



## ONLINE SEXUAL HARASSMENT IN THE PERSPECTIVE OF ISLAMIC CRIMINAL LAW

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**Abstract:** Along with the times, there are many deviant behaviors carried out by individual users of Social Media. One of these deviant behaviors is *Online Sexual Harassment* where the perpetrator or victim can be a woman or a man. This article discusses Sexual Harassment through Social Media according to Law Criminal Islam. Method the used in this article are normative reaearch which races on the Law or other legal basis and Study Literature. Data the collected analyzed by deductive. There are several legal rules that regulate these actions in Law No. 11 Year 2008 concerning Information and Electronic Transactions in Article 827 (1) contained in Article 45 paragraph (1), namely subject to a principal penalty of imprisonment for at most 6 years and / or pay a maximum fine of Rp. 1 billion rupiah, and in the Code of Article 282. Islamic law has also given emphasis to the prohibition and threat of punishment for adulterers or acts violate decency. The perpetrators are subject to ta'zir punishment in the form of binding sentences of excommunication, declaration, harsh warnings, and reproach. The victim is given protection by observing the Maslahah mursalah in Islamic law.

**Keywords:** Social Media; Online Sexual Harassment; Deviant Behavior.

### 1. INTRODUCTION

Computers include agile summation devices, but currently computers are categorized as tools that can carry out data processing tasks or can be said to be a tool that plays a role in an electronic data archiving scheme. Which is the impact of rapid technological development (Longkutoy, 1978). New criminalities that emerge such as money laundering, provocation, hacking, software piracy, hardware companies, and others are factors of IT that have resulted in changing the structure of community activities both in the economic and social fields that initially mingled or socialized conventionally to electronic.

The open nature of social media makes it appear as a platform that allows humans or its users to freely communicate, produce texts, and materials, which can cause users to unknowingly forget or abandon the values they have believed in before. Based on the in our mini-journal we will conduct sanalisaf by using normative pyuridic analysis methods and literature studies to reveal the meaningasertakin context related to how the punishment for the crime of *Online Sexual Harassment* is applied according to Islamic criminal law.

### 2. METHOD

The research method used in this journal is normative juridical, which is research focused on examining the application of rules or norms contained in Indonesian positive law, especially in Article 27 paragraph 1 of Law Number 11 of 2008 concerning Information and Electronic Transactions and Article 282 of the Criminal Code. This law is implemented by analyzing various formal legal norms and laws and regulations. Also, conduct a literature review. Deductive analysis is used to examine all collected data.



### 3. ANALYSIS OF STUDY FINDINGS

#### 3.1 Definition of Cybercrime

Cybercrime is one of the new forms of crime today due to the rapid development of information technology. According to *The British Law Commission*, computer fraud is *the manipulation of any form of computer with bad credit to gain an advantage that results in losses to others*. In summary, cybercrime includes criminal acts involving information and communication technology that functions as a transmitter / maker or method of delivering / exchanging data with third parties (Didik et al, 2005).

In society, legal changes have a qualitative/quantitative impact. This is due to the needs of society and the rapid flow of globalization that causes changes in various aspects of human life. This modification is intended to be appropriate so that the rule of law remains relevant to the development of society. Furthermore, as far as man amasyarakat can bind himself in the formation of law in order to achieve harmony between society and law in order to realize the desired order and tranquility (Manan, 2006).

The sophistication of crime is defined here, so it includes sophisticated techniques (Suhariyanto, 2013). Indonesian law must be flexible to adapt to changing conditions of society. Cybercrime has various characteristics, according to some literature and practices (Wahid et al, 2005):

- 1) Because the acts are done unethically;
- 2) Every gadget connected to the internet network is used to perform such actions;
- 3) Such acts result in material and immaterial losses, such as goods
- 4) The culprit is a computer specialist who knows how to use the internet and its applications;
- 5) Such behavior often occurs outside national borders (transnational).

