

## The Phenomenon of Online Public Shaming in the Perspective of Criminal Law

I Gusti Agung Ayu Dike Widhiyaastuti<sup>1\*</sup>, Gde Made Swardhana<sup>2</sup>, N.K Supasti Dharmawan<sup>3</sup>, Ida Bagus Surya Dharma Jaya<sup>4</sup>  
Universitas Udayana, Indonesia

**Corresponding Author:** I Gusti Agung Ayu Dike Widhiyaastuti  
[dikewidhiyaastuti2@gmail.com](mailto:dikewidhiyaastuti2@gmail.com)

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### ARTICLE INFO

**Keywords:** Online Public Shaming, Cyberbullying, Criminal Law Policy, Mitigation

*Received : 01, November*

*Revised : 20, November*

*Accepted: 28, November*

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### ABSTRACT

This article aims to analyze the phenomenon of online public shaming from the perspective of criminal law, especially when people who are humiliated through social media are found to be innocent. To analyze this, a socio-legal method is used by studying law through laws and regulations and studying it from various disciplines. The results of the qualitative analysis describe that online public shaming on the one hand is a new form of social norm of public shaming that has existed since ancient times, but on the other hand it can turn into cyberbullying against people who are humiliated who turn out to be innocent. The implication of this policy is that there are mitigation measures in the future against the impact of human rights violations, especially to live freely and safely from this phenomenon.

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## **INTRODUCTION**

Social media is one of the results of the development of information and communication technology in the era of globalization. It is undeniable that technological developments always provide convenience for humans in carrying out a variety of their daily activities because currently everything can be done with a remote system, remotely without the need for much more troublesome physical activities, including the development of information and communication technology that gives birth to a variety of social media and applications that can support human life activities. Currently, there is not a single community in the world that does not use social media to obtain or share information easily, cheaply and quickly. In this case, social media shows its face as a positive impact of the development of information and communication technology.

But on the other hand, social media is like its parent, which is a technology that has a double negative side. Hafiz Mubarak, a lecturer from the Faculty of Ushuluddin and Humanities UIN Antasari Banjarmasin, outlined a number of significant negative impacts of social media. He outlined that there are 5 significant impacts of the influence of social media, including mental health disorders, decreased productivity, dependence and addiction, lack of privacy and data security, and cyberbullying. Hafiz Mubarak argues that social media is actually a tool, not a destination. If used wisely, it can be an excellent means of communication and information. But if left unchecked, it can be a source of a variety of psychological and social problems. In this case, it is described that social media, which is actually a tool for land-landing, is the goal to make social changes in society.

In this regard, quoting Sam McQuade provides an overview of how technology is made and functioned to influence society through the process of social construction by stating hence, the notion that technology has always and inevitably been used for socially abusive or criminal purposive as determined through processes of social construction and thereafter (hopefully) arrested via administration of justice when not prevented is not suprising. Indeed, this is expected and generally regarded as the way in which technology functions in and affects society. In that context, technology is used to commit social violence and other criminal purposes so that it will encourage the evolution of crime and the law is unable to prevent it. It can be said that in McQuade's view, there is great potential for technology to become a means or space to commit crimes and is quite relevant to the current situation where social media which is the result of the development of information and communication technology is also a space or means to commit evil acts.

Currently, many social media users use social media to commit acts that are not commendable and despicable and have indications of criminal acts. Unfortunately, not everyone realizes that these behaviors have the potential to become criminal acts. For example, online public shaming or the act of shaming others that is done using social media or insulting the public online. If you look at it online, public shaming is similar to the act of shaming people in the real world, especially people who commit reprehensible acts according to public

ethics or unlawful acts. With the existence of social media, this act of humiliating others seems to have penetrated into cyberspace and occurred online. In general, the act of humiliating others that occurs in the real world occurs as a form of social reaction to despicable or unlawful acts, but in the real world this act seems to be done very carefully and measurably. It is a little different from online public shaming that occurs in cyberspace or online which tends to prioritize the speed of mind and fingers without thinking about accurate data and facts about the deeds committed by the person who is humiliated. Problems may arise when the person who is humiliated is innocent or turns out not to have committed the alleged act. In that case, to quote Paul Billingham, an Associate Professor of Political Theory, online public shaming – the practice of using the internet to criticise perceived moral transgressions and transgressors – is commonplace. And much of it is wrongful. Its target often suffers disproportionate harms and face abuse, doxing, and other forms of impermissible treatment.

