

Resolution of Cyber Harassment Against Public Figures in the Perspective of Digital Law

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Abstract

*The purpose of this study is to examine the settlement mechanism of Cyber Harassment experienced by public figures considering that in this disruptive era of technology, more and more cases like this have emerged. The research approach method used is the statute approach and the case approach. The study results are that the settlement of cyber harassment disputes against public figures can be resolved through litigation and non-litigation mechanisms. It is possible to settle through this litigation route, even though, in substance, the legal regulations regarding cyber harassment have not been described concretely in positive law in Indonesia, departing from the understanding that there is a principle of *Ius curia Novit*. The legal consequence is that judges are prohibited from objecting, let alone refusing a case submitted by the community and having an obligation to examine and try and give legal decisions on these legal issues. The next option apart from litigation is the non-litigation route. The author concludes that in resolving Cyber Harassment disputes against public figures if you choose a non-litigation way to be resolved, an alternative form of dispute resolution that can be used and is considered more suitable as a media for dispute resolution is mediation. Suggestion, To the Indonesian people in general and public figures in particular, must be brave to fight for their rights and make complaints or reports to the authorities so that losses arising from violations of their constitutional rights can be recovered. Through its power tools, the state can guarantee legal protection to victims while simultaneously providing a deterrent effect to the perpetrators to realize order and security in the life of society, nation, and state.*

Keywords: Resolution; Cyber Harassment; Digital Law

INTRODUCTION

A. Background

It should be realized that "technological advances always give impressions both directly and indirectly, both in positive and negative meanings and will significantly affect every attitude of action and mental attitude of every member of society."¹

In the digital world, "the presence of this fantastic internet further legitimizes the idea that information and communication technology has become the mainstream culture of today's society,"² and a form of value transformation that occurs from the existence of the internet, one of which is Cyber Harassment, which is "an action that describes how people who constantly pursue others online with the intention of scaring or humiliating victims."³

Based on data from the annual record (Catahu) of the National Commission on Violence Against Women (Komnas Perempuan) in 2018, "sexual violence is the second most of the cases of violence in the private/personal sphere against women reported to Komnas

Perempuan with a percentage of 31% or as many as 2,979 cases and of the total number, as many as 104 cases are *cyber harassment*."⁴

Cyber harassment itself also targets public figures. A case that has attracted much public attention is the cyber-harassment case that happened to singer Via Vallen in mid-2018. His position as a public figure who is enough to maintain the values of decency in stage performance and daily activities has not escaped the attacks of cyber harassment. Where in her Instagram story upload, Via Vallen got an indecent and sexually connotational message that read, "I want you to sign for me in my bedroom, wearing sexy clothes".



Picture 1. Screenshot Story Instagram Via Vallen⁵

¹ Hamzah, A. (1992). *Aspek-Aspek Pidana Di Bidang Komputer*. Jakarta: Sinar Grafika.

² Asshiddiqie, J. (2005). *Hukum Tata Negara dan Pilar-pilar Demokrasi*. Jakarta: Konpress

³ Aditya, R. (2020). *Apa itu Cyber Harassment? Ini Penjelasan Lengkapnya*. Retrieved 8 15, 2021, from [suara.com: https://www.suara.com/news/2020/10/23/135152/apa-itu-cyber-harassment-ini-penjelasan-lengkapnya?page=all](https://www.suara.com/news/2020/10/23/135152/apa-itu-cyber-harassment-ini-penjelasan-lengkapnya?page=all)

⁴ Komisi Nasional Anti Kekerasan Terhadap Perempuan. (2018). *Catatan Tahunan (CATAHU) Komnas Perempuan Tahun 2018 ; Tergerusnya Ruang Aman Perempuan dalam Pusaran Politik Populisme*. Jakarta: Komisi Nasional Anti Kekerasan Terhadap Perempuan.

