
Implementation Of Legal Protection For Victims Of Body Shaming On Social Media

Andi Fatmawati Syam¹, Citra Nasir², Nursyamsi Ichsan³

Universitas Mega Buana Palopo

Email: citranasir23@gmail.com², nursyamsiichsan@gmail.com³

Abstract

Indonesia as a state of law must provide legal protection for its citizens, by paying attention to current technological developments, where many criminal acts occur in the form of body shaming on social media which is currently a phenomenon, where someone easily insults someone on social media without caring about the material and mental impact felt by the victim. The research method used is normative legal research. The results showed that legal protection for victims of body shaming has not been successfully realised, because in preventive efforts and repressive efforts it has not been able to have a significant effect because we still find in social media there are still many actions like this and sometimes the victims are lazy to extend this problem for various reasons but the danger is if the victim has damaged his mentality because it is repeated. Repressive efforts by law enforcers have not been adequate in providing a deterrent effect and paying more attention to the mental condition of victims during the investigation and investigation process.

Keywords: *Protection, Body Image Defamation, Social Media*

INTRODUCTION

Indonesia, as a nation founded on Pancasila, is obligated to ensure legal protection for its citizens in order to uphold human rights for both individuals and society within a unified state that promotes a sense of solidarity, all aimed at achieving collective well-being. Protection, in its essence, safeguards the human rights that are infringed upon by others, ensuring that the community can fully enjoy all the rights bestowed upon them. Legal protection encompasses a range of measures that law enforcement officials must implement to instill a sense of security, both mentally and physically, by preventing any form of interference or threats from any entity.

Based on Law Number 13 of 2006 concerning Witness and Victim Protection, Protection as defined in Article 1 point 6 is the fulfillment of rights and provision of assistance to ensure the security of Witnesses and/or Victims. This protection must be carried out by LPSK or other institutions in accordance with the law. Legal protection is essentially categorized into two types: a) Preventive Legal Protection, which aims to prevent violations before they happen through laws and regulations that establish boundaries and obligations; and b) Repressive Legal Protection, which involves sanctions like fines, imprisonment, and additional penalties after an offense has occurred.

It is undeniable that the very dynamic changes in society, especially those related to the use of Information Technology, media and communication, will have an impact on the behaviour of society and human civilization globally. The development of information and communication

technology has caused world relations to become *borderless* and caused dynamic social, economic and cultural changes. Information technology today can be likened to a double-edged sword. On the one hand, it will have a positive impact on improving human welfare, progress and civilisation. But on the other hand, if it is not managed wisely, it can be used as a means of violating the law that utilises or uses ITE facilities. (Heriyanto, 2022).

If in the past people could only commit insults and defamation through written letters or oral speech, now with the internet someone can also commit insults and / or defamation via the internet. The rise of incidents related to cases of *body shaming* that occur in society, especially in interactions in cyberspace through social media, requires existing legal rules as a guarantee of protection for the rights of victims due to body shaming. Problems related to humiliating someone's physical form or *body or body shaming* can be said to be no longer taboo or foreign, especially in Indonesia (Fitria & Febrianti, 2020).

Verbal bullying is also a category of body shaming that often occurs and sometimes goes unnoticed. This is because this phenomenon is such a common thing that it is not really a problem for some people. Because usually people just consider it as a joke or a joke. A person's response to these utterances is based on the meaning they interpret or give to them. In the sense that in the process of interaction between individuals that to know something, assess it, then give meaning and give action in a social context. (Yeni Pawita Sukmawati, 2021).

These criminal acts have inflicted significant pain and hardship on the victims and their loved ones. It is imperative to address these crimes effectively through a combination of preventative and punitive measures to ensure the safety and well-being of the community. A competent institution must handle these matters professionally. Providing comprehensive information on the rights of victims and their families is crucial in assisting them through the challenges of loss and suffering caused by these crimes.

