

The Perspective of Victimology on Cyberbullying in Social Media

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Abstract: More than fifty of cybercrime comes from social media. Cyberspace is divided into white and black sites. White sites where information is known. Meanwhile, the largest portion is precisely the dark social media became the gates of attack. The trend shows that social media is used to socialize. The growth of social media users increases the trend of cyberbullying. That raises victims who need attention and protection. In this case, the role of victimology is necessary to find out the relationship between victims and perpetrators, as well as legal protection. In Indonesia there are several existing laws, it can be used to follow up on the parties doing cybercrime. There are *the Indonesian Criminal Code (KUHP)*, *Law No. 40 the year 1999 on the Press and the Law on Electronic Information and Transaction*. However, these regulations are not effective in preventing crime and providing protection to victims. Therefore this paper aims to explore how Indonesian regulation provides the regulation to protect cyberbullying victims. Through this article, it is also hoped that it can be known whether the existing regulations in Indonesia can be applied to the cyberbullying. In conclusion firstly, Indonesia Law does not define cyberbullying. Secondly, Indonesian regulation does not specifically regulate cyberbullying victims' rights. The recommendation is the Indonesian government should regulate juridically the type of cyberbullying crime, including the legal definition of cyberbullying, increase human resources in the field of cybercrime law enforcement and special attention from the Indonesian government to victims of cyberbullying.

1 INTRODUCTION

Cybercrime is formulated as an unlawful act that is carried out by using a computer network as a means/tool or computer as an object, whether for profit or not, at the expense of others. In connection with computers, communication has evolved through FB, WA, LINE, etc. which makes it easy for users to communicate with one another. This ease of communication turns out to be prone to irresponsible actions carried out by others to gain their own benefits but to the detriment of others. One of the actions currently deviating or breaking the law by utilizing the development of information and communication technology as a new medium for committing a crime is cyberbullying.

The need for a policy on regulations governing cyberspace becomes a necessity considering the threats and dangers of cybercrime not only coming from within the country but also potentially becoming targets or objects of cybercrime committed outside Indonesian territory and consequently occurring in jurisdiction Indonesia. Therefore, transnational or

cross border characteristics of cybercrime enable Indonesian citizens, institutions or countries or any country to be targeted or victims of cybercrime.

The importance of expressly regulating criminalization that regulates cybercriminal action is expressly stated in one of the Regional Conventions, the Council of Europe Convention on Cybercrime 2001, which in its opening stated that “convinced of the need to pursue, as a matter of priority, a common criminal policy aimed at the protection of society against cybercrime, inter alia, by adopting appropriate international legislation and fostering cooperation.

The new trends in cyberbullying in Indonesia are increasing. In 2017, Indonesian Police received 1,763 cybercrime cases (Putranegara, 2017). A large number of cybercrime victims shows that there is still a need for serious handling in cybercrime. Cybercrime as a new form of crime in the era of technological progress, based on cybercrime targets consists of cybercrime against persons, cybercrime against property and cybercrime against the government.

In Indonesia there are several existing laws, it can be used to follow up on the parties doing cybercrime. There are *the Indonesian Criminal Code (KUHP)*, *Law No. 40 the year 1999 on the Press and the Law on Electronic Information and Transaction*. However, the regulation does not fully regulate the protection of victims. The regulation is more focused on the perpetrators of the crime. However, these regulations are not effective in preventing crime and providing protection to victims.

The aim of this paper is two-fold: First, the existing regulations in Indonesia can be applied to the cyberbullying. Secondly, this paper discusses Indonesian regulations providing the regulation to protect cyberbullying victims in the victimology perspective.

2 INDONESIAN LAW PROTECTION OF CYBERBULLYING VICTIM IN SOCIAL MEDIA

The development of cybercrime that occurs today has received a reaction from countries in the world both regionally and internationally with various policies including using criminal law. The state's reaction to the development of cybercrime is a consequence of a country's sovereignty.

