

Criminal Implementation of Cyberbullying Based on Electronic Information and Transaction Law and Islamic Law

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Abstract

This writing aims to determine the application of the law against cyberbullying based on Article 27 of Law No. 19 of 2016 concerning amendments to Law No. 11 of 2008 on Electronic Information and Transactions. This research is able to provide a more comprehensive understanding, which focuses on the application of the principle of justice that will be applied by law enforcement officials and the perspective of Islamic law on cyberbullying criminal acts. The method used is normative juridical with a statutory approach. The urgency of writing this legal article is a comprehensive analysis of the implementation of article 27 of Law no.19 of 2016 which more specifically discusses the act of cyberbullying and the view of Islamic law regarding the act of cyberbullying. The results of this study are to determine the application of article 27 of Law no.19 of 2016 to acts of cyberbullying, if the perpetrator who commits acts that are included in the classification of cyberbullying acts including Flaming, Harrasment, Denigration, and Outing, the perpetrator can be charged with Article 27 paragraph (3) of the ITE Law jo. Article 45 paragraph (3) of the ITE Law, with a maximum imprisonment of 4 years or a maximum fine of Rp750,000,000.00. To find out the view of Islamic law on cyberbullying which is analyzed to find out the consequences and sanctions according to Islamic law.

Keywords: Cyberbullying; Cyberlaw; Islamic law

1. INTRODUCTION

With the development of an increasingly advanced and modern era, human life has changed in many aspects. How we work, study, communicate, and even interact with each other. In recent decades, technological advances have become one of the drivers of life changes that provide various human conveniences. Technology can be likened to a double-edged knife that can bring positive and negative impacts. This is not only felt by adults, generation Z has also begun to feel. Technology, especially in the field of information, goes hand in hand with technology, so that if there is technological progress, it means that there is progress in the field of information that can change people's lives.¹

With the ease of the information exchange process, it is inseparable from the negative impact, namely the availability of information that is increasingly uncontrollable. Social media is one of the information technologies that is a means to communicate and access any site easily, the presence of social media is not only to access information. But it can also be misused by people to carry out criminal activities in cyberspace. These activities are commonly known as cybercrime, cybercrime is a digital crime committed through electronic media or in cyberspace for profit. The types of cybercrime that exist and are legally recognized in Indonesia (UU ITE) including phishing, cyberbullying, fraud, unauthorized access, defamation, distribution of illegal materials, invasion of privacy, and

¹ Einar M. Sitompul, *Gereja Menyikapi Perubahan* (BPK Gunung Mulia, 2006).

infringement of intellectual property rights, etc.² Cybercrime targets are divided into several categories, including cybercrime attacking individuals, attacking property rights and attacking the government. Cybercrime that attacks individuals is a cybercrime whose target is a person or individual who meets certain characteristics of the purpose of the attack. Examples of crimes that attack individuals are pornography, cyberstalking, cyber-trespass, and cyberbullying.³

Cyberbullying is an extension of the word bullying, bullying is a negative action carried out repeatedly by a person or group of people that is offensive or intimidating due to an imbalance of power between the victim and the perpetrator. The form of attack can be physical or verbal. Hinduja Patchin explains that cyberbullying is deliberate and harmful behavior that is repeated continuously through electronic media⁴, Bullying and cyberbullying differ in terms of their location and scope, the former being direct, while the latter is indirect. Cyberbullying uses electronic media, social media or digital technology to intimidate, ridicule, insult, threaten victims.

Hentig, through Rena Yulia, suggests that victims can contribute to crime in various ways:⁵ a. The victim desires the committed crime; b. The crime brings benefits to the victim; c. Harmful outcomes to the victim can result from collaboration with the perpetrator; d. The victim's provocation leads to their own loss. Cyberbullying is more severe because the perpetrator can act anonymously and can easily contact the victim at any time.

Cyberbullying crimes are rampant in Indonesia, especially by teenagers. Instagram is one of the highest platforms that trigger Cyberbullying cases.⁶ An example of a cyberbullying case in Indonesia is a viral case on social media, namely on twitter, which went viral in 2020 Dr. Tirta Mandira Hudhi, commonly known to us as Dr. Tirta, who raised his voice on twitter that he felt disturbed because he experienced cyberbullying because he was blasphemed by netizens for 3 days, the blasphemy was because Dr. Tirta violated the rules of the Covid-19 health protocol, namely crowding and gathering more than 5 people. As a result Dr. Tirta became the subject of ridicule by netizens, after feeling Dr. Tirta expressed his sadness through a twitter tweet on his personal account "After this, I will raise my voice about mental health due to Cyberbullying. I was blasphemed for 3 days,

² Victoria Vanessa and Aji Lukman Ibrahim, "Clickbait as a Potential Threat in the Development of Cybercrime in Indonesia," *Jurnal USM Law Review* 7, no. 1 (2023): 1–17, <https://doi.org/http://dx.doi.org/10.26623/julr.v7i1.8024>.

³ Febi Fitria Nuraini, "Perlindungan Hukum Tentang Kejahatan Pencurian Data Pribadi Dihubungkan Dengan Undang-Undang Nomor 19 Tahun 2016 Tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik Dalam Perspektif Ham" (Universitas Komputer Indonesia, 2022), <http://elibrary.unikom.ac.id/id/eprint/7363>.

⁴ Sameer Hinduja and Justin W Patchin, "Bullying, Cyberbullying, and Suicide," *Archives of Suicide Research* 14, no. 3 (2010): 206–21.