Rights are optional, meaning that they depend on the conditions that affect the victim, both internal and external. Internal factors include physical factors and psychological factors that come from within, while external factors come from outside which can be in the form of infrastructure, environmental situations. It is not uncommon to find a person who has suffered (physically, mentally, or materially) as a result of a criminal offence that has befallen him, not exercising the rights he should receive for various reasons, such as fear that in the future the community will become aware of the incident that befell him (because this incident is a disgrace to him and his family) so that it is better for the victim to hide it or the victim refuses to apply for compensation because it is feared that the process will become increasingly long and protracted which can result in prolonged suffering.

METHOD

The research methodology employed in this study is a combination of the normative juridical approach and the empirical juridical approach, also known as normative-empirical legal research. This method involves conducting (applied) legal research by analyzing the application and enforcement of laws (legislation) and written records pertaining to specific legal occurrences within society. This study aims to ascertain whether the results of the application of the law to a legal event are in accordance or not with the provisions of the legislation (Atikah, 2022). The normative-empirical legal research method involves a two-stage approach. Firstly, the study focuses on the examination of normative law, including laws and regulations, along with relevant literature materials. Secondly, empirical legal studies are conducted by applying these norms to real legal events through field studies. Collected legal materials are carefully selected, processed, reviewed, and analyzed in accordance with the specific legal issues under investigation.

Ultimately, the findings are derived using a deductive method.

RESULTS AND DISCUSSION

In Indonesia, there is no specific regulation governing the legal protection of victims of *body shaming*. Regulations that can be used as a basis for reference to the act of *body shaming* are Article 310, Article 311 and Article 315 of the Criminal Code. However, at the moment, the most suitable legal basis for the criminal offence of *body shaming* is Article 315 of the Criminal Code.

In general, *body shaming* falls into the category of minor insults regulated in Article 315 of the Criminal Code which reads: "Every deliberate insult which is not in the nature of slander or libel committed against a person, either in public orally or in writing, or in front of the person himself orally or by deed, or by letter addressed to him, shall be punished for minor insults by a maximum imprisonment of four months and two weeks or a maximum fine of four thousand five hundred rupiahs". The elements of Article 315 of the Criminal Code are:

1. Objective Elements

- a) Any insult that is not oral defamation or written defamation. An insult that is not defamatory is when a person makes an insulting remark or reproaches someone but what is said is true without intending to defame him, but his words make another person feel offended and humiliated as a human being.
- b) Defamation is a criminal offense that occurs when someone publicly speaks or writes something that harms another person's reputation, or when they directly confront the person and use speech or actions to defame them. This offense can be committed in public or even in the presence of the person, whether it is through direct verbal communication or by utilizing written forms such as letters or electronic media comments.
- c) If the crime of defamation is carried out through a written letter sent directly to an individual, it can serve as evidence of the offense for either the sender or the recipient.

2. Subjective Element

- a) Intentionally. The Criminal Code does not provide a direct explanation of the word intentionally. However, we can know together the meaning of the word intentionally taken from M.v.T (Memorie van Toelichting) which means willing and knowing. So it can be said that deliberately is the will or knowing that is done. A person who commits an act intentionally is the one who really wants the act and is aware of what he is doing.

There is still a lack of understanding of investigator regarding the application of victim protection against body shaming so that many reports of *body shaming* can only be resolved through *restorative justice*, this has a huge impact on criminal law enforcement itself, especially on victims who feel they have suffered mental suffering as a result of body shaming.

The principle of *restorative justice* cannot be interpreted as a method of peaceful termination of the case, but more broadly on the fulfilment of a sense of justice for all parties involved in a criminal case through efforts involving victims, perpetrators and the local community as well as investigators / investigators as mediators, while the settlement of the case, one of which is in the form of a peace agreement and the revocation of the right to prosecute from the victim, needs to be requested by a judge through a public prosecutor to remove the authority to prosecute from the victim, and the public prosecutor. (Heriyanto, 2022).

In Indonesian legal setting, victim are always the most dis-advantaged party. In addition to having suffered material, physical and psychological losses as a result of the crimes committed against them, victims also have to suffer multiple losses because they are often treated as a means

to achieve legal certainty, such as having to reiterate, remember and even reconstruct the crimes that have befallen them while undergoing the examination process, both at the investigation level and after the case has been examined in court.

