

THE OBVIOUSNESS OF THE ARTICLE ON BODY SHAMING AGAINST CYBERBULLYING ON SOCIAL MEDIA BASED ON THE ITE LAW

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Abstract

Insulting the shape of the human Body, or what is familiarly known as body shaming, is an action by someone to criticize another individual's body shape, which originates from the imperfection of the body shape generally originates from; body shape is not ideal. Physique is not perfect, or there is a physical disability. The act of insulting the shape of the human Body or body shaming can be carried out verbally by carrying out direct insults aimed at insulting the individual, or an individual can criticize verbally and indirectly; in this case, the use of social media such as TikTok, Instagram, Facebook, Twitter. The research method used in this research is normative research. The results of the discussion obtained are that legally, the criminal act of insulting (body shaming) on social media can be subject to the provisions of the Law on ITE if the insult or body shaming is conveyed on social media and is expressed in the form of insults, ridicule, face, skin colour, and a person's body posture. So, this is included in the category of provisions of Article 27 paragraph (3) in conjunction with Article 45 paragraph (3) of Law No. 19 of 2016 concerning ITE. The legal protection provided to victims in criminal acts of insulting (body shaming) through social media is through LPSK, in the provisions of article 28 paragraph (1) of Law No. 31 of 2014 concerning the Protection of witnesses and victims.

Keywords: *Body Humiliation; Body Shaming; Social Media; Bullying.*

INTRODUCTION

Giving comments about other people's physical appearance without realizing it is often found nowadays through direct and indirect contact. Even though you bully other people's physical forms, the activity of commenting on other people's physical forms or what is known as body shaming, is an act that is very detrimental and is not justified in humanism or according to statutory regulations. People think that this is not something wrong. However, this certainly had an unusual impact on the victim's development. Individuals who are victims of body shaming are often withdrawn, quiet, and feel insecure. (Anggraeni, 2016)

Body shaming is the act of someone criticizing another individual's body shape where the body shape is not ideal and not like body shapes in general.(Ni PutuSuci Meinarni, 2019) In a broader sense, body shaming is a term that refers to an activity of carrying out negative criticism, either directly or indirectly, which comes from two words, namely Body, which means body shaming, which means embarrassing. The Oxford Dictionary defines "body shaming as the act or criticism of the shape or size of one's body, but body shaming only refers to a form of aggression in which one person or group of people repeatedly abuses the victim verbally or physically without provocation."(Khairulloh, 2023)



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In this tech-savvy or digital era, the use of words is often not selected or filtered by social media users towards someone who will disrupt the timeline of their account. In cases where bullying continues to insult other people's physical appearance, it will have a very traumatic impact on anyone who receives it (Ma, Xin, 2017). The impact resulting from the influence of Body shaming bullying can affect a person, causing the potential for someone to increase bodily isolation by withdrawing from social situations and becoming a person who has problems with stress levels. What is not expected of someone who receives Body shaming treatment is depression, with the resulting feeling of depression becoming a very chronic problem for someone who receives bullying treatment on social media. Even in a world increasingly in control through ease of interaction, it is quite easy for a person to carry out subtle and hurtful insults. The phenomenon of body shaming is currently very widespread among society. Body shaming insults do not only occur conventionally but can also occur through social media such as Facebook, Instagram, and so on.

Examples of cases of body shaming that have become news in the mass media or become trending topics in society are cases of body shaming as follows:

a. Aurel Hermansyah, Atta Halilintar's wife, found herself the target of Body shaming on social media after giving birth to her second daughter, Azura Humaira Nur Atta. Aurel Hermansyah experienced weight gain, so netizens on social media said she was "fat" Aurel emphasized that her decision not to diet after giving birth was not a selfish act. He stated

that this decision was to provide sufficient breast milk (ASI) to his second newborn daughter.

b. Lesti Kejora and Rizky Billar's son, Muhammad Leslar Al Fatih Billar, whose name has now been changed to Muhammad Levian Al Fatih Billar, became a victim of body shaming. Where there were many oblique comments from netizens regarding baby Leslar's physique. Worse yet, many people insulted baby Leslar's ugly physique and called him like a monkey.

