

CRIMINAL POLICY AGAINST CHILDREN WHO COMMITTED CYBER BULLYING: INDONESIA LAWS PERSPECTIVE

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ABSTRACT

The amount cases of cyber bullying against children in Indonesia shows that the biggest issue are some emptiness in law enforcement itself. There is no regulations about children who committed cyber bullying. Based on all cases, the author took 2 problem formulation which how's the Ius Constitutum against children as a doer of cyber bullying and the Ius Constituendum works by using comparative laws in Indonesia, Philippines, Queensland, And Finland. This research using normative legal research method with the statutory approach and comparative law approach. The conclusion itself shows that positive criminal law or Ius Constitutum has several legal policies that actually related, but none of them are specified in one regulation. Meanwhile, there is an urge to adding more articles on law no.19 of 2016 on electronic information and transactions, inspired by the Permendikbud No.82/2015 which more concerning cyber bullying within the responsibilities of children as doers and victims, thus the law can accomplish the purposes of criminal law, while child protection principles can also be applied.

Keywords: Cyber Bullying, Children, Doers, Indonesia.

INTRODUCTION

Children has an important role as the nation's gold generations. Every process of children's growth are important by giving them knowledge and various supporting implications. Hence, children needs not only encouragement as positive as well from family and society, but also the emphasizing of legal protection are needed.

Indonesia has been ratified the convention of the rights of the child by President Decree Number 36 of 1990, which used as a main reason in establishment of Child Protection Law Number 23 of 2002 jo 35 of 2014. This law regulating that the implementation of child protection should be clear and bold as clear as what has been listed on Pancasila, 1945 Constitution, and basic principles of Convention of The Rights of The Child (CRC), which :

1. All rights stated on CRC must be given as fair as possible for every children;
2. All actions about children must be the main consideration;

3. Every children's rights about being safe and development should be guaranteed;
4. Every children deserves attention and their opinion should be considered.

Indonesia also included this principles in several legislation, such as Law No.4 of 1979, Law No.39 of 1999, Law No.11 of 2012, and also two regulations that are related to the fulfilment of the rights and protection of children, which Law No.44 of 2008 jo Law No.11 of 2008, and lastly Law No. 19 of 2016.

One of the children's rights that highlighted here is in the article 10 of Law Number 23 of 2002, where every child have their right to stating opinion, finding and provide any information according to their intelligence level and age, for the sake of self-development with the values of decency and propriety.

Interconnected networking or known as Internet is a compilation of systems in computer that has several globally structure, and uses TCP/IP as a packet switching communication protocol. Indonesia's internet users is fairly high, which has 107.2 million users by 2019. This is rapidly high because it grew by 12.6% compared to 2018 (Jayani & Widowati, 2019). Internet as known as one of media for fast spreading information, which bring a good side and also bad side. Internet often lead children into misunderstanding about some problems and ended up they committed cyber bullying.

Bullying is defined as repeated aggressive behaviour (Kowalski & Limber, 2007) and has been recognized as a significant social issue. Research has shown that bullying behaviours tend to increase with the age of Bullying is aggressive and intentional behaviour, repeated over time, combined with power aggression, and has to involve the following four criteria which repetition, intent, harm, and power differential (Capurso et al., 2017) Most forms of bullying can be classified as direct or indirect (Feshbach, 1969) tactics which include spreading of rumours, backstabbing, and exclusion from the group. In other words, the indirect forms frequently involve relational manipulation Whereas the direct forms of bullying often involve intimidating, humiliating, or belittling someone in front of an audience, the indirect forms are designed to damage the targets' social reputation or deflate their social status while concealing the identity of the doers.

Cyber bullying is officially a form of crime that is regulated in the 2001 Convention on Cyber Crime by the Europe Union (Marion, 2010). Cyber bullying is a relatively new type from conventional bullying, where cyberbullying can arise from different technological such as cellular phones and computers, where cyberbullies can utilize text messages, chat rooms, and social networking sites (Burton et al., 2013) By official website www.stopcyberbullying.org, child cyber bullying is act committed by a child under 18 years old who promote intimidates, threatens or humiliates other child or a group full of children especially through social media. There is some forms of cyber bullying, which :

1. Flaming: Hate Speech in abusive or vulgar language through message application or site.
2. Harassment: Sending some insulting or offensive messages to someone or some people.
3. Cyber stalking: Repeated harassment is intense and threatening to create fear in the victims.
4. Denigradation: Spreading online slander or posting gossips about someone in order to damage their reputation.

5. Impersonation: Pretending to be someone else and sending or posting false news or information. that causing trouble or even danger to the victim.
6. Outing: Trick someone into revealing a secret to be humiliated and shared online.
7. Exclusion: Isolate or even corner someone from an online group.

