



Criminal law policy against cyberbullicide

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ABSTRACT

The purpose of writing this article is to find out the criminal law policies against cyberbullicide and how to formulate cyberbullicide in the future. This writing uses the normative legal research method where the study uses collecting and examining or tracing documents or also called using document and literature studies which aim to obtain information related to the needs in reviewing this research. In the regulation of bullying through social media that results in suicide victims or what is known as Cyberbullicide in Indonesia, there is a void in the norms in the current ITE Law, a void in the understanding, elements, and criminal charges against someone who commits cyberbullying which causes the victim to commit suicide. Meanwhile, the element of encouraging someone to commit suicide is regulated in the Criminal Code in Article 345 concerning advocating suicide, but this regulation does not reach the cyber realm. So that it is necessary to regulate Cyberbullicide in Indonesia so that there are no more victims due to Cyberbullying. In order to provide certainty, protection and law enforcement in Cyberbullicide crime, it can be done by reforming the criminal law against criminal offenses for Cyberbullicide perpetrators. The renewal of the criminal law was carried out by considering comparisons from other countries that have Cyberbullicide regulations and taking into account the problems in the *Ius Constitutum*. however, these arrangements do not extend to the realm of cyber. So that it is necessary to regulate Cyberbullicide in Indonesia so that there are no more victims due to Cyberbullying. To provide certainty, protection and law enforcement in cyberbullicide crimes, criminal law reform can be carried out against criminal offenses for cyberbullicide perpetrators.

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1. INTRODUCTION

The development of the current industrial revolution has resulted in the existence of social media not only as a forum for communication or as a medium for entertainment, but can also be an effective means of committing a crime and giving rise to a new crime (Habibi & Liviani, 2020; Hermawanto & Anggraini, 2020). One example of a crime arising from misuse of social media is cyberbullying (Y.-F. Paat & Markham, 2021; Pakpahan, 2020; Rumra & Rahayu, 2021). Cyberbullying is an act that is carried out repeatedly with elements of humiliation, psychological violence or intimidation carried out through social media against other parties with the aim of embarrassment, spreading ugliness and hatred, intimidating aimed directly at the victim or in an open way so that it can be accessed by users other (AKRIM, 2022; Arifin et al., 2022; Rajbhandari & Rana, 2023).

Cyberbullying is an act that we have found a lot at this time, but not a few people underestimate it, even though the impact it can have can interfere with mental health and be prone to depression which can be fatal, namely causing suicidal ideation that is obtained due to the impact of bullying. Those carried out through social media are known as cyberbullycide "cyberbullying and suicide" or suicide due to bullying through social media (Mishna et al., 2009; Mukhtar et al., 2023; Touzeau, 2018). The act of suicide resulting from the impact of bullying carried out on social media is regulated in Article 345 of the Criminal Code, Crimes against life which are regulated in Article 345 of the Criminal Code, the perpetrator did not directly commit murder, but the victim killed himself (Ismail & Lestari, 2022; Prihatin et al., 2023; Yandy, 2016). The perpetrator is only a pusher, helps, or provides a means of committing suicide. This is different from other killings which involve killing the victim directly. However, the formulation of this article does not contain elements carried out in cyberspace. Which can be said that there is no legal certainty related to the punishment of cyberbullycide crimes.

The regulation on cyberbullying in the ITE Law only contains elements such as attacking through writing or pictures but does not include elements of repeated actions and there is an imbalance of power (Amirah et al., 2021; Rizkyani, 2021). An act cannot be directly interpreted as bullying if there are no such basic elements. The ITE Law does not contain clear elements regarding cyberbullying, there are only elements of humiliation, defamation, threats and extortion, while this type of cyberbullying does not only contain elements of insult, defamation, threats and extortion, but involves elements of flaming, harassment, impersonation, outing, trickery, exclusion, and cyberstalking (Hutasuhut & Zuhir, 2022; Mukhlisotin, 2017; L. N. Paat, 2020; Pratiwi, 2022).

In the ITE Law there is no element of encouraging someone to commit suicide (Pakpahan, 2020). In order to ensnare cyberbullying perpetrators, the elements of cyberbullying crimes are required as contained in the laws and regulations in Indonesia (Lumantak, 2022; Pakpahan, 2020). The discussion proves that the legal provisions are not complete enough to accommodate the legal needs of society. This results in the substance of a regulation still being confused and lacking in regulation as in the case of elements, therefore this results in the non-implementation of a regulation. The crime of bullying through social media is a complaint offense in which there must be a complaint from the victim so that the case can be processed in court so that every case of crime in cyberspace is difficult to uncover and overcome.