Activities involving bullying and body humiliation are a form of insult to individuals who surf in cyberspace. Body shaming can be classified as a criminal act of insult, where one of the regulations governing the criminal act of body shaming is the Law on Information and Electronic Transactions (can be called UU-ITE). The regulation of criminal acts of insulting body image (body shaming) apart from being regulated in the provisions of Articles of the Criminal Code, there are also regulations outside the Criminal Code that regulate this matter which have been used in a court decision, namely in several articles in Law Number 11 of 2008 concerning Information and Electronic Transactions which were later amended in Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions (UU-ITE). (Arifah, 2011)

While the legal instrument is expected to be a "protector" for victims of body shaming, there is still ambiguity or vague norms which can give rise to multiple interpretations in the regulations related to the criminal act of insulting

body image (body shaming), so it is not impossible that with the development of information technology and various kinds of social networks, these acts of body shaming will become more widespread and more commonplace. There are 2 (two) laws and regulations that regulate the issue of body shaming, namely as follows: (I Gusti Agung Bagus Oka Wijana Narendra dan I Dewa Gede Dana Sugama, 2022)

1. If you insult or mock on social media (social media), you have violated Article 27 paragraph (3) in conjunction with Article 45 paragraph (3) of Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions or commonly known as (UU ITE).
2. If you mock or insult verbally, you will be subject to Article 310 and Article 311 of the Criminal Code, commonly known as (KUHP) concerning defamation, with the threat of nine months in prison.

It is hoped that the laws and regulations that regulate the bullying and humiliation of the Body will make a big contribution to providing protection and a sense of security for victims and are expected to have a domino effect on the perpetrators of body shaming. Body shaming bullying on social media, which is currently widespread, is a form of criminal act. The criminal act of insulting on social media in the form of body shaming can be reviewed through the Law on Information and Electronic Transactions because the media used is online electronic media. Researchers are

also interested in discussing the analysis of the vagueness of articles in the provisions of articles related to the criminal act of body shaming in the ITE Law. By seeing the phenomenon of the development of criminal acts of humiliation called body shaming on social media, researchers are encouraged to write an article regarding the juridical review of the article on insulting body shaming on social media according to criminal law and the Law on Information and Electronic Transactions.

RESEARCH METHODS

The method used in this research is a normative legal research method which covers more in-depth legal principles. In this research, we examine and research further about statutory regulations. (Soerjono Soekanto, 1986) Namely, legal research on normative juridical legal research approaches, including legal principles, systematic legal research, and vertical and horizontal synchronization research. This type of research is in addition to researching existing materials (books, statutory regulations, media determination internet, newspapers, and published research results) through library materials. (Abdul Kadir Muhamamad, 2015) The laws and regulations used are those related to criminal acts of Body shaming on social media in terms of criminal law and the ITE Law.

RESULTS AND DISCUSSION

A. Overview of Cases of Body Shaping Bullying via Social Media in Indonesia.

In 2023, there will be 1,203 cases of body shaming related to criminal acts of body bullying on social media. Body

shaming is a form of insulting someone, which is categorized into two actions. Namely, it is an action in which someone transmits a narrative through insults or mockery of their shape, face, or skin colour. A person's posture using social media. In the case of criminal insults, it turns out that the victims are not only ordinary people but also several Indonesian artists who have experienced this. Several cases that have emerged regarding victims of Body shaming in Indonesia experienced by several artists in Indonesia are as follows:

- 1) Ayu Ting-Ting (experienced by Rozak's father) Ayu Rosmala, or Ayu Ting-ting, is an artist famous as a dangdut singer travelling across Indonesia. An unpleasant statement came from Ayu Ting-Ting's father, Abdul Rozak, commonly known as Rozak's father. Rozak's father has characteristics that have a bit of a "feminist" side, so people make a lot of insults about Rozak's father.
- 2) Aurel Hermansyah, the wife of public figure Atta Halilintar, was one of the victims who received action for bullying, in which case Aurel Hermansyah received very inappropriate words regarding her body shape. One of the things that makes the general public bully is the enlargement of Aurel Hermansyah's body shape. However, in solving this problem, the cause of Aurel Hermansyah's enlarged body shape was due to Aurel Hermansyah's postpartum birth.
- 3) Lesti Kejora (experienced by Leslar Al Fatih), a dropout from one of the dangdut competitions, married Risky Billar. They were blessed with one

son named Leslar Al Fatih. Since the birth of the two couple's children, many people in cyberspace have bullied the body shape of the child of the couple Risky Billar and Lesti Kejora and even matched the shape of their child's face. He called it "monkey" and equated it with the face shape of an "alien."

