

Law on Cyberbullying in Indonesia, Malaysia, and Brunei Darussalam

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ABSTRACT

All state have various laws that might apply to bullying behaviors. However, this law shows unintended. This study shows legal analysis in some journal, acts, and regulation in every state. Law Journals were conducted. It examines laws and policies dealing with cyberbullying in Indonesia, Malaysia and Brunei Darussalam starting with defining cyberbullying and then comparing the measures in which the issues surrounding cyberbullying have been addressed using various legal strategies. As of August 2017, 48 states had electronic harassment laws which explicitly included cyber bullying in US State. A total of 44 states included criminal sanctions in their cyber bullying laws. The authors point out that the majority of U.S. states have written legislation to address bullying and cyberbullying and that many state legislation that prohibit electronic bullying and developed consequences for doing so. This study was conducted to gain insight into how cyberbullying law implemented in Indonesia, Malaysia, and Brunei Darussalam. Last, after analyzing existing legislative methods an cyberbullying cases around the world, this article concludes with legal and policy recommendations based on these comparisons in Indonesia, Malaysia, and Brunei Darussalam.

Keyword : *Law, Cyberbullying, Indonesia, Malaysia, Brunei Darussalam*

1. Introduction

Information technology has become widely. It becomes excellent places for people to express themselves. Information technology is associated with benefit and consequences. Positive benefits include access to information, access online communitie for empowering business, and access to teaching and learning resources.

However, Information technology has also been associated with considerable negative implications. This includes cyberbullying. With the existence of social media and its easy access, bullying became came even more prevalent and was coined cyberbullying.

The first study question concerns the need for an informative and clearly focused analysis of state legislation to describe the purpose and structure of laws and their definitions, key provisions, similarities, and differences in Indonesia, Malaysia, and Brunei Darussalam.

In Indonesia, cyberbullying occurs in the school environment among children or teenagers, thus the laws of Indonesia tackle the problem as one school safety through Article 45B of the new amendment of the Electronic Information and Transactions (ITE) Law, cyberbullying is now finally considered as a form of harassment, and a criminal act that carries a maximum imprisonment term of four years and/ or fines amounting to Rp 750,000 (US\$55.55).

Yet there is also legislation that could be used for looking t the Indonesian Criminal Code Act (KUHP).

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.¹

At present, Laws on cyberbullying are being drafted in Malaysia.² The results indicated that there is a lack of awareness regarding cybercrimes and its related laws among active Internet users. Such negative attitude towards cybercrimes may contribute to the prevalence of cyberbullying in this country³

¹Eka Nugraha Putra, Urgency Of Regulating Cyberbullying On Indonesian Law, Proceedings of The 3rd Annual International Conference Syiah Kuala University (AIC Unsyiah) 2013 In conjunction with The 2nd International Conference on Multidisciplinary Research (ICMR) 2013 October 2-4, 2013, Banda Aceh, Indonesia

² Laws to tackle cyber bullying being drafted in Malaysia
www.scmp.com/tech/article/2068707/laws-cyber-bullying-being-drafted-malaysia

³ Muhammad Shawal bin Abdul Rashid, Redicting The Intention To Cyberbully And Cyberbullying Behaviour Among The Undergraduate Students At The International Islamic University Malaysia

Among the 17 Asian countries analyzed: 3 countries (Japan, Philippines, and Republic of Korea) have domestic laws regarding cyberbullying;¹ 1 country (Singapore) is considered to have legislation concerning cyberbullying although Singaporean law does not use the explicit terms of “cyberbullying” or “bullying”; and 13 countries (Brunei Darussalam, Cambodia, China, Democratic People’s Republic of Korea, India, Indonesia, Lao People’s Democratic Republic, Malaysia, Mongolia, Myanmar, Thailand, Timor-Leste, and Vietnam) do not have domestic laws concerning cyberbullying⁴

Malaysia does not have any laws to take action against online harassers, but given the widespread plague of cyber bullying and the anonymity of the internet, laws to punish cyber bullies are being drafted.

However, other laws in Malaysia provide some protection from online dangers. Sending threatening messages could be a criminal offence under Malaysia’s Communications & Multimedia Act 1998 or Section 503 of Malaysia’s Penal Code dealing with intimidation.