⁵ Ika Dewi Sartika Saimima and Anita Pristiani Rahayu, "Anak Korban Tindak Pidana Perundangan (Cyberbullying) Di Media Sosial," *Jurnal Kajian Ilmiah* 20, no. 2 (May 26, 2020): 125–36, <https://doi.org/10.31599/jki.v20i2.102>.

⁶ Reska K. Pratama, Kevin rizky; Nistanto, "Instagram, Media Sosial Pemicu 'Cyberbullying' Tertinggi," *Kompas.com*, 2021, <https://tekno.kompas.com/read/2021/03/29/07164137/instagram-media-sosial-pemicu-cyberbullying-tertinggi>.

fortunately I didn't commit suicide. Doesn't mean you can curse at will and say 'cie baperan.'" Dr. Tirta tweeted.

Cyberlaw is a new legal framework that is now in place. As the law for the use of information technology, "cyber law" is now used worldwide; The term "CyberLaw" is considered equivalent. Mayantara Act, Cyber Law and Information Technology Act are other topics. Use of information technology in cyberspace and the Internet work has led to the emergence of these concepts.⁷

The Indonesian government's efforts to form legislation that balances changes in people's lives due to technological developments that trigger criminal acts are specifically outlined in the ITE Law. In handling cyberbullying, the relevant articles of KUHP in regulating acts of cyberbullying are listed in Chapter XVI regarding insults, namely in article 310 paragraph (1) and paragraph (2), but the article bullying applies in the real world only. In Indonesia, regulations relating to cyberbullying are regulated in the Electronic Information and Transaction Law, especially in Article 27 paragraph (3) of the ITE Law forbids the use of electronic media for communication that incorporates components of defamation and insults. Because in the ITE Law there are no clear elements regarding cyberbullying.

Research that discusses the application of cyberbullying law in Indonesia has been conducted in previous research, as in Alhakim's study.⁸ This study has implications for the illegal activity of cyberbullying hate speech in accordance with Indonesian laws and regulations. This research explains in detail how criminal sanctions are given if there is a cyberbullying crime and how to resolve the cyberbullying crime. Furthermore, research from Shania Junishia Pratiwi⁹ has the advantage of preventing cyberbullying crimes of violence. This research discusses the legal sanctions for perpetrators of criminal acts of cyberbullying in all articles in the ITE Law specifically. However, this study does not explain the classification of actions that can ensnare the perpetrators of cyberbullying. And finally, Arif Fadila's research¹⁰ has the advantage of analyzing the decision regarding the crime of cyberbullying which discusses aspects of positive law and Islamic law. However, this research still does not mention the specific classification of cyberbullying acts based on article 27 of the ITE Law.

Examining prior studies, it can be seen that this study differs from others, particularly in the way it addresses the categorization of cyberbullying in accordance with ITE Law article 27, the implementation of the application of law along with the obstacles and impacts of cyberbullying victims and seen from the view of the law of Islamic. This study will

⁷ Tasya Safiranita Ramli et al., "Aspek Hukum Atas Konten Hak Cipta Dikaitkan Dengan Undang-Undang Nomor 19 Tahun 2016 Tentang Informasi Dan Transaksi Elektronik," *Jurnal Legislasi Indonesia* 17, no. 1 (2020).

⁸ Abdurrahman Alhakim, Junimart Girsang, and Getrudis Yetiana Wadhi, "Kajian Yuridis Sanksi Pidana Terhadap Tindak Pidana Hate Speech Cyberbullying Di Indonesia," *Legalitas: Jurnal Hukum* 15, no. 2 (2023): 158–65.

⁹ Shania Junishia Pratiwi, "Pencegahan Tindak Pidana Kekerasan Melalui Media Sosial (Cyberbullying) Berdasarkan Perspektif Hukum Positif," *Lex Crimen* 11, no. 3 (2022).

¹⁰ Arif Fadilah, "Analisis Tindak Pidana Cyberbullying Studi Kasus Nomor 471/PID. SUS/2013/PN. SLMN" (Fakultas Syariah dan Hukum UIN Syarif Hidayatullah Jakarta, n.d.).

conduct a juridical review of the criminal offense of cyberbullying based on Article 27 of the ITE Law. In-depth analysis of legal provisions is expected to provide a more comprehensive understanding of law enforcement efforts in Indonesia. Therefore, the goal of this study is to determine how the law applies to the illegal activity of cyberbullying based on article 27 Act No. 19 of 2016 on amendments to Act No. 11 of 2008 on electronic information and transactions and aims to find out the views of Islamic law regarding acts of cyberbullying.

2. METHOD

This legal research employs the normative juridical method, concentrating on the examination of the application of legal norms to address specific issues.¹¹ The approach taken involves a statutory analysis relevant to the identified problems.¹² Data for this study is gathered through a literature review, exploring sources and expert opinions. The research conducts a descriptive analysis of the law, particularly Article 27 (3) Act no. 19 of 2016 amending Act no. 11 of 2008 on Electronic Information and Transactions.

3. RESULTS AND DISCUSSION

Cyberbullying is an extension of the word bullying; bullying is a negative action carried out repeatedly by the individual or group of people that is offensive because of the imbalance of power between the victim and the perpetrator.¹³ In other words, it attacks victims who are weaker than the bully. It usually involves a difference in physical strength. This bullying is usually said to be a threat or disturbance from someone who feels the perpetrator is powerful. It causes the victim to experience physical, mental, and psychological harm. Bullying is both physical and mental violence. Bullying, often known as bullying, is a social issue that affects all walks of life. Bullying can take many different forms; relational, such as relational, physical, verbal, and cyber bullying, according to coloroso.¹⁴

Hinduja and Patchin describe cyberbullying as a repetitive and deliberate harmful behavior conducted through electronic media.¹⁵ It encompasses social bullying that occurs online, involving harassment and aggression targeted at individuals electronically.¹⁶ According to Kowalski, cyberbullying occurs on various platforms such as websites, chat rooms, email, instant messaging, video games, and through photos or messages delivered via cell phones.¹⁷ These media utilize the interconnected Internet to make information more

¹¹ Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana Prenada Media, Vol.55 Tahun 2005)

¹² Bahder Johan Nasution, *Metode Penelitian Ilmu Hukum*, (Bandung: Mandar Maju, Tahun 2008)

¹³ Surilena Surilena, "Perilaku Bullying (Perundungan) Pada Anak Dan Remaja," *Cermin Dunia Kedokteran* 43, no. 1 (2016): 35–38.

