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Body image the crime of instruction according to the perspective of Indonesian criminal law

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Abstract--Contempt for body image, known as *body shaming*, is currently rife among children to adults. In efforts to ensure the rights of victims of such acts of humiliation, it is necessary to have clear law enforcement rules. How is the criminal act of insulting body image (*body shaming*) seen and regulated based on the perspective of Indonesian criminal law and how to take responsibility for the crime. This study uses descriptive qualitative research and normative juridical research by looking at the general symptoms that occur in the community. Collecting data using literature study. The results of the study show that anyone who commits a crime of insulting one's body image (*body shaming*) will be charged with Article 315 of the Criminal Code regarding the article of minor insult if the crime is committed directly or in the sense of upfront the person who is insulted with the threat of a light sentence in the form of imprisonment or with a free criminal. However, if it is done through social media facilities, such as Instagram, Twitter, or Facebook, then the perpetrator will be subject to Article 27 paragraph (3) of the Information and Electronic Transaction Law with a penalty of 4 years imprisonment and a fine of 750 million rupiahs. The author suggests providing socialization to the public about the importance of appreciating what each person has as a form of a gift from God the Creator and providing a better understanding of the consequences that will be given to perpetrators of insults to other people's body images.

Keywords---body image, criminal law, children, crime, law enforcement.

Introduction

The human body image is a creation of the Creator, which must be treated with care and honor. In social life, there are often words or actions that are not pleasing to a person's heart, resulting in humiliation. The insult in question is commonly known as *body shaming*. This is often done not only directly when face to face, but also through social media intermediaries on someone's posts. Perpetrators of this insult usually do it consciously or unconsciously, because the perpetrator thinks that this is just a joke that cannot hurt other people's hearts. But who would have thought, people's hearts are different, some respond jokingly too, some feel offended. *Body shaming* is an act of humiliation or humiliating the body image of others. According to Evans (2010), body shaming is a form of comments and criticism to self and to others. Appearances that are criticized can be due to face shape, skin color, body size, or body changes. It is also said by Fredricson and Robert (1997), that *body shaming* is a form of a person's behavior in evaluating himself or the person he sees against the proper standard of beauty (Lestari, 2019).

This crime of insulting one's body image is not new and is the first in Indonesia. This insult can start from a joke in commenting, criticizing until finally mocking, with negative things. Often encountered in cyberspace, for example, a citizen who mocks a *public figure* through Instagram. Without realizing it, comments made on social media can lead to legal proceedings, if someone feels disturbed or uncomfortable about it. Not only comfort is disturbed, but victims of this humiliation can become more irritable, experience stress, depression, mental disorders, and can even close themselves to the environment. When this is about the victim, it can be said that the victim has suffered a psychological loss. Verbally, body shaming aims to demean and undermine the dignity and honor of the victim. It is vulnerable to be influenced by the level of trust of each individual (Muliati & Worker, 2020). In addition to affecting trust, this humiliation will also affect personal and social life. It could be someone who was initially confident walking in public, since being exposed to *body shaming*, that person becomes embarrassed and just wants to be in a closed place. It is not an easy thing, if someone with high self-confidence is suddenly broken with a sentence that hurts his feelings and heart. It is necessary to restore the psychological soul again, for someone to be able to return to the environment and adapt to the original situation.

A total of 966 cases of *body shaming* were reported to the National Police Headquarters in Indonesia throughout 2018, with a percentage of 94% being female victims and 64% being male victims. 374 cases of which have been handled, either by law enforcement or through a familial approach (mediation) between the victim and the perpetrator of the insult (., 2020). Various efforts have been made by the police, such as using an educational approach, namely by promoting digital literacy through social media and print media, so that it is not easy for people to physically mock other people (Santoso, 2018). Meanwhile, in

this case, the legal instruments expected by the community to act as protectors for the victims of this crime are not yet fully clear. There are irregularities or norms that are quite vague, giving rise to multiple interpretations in these rules. This allows for the development of negative actions from body shaming and from the increasingly widespread use of technology and other social networks, this problem has become something that is underestimated by society (Arief, 2005). The environment does not require a person to look perfect, but the people around him, who constantly comment when there are things that are not in accordance with what he thinks. Legislation that discusses the problem of body *shaming must* be able to protect and provide legal certainty for victims, and with this regulation, *body shaming crimes* can be reduced and can have a deterrent effect on the perpetrators, so that the public can be more careful in writing or saying comments to others.

Problem Formulation

Based on the background that has been explained, several problem formulations can be taken, including the following.

- How is the regulation of the criminal act of insulting body image (body shaming) according to the perspective of Indonesian criminal law ?
- What is the form of criminal liability for perpetrators of body shaming ?