According to Lawrence M. Friedman's view, the substance system determines whether or not the law can be implemented (Nugroho & Suteki, 2020; Pahlevi, 2022). Substance has the meaning as a product that is made by people who are in a legal system which includes decisions issued, a new rule that has been drafted. Legal products related to cyberbullying which result in death are currently not strong enough to ensnare perpetrators with strict sanctions, so this crime will continue to develop along with the development of information and communication technology.

The Association of Indonesian Internet Service Providers (APJII) conducted research on Indonesia which showed that around 49% of netizens (internet citizens) had been the target of bullying on social media (Juditha, 2021; Rihardi et al., 2022). The impact of cyberbullying cases is more dangerous than ordinary bullying (Rahayu, 2012), because it leaves behind digital records such as photos, videos and writings so that the memory and shame for the victim will continue as long as the digital footprint is accessed by the general public on social media. In direct bullying, it generally occurs when the victim and perpetrator meet, in contrast to bullying that is carried out in cyberspace, which can be carried out 24 hours or even all the time, anytime and anywhere.

Cyberbullycide has happened in Indonesia, but it is very unfortunate that most people are not aware of it and think that cyberbullying is something that is normal for people to do. Therefore regulations regarding cyberbullycide need to be formulated so that in the future the public will be more aware of the dangers of bullying through social media which can result in someone committing suicide and it is hoped that later when there are regulations that accommodate cyberbullycide crimes there will be no more fatalities caused by victimization in cyberspace.

Other countries such as New Zealand and Canada consider the crime of cyberbullycide to be a serious problem which is evidenced by these countries establishing or updating their laws to accommodate cyberbullycide crimes so that later it is hoped that these crimes will not result in casualties.

This writing takes sources from several papers that have similarities in this study for purposes of comparison. The paper entitled "Criminal Responsibility for Cyberbullying Actors Causing Death" written by "Otto Yudianto and Thereza Damayanti". In this writing, the focus is on criminalizing cyberbullying perpetrators in the ITE Law. Meanwhile, this paper focuses more on the formulation of criminal law against cyberbulicide by paying attention to *ius Constitutum* and *ius Constituendum*. Based on the explanation above, the authors conducted a study entitled "Criminal Law Policy Against Cyberbulicide".

2. RESEARCH METHOD

The research method used in this article is Normative Law Research or what is commonly called normative law or can be called library research or document study where this research helps answer legal issues related to this writing. This writing examines the study of documents, namely using various primary and secondary and tertiary legal materials which consist of laws and regulations, court decisions, opinions of scholars and developing legal theory. In this paper, we examine the void norms contained in "Law No. 19 of 2016 concerning Amendments to Law no. 11 of 2008 concerning Information and Electronic Transactions" regarding criminal charges for cyberbulicide perpetrators.

3. RESULTS AND DISCUSSIONS

Cyberbulicide Regulations in Indonesian Laws and Regulations

Internationally, arrangements regarding cybercrime are regulated in the Convention on Cyber Crime, which is an international legal instrument that contains protection for the public against crimes in cyberspace. The substance of this convention includes criminal policy, which has the goal of protecting society from various cybercrimes. Although cybercrime generally refers to online-based crimes, the term cybercrime is also used in traditional activities using computer infrastructure as a tool to facilitate criminals in carrying out their actions.

In Indonesia, legal arrangements regarding cyberbulicide are identified in the Criminal Code, which is the statutory regulations which form the basis and legal basis for all criminal regulations in Indonesia, as well as the ITE Law, which is a special arrangement that regulates crimes in the cyber sphere. Regarding cyberbulicide, which was defined by Sameer Hinduja and Justin Patchin from the Cyberbullying Research Center with the main research results, namely an increase in suicides related to the experience of bullying or bullying in cyberspace. There are Cyberbullying offenses (cyber bullying) and suicide offenses (suicide) in these crimes. However, currently the Criminal Code does not have any provisions that explicitly regulate cyberbulicide. The Criminal Code only regulates advocating suicide and bullying, but does not specifically regulate cybercrime. The following is a discussion of articles regarding forms of acts related to forms of cyberbullying and suicide in the Criminal Code, including Articles 310 and 345 of the Criminal Code.

MK Decision No. 50/PUU-VI/2008 as stated that the element "in public" contained in Article 310 of the Criminal Code is considered insufficient so that a special formulation that is extensive is needed, namely "distributing, transmitting, and/or making it accessible" because the legislature has not thought about that technological developments can facilitate criminal acts of insult that occur in the cyber world. Therefore, because the Constitutional Court is of the opinion that the insults regulated in the Criminal Code cannot cover the offenses of insult and defamation that occur in the cyber world. However, the interpretation of the norms contained in Article 27 paragraph (3) of Law no. 11 of 2008 jo. Article 45 paragraph (3) Law no.

Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (UU ITE) is a law that specifically regulates cybercrime in Indonesia. Based on the principle of *lex specialis derogate legi generali*, the formulation of articles in the Criminal Code as general law was set aside by Law no. 19 Year 2019 as a special law. Arrangements regarding cyberbulicide are regulated in the ITE Law in Article 45 Paragraph 3, Article 45 Paragraph 4, Article 45B.

ArrangementCyberbulicidein the Criminal Code as *lex generalis* and the ITE Law as *lex specialis* there are differences in the application of cybercrime laws to conventional crimes. The

cyber world as part of information technology has cross-border characteristics or world relations to be borderless. The conventional legal system, which is based on territoriality, is considered inadequate to answer legal problems that have just arisen and have been raised by human activities in cyberspace. These problems result in pros and cons related to whether or not conventional law can regulate activities contained in cyberspace.

Cyberbullicide in Indonesian positive law it is included in the criminal act of Cyberbullying, when looking at the arrangements in Indonesia Cyberbullying enters into the notion of defamation or insult, where this understanding is considered inadequate when viewed from the point of view of the forms of Cyberbullying which are not only defamation or just an insult. The multi-interpretation of understanding makes the use of Cyberbullicide offenses minimal because the term is still common in the ears of the Indonesian people. The definition is limited because it only interprets Cyberbullicide as a form of "threat of violence" or "scare aimed at personally".

The explanation of cyberbullicide in the ITE Law which has ambiguity can certainly make it difficult for law enforcers to use legal products against a case that will determine whether the case is cyberbullicide or not. The legal provisions governing cyberbullicide in Indonesian laws and regulations only explain the elements of cyberbullying, while there are no provisions for encouraging someone to commit suicide on social media. The Criminal Code regulates the act of Cyberbullicide, namely defamation of a person with the aim of embarrassing someone and humiliating someone, as well as encouraging suicide.

Formulation of Criminal Law Against Cyberbullicide in the Future

Criminal law plays an important role in anticipating changes and developments that occur in society. Such regular changes through legal procedures in the form of legislation will be better than unplanned changes. The scope of criminal law reform itself includes: Updating the Substance of Criminal Law; Updating of the Criminal Law Structure; and Renewal of Criminal Law Culture.

After discovering the problems of norms in the *ius constitutum*, Soerjono Soekanto stated that the attempt to reform the criminal law was to carry out a comparison of the criminal law. Comparison of criminal law is useful to provide materials on what legal factors need to be developed or eliminated gradually for the sake of the integrity of society. In addition, comparisons of criminal law do not only aim to find similarities or differences, but can solve legal problems fairly and appropriately in carrying out criminal law reforms. Legal comparisons can be made with comparisons of laws and regulations in other countries related to Cyberbullicide. This comparison aims to find references regarding regulations that can be used as a reference in determining the appropriate legal formulation in the future. The following is a comparative study of Cyberbullicide regulations in other countries: a) New Zealand, harmful Digital Communications Act 2015 formulates the act of helping and allowing suicide, namely in Article 179 with the element that a person is considered to have committed an offense if inciting, advising, provoking another person to commit suicide, this is formulated because several suicide cases or attempted suicides that occurred in other countries were driven by factors incitement of others to commit suicide, this act is punishable by imprisonment for not more than 3 (three) years. The formulation of Article 179 explains about issuing words that order others to kill themselves. In paragraph (2) a person commits a criminal act that incites, gives advice, or causes another person to commit suicide. In paragraph (3) it is explained that a person who violates the provisions of paragraph (2) is imprisoned for a period not exceeding 3 years. b) Canada, Canadian Criminal Code formulates what actions are considered as harassment and slanderous slander, namely in the formulation of Article 264 paragraph (2) for harassment (Harassment) and for someone who is deemed to publish slander (Denigration), namely in Article 299. The Canada Criminal Code also defines consequences from acts of harassment, namely fear or insecurity about their own safety or the safety of people they know. The length of the threat of imprisonment for an act in the form of harassment is not more than 10 (ten) years and for an act of slander that is not true, the threat is not more than 5 (five) years. Bill C-13 concerning Protecting Canadians from Online Crime Act In Article 179 there are elements of ordering, inciting, advising.