¹⁴ Eka Anggraeni Krisdian and Iman Subekti, "E-Book Cerita Bergambar Pencegahan Bullying Untuk Anak Usia 9-11 Tahun Berbasis Alkitab," *Aletheia Christian Educators Journal* 2, no. 1 (2021): 57–68.

¹⁵ Hinduja and Patchin, "Bullying, Cyberbullying, and Suicide."

¹⁶ Robin M Kowalski et al., "Bullying in the Digital Age: A Critical Review and Meta-Analysis of Cyberbullying Research among Youth.," *Psychological Bulletin* 140, no. 4 (2014): 1073, <https://doi.org/https://doi.org/10.1037/a0035618>.

¹⁷ Agatston, Patricia, Robin Kowalski, and Susan Limber. "Youth views on cyberbullying." *Cyberbullying prevention and response: Expert perspectives* (2012): 57-71.

accessible. Digital platforms emerged along with the development of technology and communications, such as the Internet, and continue to evolve rapidly.¹⁸ Willard adds that cyberbullying involves intentionally sending or spreading content that causes offense to another individual. It can be seen as a type of social violence that utilizes the Internet or other digital technologies. These online conversations are available 7 days a week, 24 hours a day. Destructive texts and images can spread very widely and cannot be completely deleted. Young people are reluctant to share abuse for fear of overreaction, restrictions on online activities, and possible retaliation against the cyberbullying.¹⁹ Therefore, cyberbullying can be defined as aggressive and repeated acts of intimidation, humiliation, and insults against the victim using electronic media or the internet by the bully.

3.1 Legal Application of the Crime of Cyberbullying based on Article 27 of Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions against the crime of Cyberbullying.

The application of law is the process of realizing the intent of the purpose of the law to ensure justice, defense and enforcement of the legal rights of every person in society. It involves steps such as prosecution, trial and enforcement of legal decisions. The application of law also includes efforts to prevent violations for the community/individuals and sanction the perpetrators of violations and provide protection to victims. The main objective of the application of law is the creation of an orderly, safe and just society for citizens. Today's information technology has brought new challenges in applying the law, one of the challenges is the phenomenon of cyberbullying that occurs on social media. as explained above cyberbullying is an aggressive action carried out repeatedly where a victim who feels insulted, humiliated, cursed by using electronic media / social media whose scope is the internet.

There are several types of cyberbullying actions according to Willard, namely:²⁰ *flaming, harassment, denigration, impersonation, outing dan trikery, exclusion, cyberstalking*. *Flaming* is an action, such as sending text messages that contain angry and frontal words. *Harassment* is defined as the persistent sending of harassing messages via social networking sites, text messages, or email. *Denigration* is the act of spreading bad things about someone online with the aim of harming the victim's good name and reputation, *Denigration* can be more widely disseminated through social media than through traditional defamation.²¹ *Impersonation* When someone impersonates someone else, they send hurtful messages or leave negative comments on photos posted on social media, so that

¹⁸ Tina Maylani Andriyanto Adhi Nugroho, "Urgensi Pembaharuan Undang-Undang Penyiaran Mengenai Perizinan Penyiaran Berbasis Internet Di Indonesia," *Jurnal USM Law Review* 6, no. 1 (February 25, 2023): 1, <https://doi.org/10.26623/julr.v6i1.6103>.

¹⁹ Nancy E Willard, *Cyberbullying and Cyberthreats: Responding to the Challenge of Online Social Aggression, Threats, and Distress* (Research press, 2007).

²⁰ Willard.

²¹ Rizka Rizka and Isnaini Dina Azizah, "Legal Protection for Misuse of Television Station Logo Without Permission in Tiktok Social Media," *Jurnal USM Law Review* 7, no. 1 (2023): 18–29, <https://doi.org/http://dx.doi.org/10.26623/julr.v7i1.8070>.

the victim's friends believe that the victim created the status or message. While *Outing* is Spreading other people's personal or secret images with the aim of exposing bad things or violating the victim's privacy. *Trickery* is persuading someone with deception to get their secrets or personal photos, which can one day be used as a weapon to blackmail / threaten. The intentional and harsh act of excluding someone from an online group is known as *Exclusion*. *Cyberstalking* is harassing and defaming someone so intensely that it causes great fear in the victim.

The ideal policy of criminalization of cyber-crime in Indonesia is the establishment of a special law on cyber-crime, namely the ITE Law. This special law This particular statute establishes broad guidelines that will be applicable to all crimes involving information and communication technology.²² Indonesia possesses adequate regulations to address the criminal act of cyberbullying. Both the Criminal Code (Kitab Undang-Undang Hukum Pidana) and the ITE Law encompass provisions that categorize cyberbullying as a criminal offense in the country. However, neither legal framework explicitly defines cyberbullying. Specific articles within the Criminal Code govern cyberbullying, particularly in Chapter XVI concerning insults, notably in Article 310, paragraphs (1) and (2).²³ Article 310, paragraph (1) of the Criminal Code addresses intentional attacks on honor made public, while paragraph (2) is more applicable in cases where individuals deliberately engage in insults, particularly through written defamation broadcasted publicly.