⁵ Reinis, D. (2018). *Kasus Via Vallen terima 'pesan mesum', Komnas Perempuan sebut ia korban pelecehan seksual di dunia maya*. Retrieved 8 17, 2021, from BBC News:

If you look at the narrative, he said, and associated with the media used, this behavior is already included in the cyber-based non-physical sexual harassment category. In other words, it is classified as *cyber harassment*. In addition to Via Vallen, actress and presenter Fina Phillippe revealed that "not a few of her get unpleasant comments on her personal Instagram on uploads of photos of herself, even often get messages or DM (*Direct Messages*) from men showing their genitals."⁶

Around Gorontalo Province, one of the celegrams among Gorontalo's youngsters with the account name @funnizam has also experienced *Cyber Harassment*. When his post about the *soft opening* of one of the multinational franchises, namely McDonald's in Gorontalo City, went viral, many hate speeches adorned the comment section of his uploads both on social media Instagram and social media Twitter.

Of course, this is an irony. Modernization that should lead to a more advanced civilization instead produces residue in the form of the birth of an irresponsible society in social media. *Cyber harassment* is certainly not in line with the values

of freedom of expression as echoed in the state constitution, namely the 1945 Constitution of the Republic of Indonesia Article 28E paragraph (3), because in this case, it has injured the human rights of the human itself even though as a reasonable individual and lives in a civilized society, "everyone is obliged to respect the human rights of others in the orderly life of society, nation, and state," as mandated in Article 28J paragraph (1) of the Constitution of the Republic of Indonesia of 1945. The understood thing is that rights are not absolute freedoms, so "in their use must be observed at the same time the obligations established by laws and regulations because the law serves to protect and limit human rights."⁷ This condition is then aggravated by the unclear regulations governing *Cyber Harassment* in national law. Law Number 11 of 2008 concerning Electronic Information and Transactions has not reached this realm, as traced by the author in Chapter VII Article 27 to article 37 of Law Number 11 of 2008 concerning Information and Electronic Transactions regarding prohibited acts.

<https://www.bbc.com/indonesia/trensosial-44367891>

⁶ Febrian, N. I. (2021). *Stop Sexual Harassment melalui Media Sosial*. Retrieved 8 17, 2021, from Kompasiana.com: <https://www.kompasiana.com/nurulinayahfebrian4>

[918/ 60cecd2abb44866e3c4ef264/stop-sexual-harassment-melalui-media-sosial](https://www.bbc.com/indonesia/trensosial-44367891)

⁷ Ni Ketut Sri Utari, Yohanes Usfunan, Ni Luh Gede Astariyani, Ni Made Ari Yulianti Griadhi, Nyoman Mas Aryan, Jimmy Z Usfunan. (2016). *Hukum Hak Asasi Manusia*. Denpasar: Universitas Udayana. Hlm. 17

B. Research Problem

Based on this background description, the author formulated the problem that is the subject of study. As for the formulation of the problem, why is the solution of *cyber harassment* against *public figures* in the perspective of digital law?

C. Research Methods

The type of research used is normative legal research, where the object of study includes basic norms or rules, legal principles, statutory regulations, comparative law, doctrine, and jurisprudence. The approaches used by researchers in compiling this research are, among others: the legal approach (statue approach); and a case approach. This study uses a deductive-inductive analytical perspective approach.

ANALYSIS AND DISCUSSION

Solving Cyber Harassment Of Public Figures In Digital Legal Perspective

In the context of criminal law, unlawful acts are defined as "acts that violate the law, acts committed beyond their power or authority, and acts that violate general principles in the field of law,"⁸ Which

has implications for the emergence of losses experienced by individuals or society. Of course, this condition cannot be avoided in a society that is so heterogeneous and dynamic in a disruptive era like today.

The losses themselves can eventually lead to disputes where the dispute itself is "a condition in which there is a party who feels aggrieved by the other party, which then conveys the dissatisfaction to the second party. If a condition indicates a difference of opinion, the so-called dispute occurs."⁹

So in the context of *Cyber Harassment*, this is where criminal law plays its role through the function of the criminal law itself, which is specifically presented to "protect the interests of the law (life, body, honor, property, independence) from acts that want to rape him with sanctions in the form of criminals that are cruel when compared to sanctions

⁸ Sari, I. (2020). Perbuatan Melawan Hukum Dalam Hukum Pidana dan Hukum Perdata. *Jurnal Ilmiah Hukum Dirgantara*, 11(1), 53.

