

Shariah Assessment Toward the Prosecution of Cybercrime in Indonesia

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Abstract: This research aims to uncover how Islamic criminal acts towards social media crimes. This study also elaborates on how Islam assesses Indonesian criminal prosecution against social media crimes. The approach used is a juridical normative to assess the criminal law system in force in Indonesia with the Islamic criminal perspective as grand theory. The results found that crime through social media was adapted with the crime in Islamic law namely Hudūd, qisas diyat and *tazir*. This research also found that the Indonesian legal system provides legal rewards for perpetrators of crimes through social media charged with the Information and Electronic Transactions (ITE) Law still needs to be expanded. Crimes through social media most often threatened by the ITE Law are insults to the government or symbols of the state, threatening and defamation of others, insults to others and violating SARA (ethnicity, religion, race and intergroup). Cybercrimes related to adultery, alcoholism and terrorism must be considered because they are a serious threat. Prison penalties and fines that are most often sentenced to perpetrators of social media crimes include part of criminal *tazir* which is following Islamic criminal law.

Keywords: Cybercrime, ITE law, Islamic Criminal Law.

INTRODUCTION

Television films, video games, telephone and internet since 1960s have impacted not only the on positive side, but also the negative side to the audience. Apart from being a means of disseminating information and entertainment, the public also always received scenes of violence on television. Private television stations always show films with the theme of violence, such as action, war, fight, and horror films¹. Crime news on television also looks so vulgar. It could have a negative impact on the psychological development of children and adolescents. Berkowitz argued that violence in television news could influence viewers to become more aggressive. Berkowitz also said that a realistic or real scene of violence would generate aggression in the future, especially if the scene was presented clearly and alive so as to attract the full attention of the audience². Moreover in the time being with the development of technology and information, everyone can easily access various kinds of content including scenes of violence.³ Someone tends to imitate a model in an impression. If the

broadcast features violent scenes, the aggressiveness of the individual will increase. Eron and Huesmann argue that even if a child is not aggressive at age 8 years if a sufficient number of violent television shows are watched, he will be more aggressive at age 19 than peers who do not see violence on television. Violence will threaten stability in the community, causing shocks to all elements of society⁴

Reasons for social and policy considerations to combat electronic media crime which is the community's need to protect people from potential misuse and protect society from psychological damage to the effects of the electronic media.⁵The development of communication today does not only occur with direct meetings. The era is growing which leads to applications of electronic media such as telephones, cellphones, and so on. Features are provided to able one to communicate between one another and even if separated by space and distance. The public was helped by the applications provided in the electronic media.⁶ The development of the era not only had a big influence on the progress of the Indonesian State but also had an impact on the development of morals, behavior, and cultural shifts in society.

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¹L. Rowell Huesmann, "The Impact of Electronic Media Violence: Scientific Theory and Research," *J Adolesc Health* 41 (2009): 1–12. 1.

²Leonard Berkowitz, *Aggression: Its Causes, Consequences, and Control*. (Mcgraw-Hill Book Company, 1993).

³Corinne David-ferdon *et al.*, "Electronic Media , Violence , and Adolescents : An Emerging Public Health Problem" 41, no. September 2006 (2007): 1–5., 1.

⁴L Rowell Huesmann and Leonard D Eron, "The Development of Aggression in Children of Different Cultures: Psychological Processes and Exposure to Violence." (2013).

⁵Warren Chik, "Harassment through the Digital Medium A Cross-Jurisdictional Comparative Analysis on the Law on Cyberstalking," *Journal of International Commercial Law and Technology* 3, no. 1 (2008): 13–44., 27.

⁶Diah Kristi Sarah, "Ancaman Kekerasan Dan Pembunuhan Melalui Media Elektronik (Analisa Putusan Nomor 44/Pid.Sus/2014/PT.Smg)," *Recidive* 4, no. 2 (2015): 131–138., 131.

Social media acts as a cathartic vessel when people are experiencing certain emotions. Channeling the contents of the head and feelings is indeed a positive path for mental health. However, this backfired when the reaction of the wider audience who read their status contained their grief was not as expected. When what comes to them is blasphemy or criticism, the uploader of the confidant status will face a growing internal conflict. Already fell, hit by a ladder. Their problems have not been resolved, they must be prepared to face new problems, namely the judgment of their followers, or even the wider public. The consequences of careless/excessive use of social media can have legal consequences⁷. Indonesia as a nation with a rule of law must provide protection and recognition of the rights of its people. Especially in the field of technology and information,⁸ Indonesia must fortify its behavior and cultural shift with the enactment of Law Number 11 of 2008 which has been amended to Law Number 19 of 2016 concerning Electronic Information and Transactions (UU ITE), some limitations must be considered in terms of conveying something in the media social. Many criminal acts that can arise from the use of social media, ranging from insults, defamation, extortion, threats, and so on. A person can be charged with various laws and regulations due to not being wise in using social media.⁹ This provision is to provide a deterrent effect on the public to always maintain their behavior in using electronic media. Many criminal acts can arise from the use of social media, ranging from insults, defamation, extortion, threats, and so on. Someone can be charged with various laws and regulations due to a lack of wisdom in using social media.¹⁰ These provisions are to provide a deterrent effect to the public so that they always maintain the behavior in using electronic media. Many possible violations of the law that can be caused by electronic media if used incorrectly include hoaxes, extortion, threats, bullying, defamation, falsification of data, and so forth.

⁷Hardianto Djanggih and Nasrun Hipan, "Pertimbangan Hakim Dalam Perkarapencemaran Nama Baik Melalui Media Sosial (Kajian Putusan Nomor: 324/Pid./2014/PN. SGM)," *Jurnal Penelitian Hukum De Jure* 18, no. 1 (2018): 93-102.

⁸Islamul Haq, "Jarimah Terhadap Kehormatan Simbol-Simbol Negara; Perspektif Hukum Pidana Indonesia Dan Hukum Pidana Islam," *DIKTUM: Jurnal Syariah dan Hukum* 15, no. 1 (2017): 11-25, 12. <http://dx.doi.org/10.1016/>

⁹Mayza Amelia, Diah Gustiniati, and Muhammad Farid, "Analisis Kriminologis Kejahatan Pemerasan Dan Pengancaman Melalui Media Elektronik," *Jurnal Poenale: Jurnal Bagian Hukum Pidana* 6, no. 3 (2018), 3.

¹⁰Mayza Amelia, Diah Gustiniati, and Muhammad Farid, "Analisis Kriminologis Kejahatan Pemerasan Dan Pengancaman Melalui Media Elektronik," *Jurnal Poenale: Jurnal Bagian Hukum Pidana* 6, no. 3 (2018), 3.

Threats through electronic media can be oral (speech, and telephone) and writing (in the form of e-mail, SMS, WhatsApp Messages Messages, Facebook, Twitter, Instagram, Youtube, etc.). Many news coverage through print and television media reported that there was a threat through electronic media. Giving rise to psychological and material harm to people feels threatened.

One of the cases that had graced social media was the Prieta Mulyasari case. He expressed his dissatisfaction with the services of one of the Omni International hospitals by email to his friends. The contents of the email reached the hospital who then reported the case criminally and civilly under ITE Law.¹¹ The case of a woman named Yhunie Rhasta was upset because she was ticketed on May 31, 2017, and then wrote in her Facebook status. After making that status, the woman was picked up by the police because of the furor of the net residents who responded.¹² There are many more events that cause unrest in the community.