The phenomenon of cyber bullying in Indonesia can easily be found. The case that is still hotly discussed is cyber bullying experienced by Bertrand Peto, the son of Ruben Onsu in 2019. He became a victim of cybercrime after his face was edited into an animal face by irresponsible individuals. When this case was brought to the authorities, it was discovered that the bully was a child under 17 years old (Tionardus, 2020). Another case happened several years ago. This cyber bullying was experienced by an 18-year-old teenager named Karin Novilda after uploading posts that smelled of harsh curses and quite vulgar dating styles. This has drawn negative criticism from various circles because it is considered to have damaged the morale of its social media followers. Several Instagram accounts that uploaded hate speech and disgrace began to appear to damage her reputation. Shortly afterwards, it was discovered that one of the Instagram accounts that spread its ugliness, *buktiazakok*, was owned by an old friend who was under 18 years old (Hanindita, 2017).

The cases shows that the problem of law enforcement is due to weak regulations governing cyber bullying and the difficulty of proving child offenders. They are considered not knowing the consequences of a criminal act committed against other people. Children who committed cyber bullying don't know that the act is actually wrong because they think that what they are doing is just a fun joke. Some of them committed these acts out of vengeful motives.

According to the explanation abovementioned, there are several legal issues arise namely How is the formulation of positive criminal law against children who committed cyber bullying? How is the future criminal law policy against children who committed cyber bullying based on laws in Philippines, Queensland, And Finland? Therefore, the author is interested in conducting research with the title "*Criminal Law Policy Against Children who committed Cyber Bullying on Indonesia law Perspective*".

The writing aims to find out the formulation of positive criminal law against children who committed cyber bullying as well as to find out the form of future criminal law policy against children who committed cyber bullying, based on laws in Philippines, Queensland and Finland.

METHODOLOGY

Research methods are necessary in terms of collecting information of the research subject. Based on the problems that will be explored in this study, the research method this research uses the type of empirical juridical research where this method examines existing legal provisions as well as seeking information in the form of data and information about the problems that become the discussion or problems raised in this paper using the normative approach method where this method is based on a study of the literature and laws and regulations related to the topic raised by the author in this paper. This is Normative legal research, where based on primary and secondary legal instruments such as Positive Law in Indonesia and other supporting books related to this scientific journal.

First: The Formulation of Positive Criminal Law Against Children Who Committed Cyber Bullying

Cyberbullying is not a new thing, and the outbreak of Covid-19 pandemic has forced many to become more engaged on the use of the internet to support their daily activities, including children (Mkhize & Gopal, 2021) In the case of the criminal act itself, children are treated specifically, thus it is different from the treatment of adults in the criminal process. Due to criminal penalty for children, it is certainly different from the imposition of penalty against adults. There is some criminal positive laws in Indonesia that related to the research, such as:

Indonesia Penal Code (KUHP)

Penal Code is legal protection of all positive criminal regulations in Indonesia that have been in since 1918. There is one related article, which article 310 about defamation (Waisnawa, 2019). There are some elements related to cyber bullying such as:

1. On Purpose: Leiden Marpaung once said, on purpose meaning there is subjective element which pointing out on acts, which means, doers did their act who violates the honour or reputation of others with full awareness (Marpaung, 2010).
2. Insulting: Insulting means attacking the victim's dignity and reputation, and leads into second hand embarrassment.
3. On purpose of the accusation will be published.
4. There is a purpose for the acts must be known by many people. committing insults not only happen in public, by the sufficiency to prove that the doers intends to distributing the accusation (Soesilo, 1994).
5. Insulting can only be prosecuted if there is a complaint from the person who is the target of the insult or complaint offense, unless the insult is committed against a civil servant while carrying out his legal job.
6. Happens with a letter or picture broadcast, shown or pasted.

To be broadcast can mean to be distributing while being shown has the meaning that it can still be seen by others even though it is not distributed directly (Marpaung, 2010).

Based on elements above, there is another cyber bullying forms that related, such as: Harassment: Willard once said that harassment is a form of attacking someone's reputation by spreading it to the public through cyberspace (Willard, 2005). Denigradation: According to article 311 of the penal code, the point of denigradation is that the information conveyed by the perpetrator is cannot be true. Meanwhile, according to Willard, denigradation in cyber bullying does not pay attention to the truth of information, but the main point is an attempt to damage the reputation and good name of the victim.