⁹ Amriani, N. (2012). *Mediasi Alternatif Penyelesaian Sengketa Perdata di Pengadilan*. Jakarta: PT. Raja Grafindo Persada. Hlm. 12

contained in other branches of law.”¹⁰

The provision of this sanction is a practice of the principle of *Ut sementem faceris ita metes*, which means whoever planted something will reap the results. In other words, it is understood that this sanction is given as reciprocity of the actions carried out to cause a deterrent effect to the perpetrators of criminal acts and indirectly is a medium to order society so that it remains by the values of social life, nation, and state.

The function of criminal law is undoubtedly a material legal basis to then find solutions to resolve disputes through formal law. In the context of research on *Cyber Harassment of Public Figures* in the Perspective of Digital Law, the author determines the procedures for settlement through two channels, namely settlement through litigation channels and

settlement through non-litigation channels, which the author then describes as follows :

1. Litigation Pathways

The word *Litigation* "comes from English which means court." Whereas when referring to Black's Law Dictionary,¹¹ *litigation* is defined as "the process of carrying on a lawsuit." which in coercive authorship can be translated as the process of filing a lawsuit in court. ¹² *Litigation* can also be understood as "a mechanism for resolving disputes by passing judgments (*constitutive*)."¹³

When viewed from the legal perspective of dispute resolution, Frans Hendra Winarta provides a view of the legal case settlement process through the litigation channel with the point of view that "the litigation process places the parties opposite each other, besides that litigation dispute resolution is the final means (*ultimum remedium*) after other dispute resolution alternatives do not produce results.”¹⁴

So he understood it was "litigation is the final means of dispute resolution. The final result of the litigation has binding legal

¹⁰ Tongat. (2008). *Dasar-Dasar Hukum Pidana Indonesia Dalam Perspektif Pembaharuan*. Malang: UMM Press. Hlm. 22

¹¹ Muryati, D. t., & Heryanti, B. R. (2011). Regulation and Mechanism for Resolving Non-Litigation Disputes in the Field of Trade. *Journal of Sosbud Dynamics*, 13(1), 50.

¹² Black's Law Dictionary. *Op.Cit.* Hlm. 1017

¹³ Wiryawan, I. W., & Artadi, I. K. (2010). *Out-of-Court Dispute Resolution*. Denpasar: Udayana University Press. P. 3

¹⁴ Winarta, F. H. (2012). *Hukum Penyelesaian Sengketa*. Jakarta: Sinar Grafika. Hlm. 1-2

force against the parties involved in the dispute.”¹⁵ This is in line with Yessi Nadia's thinking that "litigation is the process of resolving legal disputes in courts where each party to a dispute has the same rights and obligations both to file a lawsuit and to refute a lawsuit through an answer.”¹⁶

Departing from the definition of litigation that has been described, *this public figure* who experiences *Cyber Harassment* can take the litigation route to resolve his legal problems considering that the *public figure* here has suffered losses for the treatment he gets. The possibility of settlement through this litigation route departs from the understanding that there is a principle *Ius curia novit*.

The principle of *Ius curia novit* substantively emphasizes that a judge is aware of all law provisions. Moreover, it has become the main task and function of the judges in the courts to test, assess, and pass judgments on a case. When carrying out his primary duties and functions as a law enforcer, a judge will be guided by the provisions of laws and regulations that are legally recognized in Indonesia.

Although there are not a few problems in society where the regulations that existed at that time did not classify the core of these problems, a judge was considered to know and understand all the laws.

The legislative consequence, of course, is that judges are prohibited from objecting, especially to the point of rejecting a case filed by the community, and should examine and adjudicate and give legal decisions on these legal issues.

This principle of *Ius Curia Novit*, if pulled far back, has historically been stated in Article 14 of Law Number 14 of 1970, which substantively emphasizes that "the judge should not refuse to adjudicate the case filed against him on the grounds of incompleteness or vagueness of the law governing it but rather to be obliged to try it."

This is also in line with the adagium *ignorantia juris non excusat*, in which he understands that ignorance of the law is not forgiven.

