in Indonesia on cyberbullying, both in terms of penal and non-penal policies, can be used in overcoming cyberbullying problems. In terms of a penal policy, Indonesia applies the EIT Law No. 19 of 2016 in dealing with cyberbullying with cyberharassment type in article 27 paragraph 3 and cyberstalking in article 27 paragraph 4 after comparing with Louisiana 2011 LA Rev Stat § 14:40.7. In terms of a non-penal

policy, ethics education approach, technological approach, technological education approach, government roles and media role are used.

REFERENCES

- Carpenter, D. , Ferguson C.J., 2009. *The Everything Parents Guide to Dealing with Bullies: From Playground Teasing to Cyberbullying, all you Need to Ensure your Childs Safety and Happiness* , Adams Media. United States of America. en.industry.co.id/read/3943/internet-users-in-indonesia-reach-143-million-people-in-2017, retrieved on July 25th 2018
- Flower, R. B., 2013. *The Dynamic of Murder: Kill or Be Killed*, CRC Press. Florida.
- Hamza, A., 1990. *Aspek-Aspek Pidana Bidang Komputer*, Sinar Grafika. Jakarta.
- Hassan, N. A., 2017. *Digital Privacy and Security using Windows: a Pratical Guide* , Apress. New York.
- Hinduja, S., Patchin J. W., 2009. *Bullying Beyond the Schoolyard: Preventing and Responding to Cyberbullying*, Corwin Press. California.
- Hoek, M., 2014. *Cyber Crime and Cybe Warfare* , Wiley-ISTE. Hoboken.
- <http://kumparan.com/41-persen-remaja-indonesia-pernah-alami-cyberbullying>, retrieved on July 27th 2018
- <http://www.en.netralnews.com/news/currentnews>, retrieved on July 27th 2018
- Husa, J., 2014. *New Introduction to Comparative Law*, Hart Publishing. New York.
- Husa, J., 2015. *A New Introduction to Comparative Law*, Hart Publishing. Nort America.
- Juvonen, J. , Graham S., 2014. Bullying in Schools: The Power of Bullies and the Plight of Victims. *Jurnal Psychology* **65**
- Mccaffrey, S., 2006. *Aspek-Aspek Pidana Bidang Komputer*, LexisNexis. New York.
- Nathan, M., 2011. *A Pastoral Leaders Handbook: Strategies for success in the Secondary School*, Continuum. London.
- Rathus, S. A., 2011. *Psychology: Concepts and Connections*, Wadsworth Publishing. Canada.
- Roddel, V., 2011. *The Ultimate Guide to Internet Safety Second Edition*, Lulu Press. Florida.
- Rosen, L. D., 2007. *Me, My Space, and I: Parenting the Net Generation*, St. Martins Griffin Press. New York.
- Sax, N., 2017. *Why Gender Matters, Second Edition: What Parents and Teachers Need to Know About the Emerging of Sex Differences* , Harmony. New York.
- Shaw, V. F., 2000. *Coping With Sexual Harassment and Gender Bias* , Rosen Pub Group. New York.
- Shore, K., 2006. *The ABCs of Bullying Prevention: A Comprehensive Schoolwide Approach*, National Professional Resources. New York.
- Thomas, S., 2013. *Technobiophilia: Nature and Cyberspace*, Bloomsbury Publishing. London.
- Tibbetts, S. G., Hemmens, C., 2014. *Criminological Theory: A Text/Reader*, SAGE Publications. Los Angeles.
- Tokunaga, R. S., 2010. Following you Home From School: A Critical Review and Synthesis of Research on Cyberbullying Victimization. *Jurnal ScienceDirect* **26**
- Williams, K. C., 2016. *Creating Physical & Emotional Security in Schools*, Nusa Media. Jakarta.