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CYBERBULLYING IN MALAYSIA: AN ANALYSIS OF THE EXISTING LAWS

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Abstract:

Cyberbullying incidents have shocked the world, particularly the infamous suicide incident in 2012 involving a 15-year-old victim, Amanda Todd, in Canada. Malaysia is currently facing the same issue and two suicide cases of cyberbullying victims involving school children were reported in 2019 and 2020. The global statistics among 28 countries indicated that Malaysia was ranked sixth in the world and second among the Asia countries in cyberbullying. As such, this paper aims to identify the law regulating such incidents in Malaysia. The methodology used in this paper is library research by referring to legislation, journals, books, conference papers, newspapers, and other periodicals. It was observed that there is no existing legal provision specifically to tackle on cyberbullying cases in Malaysia. Therefore, a new law is needed to address the issues of cyberbullying.

Keywords:

Cyberbullying, Bullying, Analysis, Existing Laws

Introduction

Several suicide cases involving cyberbullying victimisation have drawn public attention to cyberbullying incident. As such, the suicide case of a Canadian teen who was victimised by cyberbullying offender in 2012, when she killed herself at home after being subjected to severe cyberbullying (Kemal Ali, 2016). In 2013, a 14-year-old Italian girl committed suicide by

jumping out her bedroom window after being persistently cyberbullied when her video went viral on Facebook by cyberbullies (Nadeau, 2013).

These incidents show a serious and critical effect of cyberbullying on its victims. According to the statistics, Malaysia ranked sixth out of 28 countries and second in Asia for cyberbullying (Rosli, 2018). As a result, Malaysia also reported suicide cases involving cyberbullying victims in May 2020, when a 20-year-old teenager committed suicide by hanging herself in her home after receiving negative comments on her Tiktok videos that had gone viral on Facebook (Nortajudin, 2020). Previously in 2019, Malaysia also reported a suicide case involving by a 16-year-old girl who committed suicide by jumping from a building's roof after creating a poll vote for her death (Fullerton, 2019).

Furthermore, several statistics and studies revealed a poor track record in terms of cyberbullying. DIGI Cyber Safe statistics from 2017 show that 86% of children are at risk of sexual harassment and 90% are at risk of cyberbullying. This survey gathered information from 96 undergraduate students ranging in age from 18 to 20 years old (Rosli, 2018). Meanwhile, a survey conducted by DIGI Telecommunications Sdn Bhd and Telenor Group had revealed that one in four students admitted they had experienced cyberbullying. (Lee Lam Thye, 2017) According to the '2016 Norton Cyber Insights Report: Family Edition,' only 10% of Malaysian parents reported that their child was cyberbullied and 40% believed their children were more likely to be bullied online than on the playground (Lee Lam Thye, 2017). Cyberbullying victims do not only comprise of children, but the adults also may potentially become the victims, such as during the general election campaign, many politicians, artists, and social activists were abused with vulgar language via social media by net citizens (Shankar A., 2013). Social media users nowadays should have knowledge about cyber security and cyberbullying, such as not to reveal any personal information. This is important to prevent cyber bullies from knowing their identity and not replying to any messages from cyber bullies (Rahman et al, 2022).

The above scenario and discussion clearly shows that cyberbullying is not an issue which can be treated lightly merely due to its occurrence in the cyberspace, and not committed physically in the real world. Cyberbullying may happen either on teenagers or adults, but the consequence on the teenagers are more serious where it may lead to suicide. Statistics revealed for Malaysia cyberbullying is serious and has to be combatted urgently. Studies from legal perspective has to be conducted in order to identify the adequacy of the current laws in force.

It is generally observed that, currently, only several provisions had been applied to execute and penalise the cyberbullying offender. However, those provisions have no specific definitions and none of them specifically and directly mention the word of cyberbullying. Moreover, none of the provisions criminalise the act of cyberbullying as criminal offence. The non-existing of legal provisions on cyberbullying in Malaysia had cause difficulties to the police and prosecution to investigate the case, prosecute and penalise an offender of cyberbullying. Consequently, the police and prosecutor need to apply current legal provisions which are closely related to an act of cyberbullying. Some of the cases cannot be proceeded for investigation and prosecution due to the absence of specific provision for cyberbullying. Until today, none of the cases has been heard before the court and reported in any case law. Therefore, the current legal provisions is not adequate to tackle the problem of cyberbullying in Malaysia. Thus, a new law is needed to tackle the issues on cyberbullying cases in Malaysia.