This substance is then reaffirmed in a more refined formulation following the development of society and then becomes an implication of Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power

¹⁵ DSLA, A. (2021, 10 23). *Mengenal Litigasi: Mengenai Penyelesaian Sengketa di Meja Hijau*. Retrieved 3 23, 2022, from Daud Silalahi & Lawencon Associates: <https://www.dslalawfirm.com/litigasi/>

¹⁶ Nadia, Y. (2019). *Penyelesaian Sengketa Litigasi dan Non-Litigasi (Tinjauan Terhadap Mediasi dalam Pengadilan sebagai Alternatif Penyelesaian*

Sengketa di Luar Pengadilan. Retrieved 3 23, 2022, from [academia.edu: https://www.academia.edu/29831296/Penyelesaian_Sengketa_Litigasi_dan_NonLitigasi_Tinjauan_terhadap_Mediasi_dalam_Pengadilan_sebagai_Alternatif](https://www.academia.edu/29831296/Penyelesaian_Sengketa_Litigasi_dan_NonLitigasi_Tinjauan_terhadap_Mediasi_dalam_Pengadilan_sebagai_Alternatif)

which reads: "Judges and constitutional judges are obliged to explore, follow, and understand the legal values and sense of justice that lives in society." Then also apply in Article 10 Number 48 of 2009 concerning Judicial Power which states as follows:

- 1) "The court is prohibited from refusing to examine, adjudicate, and decide a case filed on the pretext that the law does not exist or is less clear, but is obliged to examine and adjudicate it.
- 2) The provisions in paragraph (1) do not close the business of resolving civil cases by peace."

Sometimes reality seems far from expectations when juxtaposed with expectations because not all judges know the law. After all, judges are ordinary human beings attached to limitations and imperfections, which must be touched upon. However, on the other hand, judges insist on knowing all the laws that live in society.

A judge must have the competence and activeness to find the law. This is also in line with the adagium *ignorantia excusatur non juris sed facti*, which means that ignorance of the facts can be

forgiven, but this is not the case with ignorance of the law.

This insistence is part of the professional attitude carried out by a judge, as stated in Article 5 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power. The judge, as an organ of the court, is the anchor of defense of justice, which is providing its services to resolve disputes, must decide based on the law, as the implementation of the principle of *Nullum Delictum Nulla Poena Sine Praevia Lege Poenali* which Moeljatno translates "no delik, no criminal without regulation first,"¹⁷ which is then substantively spelled out in Article 1 paragraph (1) of the Criminal Code, which reads: "No act can be criminalized, except on the force of criminal rules in existing legislation, before the act is committed."

In the event of a legal vacuum, such as in the case of *cyber harassment* against this *public figure*, the *Ius Curia Novit* Principle can also be the basis for legal discovery or also known as *rechtvindig*, which according to Sudikno Mertokusumo, is

"The process of law formation by judges/other law enforcement officials in the application of general regulations to concrete legal events and the results of legal discovery become the basis for

¹⁷ Moeljatno. (2000). *Asas-asas Hukum Pidana*. Jakarta: Rineka Cipta. Hlm. 23

making decisions which then create *jurisprudence*.”¹⁸

According to Bagir Manan in his book *Judges as Law Reformers*, the factors that encourage judges to make legal discoveries are:

1. “Almost all legal events that concretely occur in society are not entirely precisely regulated in the laws and regulations;
2. The provisions of laws and regulations are sometimes unclear or contrary to the provisions of other laws and regulations, so elections must be made to be applied correctly, appropriately, and fairly;
3. The dynamics of people's lives led to the birth of new legal events that have not been regulated in the laws and regulations
4. The judge's prohibition against rejecting the case and the *Principle of Ius Curia Novit*.”¹⁹

Thus, the existence of the principle of *Ius Curia Novit* encourages judges to fill a legal vacuum with the entry of a case for which there is no basis for legislation to be synergistic with the language of *Lex semper dabit remedium*, which in principle views that the law always provides

solutions so that then judges can examine and adjudicate based on legal values and a sense of justice that lives and develops in society, as a reflection of the *Judex set lex laguens* which has a meaning, the judge is the law that speaks, so it is hoped that the judge can translate the substance of the law in order to meet the needs of the community.

On the other hand, public figures who feel that Cyber Harassment harms their constitutional rights against them have the sovereignty to restore their rights. In line with this, Abdul Haris Semendawa emphasized

“The fulfillment of the rights of victims of crime is necessary for a country that places the law in chief. The role of the law not only provides a deterrent effect for criminals but also can restore the rights of victims of crimes that have been taken away by the crimes they have experienced.”²⁰

The restoration of the rights of victims of this crime has also been constitutionally regulated in Article 28D Paragraph (1) of the 1945 Constitution, which explains, “Everyone has the right to recognition, guarantees, protection, and fair legal certainty and equal

¹⁸ Martam, N. K. (2017). *Tinjauan Yuridis Tentang Rechtvinding (Penemuan Hukum) Dalam Hukum Perdata Indonesia*. *Jurnal Cahaya Keadilan*, 5(2), 44.