The partiality of the law towards victims that seems lame when compared to the suspect (defendant), can be seen from the existence of several laws and regulations that provide more "privileges" to the suspect (defendant) than to the victim. It can be explained that the application of legal protection to victims of bodyshaming must pay attention to the context in the words spoken/written on social media whether they have fulfilled the element as stated in the ITE Law Regulation on decency contained in Article 27 paragraph 1, namely "Every person intentionally and without the right to distribute and/or transmit and/or make accessible Electronic Information and/or Electronic Documents that have content that violates decency (insults and/or defamation)". The sound of the text if described by its elements, then there are several elements, namely:

- a) The subjective element is the element of guilt, which in this case contains the word "intentionally". Law enforcers must be able to prove that the perpetrator committed defamation and/or insult through the internet intentionally.
- b) The element against the law, in this case, is represented by the word "without rights". In the author's opinion, as explained and described regarding the equivalence of the meaning of the words "without rights" with against the law".
- c) The element of behaviour, in this case what is meant is the prohibited act and the object of Article 27 paragraph (3), namely: "distributing and/or transmitting and/or making accessible Electronic Information and/or Electronic Documents" that have insulting and/or defamatory content. This element can be fulfilled if it contains insults and defamation.

Legal protection in this case is closely related to rights, and the protection measures provided are more reactive than proactive. It is said to be reactive because this step is aimed at those who have experienced or become victims of crime and report it to the authorities for further processing. However, the problem is that victims often decide not to report the crimes that happen to them. Like several cases that have occurred in the community who are victims of *bullying* or defamation or *body shaming*, victims feel that the legal process is so long and far from the principle of fast, simple and low cost.

Many factors contribute to the reluctance of victims to report crimes, one of which is that this decision is a series of behaviours that stem from individual attitudes and the interaction of the victim as a reporter with the police as a function of stimulus relationships manifested in the form of positive behaviour in the "behavioural model" for victims in decision making. The behaviour of the community is a stimulus manifested in the form of appreciation from the community towards the police which will be a driving factor for the police in carrying out their duties. Thus, people who get unfair treatment carried out by other people such as insults, defamation, bullying and other unpleasant treatment must be proactive. This is the stimulus for law enforcement to provide protection to victims.

Here are some forms of legal protection carried out by law enforcement, namely:

1. Victim Personality.

The victim's personality factor is still a very influential factor in legal protection. The victim's personality factors include:

- a) Victims of crime are generally human beings who have rights and obligations and are subject to the same treatment as other people, including the treatment of criminals. Guaranteeing the treatment of victims is often demanded, because it is a form of protection. Law enforcement efforts will not bring results if they are not balanced with a sense of justice, including the sense of justice for victims of crime.

- b) The tendency for victims to be passive and even *non-cooperative* with law enforcement officials is one concrete evidence of the criminal justice system's lack of attention to the rights and legal protection of victims of crime. Not to mention the tendency to be "*offender centred*" which results in a lack of victim support for the criminal justice system. This lack of loyalty will be even more pronounced when victims must also function as witnesses who provide truthful testimony under oath. If it turns out that the victim's testimony is untrue or false and incriminates the suspect or defendant, the victim will be punished with a maximum imprisonment of nine months (Article 242 paragraph (2) of the CriminalCode on charges of giving false testimony).
- c) The lack of trust of victims in criminal justice, reflected in the number of victims who do not report, is a failure of the criminal justice system, both in organising the system and in achieving the ultimate goal. When considering a case, it is essential to take into account not only the written provisions but also the moral principles rooted in truth, especially in the latter scenario. Therefore, every sub-system within the criminal justice system has a legal responsibility to uphold the laws of the state and a moral responsibility to protect, restore and uphold human dignity.

Any deviation from the above will have a negative effect on both the suspect and the victim. In other words, the above deviations will make the criminal justice system a criminogenic factor as well as a victimogenic factor. For suspects, they will become *structural victims*, for example due to unlawful arrest and detention, while for victims, in addition to being victims of crime, they must also become victims of the criminal justice system, which in its mechanism does not pay attention to the rights and protection of victims who are an integral part of the entire criminal justice system.

