URGENCY OF REGULATING CYBERBULLYING ON INDONESIAN LAW

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ABSTRACT

In the development of telematics, Indonesia is one of the country which affected by and also give freedom of speech and freedom of expression. But the freedom of expression are not balanced with the ethical of internet using. One of the example is Cyberbullying. With the development of technology and freedom in the internet, Bullying has become Cyberbullying which is become more complicated. Cyberbullying basically can affected to everyone, but in some cases teenager are often become victim, especially girl. This paper will try to review and analyse regulation of Cyberbullying in the Indonesian Law, are the regulation could accomodate Cyberbullying as a part of cybercrime, or the regulation need to be revised in order to regulate Cyberbullying.

Keywords: Cybercrime, Cyberbullying.

Introduction

The Internet as one part of telematics, is a form of new media which has the nature of the dissemination of information very quickly. The speed of this information could have an impact on the one side, but on the other side can lead to distortion of information in the form of misunderstanding about an issue, even led to the mistaken action due to distortion of the information. Indonesia has a number of internet users are quite high that amounted to 63 million users until 2012 (APJII, 2012). In one of the features of internet social networking, Indonesia is also recorded as the country with the largest number of users in social networks such as Facebook and Twitter.

The use of social networking have a tendency of irresponsible use, as will be discussed in this paper is Cyberbullying. There are many examples that can illustrate how dangerous Cyberbullying is. In Canada a teenage daughter named Amanda Todd committed suicide after got bullied on cyberspace as it was accused of being naughty girl, a teenager named Tyler Clementi in Washington jump off a bridge after being discovered he has a sexual interaction with other men. While the example in Indonesia itself is in what happened to Justin Yoga Cahyadi a music promoter, having committed suicide by crashing into the train because he get cyberbullied on twitter for a reason that the music concert he held was messed up.

Some particular cases above shows that cyberbullying can experienced by anyone, complexity of cyberbullying is not only on its victims who could fall at random but also the
arrangement in Indonesian Law.

**Knowing Bullying and Cyberbullying**

Should be understood first that bullying and cyberbullying can be categorized as a crime, so that it can then be traced on the importance of the regulation in Indonesian Law. Therefore, this research can be started from the definition of bullying and cyberbullying.

The complexity of bullying can be seen from the description of the occurrence of bullying, which Barbara Coloroso describe bullying as a “stage play” that there are three roles for the victim, the offender and the audience (Barbara Coloroso, 2007). Even Barbara Coloroso continued that there were six phase which the bullying started till then arises a victim who then gave birth to some of the impact of the offender, the victim and the audience (people around who know that bullying is happening) where the impact are:

a. Bullying being a manner of living in personal relationships, social and professional as the offender see that bullying is a normal act.

b. children who got bullied, no longer believing in adults to protect or help them and strangled from a healthy peer relationships.

c. The audience (people) grow with guilty feelings because they do not or did not act or not sensitive with violence so they assume bullying is a small problem, not a big problem.

The bullying itself can also be defined “as an aggressive behavior that is addressed to an individual or more and targeted over and over again, where they can't defend themselves” (Julian J. Dooley et.al. 2009). While the definition from Oxford English Dictionary which is quoted by Steve Wharton that “bullying as an act to inflict pain or hurt others for their own interests” (Steve Wharton, 2005).

In the definition of bullying behavior is indeed applicable in general which involves the offender and the victim, but on the development of bullying behavior often occurs in the school environment. For example school environment in the United States teach each student in order to be the best since they entered elementary school, it then gives birth to bullying as a shortcut in the middle of the competition in their education system. As expressed above that bullying is a form of aggressive behavior, but the difference with the usual aggressive behavior is repeated so that its impact is actually more dangerous.

The methods of bullying as Barbara Colorso (2007) described as follows:

a. Verbal Suppression, the shape can be either a nickname names, censure, defamation, insults, cruel criticism (personal or racial) and sexual solicitation or nuanced statement sexual harassment.

b. Physical Suppression, the most occur but less than a third reported. It could be hit, suffocating, elbowing, punching, kick, bitten to ruin and destroy clothes, and goods belonging to a suppressed.

c. Relational Suppression, Most difficult to detect, could be a weakening of self-respect victims of repression sistimatically through neglect, ostracism; exception or avoidance. Used to alienate or reject a friend or deliberately destructive of friendship.