¹⁹ Diory, A. (2021). *Sekilas Mengenai Asas Ius Curia Novit*. Retrieved 3 24, 2022, from Pusat Pengembangan Hukum & Bisnis Indonesia: <https://www.pphbi.com/sekilas-mengenai-asas-ius-curia>

curia novit/#:~:text=sehingga%20dilarang%20menolak%20suatu%20perkara,setiap%20perkara%20yang%20diajukan%20kepadanya.

²⁰ Semendawa, A. H. (2015). Retrieved 3 25, 2022, from Lembaga Perlindungan Saksi Dan Korban: <https://lpsk.go.id/publikasi/detailjurnal/2405>

treatment before the law." Then it is also emphasized in Article 28G Paragraph (1) of the 1945 Constitution, namely, "Everyone has the right to the protection of personal self, family, honor, dignity, and property under his control, as well as the right to a sense of security and protection from the threat of fear to do or not do something which is a human right."

The path of litigation can be taken to resolve *Cyber Harassment* cases against *Public* figures regardless of the substantive legal vacuum. The public, especially *public* figures in this case as victims and judges as law enforcers, must have beliefs related to *Dormiunt aliquando leges, nunquam moriuntur*, which means the law sometimes sleeps, but the law never dies. In other words, there is no need to worry about the absence of a guarantee of legal protection due to a legal vacuum.

The turning point now lies in the *public figures* who are victims, whether they want to report the cases they have experienced so that they can then regain their wronged rights while providing a deterrent effect on the perpetrator or even not reporting to then resign themselves to the situation and justify themselves that *cyber harassment* is part of the profession they live in.

I was considering that when referring to the Joint Decree of the Minister of Communication and

Informatics, the Attorney General, and the Head of the National Police of the Republic of Indonesia Number 229, 154, KB/2/VI/2021 of 2021 concerning Implementation Guidelines for Certain Articles in Law Number 11 of 2008 concerning Electronic Information and Transactions as amended by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions which in its explanation asserts that the criminal offense of Article 27 paragraph (3) of the ITE Law is an absolute complaint.

So without complaints or reports from victims, this case cannot be processed. The consequence is obviously that the state cannot provide legal protection through its means of power. In addition, if the *public figure* does not immediately report the case he has experienced until it drags on, he is worried that the *public figure* as a victim will lose his right to complain about the case he has experienced because based on Article 74 Paragraph (1) of the Criminal Code, it is emphasized that "complaints can only be filed within six months from the time the person who has the right to complain knows about the crime, if he is residing in Indonesia, or within nine months if residing outside Indonesia."

1. Non Litigation Pathways

In addition to the litigation route, where the court mediates the settlement of legal disputes, there is a non-litigation route known as legal dispute resolution outside the court. Rachmadi Usman emphasized that "apart from going through the courts (litigation), dispute resolution can also be resolved outside the court (non-litigation), which is commonly referred to as *Alternative Dispute Resolution* (ADR) or Alternative Dispute Resolution."²¹ I Wayan Wiryawan and I Ketut Artadi also gave an understanding that

"Non-litigation as opposed to litigation (*argumentum analogium*) is to resolve disputes outside the court through peace and dispute deterrence by drafting a good contract. Non-litigation dispute resolution covers a vast field and even covers all aspects of life that can be legally resolved."²²

If reviewed, there are several disputes that have the potential to be resolved through non-litigation channels or also known as *Alternative Dispute Resolution* as summarized by the Research Team from the Supreme Court, namely as follows :

1. "International disputes, including issues in the field of public international law;

2. Constitutional, administrative, and fiscal disputes, which include issues related to citizenship and personal status, the local authority of government and semi-governmental institutions, licensing, taxation, and social security;
3. Disputes relating to organizations that arise within the organization which include management, structure, and procedures, and disputes between organizations;
4. Labor disputes that include payment claims and industrial relations disputes;
5. Company disputes that include disputes between shareholders and issues arising from liquidation and receipts;
6. Commercial disputes that are a vast field include contractual disputes, disputes arising in commercial relations such as partnerships, joint ventures, and others. Other problems that may arise in various fields such as banking, transportation, commodities, intellectual

