

APPLICATION OF CRIMINAL LAW TOWARDS CYBERBULLYING IN SOCIAL MEDIA

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ABSTRACT

Cyberbullying in Indonesia has become a serious concern in recent years, with the increasing use of digital technology such as social media and instant messaging applications as the main platform. This phenomenon not only includes various forms such as insults and threats, but also has a serious impact on the mental health of victims, including high levels of stress, anxiety, and depression. The ITE Law and the Criminal Code are the legal basis for dealing with cyberbullying, although their implementation still faces challenges in terms of consistency and effectiveness of law enforcement. Effective prevention strategies, such as education on digital ethics and increasing public awareness, are needed to reduce cyberbullying incidents in Indonesia. Active cooperation between the government, educators, technology platforms, and the community is key to creating a safe and supportive online environment for all technology users, especially the younger generation who are most vulnerable to the negative impacts of cyberbullying. Cybercrime will not occur if users have knowledge, awareness, especially students who should be more aware of the negative impacts on social media. Thus, it is necessary to conduct an analysis related to user awareness on social media.

Keywords: Cyberbullying, ITE Law, Social Media.

INTRODUCTION

Cyberbullying is defined as bullying through communication technology. Cyberbullying is one of the increasingly complex and concerning phenomena in today's digital era. In Indonesia, this phenomenon has become a major concern in various fields, including law, education, and mental health. Cyberbullying includes actions that use communication technology to threaten, hurt, or endanger others through platforms such as social media, email, text messages, or chat platforms such as Whatsapp. Some forms of cyberbullying include sending threatening messages, spreading false rumors, or statements that trigger conflict in other people's relationships. According to research, platforms that are often used to carry out cyberbullying include social media such as Instagram and Facebook, online game platforms, and chat applications. The use of this media allows perpetrators to carry out bullying without having to deal directly with their victims, making this action difficult to identify and stop. 2 The expansion of physical bullying crimes to the digital realm shows that even though there is no direct physical contact, the impact of cyberbullying can be the same, or even more severe. Victims of cyberbullying can experience psychological, mental, and physical disorders, which are often more intense than physical bullying. In addition, the existence of social media that continuously displays negative content can

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prolong and deepen the negative impact on victims. In Indonesia, reported cases of cyberbullying have increased significantly in recent years. Many of these cases result in legal proceedings and criminal penalties for the perpetrators. This shows that society is increasingly aware of the importance of handling and preventing this crime. From a legal perspective, cyberbullying is regulated in Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE), which was later amended by Law Number 19 of 2016. The ITE Law, especially in Chapter VII concerning Prohibited Acts, Articles 27 to 29, provides a legal framework to deal with various forms of cyberbullying. In addition, articles in the Criminal Code that regulate defamation and insults, such as Article 310 paragraphs (1) and (2) and Article 315, are also relevant in the context of cyberbullying crimes. With this law, it is hoped that legal protection for victims of cyberbullying can be more effective and efficient. These steps are not only important to punish the perpetrators but also to prevent similar crimes from occurring in the future. Strong implementation of these legal regulations is essential to creating a safe and healthy digital environment for all users. In this context, the need for an effective prevention strategy to reduce cyberbullying incidents becomes very important. The strategy not only includes education on digital ethics and public awareness of the consequences of cyberbullying, but also involves the active role of various parties such as educators, government, technology platforms, and families in monitoring and assisting technology users, especially the younger generation who are vulnerable to cyberbullying attacks. By outlining this problem, this study aims to further explore the dominant forms of cyberbullying in Indonesia, its impact on the mental health of victims, an evaluation of the effectiveness of existing laws, and the development of prevention strategies that can reduce cyberbullying incidents in the future. These steps are expected to provide a positive contribution in creating a safer and more supportive online environment for all technology users in Indonesia.

LITERATURE REVIEW

Understanding Cyberbullying

Cyberbullying is a form of bullying or intimidation that is carried out through digital technology, including social media, text messages, email, online forums, or instant messaging applications. This behavior involves the use of digital devices to hurt, threaten, embarrass, or intimidate others, either directly or indirectly. According to Hinduja and Patchin (2010), cyberbullying can include a variety of actions, such as sending abusive messages, spreading rumors or false information, publishing embarrassing photos or videos without permission, or faking identities to harass victims. This cyberbullying behavior is often more difficult to control than direct bullying, because the perpetrators can hide behind anonymous identities and victims find it difficult to avoid this action if it occurs in the online environment they often use. Among adolescents, cyberbullying is often a serious problem because of its significant impact on the victim's mental health, self-confidence, and social interactions. In addition, cyberbullying has several characteristics that distinguish it from traditional bullying, namely: 1. Anonymity of the perpetrator. Digital technology allows cyberbullies to hide behind fake identities or anonymous accounts. This makes it harder for victims to identify the perpetrators, which in turn can prolong the trauma of not knowing who is bullying them. 2. Unlimited Access to Time and Space. Cyberbullying can happen