In practice, if the act of humiliation is committed in the real world against an innocent person, the person concerned can sue the person who embarrassed for defamation or slander. In cyberspace, this practice is difficult to do because the person who embarrasses often uses fake accounts, people who are not recognized but participate in the scam and so on. This indirectly causes problems because people who are humiliated through online social media will have a long track record or in other words their entire life recorded in cyberspace as a person who is humiliated even though he has not committed the accused or innocent act at all.

In this regard, this article aims to analyze online public shaming from a criminal law perspective by questioning whether online public shaming of innocent people can be categorized as a criminal offense.

## **THEORETICAL REVIEW**

### ***The Theory of the State of Law***

One of the types of modern countries that is still the most popular type of country and has received recognition from the international community is the type of state of law. The earliest conceptions of the legal state type historically emerged in the 17th and 18th centuries which can be found in the writings of scholars who adhere to the natural law school. The development of the concept of the state of law in this century occurred in many Continental European countries and also Anglo Saxon. For example, Immanuel Kant, F.J Stahl, and A.V Dicey are scholars who are behind the theory of the state of law.

Immanuel Kant and F.J. Stahl developed the concept of the legal state "rechtstaat" while A.V Dicey famously developed the concept of the state of law "the rule of law". The concept of "rechtstaat" developed in the countries adhering to the Continental European system while the concept of "the rule of law" developed in the countries adhering to the Anglo Saxon system. If viewed from the background of this legal system, it seems that there are differences in the concept of the state of law that is adhered to. Referring to the opinion of Philipus M. Hadjon, the concept of rechtstaat was born from a struggle against absolutism so that it was revolutionary, on the contrary the concept of the rule of law

developed evolutionarily. Philipus M. Hadjon explained that the concept of rechtstaat rests on a continental legal system called civil law. Meanwhile, the concept of the rule of law rests on a legal system called the common law. The characteristics of civil law are administrative, while the characteristics of common law are "judicial".

In this regard, it can be known that the concept of rechtstaat, especially developed by F.J Stahl, states 4 (four) main elements of the state of law, namely 1) recognition and protection of human rights; 2) the state is based on the theory of trias politica; 3) government is based on laws (*wetmatig bestuur*); and 4) there is a state administrative court in charge of handling cases of unlawful acts by the government (*onrechtmatige overheidsdaad*). In the concept of the state of law, the protection of human rights is the most important element in F.J Stahl's view. According to him, if there is adequate human rights protection in a country, it can be ensured that the country will run healthily, both in the government system and legal protection for the population or citizens. In Indonesia, Sri Sumantri is a figure who is said to have a similar view to Stahl because he puts forward 4 (four) elements that are the same as Stahl, the difference is the placement of the first element of Sri Sumantri which emphasizes more on the rule of law by emphasizing that the duties and obligations of the government must be based on the law.

On the other hand, A.V Dicey developed the concept of the rule of law which prioritizes 3 (three) elements of the rule of law, namely 1) human rights are guaranteed through law; 2) equality before the law; and 3) the supremacy of law and no arbitrariness. A.V Dicey's view is very straightforward, specific, the initial criterion he initiated was the protection of human rights regulated by law. Not only that, in the state of law, it must clearly contain the principle of equality before the law and the law is supremacist (no one is above the law), then finally everything must use the rule of law so as to prevent arbitrariness. The concept of the rule of law A.V Dicey was redeveloped in the International Commission of Justice in 1965 in Bangkok, Thailand, which was a meeting of world legal experts. In this meeting, the basic conditions for the administration of government under the concept of the rule of law were stated: 1) the existence of constitutional protection; 2) the existence of a free and impartial judicial power; 3) free elections; 4) freedom of expression; 5) freedom to associate or organize and operate; and 6) citizen education.