Methodology

This research implemented qualitative method by using doctrinal legal research which is commonly applied for legal fraternity (Hutchinson & Duncan; 2012). Doctrinal research is characterised as library-based research that “relies on the primary and secondary sources almost monotonously that aims a coherent exposition of the law with diverse arguments” (Ishwara Bhat, 2019). It was further highlighted that doctrinal research directs attention towards legal principles formulated by judges in provisions of statutes, reported cases, constitutional or international doctrines for coherence in the conceptual framework of the legal principles (Terry & Nigel, 2012). The primary sources referred to in this research are the relevant legislations and reported court cases, while the secondary sources consist of books, article journals, conference proceedings, newspapers and other periodicals either obtained online or in printed.

Cyberbullying

There is no agreeable and universal definition of cyberbullying. The word cyberbullying is a combination of words ‘cyber’ and ‘bullying’ (Umesh Bindal et al. 2018). According to the United Nation International Children’s Emergency Fund (UNICEF) cyberbullying is defined as “bullying with the usage of digital technologies that can take place on social media, gaming platforms, messaging platforms, and mobile phones” (UNICEF,2021). Past studies defines different point of view on cyberbullying. Referring to Robin M. Kowalski and Susan P. Limber (2007) cyberbullying is an electronic bullying or online social cruelty by an individual or group of people towards the victims. Hinduja and Patchin (2006) defines cyberbullying as wilful and repeated harm inflicted through the medium of electronic text on others (Tokunaga; 2010) to sexually harass (Hinduja & Patchin 2008; Shariff & Johnny 2007) including distributing unsolicited text or photos of a sexual nature or requesting sexual acts either online or offline (Schrock & Boyd; 2008) Other scholars viewed cyberbullying as a strategic behaviour (Olthof, T. et al; 2011) using the information and communication technology by individuals or groups to impose deliberate and repeated harassment or threat via cruel text and or graphics to dominate other individuals or groups (Mason; 2008).

Furthermore, it can be described as a form of bullying using the information and communication technology to disseminate hurtful comments or non-positive random text by anonymous offenders to the victims in cyberspace (Baldry, A.C. et al; 2015). Cyberbullying by using Internet network are just a way or method to commit bullying offences, in fact, bullying has been around for a long time (Abd Aziz et al; 2022). In brief, cyberbullying can be referred to as an action to harass or humiliate other person by using communication and information technology devices and online platform as a medium of usage to commit that action. The medium or platform used to harass or threaten the victims are the online platform available such as social media, emails, or any other application accessible online. As mentioned by Kasim et al (2022) social media such as Facebook is an open access and borderless, therefore it needs rules to be imposed and screened before being published and accessible by all parties. Regardless of the definition and interpretation, cyberbullying can gravely affect the victims including children and adults to the extent that the victims commit suicide by the reason of cannot handle with severe mental illness resulted from the cyberbullying acts (Lee Lam Thye,2017) The above definitions explanation imply that cyberbullying is a type of bullying that is committed online repeatedly by a person with the intention to humiliate or harass other person whereby the act of bullying may cause negative effect discomfort, embarrassment, tension or even death to the victim.

The Effects of Cyberbullying

Cyberbullying has a number of consequences, particularly for its victims. Past research found that cyberbullying has a worse impact on victims' physical and emotional well-being compared to the traditional bullying. As mentioned before, the main difference between cyberbullying and traditional bullying is the platform used. Since a cyberbullying perpetrator can remain anonymous in cyberspace, the victim will be unaware of his identity. Without knowing who are the perpetrator is, and in the absence of direct contact, there will be a greater effect on the victims' emotional stress and their thoughts. The harmful effect can also spread to other people where the using of the internet allows the perpetrators to reach large audience in a short time frame. This situation will aggravate the pressure on the victim since many people are aware of his act.