Criminal behaviour can take place in an electronic environment. Investigation of cyber crimes, that is, any crime committed in an electronic network, requires particular expertise, investigation procedures (Sigid Suseno, 2016). The characteristics of cross border cybercrime related to criminal jurisdiction in force of national criminal law. In cybercrime all acts can be done in one country or some parts are carried out in one country and some parts are carried out in other countries or the acts are carried out in one country and consequently spread in several regions of the country. The extent and spread of cybercrime locus delicti will lead to the potential for multiple jurisdiction or jurisdiction conflicts in the eradication of cybercrime.

In Indonesia there are regulations that govern cybercrime issues, but the regulations do not specifically regulate cyber bullying. Some laws and regulations governing cybercrime include *the Indonesian Criminal Code (KUHP)*, *the Law No. 40 year 1999 on the Press and the Law on Electronic Information and Transaction*. These regulations are related to cybercrime. So that in implementation

several of these regulations can be applied simultaneously.

a) The Indonesian Criminal Code (KUHP)

In the Indonesian criminal code, several articles have links to cybercrime. These articles include Proverbs 310 paragraph 1 and paragraph 2 regulate that the person who intentionally harms someone's honour or reputation by charging him with a certain fact, with the obvious intent to give publicity thereof, shall, being guilty of slander, be punished by a maximum imprisonment of nine months or a maximum fine of three hundred rupiahs.

Furthermore, in Article 310 Number 2 Indonesia's Criminal Code regulates that If this takes place by means of writings or portraits disseminated, openly demonstrated or put up, the principal shall, being guilty of libel, be punished with a maximum imprisonment of one year and four months or a maximum fine of three hundred rupiahs.

b) The Law No.40 of 1999 on the Press

The freedom of the press is a form of popular sovereignty and is a very important element in creating a democratic society, nation, and state life so that freedom of thought and opinion is issued. In the life of a democratic society, nation and state, freedom of expression of thoughts and opinions in accordance with conscience and the right to obtain information, constitutes a very basic human right, which is needed to uphold justice and truth, promote public welfare, and educate the life of the nation. The national press as a vehicle for mass communication, information disseminators, and opinion formers must be able to carry out the principles, functions, rights, obligations, and roles properly based on professional press freedom so that they must be guaranteed and protected by law, and free from interference and coercion from anywhere. Unlimited press freedom has a very bad impact on the survival of the nation. Therefore it is only natural that the press is regulated in statutory regulations.

Law No. 40 the year 1999 on Press did not specifically regulate cyberbullying. But some regulations have links with cyber harassment and cyberbullying. The provisions of the article include article 5 (1) and Article 6. Article 5 (1) regulates that national press has the obligation to report events and opinions with respect towards religious norms and moral norms possessed by the public, completed with the presumed innocent principle.

Next Article 6 states that national press must play its roles in the following matters: fulfil the public's right to know, enforce democratic basic principles,

promote the embodiment of supremacy of law and human rights, while at the same time respect the diversity, develop public opinion based upon factual, accurate and valid information, conduct control, provide criticism, correction, and suggestion towards any public concern, fight for justice and truth.

Based on article 6 it can be seen the obligations that must be carried out by the national press. One of them is the obligation to uphold democratic values and respect diversity, human rights. The national press is also obliged to fight for justice. Therefore, press activities are prohibited to contain negative news, for example, news with content in the context of bullying.

Furthermore, Article 18 paragraph 2 expressly regulates criminal sanctions and fines for those who violate the provisions of Article 5. However, these articles are more focused on the actions of the perpetrators of crimes.

c) The Law concerning on Electronic Information and Transaction Law

In order to provide protection and recognition of the rights and freedom of communication, the Law on Information and Communication was enacted, namely the Law on Electronic Information and Transactions. Furthermore, in the regulation on information and communication, several provisions in the *Law No. 11 of 2008*, so enacted *Law No. 19 of 2016 concerning Amendment to Law No. 11 of 2008 concerning Information and Electronic Transactions*.

The regulations regarding information and communication are not regulated in writing about cyberbullying. However, in both laws, there are articles directed at regulating people without the right to access other people's personal data through electronic media. The arrangement is also intended for the security of personal data of media users and electronic systems.

As stipulated in the law that the use of any information through electronic media that involves a person's personal data must be done with the consent of that person. Therefore those who have been violated their rights can file a claim for the harm caused. This is regulated in the provisions of article 26 paragraph 1 and paragraph 2.