At first, body shaming was just a trend for joking purposes. Still, if we explore it further, it will become something more serious, even bringing down or badmouthing other people, resulting in discomfort for the person who is the object of body shaming. Especially in the digital era like today, using words often cannot be controlled when using social media unwisely. Suppose this body shaming continues over a long period. In that case, it will affect a person's self-esteem by increasing isolation and withdrawal, which makes a person vulnerable to stress and depression with a feeling of lack of self-confidence. (Anggaraini dan Bambang Indra Gunawan, 2019)

Insults committed against artists are conveyed online via social media, so insults carried out through body shaming can be categorized as a crime of light insult in the Criminal Code. The cases above are one form of Body shaming crime committed on social media. From the cases above, it can be concluded that the criminal act of body shaming is the act of commenting on another person's body shape to convey an insulting narrative.

B. The basis is related to the criminal act of body image bullying through social media according to the Criminal Code and UU-ITE

The basis for the criminal act of body image bullying (Body Shaming) is regulated in the ITE Law Article 45 paragraph (1) and Article 27 paragraph (3), which carries a criminal penalty of 6 years. In criminal law, insults are divided into 2, namely:

1) Material Insult

Insults consist of a fact that includes an objective statement in verbal or written words, so the determining factor is the statement's content, whether it is used in writing or orally. There is still the possibility of proving the accusation was in the public interest.

2) Formal Insults

In this case, the content of the insult is not found but rather how the statement in question was made. The form and method of manifestation are the determining factors. In general, the way to express it is harsh and non-objective. The possibility of proving the truth of the allegations does not exist, and it can be said and assumed that such a possibility is closed.(Oemar Seno Adji, 1980)

Body shaming is the action of someone who bullies someone's body shape, which is not ideal or not in the shape of a normal human body. Body shaming is divided into 2 (two) types, including:

1) Active Body Shaming

Active body Shame is an aspect of bodily behaviour, such as movement and behaviour. This term is usually called embarrassment (embarrassment). This body shaming usually occurs during

preparations that are not expected or planned. (Chairani, 2018)

2) Chronic Body Shaming

Chronic body shaming is an action in a definite form that is carried out continuously regarding an appearance or Body, such as body weight, height and skin colour. Apart from that, chronic body shaming is related to body functions and anxiety that is commonly experienced, such as acne, disease, bowel movements, ageing and so on. (Chairani, 2018)

The Criminal Code is the basis that is the first reference when looking for punishment that will serve as a guiding basis for criminal acts, both light to medium scale. Criminal acts in Indonesia are generally regulated in the Criminal Code, but jurisprudence can be used outside the Criminal Code.(Rahmawati & Zuhdi, 2022) According to the Criminal Code, regulations regarding insults are used as the main basis for references to criminal acts of body shaming. In the insult articles, namely Article 310, article 311, and Article 315, if viewed from the substance of the article, the most suitable article for the crime of body shaming is Article 315 of the Criminal Code.

Article 315 of the Criminal Code reads:

"Every intentional insult that is not in the nature of defamation or written defamation is committed against a person, either in public orally or in writing, or in front of the person himself orally or in action, or in a letter sent or received to him/her, is threatened with light insult with a maximum imprisonment of 4 months and 2 weeks or a maximum fine of IDR 4.5 million."

Article 315 of the Criminal Code is still limited because it regulates

intentional insults that are not like defamation or defamation, whether committed by a person in public or in front of the person himself orally or in writing. Article 315 of the Criminal Code does not explain in detail regarding insults in any form that can be considered light insults; in other words, the current Criminal Code only regulates insults in a broad sense without going into detail, so it is feared that this could give rise to multiple interpretations in its implementation.