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anytime and anywhere, as long as the victim has access to a digital device. Unlike physical bullying which is limited to a specific time and place, cyberbullying can continue beyond school hours and affect the victim's personal life, including time at home which should be a safe place. 3. Fast and Wide Distribution. Information, images, or videos containing cyberbullying can spread very quickly through social media and other digital platforms. Content that is detrimental to the victim can be seen and shared by many people in a short time, which can worsen the emotional and social impacts experienced by the victim. 4. Profound Emotional and Psychological Impact. According to research by Kowalski, Limber, and Agatston (2012), cyberbullying can cause various mental health problems, such as depression, anxiety, shame, and low self-confidence. These psychological impacts can last in the long term, especially if the victim feels that they do not receive adequate support or protection from their surroundings. 5. Difficulties in Law Enforcement. Due to its complexity, cyberbullying poses challenges for law enforcement, especially in terms of gathering evidence and identifying perpetrators who may be in a different region from the victim. In Indonesia, efforts to address cyberbullying have been regulated in the Electronic Information and Transactions Law (UU ITE), but the implementation of this law faces technical and social challenges, especially among adolescents who may not fully understand the legal implications of their actions. Overall, cyberbullying is a complex phenomenon that needs serious attention, both from a legal, educational, and social perspective. Research and educational efforts are essential to raise awareness among adolescents about the consequences of cyberbullying and to create a safer and healthier digital environment.

Definition of ITE

ITE (Electronic Transaction Information) is one or a set of electronic data that is not limited to writing, sound, images, maps, designs, photos, electronic data interchange (EDI), electronic mail, telegrams, or the like, letters, signs, numbers, access codes, symbols, and others that have been processed that have meaning or can be understood by people who are capable. The ITE Law is a law that regulates information and electronic transactions, or information technology in general. This law has jurisdiction that applies to anyone who carries out legal acts as regulated in this law, both in the jurisdiction of Indonesia, or outside the jurisdiction of Indonesia, which has legal consequences in the jurisdiction of Indonesia and/or outside the jurisdiction of Indonesia and is detrimental to the interests of Indonesia.

Definition of Child

Children are the shoots, potential, and next generation of the nation's ideals. Children have a strategic role in ensuring the existence of the nation and state in the future. In order for them to be able to shoulder that responsibility, they need to be given the widest possible opportunity to grow and develop optimally, both physically, mentally, and spiritually. They need to get their rights, need to be protected, and prospered. Therefore, all forms of violence against children need to be prevented and overcome. Marsaid quoted the definition of a Child in the General Dictionary of the Indonesian Language, as a human being who is still small. Marsaid also quoted from Soedjono Dirjisisworo who stated that according to customary law, minors are those who have not yet determined concrete physical signs that they are adults. Meanwhile, the definition of a child in Law Number 13 of 2003 concerning

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Manpower is that a child is any person under the age of 18 (eighteen) years.⁴ And also the definition of a child in Law No. 17/2016 concerning the Second Amendment to Law No. 23/2002 concerning Child Protection, that a child is a person who is not yet 18 (eighteen) years old, including a child in the womb.⁵ Thus, it can be concluded that a child is someone who is still small, either male or female, who does not yet show physical signs of an adult, which based on the perspective of the law

The law states that the age limit for children is those who have not reached 18 (eighteen) years.

METHODS

In this study, the author uses a normative legal approach to evaluate the legal principles and coordination of applicable regulations related to legal protection for victims of cybercrime in Indonesia. And analyzes the basis for handling cybercrime in Indonesia with a focus on the implementation of Law Number 19 of 2016 concerning Information and Electronic Transactions (UU ITE), as well as to evaluate the effectiveness and efficiency of the methods used in handling cybercrime.