In some cases it can be found that it has not been fully achieved to see the protection in the form of preventive efforts, which are carried out to prevent the occurrence or emergence of crime in the first place. Preventing crime is better than trying to educate criminals to be better again, as the motto in criminology is that efforts to improve criminals need to be considered and directed so that no repeat crimes occur. As we know that *body shaming* cases always prioritise mediation efforts first, but as time goes by the development of technology is getting faster, many deviant behaviours in modern society need to be watched out for. As in the case of body shaming, many perpetrators want to comment on a person's body image on the basis of revenge or just make a joke that results in the victim feeling insecure about his own body shape so that protection of the right to security cannot be realised.

2. Repressive Measures

Repressive efforts are an effort to overcome crime conceptually taken after the occurrence of crime. Countermeasures involving punitive measures aim to address individuals who have committed crimes by holding them accountable for their actions and educating them on the consequences of their behavior. This is done to deter both the offenders from repeating their actions and others from engaging in similar unlawful activities, as they are made aware of the severe penalties they will face.

According to the findings from the author's interview with the victim, it is contended that there should be a legal repercussion imposed by law enforcement on the offender of body shaming in order to prevent recurring offenses. However, in reality, law enforcement always seeks mediation so that there has never been a case of body shaming that has reached the court stage. Law enforcement agencies often fall short in upholding the rights of victims who experience emotional distress, diminished self-worth, and physical humiliation. Consequently, the law

enforcement fails to effectively uphold the principle of dignity as outlined in Law 39 of 1999, which pertains to Human Rights (HAM). Dignity is a fundamental right that is inherent to all individuals, universally applicable, and enduring. Therefore, it is imperative to safeguard, honor, and defend this right, ensuring that it is neither disregarded, diminished, nor denied by any party. In addition to human rights, humans also have basic obligations between one human being towards another and towards society as a whole in the life of society, nation and state.

Based on the results of the author's interviews with victims, they said that a sense of security will never be achieved if investigators or police still view this case as not a serious matter to be followed up. Furthermore, it can even cause a mental burden for the person concerned and open up opportunities to make it a means of suppressive actions from the perpetrator of the crime, and even in turn can make a second victim. In relation to the theory of legal protection, the law is present in society to integrate and coordinate interests that can collide with each other. Coordinating these interests is done by limiting and protecting these interests. (Satjipto Rahardjo, 2000).

The principle of equality before the law refers to the equal treatment of everyone before the law, regardless of their social background, economic status, political beliefs, religion, class, and so on. The meaning of this principle is that in front of the court the position of all people is the same, so they must be treated equally. If someone is guilty, they must be punished, while if they are innocent, they must be acquitted. In addition, even if someone gets a punishment, the punishment given must be in accordance with wrongdoing. In the case that the author examines, the rights of justice and legal certainty of the victim are not fulfilled. In addition, law enforcement has failed to implement preventive and punitive measures of legal protection, including ensuring the right to security and upholding dignity. As the victim said, the case which started in 2018 until 2021 has not received clarity from the police.

If the principles and objectives of protection are properly implemented, it is not only victims and witnesses who receive protection, but more broadly. Of course, the community, nation and state are protected and the state is considered to have fulfilled its obligation to protect its citizens properly. This is one of the goals of the state as stated in the preamble of the 1945 Constitution, namely "The government of the Republic of Indonesia shall protect the whole nation of Indonesia and the whole of the 126 blood of Indonesia". Not only that, the above protection is part of the politics of criminal law which so far seems to favour the suspect/defendant. It is also expected that victims can play a role in the prevention and eradication of criminal offences. In turn, a more fundamental goal will be achieved, not only justice, legal certainty, and order, but more than that, namely a *welfare state* (Bambang Waluyo, 2014).

If you pay attention to the Criminal Procedure Code (KUHAP), legal protection for perpetrators of crimes is basically given when the perpetrator (suspect) is arrested or detained, namely in the form of providing legal assistance by legal counsel (assistance during the examination) and even with the attention to the duty letter and arrest warrant which includes the identity of the suspect, and states the reason for the arrest, as well as a brief description of the crime alleged to the perpetrator / suspect, then the provision of legal protection to the suspect / perpetrator has begun to be given. (Erizka Permatasari, 2022).