The Criminal Code predates the current technological advancements. To address regulations within the realm of cyberspace, Act No. 19 of 2016 on amendments to Act No. 11 of 2008 on electronic information and transactions Law No. 19 of 2016, was enacted. While the ITE Law doesn't explicitly define the criminal act of cyberbullying, it includes articles suitable for prosecuting cyberbullying perpetrators. Article 27 encompasses elements such as insult, defamation, threatening, and extortion. Notably, article 27 (3) of the ITE law stipulates that "Any person who intentionally and without right disseminates, transmits, or makes accessible electronic documents with insulting and defamatory content" can be held accountable.

Article 27, paragraph (3) of the ITE Law encapsulates various elements. This illustrates that any person whether an Indonesian citizen, foreign citizen, or legal entity who commits a deliberate act without a valid authorization, implying a conscious awareness of the content's insulting and defamatory nature, falls under its purview.²⁴ The narrative unfolds with the deliberate distribution and/or transmission or making accessible of such content to the public. The narrative then delves into the realm of insult and

²² Wahyu Beny Mukti Setiawan, Erifendi Churniawan, and Femmy Silaswaty Faried, "Upaya Regulasi Teknologi Informasi Dalam Menghadapi Serangan Siber (Cyber Attack) Guna Menjaga Kedaulatan Negara Kesatuan Republik Indonesia," *Jurnal USM Law Review* 3, no. 2 (December 11, 2020): 275, <https://doi.org/10.26623/julr.v3i2.2773>.

²³ Ni Putu Suci Meinarni, "Tinjauan Yuridis Cyber Bullying Dalam Ranah Hukum Indonesia," *Ganaya: Jurnal Ilmu Sosial Dan Humaniora* 2, no. 1 (2019): 299–308.

²⁴ Erwin Asmadi, "Rumusan Delik Dan Pidanaan Bagi Tindak Pidana Pencemaran Nama Baik Di Media Sosial," *De Lega Lata: Jurnal Ilmu Hukum* 6, no. 1 (2021): 16–32, <https://doi.org/https://doi.org/10.30596/dll.v6i1.4910>.

defamation, clarifying that insults perpetrated through electronic media and defamation, as per the Criminal Code, are integral components. The phrase "has the content of insult or defamation" seamlessly integrates into the narrative, signifying one of the criminal acts constituting cyberbullying, where insult denotes an assault on a person's honor and reputation, colloquially known as defamation.

Based on Article 27 paragraph (3) of the ITE Law, cyberbullying is considered a criminal offense of insulting, disseminating information that demeans or defames a person through electronic media. Although Article 27 does not explicitly explain the term "cyberbullying". However, Article 27 paragraph (3) covers various actions that can be classified as cyberbullying crimes.

There are several examples of the classification of cyberbullying actions that fall into the elements of Article 27 of the ITE Law, among others: a. *Flamming* is the act of sending text messages containing angry and frontal words. An example of a case that occurred in Decision Number 686/Pid.Sus/2016/PN.Smg. The perpetrator sent a message to the victim containing frontal words that hurt the victim's heart, so that the victim felt frightened; b. *Harrasment* is the act of harassing someone repeatedly through text messages, social media, email.²⁵ An example occurred in the case of decision Number 486/Pid.Sus/2019/PN.Smn. This perpetrator often sent messages to threaten the victim on social media which caused the victim to feel uncomfortable or uneasy; c. *Denigration* is disseminating electronic information that damages a person's image, which includes activities such as spreading slander, hate speech, and body shaming orally, in writing through social or electronic media. For example, in Sleman District Court Decision No. 471/Pid.Sus.2013/PN/Slmn, the perpetrator committed insults through social media twitter. The postings made the victim feel insulted and humiliated; d. *Outing*, *outing* is spreading other people's secrets, for example personal photos of a person are spread which can cause the victim to feel embarrassed, depressed. An example of an outing case occurred in decision Number 856/Pid.Sus/2019/PN.Bdg where the perpetrator blackmailed, threatened the victim by spreading immoral videos so that the victim felt embarrassed and inferior.

The perpetrators of cyberbullying crimes in Indonesia mostly commit acts, namely insults and defamation, the perpetrators of this cyberbullying are charged with using article 27 paragraph (3) for perpetrators who violate and fulfill the elements in article 27 paragraph (3) of ITE Law cannot be released with article 45 paragraph (3) of the ITE Law, where the perpetrator can be threatened with imprisonment for a maximum of 4 years and/or a substantial fine of RP750.000.000,00 (seven hundred and fifty million rupiahespecially if the act is done through social media/electronic media. Furthermore, the legal landscape unfolds in Article 45, Paragraph (5) of Law No. 19 of 2016 amending Law No. 11 of 2008 on Electronic Information and Transactions. This provision explicitly elucidates that Article 27, paragraph (3), which falls under the purview of the penalties

²⁵ Novan Ardy Wiyani, "Save Our Children from School Bullying," *Jogjakarta: Ar-Ruzz Media* 129 (2012).