As discussed above, the following is a criminal law formulation in the future to anticipate cyberbullicide in Indonesia, by looking at the problems that occur in the current applicable law and taking into account the comparison of laws and regulations in other countries that regulate: a) In

general, formulating a clear definition of cyberbullying or expanding the meaning of an existing term related to bullying or intimidation that occurs in the cyber world so that there is no longer any confusion that causes multiple interpretations in its meaning. As well as an affirmation in explaining the forms of cyberbullyicide. b) In particular, namely the formulation of a special crime which includes all forms of cyberbullying, the formulation of concrete forms of cyberbullying as an element of a crime. Because cyberbullyicide is an extension of cyberbullying in which cyberbullyicide results in death, therefore it is necessary to formulate this crime into Indonesian Legislation, especially in laws that regulate cyber activity, namely Law no. 19 of 2016 concerning Information and Electronic Transactions. In this regard, considering Article 179 of the Crimes Act 1961 which was amended through the Harmful Digital Communications Act of 2015, namely that there is a regulation concerning someone who issues words ordering, inciting, giving advice to others to commit suicide which in the provisions of paragraph 3 carries a prison sentence not exceeding 3 years. Considering the elements of the articles contained in the Regulations in New Zealand and Canada, elements of the crime of cyberbullyicide can be formulated which can be used as a reference in updating the ITE Law. Considering the provisions in Bill C-13 concerning Protecting Canadians from Online Crime Act, it imposes a maximum prison sentence of 14 years to the perpetrator who causes the victim to commit suicide or attempt suicide.

4. CONCLUSION

Legislation in Indonesia that regulates crimes in the cyber world, namely the ITE Law, currently does not regulate criminal charges for perpetrators of cyberbullyicide crimes. There is a vacuum in legal norms in the *ius constitutum* caused by the absence of rules regarding criminal provisions and elements of cyberbullyicide in the current ITE Law, whereas in the *lex generalis*, suicide offenses are regulated in the Criminal Code, but are conventional and do not reach cyberspace. So that it is necessary to regulate cyberbullyicide in Indonesia so that there are no more victims due to cyberbullyicide. The formulation of criminal law against cyberbullyicide is carried out by taking into account the problems contained in the *Ius Constitutum* and making comparisons with other countries that have cyberbullyicide regulations. The formulation of criminal law in this study is to formulate general provisions in the form of formulating the definition of cyberbullyicide and affirming the forms of cyberbullyicide; the formulation of specific crimes includes adding elements of encouraging someone to commit suicide, as well as formulating objective and subjective elements strictly; related to criminal sanctions, the formulation of criminal law is formulated in proportion to the crimes committed by cyberbullyicide perpetrators which cause the victim to commit suicide and then lose their life. as well as formulating objective and subjective elements firmly; related to criminal sanctions, the formulation of criminal law is formulated in proportion to the crimes committed by cyberbullyicide perpetrators which cause the victim to commit suicide and then lose their life. as well as formulating objective and subjective elements firmly; related to criminal sanctions, the formulation of criminal law is formulated in proportion to the crimes committed by cyberbullyicide perpetrators which cause the victim to commit suicide and then lose their life. This research is expected to be an input for law enforcers to be able to immediately fill the void of legal norms on criminal threats for cyberbullying criminals considering that currently cyberbullying crimes do not occur very often.

REFERENCES

- AKRIM, A. (2022). Student perception of cyberbullying in social media. *Aksaqla Jabfung*.
- Amirah, S. N., Fahmal, A. M., & Mappaselleng, N. F. (2021). Efektivitas Penerapan Restorative Justice Terhadap Anak Sebagai Pelaku Tindak Pidana Cyberbullying Di Polrestabes Makassar. *Indonesian Journal of Criminal Law*, 3(1), 49–63.
- Arifin, R., Wedhatami, B., Alkadri, R., & Nte, N. D. (2022). The internet gang of violence: Trend of cyberbullying on the internet. *AIP Conference Proceedings*, 2573(1).
- Habibi, M. R., & Liviani, I. (2020). Kejahatan Teknologi Informasi (Cyber Crime) dan Penanggulangannya dalam Sistem Hukum Indonesia. *Al-Qanun: Jurnal Pemikiran Dan Pembaharuan Hukum Islam*, 23(2), 400–426.
- Hermawanto, A., & Anggraini, M. (2020). *Globalisasi, Revolusi Digital dan Lokalitas: Dinamika Internasional dan Domestik di Era Borderless World*. LPPM Press UPN" Veteran" Yogyakarta.