Methodology

This study used a descriptive research design. Descriptive research is research conducted to collect actual and factual data, describe it systematically, and identify problems or check conditions and practices (Suryana, 2012). The research model used is a case study, namely the process of collecting data and information in-depth, detail, intensively, holistically, and systematically about individuals, events, social settings, and groups using various methods and techniques as well as sources of information in order to understand effectively how people, events, social settings operate or function according to the context. (Equatora, Muhammad Ali; Hos, Jamaluddin; Moita, Sulasman; Ibrahim, Zulham; Bauto, LOM; Santoso, 2020).

Descriptive case study research is exploratory research and has a vital role in generating temporary assumptions or understanding various social variables. This study only uses some instances as the research object, so it is casuistic. (Bill et al., 2019) Case study research emphasizes all critical aspects of a case to be studied. An in-depth description of a situation or object's clear idea in this study was explained. The cases studied were people, families, events, limited groups. (Corbett JR, 2016) Researchers can appreciate and understand how the issue of an object operates naturally. (Aarssen, L. W., & Crimi, L. (2016). Legacy, leisure and the 'work hard—Play hard' hypothesis. The Open Psychology Journal et al., 2013)

The method used in this research is descriptive qualitative research method and normative juridical by analyzing laws and other regulations and looking at various legal phenomena that exist in the community. Sources of data were

collected through literature study. Setiawan (2021), said that literature study is a variety of efforts made by researchers in collecting data and information relevant to the theme being discussed or being researched. The data and information obtained are sourced from scientific books, research reports, scientific papers, regulations, and several printed and electronic sources (Setiawan, 2021).

Results and Discussion

The author has the view that what happens in our lives, sometimes becomes a bad character, it can even be said to be bad. The perpetrators who do not have an awareness of responsibility make bad things something normal and natural to happen. Law enforcement officers, which in this case is specifically the Indonesian National Police, almost every month or year, receive complaints regarding insults to body image, either directly or through social media. Some of these things end in non-litigation, such as mediation, which is carried out between the victim and the perpetrator. A clear legal effort is needed in handling this crime, so that the public can be careful in commenting. According To The Indonesian Criminal Law Perspective. Moeljatno said that criminal law is part of the overall law that is applied to a country by establishing basic guidelines and norms for:

- Determining any actions that should not be done, which are not allowed, and accompanied by sanctions or criminal consequences for anyone who violates these rules.
- Determining in what ways and at any time those who violate these rules can be subject to criminal penalties as determined.
- Determining how to give a criminal offense can be carried out if it is true that the person suspected of having violated the rule (Moeljatno, 2008).

Regulation of the Criminal Act of Body Shaming In terms of the Criminal Code

The basis for reference to the criminal act of insulting body image (body shaming) is explained in article 310, article 311 and also in article 315 of the Criminal Code. However, in the meantime, the most frequent and suitable reference for this criminal offense is Article 315 of the Criminal Code. This article states that "Every intentional insult that is not in the nature of defamation or written defamation committed against a person, either in public orally or in writing, or in front of the person himself, verbally or by deed, or by a letter sent or received him, is threatened with light humiliation, with a maximum imprisonment of four months and two weeks or a maximum fine of three hundred rupiahs".

Article 315 of the Criminal Code is still very limited, because it describes an insult that is done intentionally without any element of defamation or defamation committed by one person, either in public or in front of the person directly orally or in writing. This article has not explained in detail what forms of humiliation, which can be called light insults, or it can be said that the current Criminal Code only contains those related to insults in a broad sense, without cornering the side of criminal acts, which is feared there will be a double interpretation in the law.

implementation. This can be explained based on the elements described in Article 315 of the Criminal Code. The following are the elements:

Objective Elements

Every insult is not verbal or written. Insults that do not have an element of defamation are, if someone insults or criticizes someone, but what is said is in accordance with the situation, without any intention to discredit his good name, but the words that are uttered make other people offended and their dignity and honor are dropped as a person. man. If that is done to one of the people in public orally or in writing, or in front of the person concerned, verbally or by deed. The crime of humiliation is meant if an act is committed in public or even directly in front of the person concerned, either spontaneously or by means of writing, with letters or comments on social media. Insults by letters received or sent. This crime is committed in the form of writing in the form of a letter sent directly to the victim, so that it can be evidence of the act of the perpetrator of humiliation either sending or receiving the letter.