The most recent case attempted by the public is the leaking of personal data from one of the well-known social media activists, Denny Siregar. He chirped on his Twitter account, complaining that his data leak was revealed by the account @ opposite6891.¹³ As a result, Denny Siregar said he would report and sue Telkomsel because of the leakage of his data. The data leakage, Denny received several terrors that also affected his family.¹⁴

Responding to various crimes in cyberspace, Indonesia in its legal act has provided the guidelines.

In the Criminal Code (Article 369 Paragraph (1) it is stated that:¹⁵

"Anyone to benefit oneself or others unlawfully, with the threat of pollution both verbally and in writing or with the threat of disclosing secrets, forcing someone to give something in whole or in part belongs

¹¹Firdaus Cahyadi, "Kebijakan Telematika Dan Konglomerasi Media Di Indonesia," in *Negara Hukum, Kebebasan Informasi Dan Media* (Jakarta: Mahkamah Konstitusi, 2012), 723-742., 734.

¹²Nadya Isnaeni, "5 Status Di Media Sosial Berujung Pidana," *Liputan6.Com* (Jakarta, July 2017).

¹³"Mengusut Kebocoran Data Denny Siregar Di Media Sosial," *Detiknet* (Jakarta, July 2020).

¹⁴"Data Pribadi Bocor, Denny Siregar Bakal Gugat Telkomsel," *CNN Indonesia* (Jakarta, July 2020).

¹⁵R Soesilo, "KUHP Serta Komentar-Komentarnya Lengkap Pasal Demi Pasal," *Politeia, Bogor* (1996).

to another person, or to give a debt or write off a debt, threatened with imprisonment for a maximum of four years”.

Threats through electronic media have not been specifically touched by Article 369 paragraph (1). This can be used as a loophole by those who wish to cheat by exploiting the weakness of this article. ITE Law must clearly and regulate all prosecution related to violations in cyberspace.

The legal rule for threatening through social media is stated in the new ITE Law, namely Article 29 of Law no. 11 of 2018 jo. Article 45b of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions which mention threats of violence or intimidation aimed at personally. Besides, the provisions of this article also include cyberbullying which contains elements of threats of violence or scare and results in physical, psychological, and material harm.

Violators of this provision can certainly be prosecuted criminal because it is not stated that the act constitutes an offense in the complaint, so it can be understood that the provisions in Article 29 jo. Article 45b of Law no. 19 of 2016 is an ordinary offense so that everyone can submit a report to the Investigators of the State Police of the Republic of Indonesia or Civil Servant Investigators for immediate follow-up.

Furthermore, the provisions of Article 368 Paragraph (1) and Article 369 (1) are regulated in Chapter XXIII of the Criminal Code, which consists of extortion and threats. The two crimes have the same nature, namely actions that are aimed at extorting others. Based on this, these two crimes are regulated in the same chapter. Even so, it is not wrong if the two criminal acts have their names, namely "extortion" for crimes regulated in Article 368 (1) of the Criminal Code and "threats" for crimes regulated in Article 369 (1) of the Criminal Code.

The use of threats is also referred to in Article 335 paragraph (1) of the Criminal Code jo. The decision of the Constitutional Court Number 1 / PUU-XI / 2013, which stated: *“Anyone who unlawfully forces others to do, not do or allow something, by using violence, or by using the threat of violence, both against themselves and others”*¹⁶. The word "force" according to R. Soesilo,

is to order people to do something in such a way that the person does something against his own will.

Every activity carried out through social media including writing status/stories or commenting has legal consequences, which if offending or attacking a person can be considered a form of the crime and this is a criminal offense. Status or comments that contain elements of the crime can be snared with the Criminal Code (KUHP) and Law No. 11 of 2008 concerning Information and Electronic Transactions (UU ITE) as amended by Law No. 19 of 2016. Perpetrators can be punished if they meet all elements and formulations of offense and have gone through a criminal justice process.

Based on the rules above, we can simplify Crimes regulated by ITE Law are limited to fraud and insults. The action was only in the form of fines and imprisonment whereas cyberspace crime is very diverse. There are still many cases of crimes that have not been regulated in this ITE Law including sexual violence.

Now, sexual violence in cyberspace is increasingly diverse. Various forms of sexual violence in cyberspace that are troubling various parties, apparently there is still no law to regulate it. As a result, perpetrators of sexual violence in cyberspace can still roam free. The obscenity law is not able to ensnare perpetrators of sexual violence in cyberspace. The articles of obscenity are only able to ensnare victims of sexual violence who have physical contact, such as proven to touch, squeeze and touch-sensitive areas of victims¹⁷.

Data from the Indonesian Child Protection Commission (KPAI) noted the total complaints of pornography and cybercrime cases that ensnared children in 2014 were 322 cases, 2015 approximately 463 cases, 2016 increased to 587 cases, 2017 increased to 608 cases, and in 2018 increased reached 679 cases¹⁸. The case of child complaints based on child protection clusters in the field of pornography and KPAI's cybercrime, has increased in 2011-2018¹⁹. The

¹⁷Vera Rimbawani Sushanty, "PORNOGRAFI DUNIA MAYA MENURUT KITAB UNDANG-UNDANG HUKUM PIDANA, UNDANG-UNDANG PORNOGRAFI DAN UNDANG-UNDANG INFORMASI ELEKTRONIK," *Jurnal Gagasan Hukum* 1, no. 01 (2019): 109–129.

¹⁸Zendy Wulan Ayu Widhi Prameswari, "PROHIBITION OF CHILD PORNOGRAPHY: ENHANCING CHILD PROTECTION IN INDONESIA," in *The 2nd International Conference on Law, Governance and Globalization 2018*, 2018.

¹⁹S Laurensius et al., "Cyber Bullying Against Children In Indonesia," in *International Conference on Social Sciences, Humanities, Economics and Law* (European Alliance for Innovation (EAI), 2018).

¹⁶Putusan Nomor 1/PUU-XI/2013, n.d.

types of complaints include children who are victims of online sexual crimes, children who have perpetrated online crimes, children who have victims of pornography in the social media, children who have possession of pornographic media, and children who have bullying in social media²⁰. As for cybercrime that is most often complained to KPAI, among others, pornographic video actors, sexting (chat containing pornographic content), are involved in pornographic groups²¹.

Then grooming or the process to establish communication with a child through the internet to lure, manipulate, or inciting the child to engage in sexual activity. Besides, there is also sextortion, which is online dating which leads to extortion²².

The legal vacuum is also exacerbated by cyberterrorism which is also not regulated by the ITE law. cyberterrorism is the use of the Internet to commit acts of violence that cause or threaten the loss of life or significant physical harm to achieve political gain through intimidation. It is also sometimes considered an act of terrorism on the Internet in terrorist activities, including intentional acts, disruption of large-scale computer networks, especially personal computers connected to the Internet, with tools such as computer viruses²³.

