

Indonesia's Criminal Law Policy in Tackling Cyberbullying with a Restorative Justice Approach

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ABSTRACT

The increasing number of complaints from victims of cyberbullying crimes from year to year certainly requires a criminal law policy, both through penal and non-penal efforts, which are not only repressive but also preventive. The Restorative Justice (RJ) approach is one of the possible mechanisms that can be offered in order to combat this type of crime. This study aims to explain how Indonesian criminal law regulates cyberbullying and how Restorative Justice (RJ) approach concept addresses cyberbullying. This research is normative juridical research. The legal materials used were primary legal materials taken from regulations and secondary legal materials refer to relevant writings, books or research. The data is analyzed qualitatively and the writing was organized systematically and descriptively. The results revealed that the regulation on the settlement of cyberbullying includes Article 310 paragraphs (1) and (2) of the Criminal Code, Article 311 of the Criminal Code, Article 315 of the Criminal Code, Article 27 paragraphs (3) and (4) in conjunction with Article 45 paragraph (3) and (4) Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions and Article 29 in conjunction with Article 45B of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE Law), in this article cannot be applied if the action is only in the form of a threat. Even so, the concept of restorative justice is regulated in law enforcement agencies as the implementation rules have not accommodated several types of cyberbullying crimes.

ABSTRAK

Meningkatnya jumlah pengaduan korban kejahatan cyberbullying dari tahun ke tahun tentunya membutuhkan kebijakan hukum pidana baik melalui upaya penal maupun non penal yang tidak hanya bersifat represif tetapi juga preventif. Pendekatan Restorative Justice (RJ) merupakan salah satu kemungkinan mekanisme yang dapat ditawarkan untuk memberantas kejahatan jenis ini. Penelitian ini bertujuan untuk menjelaskan bagaimana hukum pidana Indonesia mengatur cyberbullying dan bagaimana konsep pendekatan Restorative Justice (RJ) menyikapi cyberbullying. Penelitian ini merupakan penelitian yuridis normatif. Bahan hukum yang digunakan adalah bahan hukum primer yang diambil dari peraturan perundang-undangan dan bahan hukum sekunder mengacu pada tulisan, buku atau penelitian yang relevan. Data dianalisis secara kualitatif dan penulisan disusun secara sistematis dan deskriptif. Hasil penelitian mengungkapkan bahwa pengaturan penyelesaian cyberbullying meliputi Pasal 310 ayat (1) dan (2) KUHP, Pasal 311 KUHP, Pasal 315 KUHP, Pasal 27 ayat (3) dan (4).) jo Pasal 45 ayat (3) dan (4) Undang-Undang Nomor 19 Tahun 2016 tentang Perubahan atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik dan Pasal 29 juncto Pasal 45B Undang-Undang Nomor 19 Tahun 2016 tentang Perubahan atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik (UU ITE), dalam pasal ini tidak dapat diterapkan jika perbuatannya hanya berupa ancaman. Walaupun demikian, konsep restorative justice diatur di lembaga penegak hukum karena aturan pelaksanaannya belum mengakomodir beberapa jenis kejahatan cyberbullying.