But at the same time, the regulation in this article have weakness, which the offense contained in this article is the complaint offense. Based on article 72 paragraph (1) of the penal Code, a person who sues for a complaint offense but is not yet sixteen years of age, then his legal representative in a civil case has the right to report a violation. This is a weakness because it does not rule out the possibility that victims of cyber bullying are children and they do not have the courage to tell their parents about their problems, especially those related to cyberspace, which causes parents to have difficulty reporting if their children experience cyber bullying. Law on Child Protection Number 23 of 2002 Jo Law on Child Protection Number 35 of 2014.

Article 77: Based on article 77, an appropriate form of cyber bullying is exclusion, in which the doers isolates his victim in cyberspace as a form of discrimination so that the victim becomes isolated and his social function becomes obstructed.

Article 80: This article has several points that related to cyber bullying, which cruelty, violence or threats of violence or abuse against children. Based on the elements in the article, the intended credit is an act that is physically real, while the act of cyber bullying does not happen in real terms, but through social media platforms. However, the form of cyber bullying, namely flaming, has an element of similarity to the sound of this article. When abusive words are uttered by the doers, it is often a threat of either assault or murder. Law Number 11 of 2008 on Electronic Information Transactions.

Article 45 Section (1): The whole article discusses about the penalties for everyone who distributing inappropriate contents. There are several points such as Everyone, Intentionally, Making and distributing accessible electronic information, Electronic information or electronic documents, Having inappropriate contents. Those five points must be fulfilled so that it can be assumed that the distribution of inappropriate contents has occurred.

Article 45 Section (3): Similar goes with article 45 section (1), this article discusses about criminal penalties for everyone for doing slandering that causing bad reputations. There are some related elements with cyber bullying acts, such as harassment, denigradation, and outing.

Article 45B: This article contain regulation for everyone who spreading information that containing threats of violence to other people would sentenced to a criminal law. Again, there are some related elements with cyber bullying acts, such as flaming and harassment.

Second: The Regulation of Children Who Committed Cyber Bullying in Some Countries: Philippines

Philippines is one of the countries in Southeast Asia that has a high level of cyber bullying between children. It has become one of the top challenges faced by public school in Philippines (Vargas et al., 2018). Philippines has several national laws that regulated about bullying, both the victim and the doers are perpetrated by children through social media, such as: The Revied Penal Code of 1930 and The Cyber Crime Prevention Act of 2012. Article 353 of the Criminal Code in the Philippines highlighting the definition of libel, which "*Libel is public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance tending to cause the dishonour, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead.*" This article explained that slandering that committed in public, which causes insult or disrespecting a person, naturally insults, or blackens the victim's memory who has died, which if this act is done on social media, the doers will be punished with a severe punishment by the victim who feels offended. This regulation based on section 4 cc-4 on The Cyber Crime Prevention Act of 2012, which says "*Libel is The unlawful or prohibited acts of libel as defined in Article 355 of the Revised Penal Code, as amended, committed through a computer system or any other similar means which may be devised in the future.*"

The Anti Bullying Act of 2013: On section 2 of this regulation, For purposes of this Act, bullying shall refer to any severe or repeated use by one or more students of a written, verbal or

electronic expression, or a physical act or gesture, or any combination thereof, directed at another student that has the effect of actually causing or placing the latter in reasonable fear of physical or emotional harm or damage to his property; creating a hostile environment at school for the other student; infringing on the rights of the other student at school; or materially and substantially disrupting the education process or the orderly operation of a school; such as, but not limited to, the following:

Any unwanted physical contact between the bully and the victim like punching, pushing, shoving, kicking, slapping, tickling, headlocks, inflicting school pranks, teasing, fighting and the use of available objects as weapons; Any act that causes damage to a victim's psyche and/or emotional well-being; Any slanderous statement or accusation that causes the victim undue emotional distress like directing foul language or profanity at the target, name-calling, tormenting and commenting negatively on victim's looks, clothes and body; and Cyber-bullying or any bullying done through the use of technology or any electronic means.

And continued by section 3 B-1, *"Implementing Rules of Anti Bullying Act 2013 This covers social bullying aiming to belittle another individual or group or gender-based bullying which humiliates another on the basis of perceived or actual sexual orientation and gender identity"*

The regulations of cyberbullying in Philippines actually is in the same regulation with the conventional bullying. Section 2 explains that bullying is repeated by one or a group of students through expressions, physical actions or gestures, verbally or through electronic devices or a combination of actions that have been mentioned to other students and creates anxious and fear both would harm physical, or mental.