The provision of legal protection to perpetrators of crime does not stop after the completion of the examination of the perpetrator at the investigation level, but continues to be provided until the examination and trial of the perpetrator / suspect in court, which is manifested in the form of an opportunity to submit a defence that can be carried out by the perpetrator himself or represented by his legal representative, the right to submit various legal remedies (such

as: appeal, cassation, judicial review) on a court decision, and so on.(Dikdik M. Arief Mansur, 2008).

So, by looking at some examples of legal protection given to perpetrator of crimes during the examination process until the suspect is convicted, it gives the impression that the protection of perpetrator of crimes has a greater portion compared to victims of crime.

3. Adequate Protection

When considered more comprehensively, it appears that victims of crime have not received adequate protection. Various factors contribute to this, with one of them being the law enforcement aspect itself. If it has reached the aspect of prevention and protection of information owners from *cyber crime*, then the efforts made to realise this stage are a form of respect for intellectual creations.

If Indonesia has been known as a country that is less serious in dealing with cybercrime, then this shows that the problem of legal protection in this field is not as good as protection in other fields. The *Crime Control Model* is a model of the criminal justice system that is repressive in tackling bad behaviour. Crime control with this model tends to use high punishment and penalty, through screening that has been carried out by the police and prosecutors as an indicator to determine or assess a suspect or defendant's guilt or innocence in the judicial process (Edi Setiadi and Kristian, 2017).

The *Crime Control Model* states that the eradication or control of crime is the most important function and must be realised from a criminal justice process, so the main concern of this model must be aimed at the efficiency of the criminal justice process. The emphasis in this model is on effectiveness, namely speed and certainty. Proof of guilt of a suspect or accused can already be obtained at the police investigation level. The focus of this model is the effective protection of the public from violations of law and order.

In the *Crime Control Model (CCM)*, there is an assumption that crime prevention is the most desirable thing for society, therefore, repression of criminal behaviour is needed. According to this assumption, the failure of law enforcement to overcome crime can undermine *public order* and lead to the loss of *social freedom*. With this assumption, the *Crime Control Model (CCM)* considers that the criminal justice process against criminals is an effort that can be taken to realise *public order* and *social freedom*. The values that underlie the *Crime Control Model (CCM)* are as follows:

- a. Repressive action against crime is the most important function of the judicial process. The *Crime Control Model (CCM)* assumes that crime prevention is the most desirable thing in society. Therefore, repression of criminal behaviour is necessary. According to this assumption, the failure of law enforcement to tackle crime can undermine public order and lead to the loss of *social freedom*. Therefore, the *Crime Control Model (CCM)* considers the criminal process as a guarantee of positive *social freedom*.
- b. The main concern in the *Crime Control Model (CCM)* should be the efficiency of law enforcement to select suspects, determine their guilt and guarantee or protect the rights of suspects in the judicial process. Based on the above assumption, there is a consequence that there must be efficiency and effectiveness in the law enforcement process. The ability of law enforcement officers to arrest, detain and sentence criminal is used as a measure of success.
- c. The *Crime Control Model (CCM)* emphasises crime prevention or control. Its most prominent characteristic is efficiency, as it is all about crime prevention. Certainly, according to this model, once a criminal enters the police force, he or she will end up in a correctional centre (LAPAS). The more cases that are filed and resolved is a measure of

success.

- d. The law enforcement process in the *Crime Control Model* (CCM) must be implemented based on the principles of *speedy* and *finality*, the model that can support the law enforcement process must be an administrative model and resemble a managerial model.
- e. The use of the "*presumption of guilt*" will cause the system to be implemented efficiently; and
- f. The law enforcement process must emphasise the quality of the administrative findings of fact, as they will lead to: a) The release of the suspect from prosecution, or b) The willingness of the suspect to *plead guilty*.