Cyber terrorism is a controversial term. Some writers choose very narrow definitions, relating to the spread, by known terrorist organizations, the existence of a disruption of attacks on information systems for the primary purpose of creating alarms and panic. Some other writers choose overly broad definitions that tend to include cybercrime when in reality, cyber terrorism and cybercrime are two very different issues and must be defined separately. Online terrorism must be considered cyber terrorism when there is fear that is inflicted on a group of people, whereas cybercrime is an act of committing online crime or crime usually without the use of fear. With this narrow and broad definition, it is difficult to identify which cases of online terrorism are cyber terrorism or cybercrime.

Cyber terrorism can also be defined as the intentional use of computers, networks, and the public

internet to cause damage and harm to personal goals²⁴. Experienced cyber terrorists who are highly skilled in hacking can deal with major damage to government systems, hospital records, and national security programs, which often makes the country chaotic and afraid of further attacks. Such terrorist goals may be political or ideological because they can be seen as a form of terrorism²⁵.

The legal vacuum in some cybercrimes such as sexual violence and terrorism in the above explanation must be immediately followed up. It is essential to seek another point of view. The side of Islam, which is believed by adherents is a religion that regulates all human activities, including criminals. Is Islamic criminal law can be adapted to prosecution against cybercrime? What is the legal action against the perpetrators of cybercrime in the Islamic view? How does Islam assess the application of Indonesian legal actions against cybercrime?

The teachings of Islam in principle maintain and guarantee the honor of every human being.²⁶ Islam through its criminal law regulates the prohibition of insulting others, gossiping, pitting sheep, spying, or that can violate the honor of others. One of the verses in the Quran as the main source of Islam is contained in:

O you who have believed, let not a people ridicule [another] people; perhaps they may be better than them, nor let women ridicule [other] women; perhaps they may be better than them. And do not insult one another and do not call each other by [offensive] nicknames. Wretched is the name of disobedience after [one's] faith. And whoever does not repent - then it is those who are the wrongdoers.

Thus, the purpose of this study is to elaborate Islamic criminal acts against cybercrimes and assess Indonesian Criminal Laws against cybercrimes based the Islamic Criminal Law perspective. Indonesian citizens who are predominantly Muslim need to also know the legal aspects of the teachings of Islam even though formally the Islamic criminal law does not apply in Indonesia. However, the spirit of Islamic criminal law can also be found in the Indonesian criminal law system.

²⁰A R Mubarak, "Child Safety Issues in Cyberspace: A Critical Theory on Trends and Challenges in the ASEAN Region," *International Journal of Computer Applications* 129, no. 1 (2015).

²¹Ni Luh Gede Yogi Arthani, "EKSPLOITASI ANAK DALAM PENYEBARAN PORNOGRAFI DI DUNIA MAYA," *Jurnal Advokasi* 8, no. 1 (2018): 101–112.

²²Ibid.

²³Sara Hower and Kathleen Uradnik, "Cyberterrorism . Santa Barbara" (CA: Greenwood, 2011).

²⁴Ibid.

²⁵Jonathan Matusitz, "Cyberterrorism: Postmodern State of Chaos," *Journal of Digital Forensic Practice* 3, no. 2–4 (2010): 115–123.

²⁶Abd al-Qadir 'Audah, *Al-Tasyri' Al-Jina'i Al-Islami; Muqaranan Bi Al-Qanun Al-Wadh'i, Jil. II*, II. (Kairo: Maktabah al-Taufiqiyah, 2013).

This paper is expected to be a material consideration for policyholders to review the official rules against the enforcement of cybercrime. Cybercrime is very diverse and will increasingly develop over time. Legal sources in Indonesia need to be further elaborated, either from international law, customary law, or Islamic law

METHODOLOGY

This research explores the perspective of Indonesian criminal law and Islamic criminal law on the issue of criminal violations in the electronic media. Islamic criminal law can be used to assess and become a reference for the future. Islamic criminal law becomes an integral part of the criminal law system in Indonesia. Although officially there is no Islamic criminal law in Indonesia. The approach used is normative and juridical. Primary data were obtained from a variety of credible and up-to-date literature, such as laws and regulations, court decisions, books, and reputable journals. Secondary data found from supporting information such as websites then presented with a strong analytical instrument based on normative arguments

LITERATURE REVIEW

The Essence of Cybercrime

The development of the flow of information technology in social life occurs very quickly and has a profound change in human civilization. The rapid development in the use of internet services and electronic media turned out to have other negative impacts, namely in the form of crimes and violations, which then gave rise to the term cybercrime, which is a further development of computer crime.²⁷ In the criminal law system in Indonesia, it does not provide a clear definition outlined in the law. However, the legislators only included several provisions regarding criminal acts in the ITE Law. The definition of cybercrime can be found in several other kinds of literature²⁸.

According to the British police, cybercrime is all kinds of use of computer networks for criminal and/or high-tech criminal purposes by misusing the ease of

digital technology.²⁹ According to Peter, cybercrime is crimes directed, at a computer or a computer system. The nature of cybercrime, however, is far more complex. As we see later, cybercrime can take the form of simple snooping into a computer system for which we have no authorization. It can be the feeling of a computer virus in the wild. It may be malicious vandalism by a disgruntled employee. Or it may be a theft of data, money, or a piece of sensitive information using a computer system.³⁰

The existence of cybercrime has become a threat to the stability of Indonesian society so that the government is difficult to compensate for crime techniques that are carried out with computer technology, especially the internet and intranet networks. This is a result of the rapid development of information technology so that each development essentially affects such as two sides of a coin, each of which is interrelated and will not be separated, in the form of positive and negative sides. Cybercrime (cybercrime) stems from the lives of people who take advantage and tend to increase at any time to concentrate on cyberspace. This is part of the more rapid development of the times, the more social burdens and burdens of criminality in society. This development has an impact on the social life of the community, on the other hand on the level of progress that is being experienced, also has an impact on the emergence of various forms of crime.³¹ Thus, the principle of legality is the main principle of criminal law, that is, a person cannot be punished because his violations have not been regulated in a positive legal system (*lexscripta*).³²

Crimes through social media and cybercrime are different from traditional crime. Offensive crime on social media has a more significant effect on the victim's side than traditional offensive.³³

²⁷Prima Angkupi, "Kejahatan Melalui Media Sosial Elektronik Di Indonesia Berdasarkan Peraturan Perundang-Undangan Saat Ini," *Jurnal Mikrotik* 2, no. 1 (2014).

²⁸man Sjahputra Tunggal, Pandapotan Simorangkir, and G Windarto, *Problematika Hukum Internet Indonesia*, Prenhallindo, 2002.

²⁹Abdul Wahid Dan M. Labib, "Kejahatan Mayantara (Cybercrime)", Refika Aditama, Bandung, 2005, Hal.15.

³⁰Al Sentot Sudarwanto, 'Cyber-Bullying Kejahatan Dunia Maya Yang "Terlupakan"', *Jurnal Hukum PRO JUSTITIA*, 2009, hal. 4.

³¹Hardianto Djanggih and Nurul Qamar, 'Penerapan Teori-Teori Kriminologi Dalam Penanggulangan Kejahatan Siber (Cybercrime)', *Pandecta: Research Law Journal*, 13.1 (2018), hal 12.

³²Fajri Matahati Muhammadin, Muhammad Awfa, Kirana Anjani "Applying Customary International Law in the Indonesian Human Rights Court: An Islamic Solution of The Conundrum," *Al-Shajarah: Journal of Islamic Thought and Civilization of the International Islamic University Malaysia (IIUM)* 24, no. 2 (2019): 209–237., 218.