Cyberbullying is a form of bullying in different mediums, a bullying can be done directly, although there are also those who are not in the form of the direct interaction. While
cyberbullying not done directly because rise through the media such as the internet.

Sameer Hinduja and Justin W. Patchin (2010) describe cyberbullying as “willful and repeated harm inflicted through the use of computers, cell phones, and other electronic devices.” It can be seen from the definition above that as in terminology bullying and cyberbullying have similarity about aggressive behaviour which done repeatedly, but for cyberbullying is become more complex because the characteristics of the internet. The global, instantaneous, intrinsically transborder, digital, and enables automated information processing (Bert-Jaap Koos, 2011) make cyberbullying more dangerous. Another definition about as quoted by Delta Carroll Campfield (2008) as follows:

As the targeting of a child or adolescent by another youth using technology (e.g., e-mail, cell phone and pager text messaging, instant messaging, defamatory web sites and polling sites) for the purpose of intentionally humiliating, tormenting, threatening or harassing the individual.

Why cyberbullying discourse become an important issue? It is because internet has risen different aggressive behaviour, coupled with information dissemination that is quick and allow people to use a false identity or even without identity (anonym). Beside that, the activity carried out via the internet bear the risks and challenges (Laura E. Little, 2012), one of them not only include crimes that have long existed using internet media, but also rise new forms of crime that could happen on the internet.

Cyberbullying as a Form of Crime

In looking of crime in the virtual world we can reference to The Council of Europe's Convention on Cybercrime 2001. The Convention distinguish the types of crime in the internet in some of the articles among others Illegal access, Illegal interception, Data interference, System interference, Misuse of devices, Computer-related forgery, Computer-related fraud, Offences related to child pornography, Offences related to infringements of copyright and related rights. Some of types of the crimes can be grouped into two types of crime which are computer crime and computer related crime. The question is where is cyberbullying lies to?

We can start this discussion by recognizing the definition of computer crime. Computer crime is in the context of computer misuse, but on the definition which describe by Billy Henson, Bradford W. Reyns and Bonnie S. Fisher (2011) computer crime is any illegal activity that is perpetrated through the use of a computer. United States Department of Justice defines "computer crime" as quoted by K.A. Taipale (2003) broadly as "any violations of criminal law that involve a knowledge of computer technology for their perpetration, investigation or prosecution". Andi Hamzah (1989) describe computer crime as the use of computers illegally. Laura J. Another definition from Nicolson as quoted by Josua Sitompul (2012) as follows:

“First, a computer may be the “object” of a crime: the offender targets the computer itself. This encompasses theft of computer processor time and computerized services. Second, a computer may be the “subject” of a crime: a computer is the physical site of the crime, or the source of, or reason for, unique forms of asset loss. This includes the use of “viruses”, “worms”, “trojan horses”, “logic bombs” and “sniffers”. Third, a computer may be an “instrument” used to commit traditional crimes in a more complex manner. For example, a computer might be used to collect credit card information to make fraudulent purchases.”

Neal Kumar Katyal (2001) describe the characteristics of cybercrime and relation with
law:

“The problem of cybercrime is a larger one of how the law deals with new technologies. Sometimes, the law treats crimes that employ new technologies as different and deserving of special regulation and other times it does not... Computer crime forces us to confront the role and limitations of criminal law, just as criminal law forces us to reconceptualize the role and limitations of technology”

As in terminology actually cybercrime is a global term, there are some different uses beside of computer crime which are computer abuse, computer misuse, crime by computer, computer related crime, computer assisted crime, internet crime, E-crime and high tech crime (Sigid Suseno, 2012). So many terms which used but the core of the cybercrime itself is misuse of technology, especially on the computer and internet. In the computer crime terminology S. Kerr (2003) divide into two form of crimes that are traditional crimes committed using computers and crimes of computer misuse. Traditional crimes committed using computers include internet fraud schemes, internet gambling, online distribution of child pornography and cyberstalking. While added by Orin S. Kerr crimes of computer misuse represent a new type of crime, however, and pose fresh challenges for criminal law. The form of crimes are computer hacking, distribution of computer worms and viruses.