outlined in Article 45, paragraph (3), is categorized as a complaint offense. This implies that the legal proceedings against the perpetrators of cyberbullying, as described in Article 27, paragraph (3), can be initiated, and pursued based on a formal complaint filed by the offended party, adding a layer of procedural intricacy to the legal framework governing cyberbullying offenses.²⁶ What is meant by complaint offense, namely. Offenses that can only be processed by the police if there is a complaint from the victim.²⁷ The provision of sanctions in the form of imprisonment and fines is considered to have resolved the case by providing a deterrent effect to the perpetrators, so that imprisonment and fines for criminal offenders are considered not optimal in protecting and fulfilling the rights of victims to compensate material losses that should not be experienced by victims, especially specifically for victims of cybercrime who are economically weak. This is also considered as the right of citizens to obtain guarantees and fair legal protection.²⁸

According to Kitab Undang-Undang Hukum Pidana (KUHP), defamation is considered a criminal offense that necessitates a complaint from the aggrieved party, commonly known as a "complaint offense." In Constitutional Court Decision Number 50/PU-VI/2008, which assesses the constitutionality of Article 27, paragraph (3) of the ITE Law, it is clarified that this article also falls under the category of a complaint offense. This signifies that legal proceedings can take place if there is a complaint from an offended party. KUHP governs provisions related to insult or defamation, while the ITE Law serves as a specialized regulation derived KUHP, following the legal principle "lex specialis derogat legi generalis," indicating that special laws take precedence over general laws. Article 310 of KUHP represents the lex generalis for criminal acts of defamation and insult, whereas Article 27, paragraph (3) of the ITE Law serves as lex specialis.²⁹

The phenomenon of cyberbullying also has a real impact on victims, one of the impacts of cyberbullying is that it attacks a person's soul more than physically, in Fadia's research³⁰ on social media users aged 13-25 years shows data that there are 17.78% who experience cyberbullying. Those who have experienced cyberbullying feel sad, confused, depressed and it also cannot be forgotten and will always be in the memory of the person who experienced it. Long-term impacts for victims such as depression, protracted sadness, frustration, fear and loss of self-confidence.³¹ However, it does not rule out the possibility that the victim is not physically injured because someone who experiences mental

²⁶ Natalia Brigita Turangan, "Kajian Kebebasan Berpendapat Di Jejaring Sosial Terhadap Delik Penghinaan," *Lex Crimen* 10, no. 12 (2022).

²⁷ Rifal Wahyudi, "Tindakan Pencemaran Nama Baik Melalui Media Sosial Dalam Perspektif Hukum Pidana," *AL-BAHTS: Jurnal Ilmu Sosial, Politik, Dah Hukum* 2, no. 1 (2024): 17–25.

²⁸ Faiz Emery Muhammad and Beniharmoni Harefa, "Pengaturan Tindak Pidana Bagi Pelaku Penipuan Phising Berbasis Web," *Jurnal USM Law Review* 6, no. 1 (April 24, 2023): 226, <https://doi.org/10.26623/julr.v6i1.6649>.

²⁹ Marcelino Brayen Sepang, "Pertanggung Jawaban Tindak Pidana Pencemaran Nama Baik Melalui Media Sosial Menurut UU No. 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik Dan KUHP," *Lex Crimen* 7, no. 3 (2018).

³⁰ Fadia Tyora Yulieta et al., "Pengaruh Cyberbullying Di Media Sosial Terhadap Kesehatan Mental," *De Cive : Jurnal Penelitian Pendidikan Pancasila Dan Kewarganegaraan* 1, no. 8 (August 2, 2021): 257–63, <https://doi.org/10.56393/decive.v1i8.298>.

³¹ Flourensia Spty Rahayu, "Cyberbullying Sebagai Dampak Negatif Penggunaan Teknologi Informasi," *Jurnal Sistem Informasi* 8, no. 1 (October 4, 2013): 22, <https://doi.org/10.21609/jsi.v8i1.321>.

disorders will tend to hurt themselves or self-harm even to suicide so that medical assistance and psychological rehabilitation are needed for victims.³²

Therefore, the role of family, community and government is needed in efforts to prevent the phenomenon of cyberbullying by providing education and understanding for children/adolescents so that they do not become victims or perpetrators, if in the community they can carry out campaigns/counseling regarding cyberbullying to the community so that people be aware of the criminal act of cyberbullying, apart from that protection for victims is also needed because LPSK (Institute for the Protection of Witnesses and Victims) is currently not spread across all provinces in Indonesia. However, in enforcing the law on cyberbullying, there are several obstacles, including the ease of destroying evidence, fake accounts that use pseudonyms and do not use real identities so they are not recognized by other people (anonymous), which hinders the authorities from investigating the perpetrators, the use of foreign SIM cards is also an obstacle because it hinders the police in enforcing the law.³³

Based on the discussion above, law enforcement implementation for cyberbullying crimes in Indonesia is not all accommodated by the ITE Law, and the use of article 27 of the ITE Law does not yet fully regulate cyberbullying criminal acts, there are several cyberbullying behaviors that have not been regulated by Law Number 19 of 2016 concerning Amendments on Law Number 11 of 2008 concerning Information and Electronic Transactions. These behaviors include Impersonation, Exclusion, Trickery, and Cyberstalking. This is different from South Korea which has a special law regarding cyberbullying which is regulated in the Act On The Prevention Of And Countermeasures Against Violence In Schools regulations.³⁴ In this law, the definition of cyberbullying is clearly explained and regulates in detail all acts of cyberbullying except Exclusions. So in the future, Indonesia needs a special law that regulates cyberbullying to prevent this phenomenon from occurring which has a negative impact on victims who experience cyberbullying.