Insults in the criminal code are divided into 6 types:

1. Insulting (*small*)
2. Insult with a letter (*smaadachrift*)
3. Slanderous (*tester*)
4. Mild insult (*een voudige beledkjing*)
5. Complain defamatory (*lapstrake anklet*)
6. Defamatory accusations (*lapstrake verdarhtmaking*)

As regulated in the Criminal Code, the criminal act of insulting is a basis that can be imposed on perpetrators of medium or light-level crimes provided that the complainant commits a complaint offence.

In the elements of Article 315 of the Criminal Code, several elements can be further referred to as a basis for whether insults, in this case, constitute substantial insults. Some of the elements referred to for this are:

a. Objective Elements

Any insult that is not verbal defamation or written defamation. Insults that are not like defamation are if someone insults or criticizes someone, but what is said is true without the intention of defaming their good name. Still, their

words make other people feel offended, and their self-esteem as human beings is lowered. Some objective elements that are elements of the perpetrator include:

- 1) Human actions, namely;
 - Act, namely an active action or possessive action.
 - Omissions, namely human actions.
- 2) The consequences of human actions (results), namely:
 - It provides a dangerous impact but cannot eliminate important elements protected by law, such as life, Body, property rights, etc.
 - Conditions or circumstances (circumstances)
 - The circumstances when the action was carried out
 - The situation after the action is committed
 - Characteristics that are punished and characteristics that can violate the law (Bawekes, 2017)

b. Subjective Elements

DeliberatelyThe Criminal Code does not provide a direct explanation regarding the word intentionally. However, we can know the meaning of the word deliberate, taken from M.v.T (Memorie van Toeliching), which means to desire and know. (R.soesilo, 1995). It can be said that intentionally is wanting or knowing what is being done. A person who commits an act intentionally wants the act and is aware of what he is doing.(Al Husein & Iftitah, 2018)

The elements of Article 315 of the Criminal Code are carried out. As explained above, it is clear that this article regulates minor criminal offences. However, Article 315 of the Criminal Code does not explain what is included in

the crime of light insult. Based on the characteristics of Body shaming that have been explained above, it can be said that body shaming meets the objective elements of Article 315 of the Criminal Code, such as insults in the form of verbal defamation or written defamation carried out in public orally or in writing, or front of the person himself. Verbally or in action, as well as in letters sent or received to him, that body shaming is part of it. (Bambang Indra Gunawan, 2019)

If viewed from UU-ITE, the crime of insulting (body shaming) through social media is a criminal offence regulated by the Law on Information and Electronic Transactions provisions. Social media is a digital platform that facilitates users' socializing with each other virtually. Law Number 11 of 2008 concerning ITE, amended to become Law No. 19 of 2016 concerning ITE, regulates legal protection for activities using the internet as a medium for information and for its use. In the provisions of the Law on ITE, insults or body shaming are conveyed on social media and are expressed in the form of insults, ridicule, or someone's face, skin colour, and body posture. So, this is included in the category of provisions of Article 27 paragraph (3) in conjunction with Article 45 paragraph (3) of Law No. 19 of 2016 concerning ITE. Article 27 paragraph (3) Law Number 11 of 2008 concerning ITE still refers to the provisions in the Criminal Code. (Herisasono et al., 2014)

Article 27, paragraph 3 of Law No. 11 of 2018 is as follows:

“Every person intentionally and without right distributes and transmits and/or makes accessible electronic information and/or

electronic documents that contain insulting and/or defamatory content.”

A clearer interpretation is needed regarding how body shaming can be categorized as an act that violates existing laws. The meaning and scope of body shaming must be defined more firmly in law to facilitate more effective law enforcement. There needs to be a review of the sanctions given in cases of body shaming. The existing sanctions must be adequate to prevent acts of body shaming and provide a deterrent effect to the perpetrator. It is important to review whether the sanctions listed in the law are appropriate to the severity of the body shaming act and the extent to which these sanctions are applied consistently by law enforcement agencies. (Herts Taunaumang, 2023)

Look at Article 27, paragraph (3) of the ITE Law. If we examine it further, it does not reflect the regulations that mention the criminal act of bullying one's body shape or Body shaming straightforwardly. However, there is only an "insult/defamation" clause, which is general and often becomes a boomerang for anyone who wants to attack anyone who attacks an individual. The scope of this offence also includes light insults, which, if seen from the characteristics of body shaming, can fulfil the elements of the crime of light insults in Article 315 of the Criminal Code. Thus, Article 27 Paragraph (3) of the ITE Law is still relevant in criminal acts of insulting body image (body shaming). If the act is carried out via computer or electronic media, it can be punished if it meets the qualifications of a criminal act. (Priyanto, 2019) It is necessary to underline the elements of "making accessible",