Subjective Elements

The Criminal Code does not explain in detail what defines the word intentional, but we can know that the meaning of the word deliberate, which is quoted from MvT (Memorie van Toelichting), is knowing and wanting (Soesilo, 1995). The elements listed in Article 315 of the Criminal Code, which have been described above, have found clarity, that Article 315 regulates criminal offenses in the light category of insults. However, again, it has not been explained in detail, what is included in the classification of crimes of minor insults. That way, it can be said that Article 315 of the Criminal Code is able to become a legal basis for netizens or citizens who throw body shaming in the comments column or private messages, because they are written and carried out in public. This article is also able to ensnare people who send letters or messages body shaming, in accordance with the elements of Article 315 of the Criminal Code which are carried out directly in front of the person concerned.

Regulation of the Criminal Acts of Body Shaming in View of the Electronic Information and Transaction Law

According to Lucas, information technology is a form of application of technology used to process and transfer information in the form of electronics, micro computers, and mainframe computers (Rusman, 2011). Nowadays, along with the times, technology is not a difficult thing to find. From waking up to sleeping again, technology is all around us. This technology was born to reduce human slowness in their activities, both in processing information and conveying information. However, often the use of this technology is not in place (abused). For example, many use this technology for malicious acts, such as insulting other people's body image. This technology has been able to change the habits and lifestyle of people worldwide. The existence of this technological development also makes society experience social change. It can be said that this technology already has two different sides of the eye. Besides being able to facilitate and improve the welfare of human civilization, this technology is also able to make it

easier for people to commit unlawful acts. Once typed in the comments column, it can be read by all people in the world, at a speed that does not need to be reconsidered.

The legal arrangement for the criminal act of insulting body image or body shaming is regulated in the ITE Law Article 27 paragraph (3) with the criminal provisions described in Article 45 paragraph (3) of the latest ITE Law. Article 27 paragraph (3) states that: "Everyone without the right to distribute and or transmit and or make accessible Electronic Information and or Electronic Documents that have insults and or defamation contents." Article 45 paragraph (3): "Everyone who fulfills the elements as referred to in Article 27 paragraph (3) shall be sentenced to a maximum imprisonment of 4 (four) years and or a maximum fine of Rp. 750,000,000.00 (seven hundred and fifty million rupiah)" .

The articles above contain several elements, namely an element of error, an element of violating the law and an element of behavior. If it is connected with a criminal case of insulting body image or body shaming, then this act is included in the element of offense in ensnaring the perpetrator (Nafsul, 2020). However, in the implementation of this article, it still refers to and is guided by Article 315 of the Criminal Code which is classified as a mild insult and is a complaint offense. The following are examples of insults to the physical or body image that we often encounter in everyday life.

"Why are you so thin, you don't eat often, do you...?"

"Is it a human or a pig, how come the hole is big...?"

"Your eye bags are so black, it's no different from a panda..."

"Your skin is so dark, like coffee..."

The example of humiliation mentioned above can be charged with using article 27 paragraph (3), if the act is carried out through media means, and if it is carried out directly or without an intermediary, then it is charged with article 315 of the Criminal Code.

Criminal Liability Efforts against Body Shaming Perpetrators

In order to be held criminal liability, several conditions are needed from the maker to be responsible, elements of negligence or intentional, as there is an inner relationship between the maker and the crime committed, and the absence of a reason to forgive the maker of the act (Gustiniati, 2013). Article 27 of the concept of the 1982/1983 Criminal Code states that criminal liability is a continuation of objective reproaches based on legal actions that are applied subjectively to the designer who has complied with the requirements of the law which can be criminally charged for his actions (Djoko, 1987). In foreign terms, is *criminal responsibility* which refers to the punishment of perpetrators with the meaning of making it easy to determine whether a defendant or suspect is responsible for the criminal act that occurred or not. Pound said that criminal liability is an obligation aimed at the victim of the perpetrator to pay retaliation (Romli, 2000). In essence, criminal liability can be carried out against a person who has committed a crime, but must meet four conditions, including the following.

- There is an action by the perpetrator.
- Fulfill the formulation of the offense in the law.
- The actions taken are against the law.
- The perpetrator must be able to be held accountable (Barda, 2002).

Criminal liability for perpetrators of insulting body image (*body shaming*) in this case is a light insult carried out on social media according to the principle of *lex specialis derogat legi generali*, which refers to article 27 paragraph (3) and refers to article 315 of the Criminal Code as an act of light insult with criminal guidelines in Article 45 paragraph (3) of Law Number 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (Kebenaran et al, 2020). Mild does not mean that there is no legal umbrella for the victims and perpetrators. Several elements of the ITE crime are mentioned in article 27 paragraph (3), namely:

- Error: intentionally,
- Against the law: without rights,
- Acts: transmits,
- Object: in the form of information,
- Purpose: attacks the dignity, reputation, and good name of a person in the form of humiliation, physical or non-physical.