Tapping on electronic information and or electronic documents in a particular computer or electronic system belonging to another person is also threatened with criminal sanctions in the form of prisons and fines, as stipulated in article 47 of the Law on Information and Communication. However, it is excluded if the act was carried out with the aim of law

enforcement at the request of the Police, prosecutors or other authorized parties.

The juridical element that must be fulfilled to be subject to threats as regulated in the law is the existence of intentional acts committed by every person whether individual Indonesian citizen, a foreign citizen or a legal entity. The next element is the act of assessing one's personal data through an electronic information system without permission from the data owner.

Article 27 and Article 28 of that regulation regulates some of the prohibited action. Based on that article we know that some action is prohibited to do which these contain violate decency, gambling content, defamation and extortion or threat. Thus, the perpetrators were threatened with sanctions both criminal and fine. Therefore Article 28 paragraph (1) regulates that everyone intentionally and without the right to spread false and misleading news that results in consumer losses in Electronic Transactions. The criminal threat is a maximum imprisonment of 6 years and / or a maximum fine of 1 billion. Based on this article, everyone who spread false and misleading news through electronic systems can be punished by that Law. Article 28 (2) contains the prohibited action which includes an action spread information contain hatred or hostility of certain individuals and/or groups of people based on ethnicity, religion, race, and intergroup (SARA).

Article 29 shows the law prohibits anyone who intentionally or without the right to send electronic information that contains threats of violence or intimidation that is intended personally. Furthermore, the perpetrators are threatened with criminal sanctions in the form of prisons and fines. This is regulated in Article 45 paragraph 3.

3 PROTECTION OF VICTIM

A victim is a person who suffers physical, mental and/or economic loss caused by a criminal offense. In a crime, often the victim has a role in the crime. The party that suffers a loss in not being a criminal is the victim. The suffering of a victim can be physical, psychological or material. Their victims of crime should have the right to get protection. But in practice, victims are often denied their rights. One of them in the Indonesian criminal justice system, in the case of litigation victims, is taken over by the state represented by the prosecutor. The state as the representative of the victim sometimes minimizes the potential for personal (emotional) retribution and for punishments that are right based on rational

considerations (rationalization) for victims and society as a whole.

Seeing the consequences of criminal acts for victims of cyberbullying is only natural if the victim is considered in restoring his rights and given appropriate protection. Crime victims have rights. The right of the victim who needs serious attention is the right to report her fate and possibly be free to be pressured or afraid to report. This prevents double victims. To realize this, there is a need for rules regarding reporting mechanisms and follow-up decision making systems. Therefore it is necessary to support the existence of law enforcement officers who have adequate capabilities. Protection of victims should be done from the time the victim reports, during the judicial process to the verdict.

Protection is all efforts to fulfil rights and provide assistance to provide security to the victims. The protection of victims has a very important role in exposing a crime. Because the victim's testimony is one of the evidence in the trial. With legal protection, it is expected that victims can provide information freely without fear and threats. The right to obtain protection has been regulated in the provisions of *the 1945 Indonesian Constitution* especially Article 28G, Article 28I and Article 28 J. Article 28 G is stipulated about the right of every Indonesian citizen to get protection from various threats that threaten his life, family, honour, dignity, and property. In addition, protection must also be given to protect the right not to be tortured, the right to life and discriminatory treatment before the law. Article 28J regulates that everyone has an obligation to respect the rights of others as stipulated in the law. The article 28I regulates protection and enforcement of human rights is the responsibility of the state, especially the government.

In Indonesia there is a regulation that specifically regulates the legal protection of victims, namely *Law No. 31 of 2014 concerning Amendments to Law No. 13 of 2006 concerning Witness and Victim Protection*, hereinafter referred to as the Witness and Victim Protection Act. This law is motivated by the importance of the role of the victim as one of the parties who has a role in uncovering the occurrence of a crime. The unfolding of a crime due to lack of sufficient evidence could occur, one of which was caused by a victim-witness who felt intimidated by threats from certain parties. Therefore, this Law was formed with the intention to provide protection for one of them to the victim and to foster community participation in disclosing criminal acts. These efforts are carried out by creating a conducive climate through the provision of legal protection and security

to victims who can help uncover a crime that has occurred and report it to law enforcement.