The writer found the cyberbullying law in Oregon was unresolved while there was Oregon Laws 2008 regulated the cyberbullying. Therefore, this case was unresolved. The laws need to be updated. As more is learned about the reasons behind cyberbullying and the specific tactics utilized, prevention programs are becoming more effective.

Cyberbullying occurred in Missouri. This case was the first case of suicide resulting from cyberbullying in the State of America. In *United States v. Lori Drew*, Megan Meier was a 13-year-old girl who was deemed cyberbullying. Lori Drew was charged for the death of Megan Meier as a result of her participation in Cyber-Bullying efforts considered to be responsible for Meier’s death.

Background information and related research is included to provide case and historical data. Recommendations include committee implementations, policy, and development.

Cyberbullying is easier to define through a real-life case. It occurred in the case of Amanda Todd whose Facebook profile had been made in her name, featuring her exposed breasts as the main picture.

Research found cyberbullying in many cases a risk for suicide. In the tragic case of Amanda Todd, Canadian federal government Rehtaeh Parsons

and Todd Loik, and pledged to “focus on protecting the most vulnerable of all victims” by introducing “legislation giving police and prosecutors new tools to effectively address cyberbullying that involves criminal invasion of privacy, intimidation and personal abuse.”⁵

2. Definition Of Cyberbullying

Cyberbullying is defined as “[t]he use of electronic communication to bully a person, typically by sending messages of an intimidating or threatening nature.

Based on Chapter 647 Oregon Laws 2007, (1) “Cyberbullying” means the use of any electronic communication device to harass, intimidate or bully.

The Cyber-safety Act of Nova Scotia broadly defines cyberbullying, classifying it as:

any electronic communication through the use of technology including, without limiting the generality of the foregoing, computers, other electronic devices, social networks, text messaging, instant messaging, websites and electronic mail, typically repeated or with continuing effect, that is intended or ought reasonably [to] be expected to cause fear, intimidation, humiliation, distress or other damage or harm to another person's health, emotional well-being, self-esteem or reputation, and includes assisting or encouraging such communication in any way.

Cyberbullying” means bullying as defined in this subsection through the transmission of a communication including, but not limited to, a message, text, sound, or image by means of an electronic device including, but not limited to, a telephone, wireless telephone, or other wireless communication device, computer, or pager

3. Method

The approach to reviewing state bullying legislation began with preparation of a legislative history for each state, listing any relevant bills enacted since 1999. Specifically, some states approached legislation through a series of amendments to existing laws addressing school safety planning or student conduct, while others introduced new statutes, or series of statutes, that are exclusive to combating bullying in schools in some cases.

A thorough analysis of various case studies, law cases, and news articles was conducted to understand the issue of cyberbullying and to find preventative measures that should be taken for Malaysia, Indonesia, and Brunei Darussalam.

⁴ Protecting Children from Cybercrime : Legislative Responses in Asia to Fight Child Pornography, Online Grooming, and Cyberbullying

These differences in legislative approach influence how laws governing bullying are structured within each state like Indonesia, Malaysia and Brunei Darussalam.

4. Identifying the problem

This latter point demonstrates one interesting aspect of cyber-bullying, This is that such cybebullying law has one dimension . That is how should cyberbullying laws be implemented in every state?

5. Analysis

When adult or tennage have been threatened by modern and technology. Cyberbullying can occur through Instant Messages, Social Media, Websites, Cell Phones, and Emails.

Victims of cyber-bullying can be bullied online at any time, day or night. Internet postings can be viewed by a vast audience and may be difficult to remove.

An anonymous Instagram account was used to bully students at Whiteaker Middle School in the Salem-Keizer School District and the account has removed. Haley Percell, a lawyer for the Oregon School Boards Association said that schools should have legal obligation to respond if the bullying has made its way into the school and involve a protected class or sexual harassment. She advised administrators throughout the state on the legal implications of cyberbullying.⁶

The police of Salem Keizer department could not investigate but aware of this incident. The Oregon law did not work for this case. The Oregon law needs to be updated.