The other types cybercrime can be found in The Council Of Europe’s Convention on Cybercrime which are (2001):

1. offences against the confidentiality, integrity and availability of computer data and systems; these include illegal access (hacking), illegal interception, data interference (e.g. viruses), system interference (e.g., denial-of-service attacks), and misuse of devices (e.g., possessing hacker software)
2. computer-related offences; these include forgery and fraud
3. content-related offences and copyright offences

from the types of crime above can be cyberbullying classified to one of that crime? The methods of cyberbullying actually many can be found but some of them is often happen as exemplified by Jace Shoemaker Galloway (2013):

Flaming is a type of online fight. It is an act of sending or posting electronic messages that are deliberately hostile, insulting, mean, angry, vulgar or insulting, to one person or several, either privately or publicly to an online group.

Denigration also known as “dissing,” occurs when a person sends or publishes cruel rumors, gossip or untrue statements about a person to intentionally damage the victim’s reputation or friendships.

Bash boards are online bulletin boards where people post anything they choose. Generally, the postings are mean, hateful and malicious.

Impersonation can be particularly harmful and occurs when someone pretends to be or poses as another person. This is usually accomplished by breaking into someone’s account, by stealing a password and perhaps changing it, or by maliciously using that information provided by a friend (one reason to never give a password to anyone but a trusted adult). Once the impersonator has access to the victim’s information, considerable damage can occur. By sending out emails supposedly from the victim or by posting material online, the victim’s reputation or friendships can be irreparably harmed.

Harassment is when the electronic bully repeatedly sends insulting, hurtful, rude, insulting messages.

Text wars or attacks are when several people gang up on the victim, sending the target hundreds of emails or text messages. Besides the emotional toll it can take
on the victim, the victims' cell phone charges can be costly.

**Images and videos** are a rapidly growing concern. Due to the prevalence and accessibility of camera cell phones, photographs and videos of unsuspecting victims, taken in bathrooms, locker rooms or other compromising situations, are being distributed electronically. Some images are emailed to other people, while others are published on video sites such as YouTube.

These forms of cyberbullying above may actually be referring to the third type of cybercrime according to The Council Of Europe’s Convention on Cyber Crime 2001 that is content-related offences and copyright offences, but The Convention more set to child pornography on the internet. If we looking for examples in practice of the law against cyberbullying, United States has been through many cases, their federal government has defined the requirements for off-campus behavior, such as cyberbullying, to be regulated by the school (Richard Donegan, 2012).

On the State Law, Richard Donegan give an example cases between United States vs. Lori Drew on 2006. Federal prosecutors took charge by applying the Computer Fraud and Abuse act to the case. This act is typically used to prosecute electronic theft, but in this instance was used to apply the Myspace terms of service. The terms require users to abide by a host of regulations, which “required truthful and accurate registration, refraining from using information from MySpace to harass others [and] refraining from promoting false or misleading information” (“Unites states of America v. Lori Drew,” 2009). Based on MySpace’s terms of service, the jury found Drew guilty of one felony count for conspiracy and three misdemeanors counts for unauthorized computer use.

Slightly different arrangements applied in some States, as written in Constitutionally Of Cyberbullying Laws : Keeping The Online Playground Safe For Both Teens and Free Speech (Alison Virginia King, 2010). Some States that has no arrangement about cyberbullying usually ruling it under arrangement about ordinary crime ordinary as harassment or stalking. Further, that the rule of law of about cyberbullying require special treatment because the characteristics of cyberbullying are unique. The applicable rule of stalking on cyberbullying in the case was not use traditional stalking but cyberstalking.

Referring to Allison's opinion above and try to looking back at The Council Of Europe’s Convention on Cyber Crime 2001 so the approach of “Offences related to child pornography” part actually not exactly right, because of content that is referred to is obviously pornography on child. It is of course one of challenges because there is no legal instruments that regulates cyberbullying on the international level. It can be understood that cyberbullying unlike other internet crimes that have a large scale. Sameer Hinduja and Justin W.Patchin (2010) explained that cyberbullying have become one of the key issue because the increase in the number of children who use the internet and interact via computer and cell phone, but the challenge is that most people do not see threats associated with cyberbullying.

In USA, the lack of attention to the threat of bullying leads to the absence of a federal law about cyberbullying, so each State formulate legal rules about cyberbullying, including traditional bullying. In this State Cyberbullying Laws t is devoted to children as perpetrators and victims, so that the formulation and implementation much involving the school. There are listed 49 States which formulate rules about cyberbullying, 12 of which even contain criminal sanctions in it (Sameer Hinduja dan Justin W.Patchin, 2013).