In addition to these two concepts of the state of law, it is known that there is another concept that is developing in socialist countries called "socialist legality", which wants the realization of socialism as the most decisive source covering all the activities of state organs of government, government officials, and citizens. This concept is said to be very extreme because it wants no stratification of society in a country, as well as against all forms of struggle for individual rights, because everything owned by society must be handed over to the state.

In Indonesia, there was a discourse on the concept of the state of law until then the term Pancasila state of law emerged, which according to Padmo Wahjono is a conception whose main elements can be traced in the 1945

Constitution. This discourse has lasted quite a long time even until now, but in the end it can be accepted that the concept of the Indonesian legal state according to the 1945 Constitution of the Republic of Indonesia is a state of law Pancasila, which is the concept of a state of law where one party must meet the criteria of the concept of the state of law in general (i.e. supported by three pillars: recognition and protection of human rights, free and impartial judiciary, and the principle of legality in a formal and material sense) and on the other hand, it is colored by Indonesian aspirations, namely the five fundamental values of Pancasila.

### ***Human Rights Theory***

As mentioned in the theory of the state of law above, an important element in a country based on the law is the protection of human rights (HAM). Internationally, it has been understood that human rights are fundamental rights inherent in human beings because of their nature as human beings and this right has received universal recognition. In this case, it is understood that human rights are owned by mankind not because they are given by society or positive laws but based solely on their dignity as human beings.

The idea of human rights comes from natural rights theory which is sourced from the natural law theory put forward by John Locke after the Renaissance. John Locke's thought underpinned the emergence of the rights revolution in Britain, the United States, and France in the 17th and 18th centuries. John Locke in his book "The Second Treaties Civil Government and a Letter Concerning Toleration" postulates that individuals are endowed by nature with inherent rights to life, liberty, and property that are their own and cannot be revoked or stripped away by the state. Through a social contract, the protection of this inalienable right is left to the state. Locke emphasized that if the ruler of a state ignores the social contract by violating the natural rights of the individual, then the people of the state are free to depose the ruler and replace him with a government that is willing to respect those rights.

In the 19th century, the theory of natural rights was opposed by utilitarians fronted by Jeremy Bentham and supported by the school of Positivism developed by John Austin. Despite the resistance, the theory of natural rights is still alive. This can be seen back during the Nazi Holocaust and the end of World War II where at that time the theory of natural rights was reborn by designing an international instrument on human rights which began with the establishment of the United Nations (UN) in 1945 and began to encourage the internationalization of human rights ideas until later the international community agreed on human rights as a benchmark of common achievement for all peoples and all nations. This agreement was later implemented by the United Nations in the "International Bill of Human Rights".

Human rights thinking continues to develop to this day in 4 (four) generations of human rights. It is known that each generation of human rights has its own demands. For example, the first generation demands more "freedom", the second generation demands "equality", the third generation focuses on the demand for "brotherhood" and the fourth generation criticizes the role of the state in

development that focuses on economic development so that it has a negative impact on society, especially in the aspect of people's welfare.

### ***Criminal Law Policy Theory***

Crime develops with the development of society. This view has become a living adage and a reminder for the legal community, especially law enforcement officials. What's more, the law often lags behind the crime so that in some situations it often cannot be solved by using the law. Therefore, to maintain harmonization between crime and the law, it is necessary to balance it by carrying out criminal law policies which are basically aimed at supporting better and maximum crime control.