RESULTS AND DISCUSSION

Implementation of Criminal Law in Indonesia in Cyberbullying Cases

The Criminal Code is a book used as a basis for determining the sanctions that will be imposed on a criminal act. Regulations on acts that are classified as criminal acts in Indonesian law are regulated in the Criminal Code and regulated in several special laws outside the Criminal Code such as the ITE Law. Regulations that can be used as a basis for reference for criminal acts of insult through cyberspace (cyber bullying) are Article 310, Article 311 and Article 315 of the Criminal Code. However, for now, the most suitable legal basis for the crime of cyber bullying is Article 315, which states "Every intentional insult that is not defamatory or written defamation, which is carried out against a person, either in public orally or in writing, or in front of the person himself or herself orally or by means of a letter sent or received to him, is threatened as a minor insult, with a maximum imprisonment of four months and two weeks or a maximum fine of three hundred rupiah". The term that is also commonly used for criminal acts against honor is the crime of "insult". The term minor insult as regulated in Article 315 of the Criminal Code in 8 is translated into Dutch as *eenvoudige belediging* which means "normal" but some experts translate it as "minor". This article is not sufficient to accommodate all acts of insult through cyberspace (cyber bullying) that we often encounter lately. Article 315 of the Criminal Code is still limited because it regulates insults that are carried out intentionally which are not defamatory or defamatory, whether carried out by someone in public or in front of the person themselves using oral or written language. Article 315 of the Criminal Code does not explain in detail what forms of insults can be said to be minor insults, or in other words, the current Criminal Code only regulates insults in a broad sense without detail so that it is feared that it can cause multiple interpretations in its implementation. Regulation of criminal acts of insult through cyberspace (Cyber Bullying) in addition to Article 315 of the Criminal Code which can be used as a legal umbrella for criminalizing acts of insult through cyberspace (cyber bullying),

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there are also regulations outside the Criminal Code that regulate this matter which have been used in a court decision, namely in several articles in Law No. 11 of 2008 concerning Information and Electronic Transactions which was later amended in Law No. 1 of 2024 concerning Amendments to Law No. 11 of 2008 concerning Information and Electronic Transactions or (hereinafter referred to as the ITE Law). Basically, the ITE Law accommodates the criminal provisions of cybercrime, where a crime in the context of using cyber as a means. 15 Based on the wording of Article 27 paragraph (3) of the ITE Law which states "every person intentionally, and without the right to distribute and/or transmit and/or make accessible Electronic Information and/or Electronic Documents that contain insults and/or defamation". Then in Article 27 paragraph (4) of the ITE Law which states that Every Person intentionally and without the right to distribute and/or transmit and/or make accessible Electronic Information and/or Electronic Documents that contain blackmail and/or threats. In the formulation of the article it is aimed at the crime of insult which refers to the Criminal Code. The scope of this crime includes defamation, slander and minor insults. Although in the Criminal Code this has been formulated into different articles, the existence of the crime of insult in the Criminal Code can be linked to Article 27 paragraph (3) concerning the crime of insult through cyberspace (cyber bullying). Based on Article 27 Paragraph (3) of the ITE Law, if examined, there is actually no sentence in the regulation that explicitly mentions the crime of insulting through cyberspace or cyber bullying, there is only a clause on "insult/defamation" which is general in nature and often gives rise to multiple interpretations in the Article. The scope of this crime also includes minor insults, where if seen from the characteristics of cyber bullying, it can fulfill the elements of the crime of minor insults in Article 315 of the Criminal Code. Thus, Article 27 Paragraph (3) of the ITE Law is still relevant to be used for cases of criminal insults through cyberspace (cyber bullying) if the act is carried out via computer or electronic media, it can be punished if it meets the qualifications of a criminal act. It should be underlined that the elements of "making accessible", "distributing", "transmitting" in this article are related to the elements in public in the Criminal Code. With the three types of acts mentioned in Article 27 paragraph 3 of the ITE Law, it is hoped that law enforcers will not abuse their authority when taking action against cyber crime. However, regarding the understanding of Article 27 paragraph (3) of the ITE Law, in essence, insults via cyberspace (cyber bullying) can be recognized as a form of recognized insult crime but is still based on Article 310, Article 311 and Article 315 of the Criminal Code. The scope of this crime includes defamation, slander and minor insults. Although in the Criminal Code this has been formulated into different articles, the existence of the offense of insult in the Criminal Code can be linked to Article 27 paragraph (3) concerning the crime of insult through cyberspace (cyber bullying). Based on Article 27 Paragraph (3) of the ITE Law, if examined, there is actually no sentence in the regulation that explicitly mentions the crime of insult through cyberspace or cyber bullying, there is only a clause "insult/defamation" which is general and often gives rise to multiple interpretations in the Article. The scope of this crime also includes minor insults, where if seen from the characteristics of cyber bullying, it can fulfill the elements of the crime of minor insult in Article 315 of the Criminal Code. Thus, Article 27 Paragraph (3) of the ITE Law is still relevant to be used for cases of criminal insults through cyberspace (cyber bullying) if the act is carried out via computer or electronic media, it can be punished if it

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Factors Affecting the Effectiveness of Law Implementation Understanding the Law

Many students may not fully understand the legal boundaries of digital interactions, so they tend to think of cyberbullying as a “joke” without realizing its serious impact.