Philippines has taken effective steps to minimized the cases of cyber bullying, which by empowering youth to fight cyber bullying called *"Shift CTRL DEL Conference"* held in Cebu City in 2015, which was attended by teenagers and teachers from hundreds of schools, NGO representatives in the Philippines, and representatives at UNICEF. This activity was able to give recommendations that can be given to the Philippine Ministry of Education

Queensland

Queensland is the capital state of Australia. Queensland has laws on cyber bullying and the appropriate penalty for children, in this case, Queensland regulated laws regarding Cyberbullying in the Criminal Code Act 1899, named the Criminal Code in Queensland. Cyberbullying has been known as a harmful practice to which need to be taken seriously by all the stakeholders, including schools (Pennell et al., 2021). The behavior related to Cyberbullying is *"unlawful stalking"*, which is stalking in an unlawful manner. Article 359B explains what the forms of unlawful stalking are, such as:

1. Intentionally directed at a person (the stalked person);
2. Engaged in on any 1 occasion if the conduct is protracted or on more than 1 occasion; and
3. Consisting of 1 or more acts of the following, or a similar type, which:
4. Following, loitering near, watching or approaching a person;
5. Contacting a person in any way, including, for example, by telephone, mail, fax, email or through the use of any technology;

6. Loitering near, watching, approaching or entering a place where a person lives, works or visits;
7. Leaving offensive material where it will be found by, given to or brought to the attention of, a person;
8. Giving offensive material to a person, directly or indirectly;
9. An intimidating, harassing or threatening act against a person, whether or not involving violence or a threat of violence;
10. An act of violence, or a threat of violence, against, or against property of, anyone, including the defendant; and that would cause the stalked person apprehension or fear, reasonably arising in all the circumstances, of violence to, or against property of, the stalked person or another person; or
11. Causes detriment, reasonably arising in all the circumstances, to the stalked person or another person.

While Queensland has several penalties as a repressive act against bullying in schools. According to the Minister of Education, Training and Employment in Queensland, John Paul Langbroek, explained that the penalty of bullying starts from doing social work, serving the community, for example by serving people with disabilities, so that children can learn to respect and accept the shortcomings of others. In addition, the penalties given by the purpose of clearing illegal graffiti in several places and roads.

Finland

Finland is known as country with the best education system in the world by the International Student Assessment Program (PISA). That doesn't make Finland has minimal cases cyber bullying or what is often referred to as web bullying. Finland also doesn't have any specific regulations on cyberbullying and only takes from the Finland Penal Code which is regulated in chapter 24-Offences against privacy, public peace and personal reputation (531/2000), Section 9-Defamation (531/2000) 175 (1) A person who:

1. Spreads false information or a false insinuation of another person so that the act is conducive to causing damage or suffering to that person, or subjecting that person to contempt, or (2) makes a derogatory comment on another otherwise than in a manner referred to in subparagraph (1) shall be sentenced for defamation to a fine or to imprisonment for at most six months.
2. Criticism that is directed at a person 's activities in politics, business, public office, public position, science, art or in a comparable public position and that does not obviously overstep the limits of propriety does not constitute defamation referred to in paragraph (1)(2).
3. A sentence for defamation shall be imposed also on a person who spreads false information or a false insinuation on a deceased person, so that the act is conducive to causing suffering to a person to whom the deceased was particularly close.
4. This policy is clarified in chapter 38 on data protection and communication in section 8, as translated by the author, that someone's data illegally enters the private electronic domain of someone else and then deviates or spreads it through electronic media. must be punished with a fine and a maximum imprisonment of one year.
5. This became the basis for the Finnish government to establish a system called KiVa which aims to prevent cyber bullying. KiVa comes from the Finnish language Kiusaamista Vastaan, which means against bullying (Farrington & Ttofi, 2009). This system was developed by students and several professors and funded by the Finnish Ministry of Education and Culture. In Purpose those who are involved in KiVa are students, teachers, and parents who use internet facilities (for example through interactive anti-bullying games) and the learning environment. There are three steps applied in Kiva, starting from prevention, intervention, and supervision.

CONCLUSION

Positive criminal law or the *Ius Constitutum* in Indonesia have no explicit policy about children who committed cyber bullying. Some regulation existing without specifically discuss the forms of cyber bullying, and what can be punished, so that it can cause confusion among everyone. That is why there is urgency for evaluating existing laws and regulations, especially the Child Protection Law and the Electronic and Transaction Information Law, because there is emptiness in every norms related to child cyber bullying.

And as the basis for future criminal law policies or *Ius Constituendum*, based on the comparative legal systems of the Philippines, Queensland and Finland are used, and compared with the RKUHP, the Information and Electronic Transactions Law, and the Child Protection Law, Indonesia have no regulation about cyber bullying, the forms, and penalty for children. That is why the government needs to regulated penalties for children but still pay attention to the principles of child protection. There is repressive efforts are also needed as the solution offered by the Australian state, Queensland, is by doing social work, such as serving disabilities people or cleaning vandalism at school.

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