This effort is called criminal law policy or also known as criminal law politics. Marc Ancel defines criminal law policy as a science as well as an art that ultimately has the practical purpose of allowing positive legal regulations to be formulated in a better way and to provide guidance not only to lawmakers but also to the organizers or implementers of court decisions. Meanwhile, quoting Barda Nawawi Arief, studies related to the politics of criminal law are very important to complement positive criminal law science. According to him, positive criminal law is more of a science to apply positive law; Meanwhile, the politics of criminal law is more of a science to make and formulate or update criminal law. Thus, criminal law policy can be said to be a form of legal politics in an effort to produce or seek and formulate better criminal legislation and be able to achieve legal goals.

In this regard, and bearing in mind that every form of crime control cannot be separated from the use of criminal law, Herbert L. Packer put forward several important points in the use of criminal law to tackle crime, including:

1. The criminal sanction is indispensable; who could not, now or in the foreseeable future get along without it.
2. The criminal sanction is the best available device we have for dealing with gross and immediate harms and threats of harm.
3. The criminal sanction is at once prime guarantor and prime threatener of human freedom. Used providently and humanely, it is guarantor; used indiscriminate and coercively, it is threatener.

Herbert L. Packer's opinion is a reminder that the use of criminal law must be used properly and correctly and proportionately because criminal sanctions are severe sanctions and can take away the independence of a person who is proven to have committed a crime.

### **METHODOLOGY**

This article uses a socio-legal research methodology aimed at studying law more comprehensively, namely from the text of the legislation studied using the help of other sciences (multidisciplinary) related to the problem studied. The characteristics of socio-legal studies can be seen from the research methods carried out, namely 1) conducting textual studies, articles in laws and regulations and policies can be critically analyzed and their meaning and implications explained to legal subjects (including marginalized groups); and 2) socio-legal

studies develop various "new" methods of marriage between legal methods and social sciences.

There are also approaches used, including a legislative approach, a conceptual approach, and a case approach. The legal materials used include primary legal materials sourced from laws and regulations and secondary legal materials sourced from theories and concepts, books, research results, previous articles, and others. The results of this article's research are analyzed systematically, evaluatively, argumentatively and descriptively.

## **RESULTS**

The results that can be presented about online public shaming that the act of shaming others through social media can basically have a long-term material and immaterial impact on the person who is humiliated. People who are humiliated through social media can experience mental health disorders such as anxiety, depression and can even lead to suicidal thoughts. On the other hand, it materially has an impact on his social and economic life and is labeled for the rest of his life. Online public shaming on the one hand may be a social control tool for the person who is humiliated, but on the other hand online public shaming can cause problems when the person who is humiliated has no fault at all. According to criminal law, online public shaming carried out on innocent people can be categorized as cyberbullying as regulated in Article 27 paragraph (3) of Law No. 19 of 2016 concerning Information, Technology and Electronics as a form of defamation.

## **DISCUSSION**

The sanction of shaming others has historically existed for a long time, as concluded in the opinion put forward by Testimony Akinkunmi that public shaming has been used as a means of social control and punishment throughout history, and it has frequently been used to enforce social norms and values. It is further mentioned that in some societies, public shaming has been used as a way to maintain social order and prevent crime. This public humiliation sanction is commonly carried out in traditional societies because it is part of the punishment that can be given to those who violate social values. The purpose of humiliating this is generally to make the perpetrator and the perpetrator more guilty and willing to realize their mistakes. Some historical examples of humiliating people as a form of punishment are for example in Brief History written by Allison Hahn and Elena Popan which tells that in medieval Poland (1100-1500s), rebels could expect to be publicly humiliated through a rite of submission to the monarchy, including kneeling or laying on the ground before members of the monarchy and asking for the forgiveness for a rebellion or other act of disobedience. This public humiliated the rebel and showed submission to the monarch, was designed to ensure that the court and general public understood that the rebellion had come to end and that rebellion leaders acknowledged the monarchy's power. Another example is mentioned In England during the 1700s, public humiliation was common, and many towns had specific locations where public humiliations, which aimed to both punish criminals and prevent and deter future crime, could occur.