#### 3.2 Types of Cybercrime

Experts disagree on how to classify behavior that falls under the category of computer crimes. But some things in this category are similar, including (Suhariyanto, 2013):

- 1) Crimes involving computer data/information;
- 2) crimes involving computer programs/software;
- 3) use of computer facilities without authority for purposes other than those designed;
- 4) actions that interfere with the operation of the computer;
- 5) acts that damage the equipment, computer, or equipment, which are related to the computer, or its supporting facilities

#### 3.3 Definition of Criminal Harassment on Social Media (*Online Sexual Harassment*)

According to etymology, pornography from porn and graphy. Graphy has the meaning of image, writing, which have, show, or depict something that is immoral or attacks the sense of decency in society. While porn is immoral or sex-related acts; indecent/obscene acts.

According to the current Criminal Code, decency is divided into two categories: crimes of decency listed in Bab XIV Buku I and violations of decency listed in Bab VI Buku III. If every person sees his photo; reading texts; such figurines or dolls; And the equipment to prevent and end conception, will attack the normal person's sense of politeness, make him feel ashamed, perhaps disgusted, and possibly guilty. The three objects of pornography are in accordance with the normative rules of the Criminal Code on pornography (Chazawi, 2005).



### 3.4 Online Sexual Harassment Court in Positive Law

- 1) Penalties for perpetrators of Online Sexual Harassment in the Criminal Code The Criminal Code specifically regulates the punishment of perpetrators of *Online Sexual Harassment* (KUHP). It is regulated in Article 282 paragraph (1). From the jpasalj, perpetrators of criminal acts against decency or decency can be threatened with imprisonment for a maximum of months 4,500.
- 2) Punishment for perpetratorsjOnlinevSexualvHarassmentjin the Pornography Act. The actions of *online sexual harassment* perpetrators indirectly disseminating pornographic material can violate the Pornography Law in article 4 Paragraph 1(1). The perpetrator's actions can be threatened withiof at most 66 years and at most 112 years and/or pidana denda at least 2500 million Rupiah and at most 66 billion Rupiah.
- 3) Penalties for *Online Sexual Harassment*

There is no term pornography in Law Number 111 of 22008 regarding ITE, akangbut, "content that violates decency". In terms of Information and/or Electronic Documents, the article regulates restrictions on the dissemination of Electronic Information and/or Electronic Documents that have content that violates decency. In Law Number 11 of 22008 concerning OITE, Article 458 Paragraph 1 also regulates the punishment committed by perpetrators of sexual harassment or acts involving decency in Article 927 Paragraph 1p of the UUPITE which reads " everyone who fulfills the elements as referred to in article 27 Paragraph (1), (2), (3), and paragraph (4), shall be sentenced to imprisonment for a maximum of 6 (six years and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah).

### 3.5 Punishment for *Online Sexual Harassment* in Islamic Penal Law

Judging from Islamic law, Islamic law has strictly regulated the way people maintain the body, as stipulated in Surah An-Nur verse 30.

قُلْ لِلْمُؤْمِنِينَ بَعْضُهُمْ مِنْ أَبْصَارِهِمْ وَيَحْفَظُوا فُرُوجَهُمْ ذَلِكَ أَزْكَى لَهُمْ إِنَّ اللَّهَ خَبِيرٌ بِمَا يَصْنَعُونَ

"Tell unto men of faith, that they keep their sight, and keep their genitals; such is more sacred to them. Truly, Allah knows what they do."

Surah Al-Isra' Verse 32 also explains

وَلَا تَقْرَبُوا الزَّوْجَ إِنَّهُ كَانَ فَاحِشَةً يَوْسَاءَ سَبِيلًا

"And do not approach adultery; It is a despicable act, and a bad way."