Studies also showed that being a victim of cyberbullying can have a negative impact on physical, social, and cognitive functioning, development, and well-being of a person. The act can cause psychological, emotional, and academic issues (Beran & Li; 2005). A number of studies have found an association between cyber victims, cyber bullies and depression and suicidal ideation (Hinduja & Patchin; 2010) and externalizing behaviours (Ybarra, M. L et al; 2007) These types of cyber victimizations also relate to lower levels of self-esteem and higher levels of social stress, anxiety, depressive symptoms, and loss locus of control (Fredstrom, B. K. et al; 2011)

The use of cyberspace does not only affect the children to be the victims but it can also influence them to be the perpetrators. Past research highlighted that parents who have less supervision of their children's usage of internet can open the opportunities for them to become the perpetrators of cyberbullying (Dempsey et al; 2009).

The Forms of Cyberbullying

Since the perpetrators of cyberbullying remains anonymous, they may commit a variety of forms of bullying (Mat Ghani & Ghazali, 2015). According to CyberSecurity Malaysia, there are numerous different forms of cyberbullying. Among the common forms reported are a) intimidating rude or cruel messages via text or email or any other online platform; b) posting or forwarding humiliating content including videos or photographs; c) posting or forwarding other people's personal or private information without permission; d) distressing other people by sending repeated text or message; e) spreading rumours or lies about other people f) using fake profile on social networking sites to prank or make fun of someone; g) happy slapping: where bullying or physical assaults are videoed and distributed; h) flaming; i) outing and trickery; j) exclusion; deliberately excluded from online group k) impersonation (Hinduja & Patchin; 2009). The technology advancement had transformed the physical bullying or also known as traditional bullying to cyberbullying. The internet usage for social interactions had created a space for any person represented as anonymous to say and to do things nameless. It is one of disturbance of Internet users while surfing social networking site which may leads to negative effects. Study by Sonja Perren et al. (2010) observed that the victim of cyberbullying has higher melancholy level as compared to the victims of traditional bullying due to the unlimited forms of bullying which can be made by the perpetrator.

The Governing Laws

Currently, there is no specific acts or regulations on cyberbullying in Malaysia. The existing law related to cyber laws are the Computer Crimes Act of 1997 and the Communications and

Multimedia Act of 1998. For criminal offences, the Penal Code is applied. These three provisions do not state any definitions or have any provisions on cyberbullying. The absence of legal provisions on cyberbullying in Malaysia had cause the prosecution to apply the laws which are closely related to the act of cyberbullying. Since the Penal Code and Computer Crimes Act do not relate to cyberbullying, the prosecutor needs to rely on the provisions stated in Communications and Multimedia Act 1998 to prosecute the perpetrators of cyberbullying (Hashim; 2019). However, the provisions of Communications and Multimedia Act 1998 do not specifically mention nor penalise an act of cyberbullying as a criminal offence. Instead, it penalize an offender for making any obscene, indecent, false, menacing or offensive act in character.

For the purpose to convict the offenders for cyberbullying, the prosecutor has to prove two things namely; the specific offence provisions stating that the offences are committed online, and the provision of general criminal offences committed online as a means of committing an offence. This means that the prosecution has to look at some existing legal provisions that need to be read together (Zakaria & Baharudin; 2021).

Communications and Multimedia Act 1998 (CMA)

The existing provision that can be applied to prosecute criminal offence committed through online is section 233 of the CMA. The provision states that a person who knowingly “makes, creates or solicits, and initiates the transmission of...” any forms of online content or communication that is “obscene, indecent, false, menacing or offensive in character with intent to annoy, abuse, threaten or harass another person...” via network facilities or network service or applications service is deemed to have committed an offence. Upon conviction, the offender shall be fine not exceeding RM50,000 or imprisoned up to one year or both. Furthermore, if the offence persists even after conviction, the person shall be imposed with a further fine of RM1,000 per day.