³³Marlen Weulen Kranenbarg, Thomas J. Holt, Jean-Louis Van Gelderg, "Offending and Victimization in the Digital Age: Comparing Correlates of Cybercrime and Traditional Offending-Only, Victimization-Only and the Victimization-Offending Overlap," *Deviant Behavior* 16, no. 1 (2017).

Islamic Concept of Crime Prosecution

In the concept of Islam, the crime is called *Jarimah*. In the terminology of Islamic law, *Jarimah* is defined as acts that are prohibited according to the Shariah and determined by God, both in the form of sanctions that have clear provisions (*had*) and sanctions that have not been clearly defined by God (*tazir*)³⁴.

Jarimah, according to al-Mawardi, is a prohibition on sharia that is threatened by Allah with the punishment of *had* and *tazir*. *Had* had law is a punishment that has been ensured in the texts of the Qur'an or the Sunnah of the Prophet. While *tazir* law is a punishment that is not certain of the provisions in the Qur'an and the Sunnah of the Prophet. *Takzir* became the authority of the authorities to determine it.

The classification of *crime in Islamic law* is as follows³⁵

1. Hudūd

The word Hudūd (derived from Arabic) is the plural of the word *Had*. There are several possible meanings including limitations or definitions, torture, provisions, or the law. Present in the discussion of Fiqh (Islamic law) is the provision of sanctions against perpetrators of crime, in the form of physical or moral torture; whereas according to Islamic law, that is the decree of God contained in the Qur'an, and / or the reality carried out by Rasulullah SAW. Hudūd is a crime committed by someone or more that makes the perpetrators subject to sanctions.

The types of *had* contained in the Islamic Shari'a, namely stoning, volume or whipping, cutting off hands, life imprisonment/imprisonment, execution of execution, exile/deportation, and the cross. The fingerprints of the perpetrators are threatened with sanctions, namely:

a. Adultery (Sexual Harassment)

The *fuqaha* classify humans in terms of marital status into two, namely *mukhsan* or *mukhsanah*, and *ghairmukhsan* or *ghairmukhsanah*. Based on the history of the hadith of Abu Hurairah and Ibn Abbas, that the hadith history for adultery that *mukhsan / mukhsanah* is stoning, which is planted to the neck then stoned to death.

While the *had* to *ghairmukhsan/mukhsanah*, based on the letter an-Nur verse 2 was whacked 100 times, in front of a crowd. According to Shafi'i and Hambali, besides, he must be exiled for one year. Based on his law, QS. An-Nur verse 2:

"The woman who commits adultery and the man who commits adultery, Then suffer each one of the two hundred flags, and do not be merciful to both prevent you from (practicing) the religion of God, if you believe in Allah, and the hereafter, and let (execution) their punishment witnessed by a group of people who believe. "

b. Qadzaf (Allegation of Adultery)

Alqadzfu legal sanctions have been mentioned that are whacked or whipped 80 times. In addition to the physical law, the accuser is declared legally flawed so that his testimony is not accepted forever His legal basis, QS. An-Nur verse 4:

"And those who accuse women who are good (fornication) and they have not brought four witnesses, So they (who accuse them) are whipped eighty times, and do not accept their testimonies forever. and they are the ones who are wicked."

c. Sarigah (theft)

Based on the verses of the Quran which expressly reveal that the legal sanctions for violations of the theft of punishment, namely cutting off hands with the condition that the value of the stolen property is one Nisab and the theft is done not by coercion of another person. According to Imam Malik, the ratio of Nisab ranges from ¼ dinars or more, while Imam Abu Hanifah states that the theft ratio is worth 10 dirhams or 1 dinar. Provisions cut off the hand, which is the left. If you still steal, the right foot must be cut off. If you do it for the third time, you have to cut your right hand. If you still do, then the left leg is cut. If he still does it for the fifth time, then he must be sentenced to death. Al-Maidah verse 38:

"Men who steal and women who steal, cut off both hands (as) retaliation for what they do and as torture from Allah. and Allah is Mighty and Wise. "

d. Harabah (robbery, terrorist)

Legal sanctions for criminals of *harabah* (robber/terrorist) are more severe compared to thieves,

³⁴Haq, I. (2017). Jarimah Terhadap Kehormatan Simbol Simbol Negara. *DIKTUM: Jurnal Syariah dan Hukum*, 15(1), 11-25.

³⁵Qadir, A. A. (1992). Al-Tasyri' Al-Jina' I AL-Islami. *Juz*, 1, 685..

which are killed or crucified (cut off hands and feet), or thrown away. The legal basis, QS. Al-Maidah verse 33:

"Indeed, retaliation against those who fought Allah and His Messenger and made mischief on the face of the earth, only they were killed or crucified, or their hands and feet were cut off in reciprocity [Meaning: to cut off the right hand and left foot; and if you do it again, then your left hand and right foot are cut off.], or thrown out of the country (the place of residence). such is (as) an insult to them in the world, and in the hereafter, they will suffer great torment, "

e. Bughah (rebellion or subversion)

The legal basis, QS. Al-Maidah verse 33 and Al-Hujurat verse 9:

"And if there are two groups of those who believe it, you must make war between the two! but if one violates the covenant against another, let those who violate the covenant fight it until it recedes to God's command. if he has receded, reconcile the two according to justice, and you shall behave fairly; Surely Allah loves those who act justly."

(Surah Al-Hujurat verse 9)

f. Riddah (Convert or Apostasy)

Sanctions for apostates are killed. Jumhur fuqaha believe that the death penalty applies to apostates, both men and women. Unlike the case with Shaykh Mahmud Syaltut, he stated that sanctions for apostates were left to Allah, there were no sanctions in the world for him. The reason is that disbelief does not allow a person to be sentenced to death. After all, allowing the death sentence for unbelievers is because of fighting and opposing Muslims. Legal sanctions or retaliation against those who fight Allah and His Apostle and make damage on the face of the earth is killed, chopped off their hands and feet with reciprocity, thrown from their homes. The basis of the law, QS. At-Taubah verse 12:

"If they break the oath (promise) after they promise, and they revile your religion, then fight the leaders of the infidels, for surely they are the people (who cannot be held) by their promises so that they stop."

g. Khamar (Liquor and Illegal Drugs)

The majority of scholars agree that khamar consumers are subject to legal sanctions, namely the flagging law following the severity of the violations committed. According to Hanafi and Hambali, 80 lashes were sentenced. Whereas according to Shafi'i the sentence is only 40 times. The legal basis, the Prophet's hadith:

"It was narrated from Anas bin Malik RA. he said: Surely a man who drinks wine has been confronted with the Prophet (PBUH) and then the king beat him with two palm fronds forty times "(Saheeh Muslim)

Abdullah An-Na'im and some of Islamic Jurisprudence mention the first four. According to An-Na'im, Hudūd is only 4 kinds: Adultery, Qadzaf, Sariqah, and Harabah. So khamar is not Hudūd, but *tazir* because there is no strict sanction in the Quran . Khamar drinkers have been hit with sandals or palm fronds. This is an indication of the khamar's authority. Likewise riddah. According to An-Na'im, apostates who were sentenced to death were accompanied by elements of rebellion, such as those who were reluctant to pay zakat in the time of the caliph Abubakar

2. Qisas - Diyat

Literally, *qishash* means to cut or divide. *Qishash* referred to in Islamic criminal law is a retaliation in kind imposed on criminal offenders as sanctions for his actions. *Jarimah* Qisas, is *Jarimah* whose punishment is the same as that done by *Jarimah*. Included in these are the intentional murders and deliberate persecution which results in the severing or injury of limbs. These are the rahmat of the human body and soul.