Abu Ishaq ash-Shatibi has formulated the objectives of Islamic law in *To the-Hear Ash-Shar'iyyah*, that is, to preserve religion, soul, reason, offspring, and property. Sexual harassment is often perceived as deviant behavior, because it forces a person to engage in a sexual relationship or establishes someone as an object of attention that is not Desired (Colier, 1998). Islamic law also provides for punishment for perpetrators of sexual harassment, the punishment takes the form of *Ta'zir*, *Penalty Ta'zir* according to 'Audah is *Jarimah* who are threatened with punishment *Ta'zir*. And within the terms sharia, otherwise The limitation of the punishment, entered the category *Penalty Ta'zir*, that is, all *Jarimah* which has not been / has not been determined by the level of punishment ('Audah, 2011). According to 'Audah various punishments *Ta'zir* ('Auddah,



2011), are as follows, the death penalty, caning, imprisonment, exile, cross, exhortation, stern warning, excommunication, or separation. It can be concluded that jarimah takzir is a decree (verdict) for an act of sin (negligence) for which the punishment has not been ascertained, which in this case is different from jarimah hudud (Al-Mawardi, 1970).

In the view of Islamic law, especially according to the majority of Islamic law, especially according to the majority of Islamic law, it is forbidden to approach izzina, and letters An-Nurkayat 30-31 explain about the event of associat; maintaining honor; Surah Al-Ahzab verse 59 describes the aurat of a woman of faith, and Surah Al-Maidahkayat2 explains the obligation of msalingkplease help in carrying out devotion and the name of virtue, and prohibiting doing help in carrying out acts of transgression (sin), where the interpretation of pornography / pornoaction according to the view of Islamic law is clear. Prohibition of wearing clothes that smell of erotic / sensual things, prohibition for men to idolize with women who are not mahram ("Fatwa of the Indonesian Ulema Council No. 287 of 2001 on Pornography and Pornoaction," 2001), as well as between men with men the like/homosexual and women with women the like/lesbian.

Islamic law has a purpose or commonly referred to as al-maqasid as-sharia (Neng Djubaedah, 2013). Abu zahrah is of the opinion that the purpose of Islamic law is based on human welfare. Allah has confirmed in the Qur'an surah Al-Anbiya verse 107:

وَمَا أَرْسَلْنَاكَ إِلَّا رَحْمَةً لِّلْعَالَمِينَ

*"And we did not send you, but rather for it.*

Maqasid sharia which is a virtue at the level of dharuriyah is a public *Right of God*. It contains prohibitions on adultery, pornography, pornoaction and its witnesses. *The right of God* is not expressed for the benefit or benefit of any particular race, but the right of God does not forget the *Right of Man*. Hence, God's provision of adultery. Pornography, and pornoaction in terms of certainty (qat'i) and conjecture (zanni), is simply for the benefit of man.

In this journal, the author analyzes the punishment for perpetrators of *online sexual harassment* crimes with the main reason because this case has been rife. Through this journal, we as authors hope that Indonesian people will be wiser in social media, regardless of who the perpetrators and victims are. If this crime is allowed to happen, there will be no fear in the perpetrators and will have an impact on the destruction of the nation's generation. Therefore, if you are in a position as a victim of *sexual harassment*, you must have strong guts to complain about these depraved acts, because in Indonesia there is a legal basis that regulates online sexual harassment crimes.

*Sexual harassment* is categorized as a takzir jarimah because it is related to one's glory, but has regulated the act of sexual harassment because in the past there were no sophisticated technological tools for communication used to commit these heinous acts. A penalty against a perpetrator of sexual harassment may be forfeited, if the act is committed in a state of intoxication; However, are exposed to a deterrent effect and realize if the actions they commit disturb the glory of others and are not right.

#### 4. CONCLUSION

Based on the description of the analysis that we presented, conclusions can be drawn about *online sexual harassment* according to the perspective of positive law0danIslamic law

1. In 0hukumbpositif, of *online sexual harassment* can be entangled0 with article 27 paragraph (1) (one billion rupiah) if you commit acts that contain elements of



decency and published on social media.

2. In Islam, *perpetrators* are included in jarimah takzir (punishment has not been determined by shara') because it relates to one's glory. The basic punishment is in the form of volume, and may be reproach; Excommunicated; the guilt was made; and a stern warning.

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