- Hutasuhut, L. A., & Zuhir, M. A. (2022). PENEGAKAN HUKUM TINDAK PIDANA PERUNDUNGAN DUNIA MAYA (CYBER BULLYING) TERHADAP ANAK. *Lex LATA*, 2(3).
- Ismail, Z., & Lestari, M. P. (2022). Tindak Pidana Pembunuhan dengan Mutilasi dalam Hukum Pidana di Indonesia. *KRTHA BHAYANGKARA*, 16(2), 429-444.
- Juditha, C. (2021). Analysis of Content The Case of Cyberbullying Against Celebrities on Instagram. *Jurnal Penelitian Komunikasi Dan Opini Publik*, 25(2).
- Lumantak, M. (2022). TINJAUAN YURIDIS DALAM KASUS CYBERBULLYING TERHADAP ANAK DI MASA PEMBELAJARAN DARING. *LEX ADMINISTRATUM*, 10(3).
- Mishna, F., Saini, M., & Solomon, S. (2009). Ongoing and online: Children and youth's perceptions of cyber bullying. *Children and Youth Services Review*, 31(12), 1222-1228.
- Mukhlisotin, M. N. (2017). Cyberbullying Perspektif hukum pidana islam. *Al-Jinayah: Jurnal Hukum Pidana Islam*, 3(2), 370-402.
- Mukhtar, N., Aftab, M. J., Qamar, T., Bagum, M., Nazir, M., & Naureen, S. (2023). Psychological Impact Of Cyber Bullying On Adolescents With Special Needs In Punjab. *Journal of Positive School Psychology*, 1402-1415.
- Nugroho, D. R., & Suteki, S. (2020). Membangun Budaya Hukum Persidangan Virtual (Studi Perkembangan Sidang Tindak Pidana via Telekonferensi). *Jurnal Pembangunan Hukum Indonesia*, 2(3), 291-304.
- Paat, L. N. (2020). Kajian Hukum Terhadap Cyber Bullying Berdasarkan Undang-Undang Nomor 19 Tahun 2016. *Lex Crimen*, 9(1).
- Paat, Y.-F., & Markham, C. (2021). Digital crime, trauma, and abuse: Internet safety and cyber risks for adolescents and emerging adults in the 21st century. *Social Work in Mental Health*, 19(1), 18-40.
- Pahlevi, F. (2022). Pemberantasan Korupsi di Indonesia Perspektif Legal System Lawrence M. Freidmen. *El-Dusturie: Jurnal Hukum Dan Perundang-Undangan*, 1(1).
- Pakpahan, H. (2020). Aspek hukum pidana cyberbullying di media sosial. *Jurnal Cakrawala Hukum*, 11(3), 250-258.
- Pratiwi, S. J. (2022). Pencegahan Tindak Pidana Kekerasan Melalui Media Sosial (Cyberbullying) Berdasarkan Perspektif Hukum Positif. *Lex Crimen*, 11(3).
- Prihatin, L., Nooryanto, F. H., Suyani, S., Suryadi, S., Halim, A., & Kusumawati, S. (2023). Penyuluhan Mencegah Bullying di Lingkungan Sekolah pada Siswa. *JlIP-Jurnal Ilmiah Ilmu Pendidikan*, 6(1), 36-41.
- Rahayu, F. S. (2012). Cyberbullying sebagai dampak negatif penggunaan teknologi informasi. *Journal of Information Systems*, 8(1), 22-31.
- Rajbhandari, J., & Rana, K. (2023). Cyberbullying on social media: An analysis of teachers' unheard voices and coping strategies in Nepal. *International Journal of Bullying Prevention*, 5(2), 95-107.
- Rihardi, S. A., Pembayun, J. G., & Yusliwidaka, A. (2022). PEMBENTUKAN KOMUNITAS ANTI CYBERBULLYING DI KALANGAN SISWA MENEGAH ATAS SEBAGAI UPAYA PREVENTIF MENUJU DESA SUKOSARI BEBAS DARI PERILAKU. *Indonesian Journal Of Community Service*, 2(4), 397-404.
- Rizkyani, R. (2021). TINDAK PIDANA INTIMIDASI DI INTERNET (CYBERBULLYING) SEBAGAI KEJAHATAN MAYANTARA (CYBERCRIME). *Journal of Law (Jurnal Ilmu Hukum)*, 6(2), 436-452.
- Rumra, N. S., & Rahayu, B. A. (2021). Perilaku Cyberbullying pada Remaja. *Jurnal Ilmiah Kesehatan Jiwa*, 3(1), 41-48.
- Touzeau, N. (2018). Some behavior differences between bullying and cyber bullying and impacts on adult victims. *J. Criminol. Forensic Stud*, 1(2), 1-5.
- Yandy, E. T. (2016). TINJAUAN FIQH JINAYAH TERHADAP PEMBUNUHAN YANG DISERTAI DENGAN MUTILASI. UIN Raden Fatah Palembang.