Another case with diyat. Diyat means a fine in the form of objects or assets based on the provisions that must be paid by the criminal offender to the victim as a sanction for the violation committed. *Jarimah* Diyat, is *Jarimah* whose punishment is compensation for the suffering suffered by the victim or his family, which includes this rahmah is murder accidentally resulting in a cut or injury to a limb.

The legal basis for the application of qisas depends on the surah

O you who believe, are obliged upon you qishaash concerning those killed; free men with free men,

servants with servants, and women with women. So whoever gets forgiveness from his brother, let (those who forgive) follow in a good way, and let (those who are forgiven) pay (diat) to those who give forgiveness in a good way (also). this is a relief from your Lord and a blessing. Whoever exceeds the limit after that, then for him a very painful punishment.

Al-Qur'an Surah Al-Maidah verse 45:

"And We have ordained them in it (At Taurat) that the soul (replied) with the soul, the eye with the eyes, the nose with the nose, the ear with the ears, the teeth with the teeth, and the wounds (even) there are kisas. Whoever relinquishes (kisas rights), then relinquishes that right (becomes) the penance for him. Whoever does not decide on things according to what Allah has revealed, Then they are the wrongdoers. "

The types of crimes that result in *qishash* and *diyat* are intentional killings, intentional homicide, unintentional killings, intentional harm, accidental harm.

3. Tazir

Jarimah tazir means glorifying or helping. But *tazir* in the sense of the term Islamic law is a punishment that is educational which does not require that the culprit be subject to possession nor does he have to pay expiation or *diyat*. Crimes that are the object of *tazir* discussion are minor crimes such as sexual violations that do not include adultery, theft whose value is not up to one nisab of property, and others.

Jarimah tazir, is *Jarimah* whose provisions in the Qur'an and Sunnah of the Prophet are uncertain. *Jarimah tazir* is mentioned in the text, but the type of punishment is left entirely to the authorities to determine the sentence.

Jarimah tazir is divided into 3, namely:

1. *Jarimah* Hudūd or *qisas* / *diyat* who doubtful or do not meet the requirements, but it is immoral. For example, attempted theft, attempted murder, theft among family members, etc.
2. *Jarimah* which is determined by the Quran and the Hadith but not sanctioned. For example, insults, false witnesses, not trustworthy, etc.
3. *Jarimah* determined by Ulil Amri for public benefit.

Types of sentences that include *Jarimah Takzir* include prison sentences, suspension or dismissal, compensation, beatings, reprimands with words, and other types of punishment deemed appropriate to the violations of the perpetrators. According to Imam Abu Hanifah, minor violations committed by someone can repeatedly be carried out or sentenced by the judge of the death penalty. For example, a thief is sent to prison, then still repeating to steal, the judge has the authority to sentence him to death.

The decision regarding legal sanctions and the party who is authorized to determine the type of punishment and the implementation of *tazir* is the government except teachers to educate their students, parents to educate their children, husbands to educate their wives

The Prosecution of Cybercrime in Indonesia

In the Criminal Code (KUHP) Article 369 Paragraph (1) it is stated that:³⁶

"Anyone to benefit oneself or others unlawfully, with the threat of pollution both verbally and in writing or with the threat of disclosing secrets, forcing someone to give something in whole or in part belongs to another person, or to give a debt or write off a debt, threatened with imprisonment for a maximum of four years".

The article specifically does not regulate threats through social media. The article only stipulates the threat that is carried out directly, which of course is different if the application is done through social media. The application of the law due to threatening criminal acts carried out through social media uses the ITE Law as a special rule (*lex specialist*) that overrides the generally accepted rules (*lex generalis*).

The legal rule for threatening through social media is stated in the new ITE Law, namely Article 29 of Law no. 11 of 2018 jo. Article 45b of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions which mention threats of violence or intimidation aimed at personally. Besides, the provisions of this article also include cyberbullying which contains elements of threats of violence or scare

³⁶Soesilo, "KUHP Serta Komentar-Komentarnya Lengkap Pasal Demi Pasal."

and results in physical, psychological, and material harm.

Violators of this provision can certainly be prosecuted criminal because it is not stated that the act constitutes an offense in the complaint, so it can be understood that the provisions in Article 29 jo. Article 45b of Law no. 19 of 2016 is an ordinary offense so that everyone can submit a report to the Investigators of the State Police of the Republic of Indonesia or Civil Servant Investigators for immediate follow-up.

Furthermore, the provisions of Article 368 Paragraph (1) and Article 369 (1) are regulated in Chapter XXIII of the Criminal Code, which consists of extortion and threats. The two crimes have the same nature, namely actions that are aimed at extorting others. Based on this, these two crimes are regulated in the same chapter. Even so, it is not wrong if the two criminal acts have their names, namely "extortion" for crimes regulated in Article 368 (1) of the Criminal Code and "threats" for crimes regulated in Article 369 (1) of the Criminal Code.

The use of threats is also referred to in Article 335 paragraph (1) of the Criminal Code jo. The decision of the Constitutional Court Number 1 / PUU-XI / 2013, which stated: *"Anyone who unlawfully forces others to do, not do or allow something, by using violence, or by using the threat of violence, both against themselves and others"*³⁷. The word "force" according to R. Soesilo, is to order people to do something in such a way that the person does something against his own will.

Every activity carried out through social media including writing status/stories or commenting has legal consequences, which if offending or attacking a person can be considered a form of crime and this is a criminal offense. Status or comments that contain elements of the crime can be snared with the Criminal Code (KUHP) and Law No. 11 of 2008 concerning Information and Electronic Transactions (UU ITE) as amended by Law No. 19 of 2016. Perpetrators can be punished if they meet all elements and formulations of offense and have gone through a criminal justice process.

There are some comments on social media which can be categorized as criminal acts according to criminal law regulations in Indonesia:

First, insulting the governing body of the Government or the General Assembly, if the commentary contains a sentence intended to insult the government or the general assembly, then the following article may be imposed:

According to R. Soesilo³⁸, the object of insult is not the individual or employee of the agency/body. But a body of government power such as district, sub-district government institutions and a public body such as the parliament, regional people's representative councils, and so on, which served the public interest. The institution/body is also personified to the head of its leadership.

Second, insulting or defamation of others, insulting comments often attack someone's physical, appearance, or condition. Such comments can certainly be seen by all social media users so that they can also tarnish the good name concerned. Prohibited acts Article 27 paragraph (3) of the ITE Law reads as follows: *"Any person intentionally and without the right to distribute and/or transmit and/or make access to Electronic Information and/or Electronic Documents that have content of defamation and/or defamation"*. The act is punishable by imprisonment for a maximum of 4 (four) years and/or a maximum fine of 750 million Rupiah. This article refers to the provision of defamation or defamation as regulated in Article 310 and Article 311 of the Criminal Code and constitutes a complaint offense so that to be able to be prosecuted/processed by law there needs to be a complaint from the party experiencing insult.