**Cyberbullying in Indonesian Law**

So far it has been no definite arrangements regarding cyberbullying in Indonesia. Even the settings of traditional bullying, yet there is also legislation that could be used in a crack
down on cyberbullying by looking at the Indonesian Criminal Code Act (KUHP) or Information and Electronic Transaction Act of Indonesian Republic 11/2008 (UU ITE). Referring to a method of the discovery of the law which means “activities especially of the judge in carrying out the laws if there a number of concrete event.” (Sudikno Mertokusumo, 1986). The discovery of these laws could use a an interpretation or exegesis. Interpretation here means is one method of discovery law that gave a clear explanation regarding the text of the Act so that the scope of a rule may be defined to a specific event (Sudikno Mertokusumo, 1986). Interpretation language can also defined as interpretation on words of the Act, if the words of the Act is obviously, then must be applied in accordance with the words though if mean opposite (A.Z. Abidin and Andi Hamzah, 2010).

This section will discussed the formulation of legislation on cyberbullying in Indonesia, one of the analysis that can be used to look at methods of interpretation or exegesis. In the context of cyberbullying we can use the interpretation according to the languages as described above, the method of interpretation of the language used for cyberbullying closely linked to “content” that are used as material a crime. One of the problems in the interpretation of the language of cyber bullying is that there is no proper word to describe “bully” even “cyberbullying” itself in Indonesia language. Indonesian language for the word “bully” (noun) “bullying” (verb) in the sense of the terminology means scaring, threaten and interfere with the weak (Peter Salim , 2006), So that, in the definition of “cyberbullying” in terminology is same only it uses the internet as medium, not done directly (physical), but looking the original definition of cyberbullying we can interprete that cyberbullying is related with act which strike people’s honour (defamation). Below we will be looking at the two regulations which could be ruling cyberbullying by using the method of interpretation above.

1. Indonesian Criminal Code Act (KUHP)

Must be paid attention that cyberbullying associated with the content, while traditional bullying can be done directly or not, considering the shapes as can pass verbal and physical action. Therefore in look for the approach cyberbullying in Indonesian Criminal Code Act we can use Article about defamation. In Indonesian Criminal Code Act, Article about defamation stipulated in Article 310 Paragraph 1 which reads:

“Whoever intentionally attacked the honour or good name of someone with an impute, which means so that it is known to the public, was threatened with imprisonment because of contamination longest nine months or criminal fines at most four thousand five hundred rupiahs.”

In the formulation of Article 310 Paragraph 1 above the definition of defamation is still common, the interpretation of cyberbullying can be seen in Article 310 Paragraph 2 which reads:

“If it is done by writing or the image that is published demonstrate or affixed to the general advance, then threatened due to defamation written with an imprisonment of no longer than one year four months or criminal fined of four thousand five hundred rupiahs.”

In the context of formulation of the cyberbullying article above could be interpreted into a formula of cyberbullying because of writings or description (content) humiliation which is broadcast and performed in public. But based on the Verdict of The Indonesian Constitutional Court Number 50/PUU-VI/2008, the definition of insult or defamation which have elements “in public” on Article 310 Indonesian Criminal Code Act above is hard to implement on the context of defamation on the internet. So it required the phrase “distribute and/or transmite, and/or made the defamation information can be accessed.” This phrase
which will bring us to discuss Article of defamation on Indonesian Information and Electronic Act Number 11/2008.


In the verdict of The Indonesian Constitutional Court Number 50/PUU-VI/2008 above has been explained that the formulation is *sui generis* (the regulation of which are set separated) that is very necessary to give certainty of legal protection of the dignity of every person and to accommodate the development and convergence of information technology, media, telecommunications and so rapidly. The phrase inculcates the development of convergence of telematics are worth considering further development underlined that so quickly coupled with its crime. We'll see if in the context of the discussion of cyberbullying legislation this Indonesian Information and Electronic Act Number 11/2008 can accommodate the developments.

Same thing like the regulation in Indonesian Criminal Code Act, there is no definite regulation about cyberbullying, but because it related with content the closest outline can be found on Article 27 Paragraph 2 which reads:

“Any person intentionally and without rights to distribute and/or transmit and/or make accessible electronic information can and/or electronic document which has the charge of insult and/or defamation.”