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I. INTRODUCTION

The Indonesian population was one of the largest users of the Internet in Southeast Asia. In 2022, it was estimated that there were approximately 210 million internet users in Indonesia (Dewi, 2022). The advancement of information technology in the digital age facilitates communication between individuals. However, it is not uncommon for people to be less precise in utilizing this increasingly developing technology. Based on data from UNICEF in 2020, 45% (forty five percent) of children in Indonesia were victims of bullying in the digital world (which refers to cyberbullying) (Ardiansyah, 2022). Apart from these data, the Ministry of Communication and Informatics in collaboration with UNICEF conducted research from 2011 to 2013 with the results that around nine out of ten children aged 10 to 19 years or around 89% (eighty nine percent) communicated online with colleagues and 56% (fifty six percent) communicate online with their families, 25% (twenty five percent) communicate online with their teachers and 13% (thirteen percent) claim to have been victims of cyberbullying (Fadilah, 2021). This shows that internet technology should be used properly to help humans in social life based on legal certainty, prudence, good faith, and freedom to have technology or be neutral in technology as stated in Article 3 of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (hereinafter referred to as the ITE Law) cannot be separated from negative use which has a negative impact on people's lives (Aristoni et al., 2021). In the ITE Law, the criminal act of cyberbullying can be punished with imprisonment for a maximum of 6 (six) years as stated in Article 45 of the ITE Law. Moreover, if cyberbullying causes harm to other people, they are subject to a maximum imprisonment of 12 years as contained in Article 51 paragraph (2) of the ITE Law. Unfortunately, these repressive regulations do not seem to have an impact on the resolution of cyberbullying crimes, thus requiring a new concept in solving cyberbullying crimes (Putra, Pratama & Pradnya, 2022). Restorative justice (hereinafter referred to as RJ) is an approach that basically aims to restore, because basically when people commit crimes, things change. As such, RJ's role was to recover and protect victims of crime (Hafrida, 2019). By paying attention to the aspects of benefits for victims, communities and perpetrators, restorative justice was considered as an approach that meets such criteria.

Currently, the settlement of criminal acts in Indonesia generally uses the legal basis of the Criminal Code (KUHP). However, the purpose of punishment in the Criminal Code was very different from the RJ concept. The direction of punishment in Indonesia can be illustrated in Article 10 of the Criminal Code which essentially adheres to a retributive paradigm, namely providing a deterrence effect so that perpetrators do not repeat their actions (Anggraeni, 2020). In the current Criminal Law Law, the mechanism for solving crimes through the new RJ approach was contained in Law no. 11 of 2012 concerning the juvenile justice system (hereinafter referred to as the SPPA Law). Unfortunately, the SPPA Law only applies to perpetrators who are still children, namely those who are not yet 18 years old.

According to Wibisana & Setiabudhi (2022), restorative justice, which prioritizes finding solutions to criminal cases for the benefit of victims, offenders, and society as a whole, is central to the resolution of cyberbullying conflicts. Whereas, the Restorative Justice approach proposed as a solution to the Non-Penal Policy on criminal bullying in electronic media is promising for reducing cyberbullying in the future (Sidauruk et al., 2021). Further, (Clara et al., 2016) highlight that the

formation of a new Criminal Code and the conduct of comparative studies with other countries' approaches to cyberbullying can serve as a reference, an important factor to consider, and a valuable source of input on how Indonesia should approach the issue of cyberbullying. In essence, the author's efforts to compile this scientific publication with a focus on Indonesia's criminal law policy for tackling cyberbullying through the use of Restorative Justice represent a form of renewal in the legal field.

The increasing number of complaints from victims of cyberbullying crimes from year to year certainly requires a criminal law policy, both through penal and non-penal efforts, which are not only repressive but also preventive (Sidauruk et al., 2021). The RJ approach is one of the possible mechanisms that can be offered in order to combat this type of crime. In the context of efforts to combat cyberbullying, it is interesting to examine how criminal law policies regulate cyberbullying and how RJ's approach concept deals with cyberbullying. As a result, the purpose of this study is to shed light on how the Indonesian criminal law regulations control cyberbullying as well as how RJ's approach concept addresses the issue of cyberbullying.

II. RESEARCH METHOD

To get the best possible findings from this study, the author employs normative judicial research. In accordance with this form of normative judicial research, the statute approach and case approach are utilized. The legal materials used were primary legal materials taken from regulations and secondary legal materials refer to relevant writings, books or research (Marzuki, 2015). The authors gather legal data based on primary and secondary legal data, then group, record or cite, summarize, and, if necessary, review qualitative Methods. The method of legal data analysis that is utilized is one that is both systematic and descriptive. This method begins with the deciphering of legal materials in a manner that is organized, and then continues with the analysis of these materials using techniques of demonstration analysis as well as the interpretation of concepts that are relevant.