Third, threatening others, threatening comments are prohibited in Article 45b of Law No. 19 of 2016 jo. Article 29 of Law No. 11 of 2008, *"Everyone intentionally and without the right to send Electronic Information and/or Electronic Documents containing threats of violence or intimidation that is addressed personally"*. The act is punishable by imprisonment for a maximum of 4 (four) years and / or a maximum fine of 750 Million Rupiah.

Bedreiging is a pressure aimed at the psychological psychology of people.³⁹

Fourth, Regarding SARA, the comment referring to the intended SARA is as prohibited by Article 28

³⁷ Putusan Nomor 1/PUU-XI/2013.

³⁸ Soesilo, "KUHP Serta Komentar-Komentarnya Lengkap Pasal Demi Pasal."

³⁹ Andi Hamzah, *Terminologi Hukum Pidana*, 1st ed. (Jakarta: Sinar Grafika, 2013), 10

paragraph (2) of the ITE Law.⁴⁰ "Every person intentionally and without the right to disseminate information intended to incite hatred or hostility of certain individuals and/or groups of people based on ethnicity, religion, race, and intergroup (SARA)". The act is punishable by imprisonment for a maximum of 6 (six) years and/or a maximum fine of 1 billion Rupiah.

Court Judgments in Indonesia Regarding Social Media Crimes

1. Based on the author's observation on the Supreme Court's Decision Directory website, there are several examples of criminal cases / criminal acts committed through social media, including Decision Number 198 / Pid.Sus / 2018 / PN Lbo in his decision the judge stated that Defendant Arianto Damalante Alias Lalan has been proven legally and convincingly guilty of committing the crime of "transmitting electronic documents that have a threatening content" and dropping the criminal on the Defendant, therefore with imprisonment for 3 (three) months and 15 (fifteen) days⁴¹.
2. Decision Number 159 / Pid.Sus / 2018 / PN Lmg The judge stated that Defendant Frisa Ilang Andika Bin Imam Hambali, had been proven legally and convincingly guilty of committing a criminal offense "Deliberately and without the right to distribute, make accessible electronic information or documents electronics that have a threatening charge ", as Primair indicted and sentenced the Defendant to, therefore with a 7 (seven) month imprisonment and a fine of Rp. 100,000,000.00 (one hundred million rupiah) provided that if the fine is not paid it will be replaced with a sentence of imprisonment for 1 (one) month⁴².
3. Decision Number 29 / Pid.Sus / 2020 / PN Plk the judge stated Defendant Denny Juniardi Bin Mahdini Ahmad Zaini was proven legally and convincingly guilty of committing the crime of "distributing and/or transmitting and/or making accessible electronic information and/or documents electronic which has a charge of

extortion and/or threatening "As well as imposing a criminal offense against the defendant, therefore with imprisonment for 2 (two) years and 6 (six) months and a fine of Rp1,000,000.00 (one million rupiah) with the provisions if These fines are not paid replaced with imprisonment for 1 (one) month⁴³.

4. The decision of the Supreme Court Number 574 / K / Pid.Sus / 2018 in the case of Baiq Nuril Maknun which was mentioned in the previous introduction.

This latest case, after the decision of the Supreme Court which refused the request for a Review of Good Nuril Maknun. The problem of the case that befell Baiq Nuril should not have caused a polemic if the judge who handled it carefully considered the actions carried out by Baik Nuril.

Initially, both Nuril was charged with a single charge under Article 27 paragraph 1 jo Article 45 paragraph 1 of Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE) which had been decided by the Mataram District Court Number 265 / Pid.Sus / 2017 / PN.Mtr On July 26, 2017, by releasing the defendant from all the demands of the Public Prosecutor (Prosecutor), however, the Prosecutor made a legal remedy against the decision by submitting an appeal to the Supreme Court. Interestingly, the Supreme Court stated that Baiq Nuril fulfilled the offense of Article 27 paragraph 1 in conjunction with article 45 paragraph 1 of the ITE Law which was an article also alleged by the Mataram District Court to release the defendant.

The judge's consideration was based on the fact that Baiq Nuril's actions fulfilled the article stipulation that the defendant was fully aware of the contents of the recording he had sent and transferred or transferred from his cellphone to the witness Haji Imam Mudawin's laptop. The potential witnesses of Haji Imam Mudawin will disseminate electronic documents explaining the contents of recorded conversations that have the content of moral violations. The limitation of fulfilling the element of forwarding, sending, or transferring is when another witness sends, redistributes the contents of the recorded conversation to another person's handphone, and so on. The further consideration of the Supreme Court judge in convicting

⁴⁰Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik.

⁴¹Putusan Nomor 198/Pid.Sus/2018/PN Lbo, Mahkamah Agung, 11 Februari 2019, n.d.

⁴²Putusan Nomor 159/Pid.Sus/2018/PN Lmg, Mahkamah Agung, 01 Agustus 2018, n.d.

⁴³Putusan Nomor 29/Pid.Sus/2020/PN Plk, Mahkamah Agung, 03 Maret 2020, n.d.

a defendant is as a learning tool for the defendant and the public to be careful in using and using electronic media, especially regarding personal data of people. The judge in convicting a criminal verdict against Baiq Nuril seemed to simplify the provisions contained in Article 27 paragraph 1 of the ITE Law and did not see cases and actions as a whole starting from the motives, intentions to the objectives of the actions committed by Baiq Nuril.

Islam and Social Media

Social networking sites like Facebook, Instagram, Twitter, Goggle, WhatsApp and YouTube products of scientific and technological advances that are rapidly experiencing the world today. Muslims do not have a role in it except for very few. These social media sites are tools and methods that can be used in good and can be played out for crime. Its function is to find out the reality of the world easily. In Islamic law, that social media is only as a means to an end.

Imam Izzuddin bin Abdul Salam elaborated that the means have the provisions of the objectives achieved, then the best means of directing goals is the best means and vice versa the worst means of directing goals is the worst of the means.⁴⁴ Imam al-Qarafi explained that the *dzari'ah* (path) could be closed and opened. So, *dzari'ah* can be defined as prohibition if it leads to bad things and defined as an obligation if it facilities good matter.⁴⁵ Islam is wise teaching that controls all lines of people's lives including the use of social media.⁴⁶ Humans are social creatures that need interaction, both directly and virtually. So, it affects people's behavior if they are wrong in using media interaction through virtual.

Islam does not prohibit the use of electronics but teaches to always follows the development of space and time including internet technology in a proper manner. The development of technology is something that cannot be intercepted that provides benefits to the community. however, it is also possible for crimes to occur if they are used incorrectly which results in new types of crime that require clear legal solutions.⁴⁷

Egyptian fatwa institute, Dar al-Ifta provides information that the spread of moral scandals on social media with the aim of revenge, scolding, inappropriate comments, and so forth and to rumor in public opinion can be said to be a crime in Islamic teachings.⁴⁸ The possibility of other crimes can lead to adultery for men and women who misuse it. Al Quran clearly stated that

“Indeed, those who like that immorality should be spread [or publicized] among those who have believed will have a painful punishment in this world and the Hereafter. And Allah knows and you do not know.”