The outline of the Article is quite close to the definition of cyberbullying-related content that is insulting or attacking other parties and this spread on the internet (electronic information or electronic documents). But in refers to the definition of cyberbullying takes the stage repeatedly addressed to victims of cyberbullying, which means it occurs when such action (frighten, oppress, vilify through content on the internet) is carried out over and over again and give impact on its victims (feeling threatened, fears, depression).

By looking at both the legal regulation over Indonesia, inconclusive cyberbullying has not been regulated explicitly, even the interpretation that there also has not been able to accommodate the Act of cyberbullying. In formulating a rule about the prohibited actions especially in the field of criminal law or commonly called criminalization should pay attention to several things, one of which Sudarto described as quoted by Teguh Prasetyo (2010) an act which is sought to prevented or overcome with criminal law should be “undesired act”, which the act brings the harm (materially and or spiritual) upon the society.

In terms of material losses by cyberbullying, there has been no definite data about it but Indonesian cybercrime has occupying the top 10 countries with the most cybercrime activities (Kompas.com, 2012). The existence of Indonesian Information and Electronic Act Number 11/2008 is also not effective. Indonesian Information and Electronic Act Number 11/2008 still has not complete regulations about internet crime issues such as cyber pornography, free speech, specifically on free speech maybe can be found in Article 27 Paragraph 3 of Indonesian Information and Electronic Act Number 11/2008 which still considered multi exegesis while in the Explanation Section it is written “Quite clear” (Raida L Tobing, 2010). The ineffectiveness of the existing legislation is also coupled with the fact that Indonesia has also not yet ratify The Council Of Europe’s Convention on Cybercrime 2001, whereas when it has ratified Indonesia can arrange the implementation and regulations can be made compatible to the convention as a source of national legal (Muhammad Amirulloh et.al., 2009). Although not regulated specifically about cyberbullying but the chapter of child pornography from the convention could be formulated and adjusted to the conditions that occur in Indonesia.

Basically cyberbullying can happen to anyone, just it is quite a lot of teens who became a victim, in America, although there is no legislation which regulates nationally about
cyberbullying but each State has its own regulation. A slightly different problems in Indonesia than about the importance of regulatory concern about cyberbullying is about an object in the design, to whom this is aimed setting cyberbullying. Is it to children or teenagers? Or to the public?

As revealed above that Indonesia could adopt the formulation about child pornography existing in Council Of Europe’s Convention on Cybercrime 2001 into the legislation of cyberbullying, because if looking to The Council Of Europe’s Convention on Cybercrime 2001 can be found in the phrase of “distributing or transmitting child pornography through a computer system”. In many cases cyberbullying a lot of action distribute pornographic content related victims often become triggers the cyberbullying, it would later can be adopted by Indonesia, so that Indonesia could make regulations indirectly set up two things child pornography and cyberbullying. But the legislation and the adjustment of the outline of child pornography from Council Of Europe’s Convention on Cybercrime 2001 Make regulations of cyberbullying specify to protect the prospective victim a child or a teenager. If it means to regulate about cyberbullying broader so the implementation of the ratification can be done to by revise Indonesian Information and Electronic Act Number 11/2008.

Conclusions
Cyberbullying as a form of crime could be described as a phenomenon has not been too look out for in Indonesia, though its effects are dangerous especially when children who are victimized, cyberbullying is also dangerous due to repetitive and difficult stages track the perpetrators of cyberbullying for characterizing the cyberspace so quick in terms of dissemination of information also because cyberbullying usually performed more than one person making it difficult to trace the main perpetrator.

The Council Of Europe’s Convention on Cybercrime 2001 did not regulate about cyberbullying, but Indonesia could follow what is done in other countries and regulate its own rules of law about cyberbullying, but it is however must be coupled by the ratification of The Council Of Europe’s Convention on Cybercrime 2001 because it can also regulate about child pornography, where child pornography is usually the trigger of cyberbullying cases.

Ratification of The Council Of Europe’s Convention on Cybercrime 2001 is also need to be done considered that Indonesian Criminal Code Act and Indonesian Information and Electronic Act Number 11/2008 can’t accomodate the interpretation for cyberbullying. This ratification later can be implemented to separate Act or to Indonesian Criminal Code Act and also Indonesian Information and Electronic Act Number 11/2008 itself.

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