²¹ Usman, R. (2012). *Mediasi di Pengadilan*. Jakarta: Sinar Grafika. Hlm. 8

²² Wiryawan, I. W., & Artadi, I. K. *Loc.Cit.*

- property rights, construction industry, and others;
7. Consumer disputes, between producers or suppliers and consumers;
 8. Housing disputes, including disputes between landlords and tenants, or between tenants, review of rent costs, environmental disputes and so on;
 9. Disputes related to *torts*, including negligence and failure to carry out obligations and including insurance claims related to it;
 10. Disputes arising from divorce, including those relating to children, property and financial matters;
 11. Other family disputes, such as inheritance claims, family business and other disputes within the family environment;
 12. Trust disputes, which include disputes between trustees and beneficiaries;
 13. Disputes that have consequences for criminal law;
 14. Disputes relating to issues between neighbors, between members of

society, gender, race and ethnicity;

15. Personal disputes between individuals;
16. Disputes about facts, which may arise from the credibility of the parties themselves or from data provided by third parties, include interpretations of the data concerned.;
17. Disputes relating to legal issues that generally arise from opinions expressed by the attorney concerned;
18. Technical disputes that include differences of opinion between the professional and technical experts of each party;
19. Differences in understanding, for example arising from the use of words or vague assumptions, used;
20. Differences in perceptions of fairness, concepts of justice and morality, culture and values, and attitudes.”²³

Referring to the forms of disputes that have been summarized by the research team from the Supreme Court, Cyber Harassment of public figures can be resolved through non-litigation channels considering that this case is included in the category of

²³ Eddy Djunaedi et.al. (2000). *Laporan Penelitian Alternative Dispute Resolution (Penyelesaian Sengketa Alternatif) dan Court*

Connected Dispute Resolution (Penyelesaian Sengketa Yang Terkait Dengan Pengadilan). Jakarta: Mahkamah Agung Republik Indonesia. Hlm. 19

disputes that have criminal legal consequences and can also be included in the classification of personal disputes between individuals.

If building a normative thinking construction based on positive law in Indonesia, then, in essence, criminal cases cannot be resolved outside the court process. However, this understanding has transformed since the presence of a restorative justice approach, namely "the model of punishment imposed by the courts which aim to optimally restore the condition of victims of criminal acts before the occurrence of criminal events."²⁴

The settlement of criminal cases through this non-litigation channel has been legitimized through the Letter of the Chief of Police No Pol: B/3022/XII/2009/SDEOPS dated December 14, 2009, concerning Case Handling through *Alternative Dispute Resolution* (ADR), which the Police Newspaper Telegram No further strengthens: ST/110/V/2011 dated May 18, 2011, concerning Alternative Settlement of Cases Outside the Court, so that criminal case settlement can be carried out through ADR or also known as the Term penal mediation.

According to *The Institute for Criminal Justice Reform*, there is a

categorization that is used as an indicator and scope for criminal cases that can be resolved outside the court through penal mediation, namely:

1. "Violations of the criminal law are included in the category of complaints, both absolute complaints and relative complaints;
2. Violation of the criminal law has a fine as a criminal threat and the violator has paid the fine (Article 80 of the Criminal Code);
3. Violation of the criminal law belongs to the category of "offense", not "crime", which is only threatened with a fine;
4. Violations of the criminal law include criminal acts in the field of administrative law that place criminal sanctions as *ultimum remedium*;
5. Violations of the criminal law are categorized as minor/all-light and law enforcement officials use their authority to exercise discretion;
6. Violations of ordinary criminal law that are stopped or not processed to court (Deponir) by the Attorney General by the legal authority he has;
7. Violations of criminal law are included in the category of violations of customary

²⁴ Syahrin, M. A. (2018). Penerapan Prinsip Keadilan Restoratif Dalam Sistem Peradilan Pidana Terpadu. *Majalah Hukum Nasional*, 48(1), 98.

criminal law that are resolved through traditional institutions.”²⁵

This categorization of penal mediation indicators confirms that Cyber Harassment of public figures can be resolved through non-litigation channels, considering that if it relies on favorable legal regulations in Indonesia that exist until this writing, classifying cyber harassment as an absolute complaint to meet the penal mediation indicators.