This verse explains in general information disclosure that results in crime. Any Attempt to spread moral scandals on social media are not following Islamic law. Other people's disgrace must be covered instead of being exposed through social media. A person has no right to spit on other people's social media because it is God's authority. Someone should refrain from spit something that is indicated by crime through social media. Social media should be used as a medium for inviting good things, reminding one another. Social media is used as the opiate of almost everyone.⁴⁹

DISCUSSION

Islamic Criminal Law Prosecution against Cybercrime: An Adaptation

In Indonesia, the ITE Law applies to perpetrators of crimes through social media. Specifically, Islamic criminal law is not found in legal sources and through the views of jurists. However, that does not mean Islamic criminal law does not provide legal solutions related to the phenomenon of crime that continues to grow⁵⁰.

Cybercrime in cyberspace, have similarities in crime in the real world. Thus, legal actions can be adapted. In fiqh methodology, adaptation is termed as *Takyif*. *Takyif* in Fiqh defined as a determination of the reality of the new incident to attach to a jurisprudential origin with the intent to give those descriptions of the

⁴⁴Izzuddin Abd Al-Aziz bin Abd Al-Salam, *Al-Qawa'id Al-Kubra Al-Mawsum Bi Qawa'id Al-Ahkam Fi Ishlah Al-Anam Jilid I* (Damaskus: Dar al-Qalam, n.d.), 46.

⁴⁵Syihabuddin Abu Abbas Ahmad bin Idris Al-Qarafi, *Al-Furuq; Anwar Al-Buruq Fi Anwar Al-Furuq Jilid II* (Kairo: Dar al-Salam, n.d.), 33.

⁴⁶Mulyadi, "Agama Dan Pengaruhnya Dalam Kehidupan," *Jurnal Tarbiyah Al-Awlad* 6, no. 2 (2016): 556–564., 556.

⁴⁷Hithab Hajah Khaerah, "Mawaqi' Al-Tawashul Al-Ijtima'i; Fadha Jadid Liljarimah," *Dirassat & Abhath The Arabic Journal of Human and Social Sciences* 28 (2017): 410–422., 420.

⁴⁸Dar al-Ifta Al-Mashriyah, "dar al'ifta': nashr alfadayih al'akhlaiqat ealaa 'alsuwshial mydya" lilaintiqam waltashfiy 'iishaeatan liifahishat fi almujtamae" *Dar-Lifta.Org* (Cairo, July 2020).

⁴⁹M. Hatta, "Media Sosial Sebagai Sumber Keberagaman Alternatif Remaja Dalam Fenomena Cyberreligion," *Dakwah; Jurnal Kajian Dakwah dan Kemasyarakatan* 22, no. 1 (2018): 1–30.

⁵⁰Aharon Layish, "THE TRANSFORMATION OF THE SHAR'IA FROM JURISTS' LAW TO STATUTORY LAW IN THE CONTEMPORARY MUSLIM WORLD," *Die Welt des Islams* 44, no. 1 (2004): 85–113.

emerging reality upon verification of homogeneity and similarity between the original, with juristic descriptions and the emerging reality⁵¹. We can simplify *takyif* as an analogy in *qiyas* with some different criteria⁵². In the previous presentation, legal action in Islam is called *jarimah*. *Jarimah* itself has different criteria so that the sanctions can be different. Cybercrime that contains elements of sexual violence, will be dealt with *Jarimah* of sexual violence. Cybercrime that contains elements of terrorism, will be dealt with *Jarimah* of terrorism. Other cybercrimes can be treated with the same approach so that cybercrime actions can be classified according to *Jarimah*, whether including *Hudūd*, *Qishash*, *Diyat*, or *tazir*.

Cyber crimes that are dealt with *Jarimah Hudūd* can be in the form of crimes that contain elements of adultery and its accusations, theft, terrorism, intoxicants, and illegal drugs. *Jarimah qisas* and *diyat* can be treated for crimes that contain elements of murder, injury, and damage to limbs. As for crimes that do not have special provisions or do not meet the criteria of *Hudūd*, *Qisas*, and *diyat*, will be subjected to *Jarimah Tazir*.⁵³ *Tazir* is a sanction determined by the judge's carefulness in deciding a case as long as it does not exceed the limits set. The punishment is not specifically regulated by the passage, the Qur'an, and the sunna.⁵⁴ According to Islamic criminal law experts, the sentence in *tazir* crime is not certain of the amount of the sentence material, because the determination of the sentence is left entirely to the judge in a country. However, Islam offers several penalties, both determined by the form and amount or not yet determined.⁵⁵ Penalty criminal sanctions offered in the form of Islamic criminal law:⁵⁶

1. The death penalty, if a criminal act of *takzir* is carried out can only be overcome with a death sentence. Such punishment for spies and big criminals or recidivists.
2. Do no more than ten times for those who repeatedly commit similar crimes.

3. Imprisonment, whether for a limited or unlimited time if according to the judge the sentence is appropriate and under the purpose of the prescribed sentence.
4. Alienation and boycotting, as for people who always disturb the security and peace of society.
5. Crucifixion, but should not be killed and still be given food and opportunities to carry out worship.
6. Compensation by seizure,
7. Warnings and advice,
8. Revocation of certain rights,
9. Disdain and exclusion in the association.
10. Disseminating news.
11. Fines.

Shariah Assessment on Indonesian Cybercrime Prosecution

Considering that Indonesia is a state based on Pancasila which refers to positive law and enacts the ITE Law as a law regulating cyber crime rather than Islamic criminal law, sanctions must be based on stipulated regulations.

The legal rule for threatening through social media is stated in the new ITE Law, namely Article 29 of Law no. 11 of 2018 jo. Article 45b of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions which mention threats of violence or intimidation aimed at personally. Besides, the provisions of this article also include cyberbullying which contains elements of threats of violence or scare and results in physical, psychological, and material harm.

Violators of this provision can certainly be prosecuted criminal because it is not stated that the act constitutes an offense in the complaint, so it can be understood that the provisions in Article 29 jo. Article 45b of Law no. 19 of 2016 is an ordinary offense so that everyone can submit a report to the Investigators of the State Police of the Republic of Indonesia or Civil Servant Investigators for immediate follow-up.

Furthermore, the provisions of Article 368 Paragraph (1) and Article 369 (1) are regulated in

⁵¹WMKFW Khairuldin et al., "Al-Takyif Al-Fiqhi and Its Application in Islamic Research Methodology," *Journal of Critical Reviews* 7, no. 7 (2020): 462–467.

⁵²M U Syabir, "Al-Takyif Al-Fiqhi Li Al-Waqai' al-Mustajiddat Wa Tatbiqatuh Al-Fiqhiyah," *Damsiyik: Dar al-Qalam* (2004).

⁵³M. M. Naufal and H Jannah, "Penegakan Hukum Cyber Crime Ditinjau Dari Hukum Positif Dan Hukum Islam," *Al-Mawarid Journal of Islamic Law* 12, no. 1 (2012): 69–84., 82.

⁵⁴Muhammad Sa'id Ramadhan Al-Buti, *Muhadharat Fi Fiqh Al-Muqaran* (Damaskus: Dar al-Fikr, n.d.), 149-150.

⁵⁵Abd al-Qadir 'Audah, *Al-Tasyri' Al-Jina'i Al-Islami; Muqaranan Bi Al-Qanun Al-Wadh'i*, Jil. II., 458.