All the evidence illustrates the effect of cyberbullying in new era especially for the youth, but many issues remain unresolved. A significant cyberbullying in Missouri. This case was the first case of suicide resulting from cyberbullying in State of America In 2006, A thirteen – years- old Megan Meier met a teenage boy named Josh Evans on social networking website MySpace

United States vs. Lori Drew, involved Drew and her daughter creating a false MySpace account under the alias name “Josh. these comments to heart and committed suicide. The Missouri district court determined that they could not hold Drew directly accountable for the harassment leading to Meier’s death due to extraneous circumstances and lack of legal

encompassment.⁷ Under federal sentencing guidelines, Ms. Drew could face up to three years in prison and \$300,000 in fine

Although some countries have made great strides in the area of combatting cyber bullying, they are still faced with many unanswered questions and significant uncertainty.

Amanda, a British Columbia teenager, was haunted and bullied by her stalker. She discovered a Facebook profile had been made in her name, featuring her exposed breasts as the main picture. After posting the video in Youtube, Amanda committed suicide.

38-year-old Dutch Coban regarding cyberbullying Amanda Todd was sentenced to 11 years by a court in the Netherlands for similar crimes.

The effect came to Amanda Todd Case. It has led the Canadian lawmaker to seriously consider amendments expansion of legislation in an attempt to combat cyberbullying more effectively⁸

Regulators, parents, and the courts should find productive solution.

3.1 Cyberbullying Law in Indonesia

This day, there are some crimes of cyberbullying in Indonesia. In fact, Indonesia has statutes to combat cyberbullying behavior. Indonesia has two statutes that can be used to prosecute instances of cyberbullying. So far Indonesia has been no amendment.

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 are “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.”

The interpretation of cyberbullying can be seen in Article 310 Paragraph 2 : “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

⁷Richard Donegan *Bullying and Cyberbullying: History, Statistics, Law, Prevention and Analysis

⁸Meissner 2013
<http://www.ctviews.ca/canada/amanda-todd-s-legacy-a-look-at-canada-s-anti-bullying-efforts-a-year-after-her-death-1.149088>.

⁶ <https://www.opb.org/radio/programs/think-out-loud/article/oregon-salem-keizer-whiteaker-middle-school-cyberbullying/> Salem-Keizer School Administrators Respond To Cyberbullying.

months or criminal fined of four thousand five hundred rupiahs.”

The context of the discussion of cyberbullying legislation this Indonesian Information and Electronic Act Number 11/2008 can accommodate the developments. 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.”

Regarding to two legal regulation over Indonesia, cyberbullying has not been regulated explicitly, even the interpretation that there also has not been able to accommodate the Act of cyberbullying

However, indonesia needs to provide new regulation and provision for cyberbullying. Cyberbullying can be extremely damaging to students, can disrupt an environment conducive to learning, and should not be tolerated in our schools.

3.2 Cyberbullying law in Malaysia

A recent UNICEF report also addressed the issue of cyberbullying in Malaysia and noted that a heightened awareness of the issue is essential. “Media reports in Malaysia suggest that cyberbullying is prevalent among children and young people here, but much of it could be under-reported, as few people are aware that it is a serious problem.”⁹

In Malaysia, Computer Crimes Act 1997 in Section Three: Unauthorised access to computer materials. If convicted, the offender is liable to a fine of not more than RM50,000 or a prison term of not more than five years. Section Four: Unauthorised access to computer materials with the intent to commit or facilitate an offence. If convicted, the offender is liable to a fine of not more than RM150,000 or a prison term of not more than 10 years. Section Five: Unauthorised modification to contents. If convicted, the offender is liable to a fine of not more than RM100,000 or a prison term of not more than seven years.

Communication and Multimedia Act Section 223: Improper use of network facilities or network services. However, The law has not been enforced aggressively even though the

⁹ Tee Shiao Eek, “A Big Sister Helps Students Cope with Bullying,” UNICEF, October 4, 2009, http://www.unicef.org/infobycountry/malaysia_51549.html

consequences can be severe. The common topic of bully cases in Malaysia is about the large amount.

Based on a national survey conducted on school going children during the CyberSAFE in Schools Programme (2013), the outcome of the survey revealed that half of the students knew at least one person being bullied online and the following were the most common channels that were used for cyberbullying like Facebook, Blogs, Short Message System, Phone Call, Hacking of online account, Videos, YouTube, and email.