Along with the times and the needs of victims, penal mediation, which is "a legal breakthrough has many benefits for both parties to the case and provides its benefits to the perpetrator and the victim.”²⁶

The form of settlement through non-litigation channels or *Alternative Dispute Resolution* itself consists of

1. “Negotiations that mean deliberation;
2. Good Offices means the assistance of third parties who provide services either in the form of providing a place or facilities for use by the parties to the dispute to conduct deliberations or negotiations to settle, but

the third parties here are passive;

3. Mediation is interpreted as another form of *good office*, but the difference is that third parties actively provide guidance or direction to settle;
4. In conciliation, where in the process of resolving disputes through this channel, third parties are much more active because the initiative for the preparation and formulation of the stages of settlement is made by the third party, in this case, the conciliator, and then offers recommendations for dispute resolution;
5. Arbitration is where the third presence is neutral and acts like a judge to render an award to resolve an existing dispute, and the award is binding on the parties;
6. Summary Jury Trial in which, in practice, a dispute is submitted to the judges for decision. But this jury's decision is not binding, and these jurors do not know that the decision is not binding;

²⁵ The Institute for Criminal Justice Reform. (2021, 9 7). *Sejumlah Perkara yang Dapat Diselesaikan Melalui Mediasi*. Retrieved 3 25, 2022, from ICJR Learning Hub: <https://pkpajakarta.com/sejumlah-perkara-yang-dapat-diselesaikan-melalui-mediasi/#:~:text=Dalam%20hal%20perkara%20pida>

na%2C%20apabila,Dispute%20Resolution%20(ADR)%2C%20penyelesaian

²⁶ Hutajulu, J. H., Djatmika, P., & Navianto, I. (2016). *Mediasi Penal Sebagai Alternatif Penyelesaian Perkara Pencurian Ringan (Studi di Polres Malang Kota)*. *Arena Hukum*, 7(3), 388-403

7. *Rent-a-Judge* where this mechanism is carried out utilizing the parties hiring a court judge, usually a retired one, to resolve the dispute to then draw up a contract so that the parties execute the contents of the contract to the dispute;
8. Med-arb is a combination of mediation and arbitration where the dispute settlement is resolved first through mediation with the help of a mediator. If no agreement is reached, then it can be continued with the arbitration procedure;
9. *Hybrid* which is an arbitration procedure that combines elements of Med-Arb with *Private' Judging*;
10. CADR / CDR is Court Annexed Dispute Resolution or Court Dispute Resolution, which is a method that intersects the ADR process/choice of dispute resolution in the process of proceedings in court."²⁷

In addition to the ten forms of settlement through non-litigation channels or *Alternative Dispute Resolution*, there is also such a thing as consultation, namely "an action

that is "personal" between a particular party (client) and another party who is a consultant party, where the consultant gives his opinion to the client following the needs and needs of his client."²⁸ As well as an expert assessment which is interpreted as "the opinion of experts for something that is technical in nature and in accordance with their field of expertise."²⁹

Based on the description of alternative forms of dispute resolution, the author concludes that in resolving *Cyber Harassment* disputes against *public figures*, if you choose a non-litigation route to be resolved, an alternative form of dispute resolution that can be used and felt more suitable as a medium for dispute resolution is mediation.

The consideration is because, through this mediation channel, the time needed for conflict resolution is much faster because procedurally, mediation is more straightforward, and mediation also offers a *win-win solution*

for the parties to the conflict to minimize the losses, each party will receive an amicable agreement. Besides that, mediation is facilitated by a mediator who has been certified with competence so that all processes and negotiations will take

²⁷ *Ibid.* Hlm. 18

²⁸ Pramesti, T. J. (2020, 7 10). *Litigasi dan Alternatif Penyelesaian Sengketa di Luar Pengadilan*. Retrieved 3 25, 2022, from Hukumonline.com:

<https://www.hukumonline.com/klinik/a/litigasi-dan-alternatif-penyelesaian-sengketa-di-luar-pengadilan-lt52897351a003f>

²⁹ *Ibid*

place safely and reliably and can undoubtedly meet the sense of justice of the parties considering that mediation emphasizes deliberation and active involvement of the parties to the conflict so that the results obtained can accommodate the interests of both parties to the conflict. Most importantly, the outcome of the agreement from the mediation is legally binding on the parties. This is because the product of mediation is poured into the pact of the peace agreement, especially if the peace agreement pact is registered in the Court as mandated by Article 6 Paragraph (7) of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution which reads "The agreement for dispute resolution or difference of opinion in writing is final, and the parties are to be carried out in good faith and must be registered in the District Court within the time of no later than 30 (thirty) days from signing."