⁵⁶M. Naufal and Jannah, "Penegakan Hukum Cyber Crime Ditinjau Dari Hukum Positif Dan Hukum Islam.", 82-83

Chapter XXIII of the Criminal Code, which consists of extortion and threats. The two crimes have the same nature, namely actions that are aimed at extorting others. Based on this, these two crimes are regulated in the same chapter. Even so, it is not wrong if the two criminal acts have their names, namely "extortion" for crimes regulated in Article 368 (1) of the Criminal Code and "threats" for crimes regulated in Article 369 (1) of the Criminal Code.

The use of threats is also referred to in Article 335 paragraph (1) of the Criminal Code jo. The decision of the Constitutional Court Number 1 / PUU-XI / 2013, which stated: *"Anyone who unlawfully forces others to do, not do or allow something, by using violence, or by using the threat of violence, both against themselves and others"*⁵⁷. The word "force" according to R. Soesilo, is to order people to do something in such a way that the person does something against his own will.

Every activity carried out through social media including writing status/stories or commenting has legal consequences, which if offending or attacking a person can be considered a form of crime and this is a criminal offense. Status or comments that contain elements of the crime can be snared with the Criminal Code (KUHP) and Law No. 11 of 2008 concerning Information and Electronic Transactions (UU ITE) as amended by Law No. 19 of 2016. Perpetrators can be punished if they meet all elements and formulations of offense and have gone through a criminal justice process. There are some comments on social media which can be categorized as criminal acts according to criminal law regulations in Indonesia:

First, insulting the governing body of the Government or the General Assembly, if the commentary contains a sentence intended to insult the government or the general assembly, then the following article may be imposed:

Article 207 of the Criminal Code:⁵⁸ *"Anyone deliberately in public, verbally or in writing insulting the authority in the State of Indonesia or something the general assembly there, is sentenced to prison for one year and six months or a maximum fine of Rp 4,500,"*

According to R. Soesilo⁵⁹, that the object of insult is not the individual or employee of the agency/body. But

a body of government power such as district, sub-district government institutions and a public body such as the parliament, regional people's representative councils, and so on, which served the public interest. The institution/body is also personified to the head of its leadership.

Second, insulting or defamation of others, insulting comments often attack someone's physical, appearance, or condition. Such comments can certainly be seen by all social media users so that they can also tarnish the good name concerned. Prohibited acts Article 27 paragraph (3) of the ITE Law reads as follows: *"Any person intentionally and without the right to distribute and/or transmit and/or make access to Electronic Information and/or Electronic Documents that have content of defamation and/or defamation"*. The act is punishable by imprisonment for a maximum of 4 (four) years and / or a maximum fine of 750 million Rupiah. This article refers to the provision of defamation or defamation as regulated in Article 310 and Article 311 of the Criminal Code and constitutes a complaint offense so that to be able to be prosecuted/processed by law there needs to be a complaint from the party experiencing insult.

Third, threatening others, threatening comments are prohibited in Article 45b of Law No. 19 of 2016 jo. Article 29 of Law No. 11 of 2008, *"Everyone intentionally and without the right to send Electronic Information and/or Electronic Documents containing threats of violence or intimidation that is addressed personally"*. The act is punishable by imprisonment for a maximum of 4 (four) years and / or a maximum fine of 750 Million Rupiah. Bedreiging is a pressure aimed at the psychological psychology of people.⁶⁰

Fourth, Regarding SARA, the comment referring to the intended SARA is as prohibited by Article 28 paragraph (2) of the ITE Law:⁶¹ *"Every person intentionally and without the right to disseminate information intended to incite hatred or hostility of certain individuals and/or groups of people based on ethnicity, religion, race, and intergroup (SARA)"*. The act is punishable by imprisonment for a maximum of 6 (six) years and/or a maximum fine of 1 billion Rupiah

When compared, we will find that Islamic criminal offenses have more variants than legal actions in

⁵⁷ *Putusan Nomor 1/PUU-XI/2013.*

⁵⁸ Soesilo, "KUHP Serta Komentar-Komentarnya Lengkap Pasal Demi Pasal."

⁵⁹ *Ibid.*

⁶⁰ Hamzah, *Terminologi Hukum Pidana.*, 10

⁶¹ Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik.

Indonesia. Cybercrime in the perspective of Indonesian law covers only deception and humiliation, while in Islamic crime, adultery, accusations of adultery, liquor, theft to terrorism are regulated. Sanctions in Indonesian criminal law are limited to imprisonment and fines, whereas in Islamic criminal, sanctions will differ according to their recommendations as explained earlier.

Therefore, if we conduct an assessment from an Islamic Perspective, the cybercrime contained in Islamic criminal law needs to be expanded. Crimes Prosecution in Islam can be taken into consideration because they also have universal values, namely maintaining religion, soul, reason, descent, and wealth. Moreover, Islamic jinayah covers the rules on sexual and terrorism which are the most severe threats. Sanctions do not have to follow *Jarimah* in Islamic Criminal Law. It can be reduced to sanctioned by *tazir*. The punishment is handed over to the authorities or judges to settle cases related to cybercrime because the authorities or judges have the authority to determine the sanctions, namely imprisonment and fines.

Prison penalties and fines as contained in the Criminal Code or outside the Criminal Code such as the ITE Law in force in Indonesia are part of the spirit of Islamic criminal law. Therefore, the *tazir* region is indeed the delegation of sanction provisions provided by the court judge under applicable legal provisions in Indonesian territory.

Crime on social media if it can threaten the integrity of the unitary state of Indonesia, according to Islamic criminal law, maximum sanctions namely capital punishment can be imposed. Therefore, the clarity of sanctions for social media crimes depends on the impact caused by the perpetrators so that the judge assesses criminal penalties according to the applicable laws and regulations.

CONCLUSION

Crimes through social media are prone to occur in Indonesia. Therefore, the use of social media facilities is categorized as cybercrime illegally. In the Indonesian legal system, perpetrators of crime through social media can be charged with the Criminal Code with ITE Law. Crimes through social media most often threatened by the ITE Law are insults to the government or symbols of the state, threatening and

defamation of others, insults to others, and violating SARA (ethnicity, religion, race, and intergroup). Thus, many cases in Indonesia have been decided by the court under applicable laws and regulations. Given the fact that some cyberspace violence such as sexual violence and terrorism have not been regulated by ITE, a reformulation must be made. As a country with a majority Muslim population, Islamic law can be used as a reference. Islamic crime does not implicitly regulate, but if it is adapted (*takyif*) with *Jarimah*, then cybercrime can be dealt with according to *Jarimah*, whether it is *Hudūd*, *qisas*, or *tazir*. In the Islamic view, the scope of the conditions contained in the ITE Law needs to be expanded. Adultery cases, buying and selling that tend to damage such as intoxicating drinks and drugs, and terrorism need to be regulated legally. Prison penalties and fines as contained in ITE Law are part of the spirit of Islamic criminal law.

ACKNOWLEDGEMENTS

Gratitude to Allah who inspired us the passion to work through writing. We also extend our unlimited thanks to our leaders, especially to Prof. H. Hamdan Juhanis, M.A., Ph.D. which always encourages us to advance the institution through active scientific work. Finally, to all those involved in completing this paper, without their input and support this paper remains an idea that is not contained.

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