Cases in the form of insults to body image can be processed and a court process is carried out, if someone who feels he is being treated feels uncomfortable. If that person does not care about the case, then the treatment does not need to be discussed further. The steps that can be taken by the victim in reporting this case are the admin of a social media account who feels that he is a victim, has legal power to make a report to the police in this section *Cybercrime*. Furthermore, the victim must have accurate and specific digital evidence such as screenshots, comment pages or accounts in accordance with the explanations of articles 5 and 6 of the ITE Law. Then, the investigators will carry out an investigation process, starting from the time, the contents of the insulting sentence, who was involved and how the case could have happened. After the investigation process is complete, then proceed to the court process. Not only reporting to the police, but victims can also report to the Ministry of Communications and Information Technology's Content Complaint Service (Faisol, 2019).

The reporting case for insulting body image was once carried out by a top actress, namely Ussy Sulistiawaty in December 2018. At that time, the actress was furious and felt offended that several account owners had insulted her two beautiful daughters. Previously there had been a group of actresses who had experienced this, including Daus Mini, Nikita Mirzani, Tasya Kamila, Ashanty, who had threatened to report the perpetrator to the police, but all cases ended in a family way (peaceful way), because the perpetrator had the courage to take action, apologize to the victim. The year 2021 also went viral, namely the weightlifter Nurul Akmal who experienced a similar incident. However, he thought it was just a joke, and he asked those who insulted him to stop behaving like that. It can be said that Nurul is a person who has an open heart, who wants to

dismiss the news of his insults, by simply asking the people who insult him to stop doing it.

Based on the explanations and examples of cases above, it can be concluded that crimes of insulting body image (*body shaming*) are mostly resolved in a familial way, meaning that they are rarely brought to justice. This is because *body shaming* is a form of mild insult which is a complaint offense. A complaint or complaint offense means that a criminal act can only be prosecuted after a report requests a prosecution of the perpetrator (Gusfrianto, 2021). This understanding provides the conclusion that a criminal can be carried out by legal proceedings, if the party who is deemed to have received a loss makes a complaint to the authorities. Although many cases are resolved peacefully (mediation), this does not mean that this crime is considered trivial. This crime can also be processed before the law, if the reporting party or victim does not want to withdraw his report to the police. It is undeniable that reporting is the right of everyone, if they feel they have been harmed because of the actions of others, but many also do not want to bother taking this case of minor insult to law. It's not complicated to just report, but there are also a handful of people who want the perpetrator to be a deterrent for this act of insulting someone's body image.

Conclusion

Based on the discussion that has been described above, it can be concluded as follows. *Body shaming* is an act of humiliation in humiliating another person's body image, in the form of negative comments or criticism of appearance in the form of face shape, skin color, or body size as a form of evaluation of one's ideal beauty standards. Article 315 of the Criminal Code is used as a legal basis to ensnare people who commit criminal acts of insulting body image (*body shaming*) both in writing, or in public that can be seen and accessed by the general public. This article also ensnares someone who commits *body shaming* by sending messages or letters.

The regulation of criminal acts of insulting body image (*body shaming*) in terms of the Information and Electronic Transaction Law refers to the ITE Law Article 27 paragraph (3) with the criminal provisions described in Article 45 paragraph (3) of the latest ITE Law. Efforts for criminal liability against perpetrators of body shaming can be seen from three points of view, namely the existence of wrong actions or actions committed, the existence of unlawful acts and the existence of objects and goals to be achieved. Various cases of insulting body image that occurred in Indonesia, were mostly resolved by peaceful means (mediation), but not a few were resolved through legal channels.

Implications

Based on the discussion that has been explained clearly, the authors put forward several implications including the following. Provide socialization through an educative approach to the community on a regular basis, starting from the family environment by involving community leaders, the academic community, or law enforcement officers such as the Indonesian Police. There is a socialization of understanding the consequences, if the public intentionally or unintentionally

commits the crime of insulting the body image. The existence of strict and clear law enforcement that explains the crime of insulting body image (body shaming) so that in the future the people of the world, especially in Indonesia, can tolerate, respect and respect each other. It is necessary to simplify the laws used in handling cases of insulting body image, so that there is no comparison or duplication of interpretation in its implementation.

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Author's contributions

M.A.E. et.al is the sole author of this article.

Ethical considerations

This study followed all ethical standards for research without any direct contact with human or animal subjects.

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Data availability

Data sharing is not applicable to this article as no new data were created or analysed in this study.

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