Article 6 Paragraph (8) of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution further confirms that "The agreement on the resolution of disputes or differences of opinion as referred to in paragraph (7) must be completed within a maximum of 30 (thirty) days from registration." Consequently, if one of the parties does not implement the agreement, then the other party can file a lawsuit with the Court as referring

to Article 13 paragraph (3) letter b of Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes, which reads:

"If the Collective Agreement as referred to in paragraphs (1) and (2) of paragraph e is not executed by one of the parties, then the aggrieved party may apply for execution to the Industrial Relations Court at the District Court in the territory of the Collective Agreement registered for execution."

So it is unequivocal that dispute resolution through non-litigation channels via mediation is the best option to resolve legal conflicts caused by *cyber harassment* of *public figures*. The interests of *the public figure* who are deprived of their rights can be fulfilled without having to worry about the existence of his good name, and the perpetrator also gets a recompense according to the acts he committed by the adagium of *Culpa poena par esto*, which means that the punishment must be commensurate with his crime, even if the recompense does not have to lead to punishment which has an impact on deprivation of freedom from the perpetrator., which is based on the thought *Summum ius summa injuria, summa lex, summa crux* which means harsh laws can hurt, except justice that can help him, so that the greatness of the heart of *the public figure* certainly plays a significant role in resolving

this legal conflict through mediation channels that prioritize deliberation and consensus by the values contained in Pancasila as the ideology of the Indonesian nation.

CONCLUSION

The resolution of *cyber harassment* disputes against *public figures* can be resolved through litigation and non-litigation channel mechanisms. The litigation route is possible for *public figures* who experience *Cyber Harassment* to resolve their legal problems considering that the *public figures* here have suffered losses for their treatment. The possibility of settlement through this litigation channel, even though the substantiation of the regulatory law regarding *cyber harassment* has not been spelled out in positive law in Indonesia, departing from the understanding that there is a principle of *Ius curia novit*. The principle of *Ius curia novit* substantively emphasizes that a judge is aware of all law provisions. Moreover, it has become the main task and function of the judges in the courts to test, assess, and pass judgments of the court on a case. The legislative consequence, of course, is that judges are prohibited from objecting, especially to the point of rejecting a case filed by the community, and must examine and adjudicate and give legal decisions on these legal issues. In addition to the litigation path, the

next option is the non-litigation path. The author concludes that in resolving *Cyber*

Harassment disputes against *public figures*, if you choose a non-litigation route to be resolved, an alternative form of dispute resolution that can be used and felt to be more suitable as a dispute resolution medium is mediation. The consideration is because through this mediation channel, the time needed for conflict resolution is much faster because procedurally, mediation is more straightforward, mediation also offers a *win-win solution* for the parties to the conflict so as to minimize the losses that will be received by each party after a peace agreement, besides that mediation is facilitated by a mediator who has been certified in competence so that all losses will be received by each party after an amicable agreement, besides that mediation is facilitated by a mediator who has been certified in competence so that all losses will be received by each party after a peace agreement, besides that mediation is facilitated by a mediator who has been certified in competence so that all losses will be received by each party after a peace agreement, besides that mediation is facilitated by a mediator who has been certified in competence so that all losses will be received by each party after a peace agreement, besides that mediation is facilitated by a mediator who has been certified in

competence so that all losses will be received by each party after a peace agreement, besides that mediation is facilitated by a mediator who has been certified in competence. The negotiation process will take place safely and reliably and can undoubtedly meet the sense of justice of the parties considering that mediation emphasizes deliberation and active involvement of the parties to the conflict so that the results obtained can accommodate the interests of both parties to the conflict. Most importantly, the outcome of the agreement from the mediation is legally binding on the parties.

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