3.3 Cyberbullying law in Brunei Darussalam

Cyberbullying is becoming a worrying trend in Brunei as people are falling prey to online harassment.

Latest statistics obtained from the Royal Brunei Police Force showed there were 300 cases of cyber bullying in 2012 and another 182 cases in the first half of 2013 alone¹⁰

Brunei Darussalam is the first country in the region to establish a Child Online Protection Framework built upon the International Telecommunications Union – Child Online Protection Initiative. You led the way in 2013, when many countries were still grappling with the situation.

Brunei’s Penal Code Amendment Order 2012 has significantly strengthened the country’s legislation in relation to online child abuse and exploitation, making it among the most comprehensive and up-to-date codes in the region. The law now criminalizes:

- a. possession of an indecent or obscene photograph (or pseudo-photograph) of a child;
- b. taking, distributing, showing, advertising, and accessing indecent or obscene photographs (or pseudo-photographs);
- c. sexual acts in the presence of a person under 16 years old
- d. causing a person under 16 years old to watch a sexual act;
- e. commercial sex with a person under 16 years old, both inside and outside Brunei Darussalam; and
- f. sexual grooming of a person under 16 years old.

Brunei has ratified a number of relevant international conventions, except for Optional Protocol to the Convention on the

¹⁰ <https://btarchive.org/news/national/2016/01/25/youth-cyber-bullying-worrying-trend-brunei>

Rights of the Child on a communications procedure and the Trafficking Protocol.¹¹ Brunei maintains reservations to certain articles of the Convention on the Rights of the Child

These provisions are among the most comprehensive and up-to-date in the region. There are currently no laws addressing cyberbullying and no law that requires Internet service provider to report child abuse materials to law enforcement agencies or other relevant authorities when they learn of it on their own networks

6. Result

The problem is that technology will inevitably continue to advance. Cyberbullying most commonly takes the form of threatening or aggressive messages or hateful comments transmitted via emails, text messages or social media websites.¹²

To reduce the amount of cyberbullying will have two challenges. First, some people do not recognize the harm associated with cyberbullying. Parents, adolescent, teacher, and law enforcement need to accept that cyberbullying is one such problem that will only get more serious if they ignored it.¹³

The other challenge relates to who is willing to step up and take responsibility for responding to inappropriate use of technology. Some parents should have the technical skills to keep up with their kids' online behavior. Law enforcement is hesitant to get involved unless there is clear evidence of a crime or a significant threat to someone's physical safety.

¹¹ UNICEF, Child protection in the digital age : National responses to online child sexual abuse and exploitation in ASEAN Member States. Strengthening Child Protection Systems Series, No. 6 UNICEF EAPRO, Bangkok, 2016

¹²CCSO (Coordinating Committee of Senior Officials) Cybercrime Working Group. *Report to the federal/provincial/territorial ministers responsible for justice and public safety: cyberbullying and the non-consensual distribution of intimate images*. Ottawa (ON): Minister of Justice and Attorney General of Canada; 2013. Available: www.justice.gc.ca/eng/rp-pr/other-autre/cndii-cdncii/pdf/cndii-cdncii-eng.pdf (accessed 2014 Feb. 27)

¹³ Sameer Hinduja, Ph.D. and Justin W. Patchin, Ph.D. Cyberbullying Identification, Prevention, and Response, Cyberbullying Research Center

As a result, cyberbullying incidents often slip through the cracks. Indeed, the behavior often continues and escalates because they are not quickly addressed. Only Megan Meier case has been resolved and suspected has been sentenced in 3 years and fined

7. Conclusions

Recent incidents of cyberbullying have demonstrated its potentially devastating effects on students, schools, and communities and have spurred a sense of urgency among State and local educators and policymakers to take action to combat bullying. In response to requests for assistance by state and local officials, educators, and policymakers, we summarize below examples of key components of state cyberbullying laws.

One such case was formally known in Missouri in 2006 as *United States vs. Lori Drew*, involved Drew and her daughter creating a false MySpace account under the alias name "Josh." These comments hurt and committed suicide on Meier's date. Ms. Drew could face up to three years in prison and \$300,000 in fine.