III. RESULTS AND DISCUSSIONS

1. Definition and Types of Cyberbullying

Crime refers to a form of individual or group action that was considered inconsistent with the norms that exist within a community group. Criminal activity signifies an offense that is inextricably linked to every society. Deviant behavior becomes a threat to social norms that apply in society and can cause tension for each individual or social group. Various means of overcoming deviant behavior were needed as a form of reaction that can be given to criminals to prevent the development of a crime (Puspitosari, 2020). Crime would always continue to evolve and periodically follow the evolution of people or social groups. The massive development of technology and communication not only has a positive impact but also a negative impact known as cybercrime or crimes committed using computer systems or networks (Fahlevi et al., 2019).

Bullying refers to a negative or a series of aggressive and manipulative actions, carried out by one or more people who were charged with violence during a certain period of time against people or groups who were considered weak (Sengkey, 2018). According to Horton (2021) bullying is "a willful and conscious desire to hurt another and put him under stress". Bullying was a form of intimidation to hurt others that was done intentionally against weaker people or groups. In light of what we know about cybercrime and what we know about bullying, we may say that cybercrime is aggressively charged with non-physical violence to attack the honor of weak persons or groups and is carried out repeatedly (cyberbullying).

Cyberbullying happens in various ways, such as from uploading photos, videos or posts that embarrass the victim to making fun of the victim. In general, the motives of the perpetrators were

very diverse, such as fun, joking, revenge to seek the attention of other social users (Thejaya et al., 2021). The types of cyberbullying that were usually carried out by perpetrators include (a) Flaming, is a text message sent by the perpetrator to the victim with harsh and frontal words. (b) Denigration or defamation, which is the act of portraying the victim as unappealing with the purpose to harm his or her reputation or good name via social media. (c) Harassment or disturbance are messages sent to the victim with the intention of disturbing the victim's peace. (d) Outing, namely the dissemination of other people's secrets either by sharing photos or videos with the intention of embarrassing the victim. (e) Impersonation or imitation of the attitude or form of another person by terrorizing the victim. (f) Trickery, is persuasion someone with the intention to trick the victim with a definite purpose. (g) Cyberstalking, i.e. actions that are viewed negatively to interfere with the aim of defaming someone intensely with the intention of scaring someone. (h) Exclusion, is an arbitrary action (the narrator of power) removing someone from an online group (James & Yuono, 2020).

The application of criminal law was guided by a set of rules called “legal principles”. As for among the principles used is the principle of legality as stated in Article 1 paragraph 1 of the Criminal Code which stated that “There is no act that can be punished, except based on criminal legislation that has existed before”. The principle of legality requires written rules that clearly and unequivocally define acts that are punishable by crime. In this context, especially for the reference to the criminal act of cyberbullying which is regulated in the ITE Law, it still has to be linked to the provisions of the Criminal Code. This was because the formulation of criminal acts in the ITE Law refers to forms of acts that are prohibited by the Criminal Code.

2. Cyberbullying regulation in Indonesia

Article 27 Paragraph (3) of the ITE Law

Article 27 paragraph (3) of the ITE Law regulates acts that contain elements of insult and defamation by distributing, transmitting, and or making such content accessible. This rule refers to and cannot be separated from the provisions of Article 310, Article 311 and Article 315 of the Criminal Code which are offenses that attack a person's honor by accusing something to be public knowledge. The accusation in question is something that the perpetrator knows that his accusation is something that is not true, so to prove whether or not the perpetrator knows that the accusation is not true, a court decision must be made. However, as stipulated in the elucidation of the ITE Law and the Constitutional Court Decision number 50/PPU-VI/2008 of 2008 against acts of insult such as insults, ridicule and or inappropriate words (cyberstalking) are included in the core of the offense contained in Article 27 paragraph (3). Nonetheless, these actions fall into the qualifications of mild insult as referred to in Article 315 of the Criminal Code.