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Socialization involving counseling from police officers or lawyers can help students understand that their actions in cyberspace also have legal consequences.

School Policies and Teacher Attitudes

A firm school policy in dealing with cyberbullying is essential to prevent similar cases in the future. Teachers and schools must also have the understanding and awareness to act quickly if they see signs of cyberbullying. In addition, school support in developing educational and counseling programs greatly helps students understand the risks and consequences of cyberbullying.

The Role of Parents and the Environment

Parents play an important role in supervising and educating students' character outside of school. Open communication between parents and children regarding the use of social media and the impact of cyberbullying behavior will greatly help prevent these cases. A supportive social environment can also build students' awareness to respect others in cyberspace. In its development, the internet has brought a negative side, by opening up opportunities for anti-social actions that have been considered impossible or unthinkable to occur. A theory states that crime is a product of society itself, which can be simply interpreted as society itself producing crime. Crimes that arise as a negative impact of the development of internet applications are often referred to as cybercrime. Related to the large number of social media users in Indonesia. It also creates the potential for great crime through the use of social media. Social media, which was initially used as a place to socialize between users and also as a place to communicate with someone far away, is currently being widely misused by its users. Criminalization is an effort that can be made as a crime prevention measure in which there are sanctions that regulate it. Criminalization is carried out as a reaction to a crime and is in the form of suffering that is deliberately given by the state or authorized institutions to the perpetrators. This suffering is only given as the closest option, not as the final goal that is aspired to in accordance with coaching efforts.

CONCLUSION

Social Media Abuse by minors occurs because of the freedom to access social media that is used negatively and cannot be controlled and supervised regularly by parents. Social media abuse by minors is regulated in Law Number 19 of 2016 concerning Information and Electronic Transactions, but regarding criminal liability committed by children, this is regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. It is explained in Article 1 number 3 that children in conflict with the law are children aged 12-18 years. Schools can hold seminars, workshops, or discussion sessions on internet ethics, related legal regulations, and the psychological impact of cyberbullying. In addition, training in healthy communication skills and conflict resolution techniques can help students resolve disputes without having to use social media as a place to insult or attack others. With a better understanding and good cooperation between students, teachers, parents, and law enforcement, it is hoped that the application of criminal law to cyberbullying.

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REFERENCES

- Agustina, Fita. “Analisis Perilaku Cyberbullying Di Media Sosial Dan Upaya Penanggulangannya”
- Andi, Hamzah. Delik-Delik Tertentu Di Dalam KUHP. PT. Sinar Grafika, Jakarta, Edisi kedua, 2015.
- Andreas Kaplan M, Haenlein Michael 2010. ”Users of the world unite The challenge and opportunities of social media” Business Horizon 53 (1).
- Aruan Sakidjo dan Bambang Poernomo, 1990, Hukum Pidana, Jakarta: Ghalia Indonesia.
- Baiti, F. Utami A. S N. “Pengaruh Media Sosial Terhadap Perilaku Cyberbullying Pada Kalangan Remaja. Cakrawala.” Jurnal Humaniora, 18(2), 257–262.) 18, no. 2 (2018):
- Marcello Veron Tengker, Tindak Pidana Pencemaran Nama Baik Menggunakan Media Sosial Elektronik Dengan Pelaku Anak Di Bawah Umur, Lex Privatum Vol. IX/No. 10/Sep/2021.
- Marsaid, Perlindungan Hukum Anak Pidana Dalam Perspektif Hukum Islam (Maqasid Asy-Syari’ah), (Palembang: NoerFikri, 2015).
- Matthew Milles dan A. Michael Huberman, Analisis Data Kualitatif (Jakarta: UI Press, 1992).
- Moeljatno, 2009, Asas-Asas Hukum Pidana, Jakarta, Rineke Cipta.
- Mohammad Nazir, Metode Penelitian (Bogor: Ghalia Indonesia, 2005).
- Puteri Hikmawati, “Pidana Pengawasan Sebagai Pengganti Pidana Bersyarat Menuju Keadilan Restoratif”, Negara Hukum, Vol 7 No.1, 2016.
- Suharsimi Arikunto, 2006, Prosedur Penelitian Suatu Pendekatan Produk (Jakarta: PT.Rineka Cipta)
- Undang-Undang Nomor 19 Tahun 2016 atas perubahan Undang-undang No 11 Tahun 2008 Tentang Informasi dan Transaksi Elektronik
- UU No. 17 Tahun 2016 Tentang Perubahan Kedua Atas Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak.
- Wirjono Prodjodikoro, 2003, Asas-Asas Hukum Pidana di Indonesia, Bandung, Refika Aditama.