3.2 Perspective of Islamic Law on Cyberbullying

Islamic law is a law derived from the Al-Quran and Sunnah that regulates human social behavior in society. Islamic law is a rule or law from Allah and the Prophet Muhammad (SAW) to regulate human behavior among his people.³⁵ Regulation of behavior one of the goals is to create a better life for humanity in this world and the hereafter. There are four sources in Islam: Quran, Hadith, Al-Ijma and Qiyas. The Prophet Muhammad (peace be upon him) said: "Whoever follows the Qur'an will not go astray in

³² Johanna Tania Wijaya, "Perbandingan Perlindungan Hukum Bagi Korban Cyberbullying Dalam Hukum Pidana Indonesia Dengan Korea Selatan" (Universitas Mataram, 2023), <http://eprints.unram.ac.id/id/eprint/35293>.

³³ Ni Komang Putri Pratiwi, Anak Agung Sagung Laksmi Dewi, and I Made Minggu Widyantara, "Penegakan Hukum Terhadap Pelaku Cyber Bullying Di Kepolisian Daerah Bali Pada Masa Pandemi Covid-19," *Jurnal Preferensi Hukum* 3, no. 1 (2022): 190–95.

³⁴ Berthi Ramadhani P., "Studi Perbandingan Kebijakan Hukum Pidana Pada Kejahatan Cyberbullying i Indonesia Dan Korea Selatan," *Jurnal Akta Yudisia* Vol 7, No (2022), <https://doi.org/https://doi.org/10.35334/ay.v7i2.4946>.

³⁵ Marzuki, 2017, "Pengantar Studi Hukum Islam", (Yogyakarta: Penerbit Ombak), hal 12

his journey in this world."

Moral conduct, known as "Akhlaq" in Islam, stands as a cornerstone in its teachings. It signifies recognition of the Creator of the universe and mankind. Akhlaq guides Muslims toward virtuous behavior, embodying qualities like compassion and integrity. It serves as a moral compass, shaping character and fostering a harmonious connection between individuals and the divine principles of Islam.³⁶ In Islamic criminal law in fiqh is commonly referred to as jarimah or jinayat, jinayat in law is often referred to as an offense or criminal offense. Cyberbullying falls under the broader prohibition of insulting and defaming, which emphasizes the importance of upholding human dignity and respect both in physical interactions and through social media. Although Islam does not specifically discuss cyberbullying, in that case cyberbullying falls into the prohibition of insulting, slandering or denouncing which has been regulated by the Al-Quran and Hadith.

The prohibition of this behavior is explained and included in several letters in the Quran, in the words of Allah in surah (Al-Hujurat verse 11). The surah explains that we as believers are forbidden to make fun of degrading a people, fellow women and are forbidden to call with bad titles and offend Muslims to repent, because those who do such actions are wrongdoers. This surah emphasizes that it is important to maintain morals to speak respectfully and avoid behavior that degrades or insults others which can cause the victim to have feelings of shame, anger because it can cause conflict and hostility between the perpetrator and the victim.

Allah SWT also explains what is stated in the Al-Quran surah (At-Taubah verse 79) that there will be retribution for this behavior or action. This verse means that if people are hypocrites or people who insult and insult believers, there will be retribution from Allah for their insulting actions, and they will receive a painful punishment from Allah at the end of time. The surah emphasizes that a hypocrite is a person who mocks, criticizes, and belittles other people, even when they do the right thing. With this action, Allah will give a very painful punishment to the perpetrator who committed this despicable act.

In Islamic law, the term punishment and criminal sanctions is known as Uqubah, which is defined as the infliction of suffering and misery on the perpetrator of a crime as a response to what has been done. To gain a better understanding of cyberbullying from an Islamic perspective, it is necessary to study and classify criminal acts according to Islamic law. Therefore, it is important to understand the criteria/classification regarding forms of uqubah (punishment) which consist of several categories according to the criminal act (jarimah) which causes an act/act of cyberbullying to fall into the classification of Islamic crime (jarimah). If we look at the elements of jarimah that must be fulfilled, they include:
a. Al-Rukn al-syari (Formal Elements), Formal elements are the existence of texts (legal provisions) which prohibit an action with a penalty. For the crime of cyberbullying itself, there is no text that regulates it in the Al-Quran and Hadith, but the crime of cyberbullying

³⁶ Maulida Nur Mukhlisotin, "Cyberbullying Perspektif Hukum Pidana Islam," *Al-Jinayah: Jurnal Hukum Pidana Islam* 3, no. 2 (2017): 370–402.

can ensnare the perpetrator using the ITE Law. Apart from that, the Koran and al-Hadith prohibit insulting, criticizing and making fun of fellow Muslims; b. Al-Rukn al-madi (Material Element), The material element is the existence of behavior that forms a finger, either in the form of real action, or in the act of not doing it. In the crime of cyberbullying itself there is a material element, namely the act of deliberately threatening, intimidating, slandering, making fun of, insulting and intimidating the victim by sending repeated text messages; c. Al-Rukn al-adabi (Moral Element), The moral element is a maker or amukallaf (individual who is an adult and can be held responsible for the actions he commits. In the crime of cyberbullying itself is a person who has legal competence (mukalaf) because he is able to use and optimize the use of technology.

The Qur'an does not describe the acts of cyberbullying but acts that enter into cyber bullying aimed at hurting others through humiliation, pollution of the good name, defamation, rude speech, and threats, can be attributed to the three letters above. The three letters strictly prohibit bullying and warn that whoever commits such acts against others will face punishment of himself.

In addition to the Quran, hadith or as-sunnah also prohibits insults. As-sunnah or hadith contains the words, actions, and opinions of the Prophet, as-sunnah and hadith as an explanation of the interpretation of the verses of the Quran: from Abdullah bin Umar ra (HR. Al-Bukhori).³⁷ The meaning of the hadith is that fellow Muslims are brothers and we as Muslims are prohibited from being unjust and doing bad things to fellow Muslims. If someone helps a fellow Muslim who is experiencing difficulties, then Allah will also ease his difficulties on the Day of Judgment. And vice versa, if there is someone who covers the disgrace of others, then Allah will cover his disgrace on the Day of Judgment.