The rules contained in Article 27 paragraph (3) of the ITE Law do not focus on the feelings of the victim but rather focus on the actions of the perpetrators who were carried out intentionally (*dolus*). According to Chazawi & Ferdian (2018), “deliberate actions must meet two (2) criteria, namely, (1) these actions must be proven against the perpetrator's motives and the goals to be achieved, (2) between actions, motives and goals must have a causal relationship in the perpetrator's mind”. The formulation of Article 27 paragraph (3) has elements against the law even though basically all criminal acts that occur are definitely unlawful acts. This ITE Law does not provide detailed information on actions that can be carried out in certain situations, whereas if it refers to Article 310 paragraph (3) of the Criminal Code there are acts that have the right to be carried out, namely in the public interest or because they are forced to defend themselves (Samantha et al., 2022). Hence, the actions committed as stated in Article 310 paragraph (3) of the Criminal Code can be free from all lawsuits (Ahmad, 2020).

Cyberbullying is a growing concern in Indonesia, and the government has taken steps to regulate and prevent this harmful behavior. Article 27 Paragraph (3) of the ITE (Information and Electronic Transactions) Law specifically prohibits the dissemination of defamatory or slanderous material

through electronic media, including social media and messaging applications.

The Indonesian government has also issued various regulations and guidelines to address cyberbullying, including the Ministry of Education and Culture's regulation on the prevention of bullying in schools, which includes provisions for addressing cyberbullying. The National Commission on Child Protection has also developed guidelines for preventing and responding to cyberbullying, which includes measures such as counseling, mediation, and legal action.

However, despite these efforts, cyberbullying remains a significant issue in Indonesia, particularly among young people. There is a need for ongoing education and awareness-raising campaigns, as well as more effective enforcement of existing regulations and laws, to prevent and address cyberbullying in Indonesia.

Article 27 Paragraph (4) of the ITE Law

Against actions that contain extortion and/or threats intentionally by means of distributing, transmitting, and or making the content accessible, regulated in Article 27 paragraph (4) of the ITE Law reads, "Everyone who intentionally and without rights distributes and/or transmits and/or makes accessible electronic information and/or electronic documents that contain extortion and/or threats." In addition to these rules, Article 29 of the ITE Law reads "Every person intentionally and without right sends electronic information and/or electronic documents that contain threats of violence or intimidation directed personally". These rules cannot be separated from Article 368 and Article 369 of the Criminal Code. Even though these Articles contain elements of the offense of extortion and/or threats, what constitutes a criminal act in these Articles is extortion while threats are only a way to commit extortion.

Blackmail, as defined by the Criminal Code, is the unlawful benefiting of oneself in order to coerce another person into giving something that is entirely or partially owned by oneself or another person, or into incurring a debt or canceling a debt (Sari et al., 2022). Referring to Article 29 of the ITE Law, which contains the phrase "sending electronic information and/or electronic documents that contain threats of violence or intimidation aimed at individuals" is not a crime as referred to in the Criminal Code. Therefore, threats sent through electronic media cannot be related by the ITE Law unless the threat is preceded by an unlawful act, namely intentionally and without the right to distribute and/or transmit and/or make accessible electronic information belonging to a person which is then used to commit extortion by providing threats such as defamation, opening secrets or threats of violence (Alweni, 2019).

Basically, the criminal acts in the ITE Law and the Criminal Code as we has described above have similarities, the difference lies only in locus delicti, in the ITE Law criminal acts are carried out in the mass media by distributing/widely disseminating electronic information and having the nature of completing a crime if the electronic information can actually be accessed (Efendi, 2020). Based on the description above, it can be mapped to several classifications of cyberbullying crimes that can be charged with the ITE Law, namely acts of denigration, outing and impersonation.

The concept of RJ's approach in solving cyberbullying cases.

RJ's approach in solving crime problems has actually been applied in various cases, starting from settlements carried out in the family environment, village offices, customary heads. Acts of cyberbullying should be resolved amicably, especially nowadays there were many similar cases, ranging from disapproval of someone's words on social media which then resolves the dispute through the courts. Because cyberbullying disputes not only violate the law but also harm the victim's feelings, addressing cyberbullying disputes through the judicial system was not the optimal approach for resolving problems. The settlement of cyberbullying disputes through legal means is focused on retaliation in the form of punishment or imprisonment; nevertheless, even after the offender has served his term and the victim has experienced dehumanization, this can lead to acts

of retribution. In order to achieve the cyberbullying problem resolution desired by all parties involved, an alternate, more compassionate and equitable settlement approach is required. According to John Braithwaite that “RJ is an approach to solving problems in its various forms, involving victims, perpetrators, social networks, justice institutions and society” (Braithwaite, 2020). Restorative with the principle of justice for all parties in the settlement of criminal cases that focuses on repairing damage arising from a crime or returning to the state before the occurrence of a crime by reuniting the relationship between the victim, the perpetrator and the community. Social relations were essential to regulate life in society as the principles of RJ (Harmanto et al., 2022).