However, the provisions of CMA do not define the words ‘obscene, indecent, false, menacing or offensive in character’. Part 2: Guidelines on Content in the Malaysian Communications and Multimedia Content Code (Content Code) by the Communications and Multimedia Content Forum of Malaysia only provides the general principles of these terms. Moreover, the guideline does not define nor mention the word ‘cyberbullying’ in its provisions. Till date, these provisions of CMA are the closest provisions to cyberbullying that can be relied on and applied by the prosecutor since the provisions generally mentioned about any forms of online content or communication that obscene, indecent, false, menacing or offensive. This kind of forms are generally amount to the act of cyberbullying that is committed via online by the perpetrators.

Penal Code

The provisions of the Penal Code are used for all criminal offences and it can be read together with section 233 CMA to prosecute cyberbullying offender. This is due to the fact any act that violates the law will be considered as a criminal act, irrespective of the type of the medium used; whether the crime is committed physically or in cyberspace. Consequently, it is necessary to understand the categories of crimes specified in the Penal Code in order to convict criminals. There are several provisions under the Penal Code that can be applied to prosecute cyberbullying perpetrators. Those provisions are section 503 (criminal intimidation), section 507 (criminal intimidation by an anonymous communication), section 509 (word or gesture

intended to insult the modesty of a person) and section 499 (defamation) (Razali, N. A., & Nawang, N. I; 2022).

Even though these provisions do not provide for the definition or characteristics of cyberbullying nor any of the words of cyberbullying, but these provisions are extended to penalise the perpetrator of cyberbullying. Section 503 of the Penal Code on criminal intimidation offence states that 'whoever threatens another with any injury to his person, reputation or property... with intent to cause alarm to that person... commits criminal intimidation'. The person who are found guilty under this section will be penalised under section 506 which states 'whoever commits the offence of criminal intimidation shall be punished with imprisonment for a term which may extend to two years or with fine or with both; if the threat is to cause death or grievous hurt... shall be punished with imprisonment for a term which may extend to seven years or with fine or with both'. Based on this provision, it was clear that any act which can cause injury to another person, his reputation or property can be regarded as committing criminal intimidation that can amount to imprisonment or fine or both. An act of cyberbullying can cause bad reputation to the victims even though it does not directly involve physical harm to the victims, but this act can cause injury to the person emotionally that can amount to distress and commit suicide.

Section 507 of the Penal Code, provides that 'whoever commits the offence of criminal intimidation by an anonymous communication... shall be punished with imprisonment for a term which may extend to two years, in addition to the punishment provided for the offence by section 506'. Referring to this provision it was visibly mentioned that criminal intimidation by an anonymous communication can amount to imprisonment. With regards to the act of cyberbullying, the perpetrators enable to hide their identity by using anonymous communication. Therefore, this provision seems to support the prosecution of an offender of cyberbullying, although this provision does not specifically mention the criteria nor characteristics of cyberbullying that can be applied under this section.

Provisions of section 509 Penal Code provides that 'whoever, intending to insult the modesty of any person, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen by such person, or intrudes upon the privacy of such person, shall be punished with imprisonment for a term which may extend to five years or with fine or with both'. Based on this section, a person is said to commit criminal offence if he intends to insult the modesty of another person by expressing any word, display any object with an intention such word or object shall be heard or seen by other person shall be punish with imprisonment or fine or with both. Acts of cyberbullying which involves posting humiliating content including words or sound, spreading rumours about other people including videos or photographs maybe considered as criminal offence under this provision. Unfortunately, application of this provision to cyberbullying act is difficult since it is not easy to proof the act of bullying done online.

Other than that, section 499 Penal Code on defamation also seems to relate to the prosecution of the cyberbullying offender. This provision states that 'Whoever, by words either spoken or intended to be read or by signs, or by visible representations, makes or publishes any imputation concerning any person, intending to harm, or knowing or having reason to believe that such imputation will harm the reputation and shall also be liable to fine of such person, is said, except in the cases hereinafter excepted, to defame that person'. Section 500 of the Penal Code

provides that the person found guilty shall be penalised to imprisonment for two years or fine or both. In general, this provision may be used to accuse cyberbullying offender if the act involves imputation of other person that can harm the reputation of that person through intimidating rude or humiliating content of the victim. However, section 499 of the Penal Code is too general to be used to prove an act of online bullying because the act of making or publishing any imputation concerning any person is very subjective and it can give different impact to the victim in each situation. An act of online bullying can affect a person differently since it depends on the state of mind and mental strength of such person. Therefore, this provision is not appropriate to be applied in all acts of cyberbullying.