Ultimately every state will determine whether new or revised legislation and policies should be introduced to update, improve, or add cyberbullying prevention provisions. At least, in this context is more expansive government policies tend to be states with more expansive legislation

While this study focuses on cyberbullying law to protect the child under 18 years. Currently, Indonesia, Brunei Darussalam and Malaysia do not have legislation dealing with cyberbullying and the privacy of the internet user per se. Consequently, schools are often placed in a position where they have to choose between their learners' safety and their learners' privacy, with little regard to the fundamental rights learners ought to be able to enjoy at school.

8. Suggestion

Cyberbullying is a serious problem. So it takes some preventions. Not only parents but also law enforcement officers also have a role in preventing and responding to cyberbullying. As law enforcement officers give the socialization about cyberbullying and online safety issues more broadly in an attempt to discourage them from engaging in risky or unacceptable actions and interactions for some school.

Regardless, new criminal and civil laws alone will not suffice to deal with less severe but much more common forms of cyberbullying and their impact on the well-being of youth.

New cyberbullying legislation brought forward in Indonesia, Malaysia, Brunei

Darussalam has focused on strengthening the roles and responsibilities of schools.

This is the best challenge for Indonesian, Malaysia, and Brunei Darussalam's law makers and school governing bodies are confronted with today.

Countries such as Canada, the United States of America, Missouri, and Oregon have indeed had more extensive experience with the issue of balancing the rights of parties when it comes to dealing with cyberbullying. They have developed fairly comprehensive legislation with regards to cyberbullying and have a far greater volume of case law on the issue of cyberbullying than Indonesia, Malaysia, and Brunei Darussalam. Therefore we suggest that we should look towards the action these countries have taken in the fight against cyberbullying and learn from them.

References

- [1] Cyberbullying, OXFORD DICTIONARY (3d ed. 2010).
- [2] UNICEF, "Child protection in the digital age: National responses to online child sexual abuse and exploitation in ASEAN Member States". Strengthening Child Protection Systems Series, No. 6 UNICEF EAPRO, Bangkok, 2016
- [3] Eek, Tee Shiao "A Big Sister Helps Students Cope with Bullying," UNICEF, October 4, 2009
- [4] Putra, Eka Nugraha. *Urgency Of Regulating Cyberbullying On Indonesian Law*, Proceedings of The 3rd Annual International Conference Syiah Kuala University (AIC Unsyiah) 2013 In conjunction with The 2nd International Conference on Multidisciplinary Research (ICMR) 2013 October 2-4, 2013, Banda Aceh, Indonesia
- [5] S. Ramadhani, Y. M. Saragih, R. Rahim, and A. P. U. Siahaan, "Post-Genesis Digital Forensics Investigation," *Int. J. Sci. Res. Sci. Technol.*, vol. 3, no. 6, pp. 164–166, 2017.
- [6] Shawal, Muhammad bin Abdul Rashid, Redicting The Intention To Cyberbully And Cyberbullying Behaviour Among The Undergraduate Students At The International Islamic University Malaysia
- [7] <https://btarchive.org/news/national/2016/01/25/youth-cyber-bullying-worrying-trend-brunei>
- [8] Y. M. Saragih and A. P. U. Siahaan, "Cyber Crime Prevention Strategy in Indonesia," *SSRG Int. J. Humanit. Soc. Sci.*, vol. 3, no. 6, pp. 22–26, 2016.
- [9] M. Saragih, H. Aspan, and A. P. U. Siahaan, "Violations of Cybercrime and the Strength of Jurisdiction in Indonesia," *Int. J. Humanit. Soc. Stud.*, vol. 5, no. 12, pp. 209–214, 2017.
- [10] Laws to tackle cyber bullying being drafted in Malaysia www.scmp.com/tech/article/2068707/laws-cyber-bullying-being-drafted-malaysia
- [11] State Cyberbullying Laws : A Brief Review of State
- [12] Cyberbullying Laws and Policies Missouri Revised Statutes
- [13] Patchin, Justin W. Ph.D and Sameer Hinduja, Ph.D. Cyberbullying Identification, Prevention, and Response, Cyberbullying Research Center
- [14] Meissner, <http://www.ctviews.ca/canada/amanda-todd-s-legacy-a-look-at-canada-s-antibullying-efforts-a-year-after-her-death-1.149088>.