Some values of the *Crime Control Model* seek that crime in any case needs to be applied to criminal sanctions in order to have a legal impact on human behaviour. The impact of legal provisions, not just in the form of obedience, because the impact is the total effect of a legal provision on human behaviour, both positive behaviour and negative behaviour, for example: The prohibition against commenting on a person's physical condition either verbally or in writing, in the real world or the virtual world of social media can lead to negative behaviour towards certain people, for example, by being allowed to comment on the physique of others, many people think that this case is just a normal thing that has no legal impact.

CONCLUSION

The legal protection for victims of *body shaming* has not been successfully realised, because in preventive efforts and repressive efforts it has not been able to have a significant effect because we still find in social media there are still many actions like this and sometimes the victims are lazy to prolong this problem on the grounds of a prolonged process and there are also those who are mentally good so they don't bother with it. However, the problem is that if this continues, it may cause the victim to experience mental burden and withdraw from the environment due to depression caused by bearing the suffering alone. Meanwhile, the repressive efforts made by law enforcers have not been sufficient to cause many victims with similar cases, so there needs to be a better policy in order to reduce crimes like this and provide a deterrent effect so that people or individuals are more careful in commenting on social media. In the perspective of victimology, the policy can be in the form of restitution and/or compensation and for the process of resolving cases like this, law enforcement officials should pay more attention to what are the rights of victims in cases of *body shaming*, especially regarding the psychological condition of victims.

REFERENCES

- Adha, Alentin Putri. (2017). Law Enforcement Against the Quarantine Crime of Carrying Wild Boar Meat Without Documents. *Thesis*. Faculty of Law, University of Lampung. Bandar Lampung.
- Atikah, Ika (2022) *Legal Research Methods*. Sukabumi: Haura Utama.
- Erizka Permatasari (2022). Rights of Suspects, Defendants, and Convicts. Accessed via <https://www.hukumonline.com/klinik/a/hak-hak-tersangka-terdakwa-dan-terpidana-cl4236/>
- Fitria, K., & Febrianti, Y. (2020). The Interpretation And Attitude Of Body Shaming Behaviour On Social Media (A Digital Ethnography Study On Instagram). *Diakom: Journal of Media and Communication*. Vol. 3 No. 1, September p: 12-25 DOI: 10.17933/diakom.v3i1.78 e-ISSN: 2623-12212
- Heriyanto, H., Saputra, T. E., Ichsan, N., & Susanto, C.. (2022). The Effectiveness of The Settlement

of Alleged Criminal Offences of Insult or Defamation Through Electronic Media with Restorative Justice at The Investigation Stage. *International Journal of Business, Law, and Education*, 3 (2), 212 - 220. <https://doi.org/10.56442/ijble.v3i2.474>

Kitab Undang-Undang Hukum Pidana (KUHP). Accessed via website: https://jdih.go.id/files/843/KUH_Pidana.pdf

Mansur, Dikdik M. Arief, 1955- & Gultom, Elisatris, 1968-. (2007). *The Urgency of Crime Victim Protection: Between Norm and Reality*. Jakarta: College Book Division, Raja Grafindo Persada.

[Rahardjo](#), Satjipto (2000). *The Science of Law*. Bandung: Citra Aditya Bakti.

Setiadi, Edi, et al. (2017). *Integrated Criminal Justice System and Law Enforcement System in Indonesia*. Jakarta: Prenada Media.

Sukmawati, Yeni & Dewi, Anak & Karma, Ni. (2021). Legal Protection for Victims of Criminal Offences of Body Shaming. *Journal of Legal Construction*. 2. 537-541. 10.22225/jkh.2.3.3638.537-541

[Law Number 19 Year 2016 on the Amendment to Law Number 11 Year 2008 on Electronic Information and Transactions](#).

Law No 13/2006 on Witness and Victim Protection

Law Number 11 Year 2008 on Electronic Information and Transactions (ITE).

Law No. 31/2014 on the Amendment to Law No. 13/2006 on Witness and Victim Protection and its Implementing Regulations.

Law No. 39/1999 on Human Rights (HAM)

Waluyo, Bambang. (2022). *Viktimology: Victim and Witness Protection*. Jakarta: Sinar Grafika.