An act of cyberbullying that involves suicide case can apply section 306 of the Penal Code (abetment of suicide). It was stated under this section that ‘if any person commits suicide, whoever abets the commission of such suicide shall be punished with imprisonment for a term which may extend to ten years, and shall also be liable to fine’. However, this provision may be applied if there is a proof that the offender of cyberbullying has committed abetment of suicide over the victim who is an adult who is eighteen years above. If the victim is a child or insane person, section 305 of the Penal Code (abetment of suicide of child or insane person) will be applied to prosecute cyberbullying offender. The provision states ‘if any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication, commits suicide, whoever abets the commission of such suicide shall be punished with death or imprisonment for a term which may extend to twenty years, and shall also be liable to fine’. However, this provision can be applied if there is a proof that the offender of cyberbullying has committed abetment of suicide of children or insane persons.

Based on the above explanations on the provisions of the Penal Code relating to section 503 (criminal intimidation), section 507 (criminal intimidation by an anonymous communication) section 509 (word or gesture intended to insult the modesty of a person), section 306 (abetment of suicide), and section 305 (abetment of suicide of child or insane person), all of these provisions do not directly nor specifically mention on cyberbullying, but can be applied if the elements of section 233 CMA have been fulfilled. The elements are includes “...any forms of online content or communication that is “obscene, indecent, false, menacing or offensive in character with intent to annoy, abuse, threaten or harass another person...” via network facilities or network service or applications service. The reason for the fulfilment of section 233 CMA is because none of the provisions in the Penal Code cover any online offence since the drafting of the Penal Code was made before the existence of communication technology that developed rapidly from time to time.

Therefore, in order to prosecute a cyberbullying perpetrator, the prosecutor has to apply and read two legislations together, namely the provisions of the Penal Code and section 233 CMA, or in some cases, section 233 of CMA solely. However, the relying on those provisions is actually very hard for the prosecutor to prove the act of cyberbullying. The main reason is because the provisions are too general and the prosecutor may only prosecute the online content or communication that is obscene, indecent, false, menacing or offensive. The absence of definition of cyberbullying in any legislations in Malaysia makes it difficult to define and identify the characteristics and forms of cyberbullying. Moreover, the law does not mention clearly that cyberbullying is a criminal offence in any provision in Malaysia. By this reason, some cases cannot be prosecuted before the court, and until today, there are no cyberbullying cases had been prosecuted and brought to the court.

Recently, on October 2022, the Parliament had passed a Bill on stalking to be inserted in the Penal Code. Section 507A provides that stalking is regarded as a criminal offence which may lead to imprisonment of up to three years or a fine or both. According to the second reading of the Bill in the Parliament, stalking means a series of acts such as following someone or doing something repeatedly either in real life or in cyberspace so as to cause fear to the victim of injury or behaviour that may lead to death (Parliament Hansard, October 2022). This Bill clearly covers an act of stalking physically or in cyberspace repeatedly. This new provision can be applied to convict a cyberbullying offender if it is proven that the perpetrator has repeatedly stalked the victim. The word 'repeatedly' means that the stalking must be made at least twice and thus does not cover stalking that is done only once. However, this element is difficult to prove in cyberbullying case since the perpetrator may use several different social media accounts to stalk and the account owner is unknown or the perpetrator uses fake account. Furthermore, this also means that this bill does not apply to stalking that occurs only once. For example, if the perpetrator stalks the victim using multiple social media accounts, proof of guilt is required to identify the owner of the social media account involved, because the perpetrator is the same person. When the identity of the account owner is 'unknown' (anonymous) or a fake account is used, the police or prosecution must conduct an appropriate investigation if this kind of situation occurs.