In the provisions of the Act, it is regulated that protection is given to one of them is a criminal offense whose life is threatened. This is regulated in the explanation in Article 2 paragraph 2 of the law. As stipulated in the provisions of the Witness and Victim Protection Act, protection is provided at all stages of the criminal justice process within the judicial environment. This is regulated in Article 2. Protection, as regulated in Article 8, is given from the investigation stage begins and ends in accordance with statutory provisions. The purpose of implementing such protection is to provide a sense of security to the victim in providing information in every criminal justice process.

The form of protection for victims regulate in the Article 5 and Article 7 paragraph 2 of the Law on the Protection of Witnesses and Victims.

In the process of giving testimony before the trial, victims who feel their lives are very threatened have the right to provide information without being present at the location of the case. This provisions are regulated in Article 9 of the Law on the Protection of Witnesses and Victims.

Regarding the information given by the victim, she cannot be prosecuted for reports, testimonies that will, are or have been given. This is stipulated in Article 10 paragraph 1 of *the Law concerning the Protection of Witnesses and Victims*. The testimony of the victim who is also a criminal offense does not make the victim acquitted of lawsuits if his actions are legally proven. But his testimony can be taken into consideration by the judge to lighten his demands. This is regulated in the provisions of Article 10 paragraph 2 and paragraph 3.

What needs to be regretted is that the protection to victims secured by the Act is still in the form of basic legal protection. So that without being specifically regulated in the Law relating to the mentioned rights, it has also been regulated in other Acts, for example in *the Criminal Procedure Code* (KUHP). Likewise, the prosecution to get restitution in the form of payment of compensation from the perpetrators of criminal acts has also been regulated in the formal criminal law, namely *the Criminal Procedure Code*. So there is no novelty regulated in *the Law on the Protection of Witnesses and Victims*.

As regulated in the *Witness and Victim Protection Act*, in Indonesia the protection of victims is provided through the Witness and Victim Protection Agency, hereinafter referred to as LPSK. This institution was formed based on the Law on Witness Protection and

Victims. LPSK is an independent institution and is responsible to the President.

Protection of victims as provided for in Article 28 of the Law on the Protection of Victims' Witnesses is provided with the following conditions: the importance of witness and/or victim statements, the level of threat that endangers witnesses and/or victims, results of analysis of medical teams or psychologists for witnesses and/or victims, track record of crimes committed by witnesses and/or victims.

The parties who prevent the giving of protection to victims can be threatened with sanctions including imprisonment or fines, which are regulated in Article 37, Article 38, Article 40 of the *Law on Witness and Victim Protection*. These article also shows the efforts made by the state, in this case, the government to provide protection to victims. Proven for those who make victims suffer losses from information given correctly will be threatened with sanctions.

4 CONCLUSION

As stated earlier, this article focussed on the cyberbullying by social media. Based on data the trend of cyberbullying victim is increase. That raises victims who need attention and protection. In Indonesia there are several existing laws, it can be used to follow up on the parties doing cybercrime. There are *the Indonesian Criminal Code (KUHP)*, *Law No. 40 the year 1999 on the Press and the Law on Electronic Information and Transaction*. However, these regulations are not effective in preventing crime and providing protection to victims. In Indonesia the right of victim has been set in the *Law No. 31 of 2014 concerning Amendment to Law No. 13 of 2006 concerning Protection of Witnesses and Victims* but there is not define juridically the legal definition of cyberbullying. Consequently, there is still difficulties in determining crime through an electronic system that is categorized as cyberbullying. In these Laws also do not regulate specifically of cyberbullying victims' rights.

Having stated all the above, the Indonesian government should regulate juridically the type of cyberbullying crime, including the legal definition of cyberbullying. The government also should increase human resources in the field of cybercrime law enforcement. That aims to increase law enforcement in the field of cybercrime. Then, legal protection for victims of cyberbullying should be getting special attention from the Indonesian government

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