The development of RJ's approach in resolving disputes today has been applied in the criminal justice system starting from the police, prosecutors. For example, the Regulation of the Chief of Police number 6 of 2019 concerning the investigation of criminal acts, hereinafter referred to as PERKAP-PTP and the Circular of the Chief of Police number 8 of 2018 regarding the application of RJ, explains that restorative justice is the settlement of criminal cases involving perpetrators, victims and/or families and related parties, with the aim of achieving justice for all parties. The Regulation of the Chief of Police focuses on the process of resolving criminal acts by deliberation to achieve justice for all parties affected by criminal acts with the result of termination of investigation or SP3. However, The PERKAP-PTP provides limitations on criminal acts that can be resolved through RJ, which is seen from the negligence or negligence of the perpetrator. Settlement through RJ justice for criminal acts committed intentionally cannot be applied RJ based on PERKAP-PTP so that cyberbullying is still very difficult to solve with the RJ approach at the police level because basically cyberbullying is done with an element of intent. At the prosecutor's level, RJ's requirements are regulated in Article 5 paragraph 1 letter (b) of Prosecutor's Regulation No. 15 of 2020 concerning Termination of Prosecution Based on RJ Justice, the threat of imprisonment of not more than 5 (five) years so that cyberbullying acts in Article 27 paragraph (4) jo Article 45 paragraph (4) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions cannot be completed through the prosecutorial level because constrained by the maximum limit of criminal threats. At the Supreme Court level based on the Decree of the Director General of the General Judicial Agency Number 1691 / DJU / SK / PS.00 / 12/2020 concerning Guidelines for the Application of RJ in the General Judicial Environment, it provides a limitative RJ approach to minor crimes, so that the settlement of cyberbullying in court is very difficult to implement because it is constrained by restrictions on RJ's approach to certain articles.

RJ's approach in resolving cyberbullying conflicts was very important to do to get rid of prolonged feelings of mutual hatred because basically cyberbullying was not only an act of violating the law but also attacking the feelings of the victim, so that the use of RJ was not only focused on resolving disputes but also as a preventive measure for acts of violence or the same crime (Kulkarni & Patki, 2019). John Braithwaite said that “one approach to achieving success from RJ is the theory of reintegrate shaming or known as the theory of embarrassment” (Braithwaite, 2020). There are 2 most important things from RJ, namely (1) the process of resolving unlawful acts that have occurred is carried out by bringing the victim and perpetrator (suspect) together to sit in a meeting to talk together. (2) The process of humiliation by bringing together victims, perpetrators and the supporting community with the steps, a. Explain to the perpetrator that this treatment is not justified and condoned by society, b. Supports and respects the individual but does not condone the behavior. The recovery process with the RJ approach is one of them through diversion, namely diversion or punishment from the judicial process into an alternative process of resolving cases, namely through deliberations on recovery or mediation (Srirejeki & Setiyono, 2022). RJ as a form of effort to end the cycle of violence resulting from retributives that can prevent crimes from occurring in the future (Gray, 2019). Hence, there were 3 (three) steps that should be taken in order to achieve restorative justice, namely: (Braithwaite, 2020). (a) Forgiveness, is a positive response from the

victim to the perpetrator for mistakes, this represents a feeling or attitude towards personal behavior, this is an expression of compassion where the victim releases grudges or hatred towards the perpetrator in the hope that the perpetrator can be trusted again in the future. (b) The reconciliation approach (this is applied in Latin America and Africa with the term truth and reconciliation commission) which is understood as an extension of the victim's love, compassion and concern for the perpetrator in order to restore the relationship between them. The reconciliation approach helps to strengthen the emotional bond between the perpetrator and the victim. (c) Reintegrate shaming; in a restorative perspective, if the perpetrator does not feel ashamed because he has hurt others, then this is very risky for committing crimes in the future. A sense of shame over one's actions as one matures into a perpetrator is crucial for preventing further wrongdoing. There are 3 ways to cultivate shame through a restorative approach (a). Admit his actions that it is dangerous, (b). Want to be responsible for the mistakes he made, and (c). Compensate for losses due to crimes he committed such as regret and so on.