Defamation Act 1957

Notwithstanding of criminal offences, the act of cyberbullying may also fall under the civil wrongs provided by the Defamation Act 1957 as part of libel or slander wrongdoing. There is no specific definition of 'libel' or 'slander' given by this Act. Nevertheless, according to the Common Law, it is defined as imputation or accusations of other person's reputation. In *Dato' Musa bin Hitam v SH Alattas [1991] 1 CLJ 314*, High Court states that 'The test as to whether the words complained of were defamatory or not is whether, under the circumstances in which the writing was published, reasonable men to whom the publication was made would be likely to understand it in a libelous sense. The test is objective and the question is what the words mean as word and not what the defendant in his own mind meant by them or intended to mean. The fact that the person to whom the words were published might not believe them to be true is irrelevant and does not affect the right of action although it might affect the question of damages.' (Guan, Han, Chern, & Lun; 2020)

According to section 5 Defamation Act 'it is a slander in respect of words calculated to disparage plaintiff in any office, profession, calling, trade or business held or carried on by him at the time of the publication'. Section 6 also mentioned the act of slander of title, goods or malicious falsehood that are published in writing or other permanent form that can affect plaintiff in any office, profession, calling, trade or business carried on plaintiff at the time of publication. An act of slander by intend to tarnish other person reputation in terms of his office, profession, calling trade or business can be subject to civil action under section 5 of Defamation Act. Based on this provision, an act of libel and slander that been posting online to harass other person can be amount to cyberbullying. An act of cyberbullying consist of harass or humiliate other person via online using words, or text, or graphic, or image is consider an act of tarnishing other person's reputation that can effect plaintiff's personal or office or profession, calling, trade or business. Therefore, victims of cyberbullying can take civil action based on above provision if the plaintiff can proof burden of probability that by way of an action of cyberbullying offenders can effect his reputation.

In order to prove civil action under Defamation Act, there are 3 elements that need to be fulfilled by plaintiff. The first element is whether the statement have defamatory meaning. In *Chok Foo Choo@Chok Kee Lian v The China Press Berhad [1999]1 AMR 753,MR*, honourable judge Gopal Sri Ram said ‘...the first task of a court, in an action for defamation, is to determine whether the words complained of are capable of bearing a defamatory meaning. And it is beyond argument that this is in essence a question of law that turns upon the construction of the words published’. The second element is when the defamatory statement is specifically referring to the plaintiff; to prove whether the statement is referring to the plaintiff or not, the person who knows the plaintiff believes that the statement is referring to the plaintiff. Third is the defamatory statement had been published. (Guan, Han, Chern, & Lun; 2020)

In *Masyitah bt Md Hassan v Sakinah bt Sulong [2021] 7 MLJ 144*, the court found out that the defendant's actions were very inappropriate when she not only published the post, but also responded to the comments made from the post, with an accusatory, and downright nasty response. The defendant not only slandered and maligned the plaintiff, but actually launched a campaign to bring the plaintiff down which caused the plaintiff to become cyberbullying victim. Referring to this case, an act of accusatory that can effect plaintiff reputation can be amount of cyberbullying and its offender is subject to legal action. Nonetheless, Defamation Act is too general to prosecute cyberbullying an offender, but this existed provision can be applied for civil action if there is proof on cyberbullying act.

Conclusion

Malaysia needs specific provisions on cyberbullying to protect and safeguard the victims as well as to prosecute offender before the court. In United Kingdom, there is a specific provision called the Protection of Harassment Act 1997. This provision is enacted to protect people from harassment and similar conduct, which includes stalking involving fear of violence or serious alarm or distress. Therefore, this provision states that criminal offences of harassment and stalking can prosecute an offender, which can amount to imprisonment and a fine. Singapore similarly has a legal provision on cyberbullying called Protection from Harassment Act 2014. This provision prosecutes the harasser and stalker, which amounts to imprisonment and a fine. In contrast, in the Philippines, has a specific act named the Anti-Bullying Act of 2013 that specifically protected students either in secondary and primary schools. Therefore, Malaysia is urge to enact new law that can be specifically spell out on definitions, types, characteristics, sanctions to the perpetrators as well as protection to the victim.

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