According to Islamic law there are sanctions for the crime of cyberbullying, in the expanding realm of cybercrime, negotiations on social media, commonly known as cyberbullying, have emerged as a disconcerting phenomenon where individuals deploy electronic and internet media for their actions. The pervasive nature of cyberbullying raises profound concerns about its impact on individuals and society at large. To comprehensively understand cyberbullying within the view of Islamic law (jarimah), it is essential to embark on a detailed study and classification of these criminal acts, aligning them with the principles of Islamic jurisprudence.

Examining cyberbullying through the lens of Islamic law reveals a nuanced perspective that extends beyond legal considerations to encompass ethical and moral dimensions. As technology continues to shape new forms of interaction, this exploration seeks to unravel the underlying principles that guide the Islamic view on cyberbullying. This holistic inquiry provides a foundation for informed discourse and effective legal responses, addressing the evolving nature of crimes committed in the digital realm within the broader context of Islamic legal principles. It is therefore important to understand the criteria/classifications that cause an act of cyberbullying to fall into the classification of

³⁷ Fadilah, "Analisis Tindak Pidana Cyberbullying Studi Kasus Nomor 471/PID. SUS/2013/PN. SLMN."

Islamic crimes. (jarimah). When he sees the elements of the law that must be fulfilled among them³⁸: a. Al- Rukn al-syari (formal element), the formal element is the existence of a nash (legal provision) that prohibits an act with punitive sanctions. For the crime of cyberbullying itself, there is no text that regulates both in the Koran and Hadith, but the crime of cyberbullying can ensnare the perpetrator using the ITE Law. In addition, the Koran and Hadith prohibit insulting, denouncing, and making fun of fellow Muslims; b. Al-Rukn al-madi (Material Element), the material element is the existence of behavior that forms the jarimah, either in the form of real actions, or by not doing it. In the crime of cyberbullying itself there is a material element, namely the act of deliberately threatening, intimidating, slandering, ridiculing, insulting, and intimidating the victim by sending text messages that are carried out repeatedly; c. Al-Rukn al-adabi (Moral Element), The moral element is a maker or a mukallaf (an individual who is an adult and can be held accountable for his actions. In the crime of cyberbullying itself is a person who has legal capacity (mukalaf) because he can use and optimize the use of technology.

Of the three mentioned elements of Jarimah, cyberbullying aligns with Al-Rukn al-madi and Al-Rukn al-adabi components.³⁹ By fulfilling these elements, there are sanctions for perpetrators of cyberbullying crimes according to Islamic law. In determining the appropriate punishment (Uqubat) given to the perpetrator, it is necessary to know several classifications of criminal acts, Jarimah can be seen in terms of the severity of the punishment based on Islamic law, including: a. Jarimah Hudud is the most serious and most severe jarimah in Islamic criminal law. This is a form of outreach to the public interest. Jarimah hudud is a jarimah which is threatened with had punishment (Allah's right); b. Jarimah Qishas and Diyat, the target of this crime is the integrity of the human body, intentionally or unintentionally. Qishas and Diyat are both punishments that have been determined by sharia. What differentiates it from had punishment is that had punishment is the right of Allah, while Qishas and Diyat are human (individual) rights; c. Jarimah Ta'zir is a jarimah or criminal act that threatens servants or interferes with the welfare of humans or servants of Allah. The definition of Ta'zir according to language is ta'dib which means giving lessons or teaching. Ta'zir carries the threat of punishment, namely that which has not been determined by the syara' and the authority to determine it is handed over to the ulil amri or judge.

From several explanations of criminal sanctions according to Islamic law, perpetrators of cyberbullying crimes can be charged with Jarimah Ta'zir. Based on Jarimah Ta'zir's categorization, currently there are no specific regulations that determine the level of punishment for cyberbullying. This falls within the realm of criminal acts included in Jarimah Ta'zir, where the severity of the punishment is the authority of the ruler or ulil

³⁸ Moch Fahmi Firmansyah, "Tindakan Cyberbullying Dalam Kajian Hukum Pidana Islam Dan Hukum Positif," *Edulaw: Journal of Islamic Law and Jurisprudence* 5, no. 2 (2023): 48–57, <https://repository.uinjkt.ac.id/dspace/handle/123456789/56505>.

³⁹ Firmansyah.

amri.⁴⁰ In Jarimah Ta'zir, the victim can play a role, and the judge has the authority to grant forgiveness. Although this forgiveness cannot erase the punishment, it has the power to mitigate the consequences for the perpetrator. The panel of judges has the authority to consider elements that can reduce the sentence for perpetrators of cyberbullying.⁴¹

For example, a cyberbullying case was brought to justice in the Sleman District Court decision No.471/Pid.Sus.2013/PN/Slmn. The perpetrator of the cyberbullying insulted the victim in his Twitter post, and the victim felt that his good name had been humiliated. In the verdict the defendant was legally and convincingly proven guilty of violating article 27 paragraph (3) in conjunction with article 45 paragraph (3) of the ITE Law with the threat of 4 years imprisonment and/a maximum fine of IDR 750,000,000.00 (seven hundred and fifty million rupiah). In this case the judge sentenced the defendant to prison for 4 months and a fine of Rp1.000.000 (one million rupiah) subsidiary to 1 (month) in prison.