RJ's approach in solving the problem of cyberbullying does not focus on sanctions or the actions of the perpetrator, but the main focus is on improving the perpetrator's malicious behavior, improving the relationship between the parties and growing shame for the perpetrator. The restorative approach, in particular when applied to the issue of cyberbullying, does not place restrictions on who can play an important part in finding a solution to the problem. For example, the approach may be carried out by the government or certain institutions without involving the families of the victims or the perpetrators; however, the restorative approach may involve everyone, including relatives, aunts, and grandparents to provide emotional support (Anzward, 2020).

In the context of cyberbullying, RJ might involve bringing together the victim, the offender, and possibly other affected parties (such as family members, teachers, or peers) to engage in a facilitated dialogue about the harm caused by the cyberbullying and how to address it. The goal is to encourage empathy, understanding, and accountability, and to develop a plan for repairing the harm and preventing future incidents of cyberbullying.

RJ can offer a number of benefits over traditional punitive approaches to cyberbullying, such as suspension or expulsion from school or legal action. These benefits can include greater victim satisfaction, reduced recidivism, improved relationships between the victim and offender, and greater community involvement and support. However, RJ is not a panacea and may not be appropriate or effective in all cases of cyberbullying. It requires careful planning and implementation, as well as trained facilitators who are skilled in working with victims and offenders. Additionally, it may not be appropriate in cases where the harm caused by the cyberbullying is severe or the offender is resistant to engaging in the process.

IV. CONCLUSION

Providing understanding to law enforcers in applying this article is very important to avoid criminalization of actions that are not included in cyberbullying. Not all cyberbullying classifications can be subject to Article 27 paragraph (3) and Article 27 paragraph (4) of the ITE Law such as Flaming, Harassment, Cyberstalking and Exclusion. Insult or defamation through the mass media as stipulated in Article 27 paragraph (3) of the ITE Law is not an act in the form of ridicule or an attack on honor, but the actions of the perpetrator are an important element that must be proven that the perpetrator's actions are slander and the perpetrator knows the information spread through the mass media is a lie. As for the settlement of cyberbullying with the RJ approach by focusing on the interests of stakeholders, the cyberbullying resolution mechanism using the diversion, deliberation or reconciliation method must pay attention to the process of embarrassing the perpetrator so that the perpetrator realizes that his actions are not justified. Reintegrate shaming is a theory that can be

used to maximize the success of applying RJ in resolving conflicts. In the context of cyberbullying, such as making messages or videos of apologies and acknowledgments of guilt on the perpetrator's social media account. In addition, the legal basis for the RJ approach to resolving criminal acts still depends on the internal rules of each criminal justice sub-system so that a legal basis regulates the settlement of criminal acts through the RJ approach.

In Indonesia, the use of restorative justice in cases of cyberbullying is encouraged by the Ministry of Law and Human Rights. The ministry has established a mediation center to facilitate the use of restorative justice in criminal cases. Under this policy, victims of cyberbullying can file a complaint with the police, and the case will be referred to the mediation center. The center will then work with the victim and the offender to reach a mutually agreeable resolution. This can include an apology, compensation, or community service. If the victim and offender are unable to reach a resolution through mediation, the case will proceed to the court system. However, the use of restorative justice has been shown to be effective in reducing recidivism and promoting healing for both the victim and offender. Overall, the use of restorative justice in tackling cyberbullying is a positive development in Indonesia's criminal law policy. It provides a more holistic approach to addressing the harm caused by cyberbullying, and it promotes community involvement in the resolution process.

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