"distributing", and "transmitting" in this article about the elements public in the Criminal Code. With the three types of actions mentioned in Article 27, paragraph 3 of the ITE Law, it is hoped that law enforcers will not abuse their authority when taking action against cybercrime. (Safaat, 2023) However, regarding the understanding of Article 27 paragraph (3) of the ITE Law, basically insulting body image (body shaming) can be recognized as a recognized form of insulting offence but is still based on Article 310, Article 311 and Article 315 of the Criminal Code. (Wijaya & Purwadi, 2018)

Article 27 paragraph (3) of the ITE Law itself does not contain the classification of insults, thus confusing the maximum limit of imprisonment or fines for each category of insults (libel, written defamation, slander, minor insults, slanderous complaints, and false allegations) including it includes Body shaming insults carried out on social media. (Laoly & Malau, 2020) The criminal act of Body shaming on social media is a criminal offence which is included in the offence of light insult as regulated in Article 27 paragraph (3) ITE, the sanction of which is imprisonment as regulated in article 45 paragraph (3) of the ITE Law, according to the author the sanction is in the form of a criminal offence. For perpetrators of criminal acts of Body shaming on social media, this is considered a sanction that is too excessive because the ITE Law aims to regulate administrative law only and does not regulate criminal sanctions; criminal sanctions can be returned to the insulting provisions contained in the Criminal Code, even though they do not reach the

perpetrator. Criminal acts of insulting or Body shaming on social media, but the existence of the ITE article is considered to lead to the criminalization of perpetrators suspected of committing criminal acts of Body shaming on social media. (Mahrus Ali, 2010) So, in this case, the ambiguity of the articles stipulated in the ITE Law, which is implemented through Article 27, paragraph 3, is still at the same stage. Namely, the included elements still need to be identified clearly and correctly to make multiple interpretations very common. That clear substance is needed if someone is to sue about the needs of the UU-ITE article. (Aswat et al., 2022) In conditions where the article is ambiguous, all law enforcers must have the same perspective or understanding of the article to avoid multiple interpretations.

CONCLUSION

Based on the description of the discussion above, the following conclusions can be drawn:

1. In Indonesia, there will be 1,203 cases of body shaming in 2023 related to criminal acts of body bullying on social media. Recently, several cases of body shaming have attracted public attention, such as Ayu Ting-Ting (experienced by Rozak's father), Aurel Hermansyah and Lesti Kejora (experienced by Leslar Al Fatih).
2. Regulation of criminal acts of body image bullying (body shaming) viewed from the perspective of the Criminal Code (KUHP) will refer to Article 310, Article 311, and Article 315 concerning insults. And let's look at the three articles above. We will

refer to Article 315 of the Criminal Code (KUHP) because if we look at the characteristics of body shaming, it fulfils the elements both subjectively and objectively, which are obtained directly and relevantly and can still be resolved through Article 315 of Criminal Code (KUHP). If we look at Law Number 19 of 2016 (UU ITE), body image bullying (body shaming), which is conveyed through writing on social media and what is mentioned is an insult that conveys hate speech about the Body is good; a person's body shape, body shape, or posture. So, it will be classified through Article 27 paragraph (3) in conjunction with Article 45 paragraph (3) Law Number 19 of 2016 concerning ITE. There is a vagueness in the rules in Article 27, paragraph (3) of the ITE Law, which can trap perpetrators of criminal acts of Body shaming on social media related to the non-classification of insulting offences in the existing defamation article. In Article 27 paragraph (3) of the ITE Law, offending defamation in the form of body shaming is an offence that can easily be subject to the provisions of Article 27 paragraph (3) because the offence of defamation in Article 27 paragraph (3) of the ITE Law only requires the fulfilment of " "contains insults and defamation" so that Article 27 paragraph (3) of the ITE Law can be considered to have a broad scope of meaning because it does not classify the types of insults referred to in Article 27 paragraph (3) of the ITE Law.

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