The punitive sanctions in Article 27 paragraph (3) in conjunction with Article 45 paragraph (3) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions are in accordance with Islamic criminal law. By looking at this case, the procedural mechanism for ta'zir punishment is that it is handed over to the judge who has judicial power.⁴² And also the criminal act of cyberbullying fulfills the elements contained in the ta'zir radius. In the application of Islamic law in Indonesia it is not applied comprehensively, but basically the values contained in Islam are applied in Indonesian positive law.

In addition to the Koran and hadiths, the MUI Fatwa does not directly prohibit cyberbullying but prohibits acts that fall into the classification of cyberbullying crimes contained in Fatwa MUI Number: 24 of 2017 Fatwa on laws and guidelines for business through social media.⁴³ Some of them prohibit various behaviors and actions against Muslims who are active on social media. Some of these include prohibitions on slandering, namimah, pitting, bullying, and spreading hostility, including hate speech. All these prohibitions aim upholding the sanctity, ethics, morality, and goodness of social media for Muslims in accordance with the principles of Islamic sharia.

Seeing the increasing phenomenon of cyberbullying and the widespread use of digital technology, victims of cyberbullying often face widespread threats, intimidation, insults via social media, text messages or online platforms. The perpetrator's actions constitute non-physical violence which has an impact on a person's mental health. The

⁴⁰ Fratama Ario Erikson and Fatah Hidayat, "Pandangan Hukum Pidana Islam Terhadap Penghinaan Orang Yang Telah Meninggal Dunia Melalui Media Sosial," *Ta'zir: Jurnal Hukum Pidana* 6, no. 2 (December 15, 2022): 148–56, <https://doi.org/10.19109/tazir.v6i2.14365>.

⁴¹ Winda Fitri and Nadila Putri, "Kajian Hukum Islam Atas Perbuatan Perundungan (Bullying) Secara Online Di Media Sosial," *Jurnal Pendidikan Kewarganegaraan Undiksha* 9, no. 1 (2021): 143–56, <https://doi.org/https://doi.org/10.23887/jpku.v9i1.31438>.

⁴² Fuad Thohari, *Hadis Ahkam: Kajian Hadis-Hadis Hukum Pidana Islam (Hudud, Qishash, Dan Ta'zir)* (Yogyakarta: Deepublish, 2018).

⁴³ Athoillah Islamy, "Fatwa About Social Interaction on Social Media in The Paradigm of Islamic Legal Philosophy," *Al-Mishbah: Jurnal Ilmu Dakwah Dan Komunikasi* 15, no. 2 (2020): 163–74.

impacts for victims of cyberbullying include mental health problems, victims experiencing anxiety disorders, depression, feelings of no safe place for themselves, lack of self-confidence, feelings of worry, etc.⁴⁴ To seek support and assistance for victims of cyberbullying. One community that cares about the phenomenon of cyberbullying is the Islamic Psychology the Islamic Psychology Association (API), which also provides solutions on how to overcome this phenomenon.⁴⁵ Victims of cyberbullying can also undergo Islamic psychological counseling online, one of which is at LPT DELTA (Institute for Applied Psychology) DELTA. Counseling is a communication activity between a psychologist and a victim to find a middle ground for mental problems/disorders using the principles of Islamic law online.⁴⁶

Based on the discussion above, the Al-Quran and hadith have a strong basis for prohibiting cyberbullying. Although "cyberbullying" is not explicitly mentioned, the prohibition of insulting, denouncing, and fitnah found in the Quran and hadith can be related to cyberbullying. It is important for us as Muslims to maintain morals and ethics in using social media, respecting each other among Muslims because these are values that are emphasized in Islamic teachings. So, it is necessary to have awareness and responsibility for Muslims so as not to violate the morals and ethics that have been established in Islamic teachings.

4. CONCLUSION

The implementation of law against cyberbullying aims to find out how the law is applied for perpetrators of cyberbullying based on article 27 of Law no.19 of 2016 concerning amendments to law no.8 of 2008 concerning Information and Electronic Transactions and cyberbullying perpetrators according to Islamic Law. Regarding cyberbullying, although it is not explained explicitly, there are several acts that can be categorized under Article 27 of the ITE Law, including Flaming, Harassment, Denigration, and Outing. Perpetrators of cyberbullying can be charged under Article 27 paragraph (3) of the ITE Law with the threat of a maximum prison sentence of 4 years and/or a maximum fine of 750 million rupiah. Apart from that, Islamic law views cyberbullying as a prohibited act as stated in the QS. Surah Al-Hujurat verse (11), QS. At-Taubah verse (79) and hadith (HR. Al-Bukhari) from Abullah Ibnu Umar ra strictly prohibits acts of insulting, criticizing and slandering and gives a warning that anyone who commits these acts will receive retribution against himself. Acts of insulting, defaming, are included in the category of Ta'zir, because they are not mentioned in the Al-Quran or Hadith, so that punishment is given by the ruling authority or judge to the perpetrator so that they do not repeat the act again.

⁴⁴ Desmiarti, "Dampak Psikologis Bagi Korban Cyberbullying 'Luka Yang Tak Terlihat,'" yankes.kemkes.go.id, 2023, https://yankes.kemkes.go.id/view_artikel/2788/dampak-psikologis-bagi-korban-cyberbullying-luka-yang-tak-terlihat.

⁴⁵ Editor News, "API Diminta Ikut Atasi Cyber Bullying," Radar Jogja Jawa Pos, 2017, <https://radarjogja.jawapos.com/jogja/65723521/api-diminta-ikut-atasi-cyber-bullying>.

⁴⁶ Editor, "Konsultasi Psikologi Islam Online," psikologidelta.com, accessed March 5, 2024, <https://psikologidelta.com/konsultasi-psikologi-islam-online/>.

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