These public humiliations were also used to indicate that a specific person could not be trusted or did not adhere to community morality. Allison Hahn and Elena Popan further gave an example of how public humiliation in the UK is carried out, namely one such method of humiliation involving being locked inside a pillory, a device constructed from two planks of wood with holes designed so that the criminal's head and hands could be locked between the wood boards, resulting in an uncomfortable posture and inability to escape from jeering crowds.

In Indonesia, public humiliation is a form of social sanction that can not only be found in indigenous peoples but also non-indigenous peoples. Sanctions for public humiliation sometimes appear at the level of relatives/closest neighbors to the wider community. Sanctions for public humiliation are given because someone has violated social values in society, such as parading the perpetrators of infidelity around the village as happened in July 2025 in Sakala Village, Sapeken District, Sumenep Regency. Going back to 2007, in South Pamak, Tebing District, Karimun Regency, Riau Islands, there was also a parade around the village against a young couple who were suspected of committing adultery. It can be said that in Indonesia, humiliating sanctions have become one of the social control tools that are recognized as effective in providing a deterrent effect to moral violators. Social sanctions have effects and impacts that are quite feared because anyone who is affected by social sanctions will suffer for the rest of their lives. The embarrassment caused by the application of social sanctions has a much more deterrent effect than legal sanctions.

In the current development, public shaming is not only carried out directly on violators of social values but also begins to be carried out indirectly online through social media or commonly referred to as online public shaming. Applications such as Instagram, X, Tiktok, Facebook and others are often used as a place to conduct online public shaming by the cyber community. Online public shaming is generally done by doxing, mobbing, sending photos, screenshots and many more. Some examples of online public shaming that have occurred in the telling story of Lindsey Stone, who was publicly shamed for a joke photo in which she appeared to be acting disrespectfully at a military cemetery. In Indonesia, online public shaming has been experienced by Sonya Depari who yelled at police officers and claimed to be the general's son. Then singer Nadin Amizah who experienced online public shaming because of his opinions about rich and poor people.

Online public shaming like public shaming in the real world has the same working mechanism, namely shaming others as a form of social control. Both are carried out as a form of punishment for someone's actions that are considered to violate social values or legally there is a mistake made that causes harm to others. In this regard, Paul Billingham said online public shaming can be an effective way to censure wrongdoing, draw attention to social ills such as racism and sexism, and deter future wrongdoers. According to Billingham however, we should not too quick to decry all online public shaming. Thousands of people participate in this practice, believing that it can be a force for good. Many consider themselves to be upholding valuable standards of conduct, and rightly censuring those who fall short of those standards. This kind of informal sanctioning is essential to ensuring

the continuation of these standards. Billingham believes that in some ways online public shaming as informal sanctioning needs to be maintained. According to him, this justification for public shaming holds that it is an effective way in which to enforce valuable social norms – rules of behavior that ought to govern our conduct in relation to one another. Public shaming can highlight violation of these norms, reaffirm the importance of compliance, help in causing the norm violator to repent, and deter future violation.

Despite the positive thoughts about online public shaming, it must still be admitted that online public shaming has a negative impact that endangers mental health and harms a person socially and economically. Daniel Solove writes that internet shaming has a tendency to become overzealous. It creates an indelible blemish on a person's identity. Being shamed in cyberspace is akin to being marked for life ... People acquire permanent digital baggage. In this regard, Quoting Allison Hahn and Elena Popan, it is stated that while the actual event causing a public humiliation may last only a few moments, the emotional effects can last for a lifetime and may manifest in severe depression and anxiety; in some extreme cases, public humiliation has led to suicide. The opinions of Allison Hahn and Elena Popan are not the only opinions that describe the impact or effect of social sanctions such as public humiliation/shaming. Akinkunmi's testimony is similar to quoting Russell Blackford who said that public shame can lead to ostracism and isolation, which can have serious negative effects on a person's mental health and well-being. It can also cause damage to a person's reputation and make it difficult for them to rebuild their lives after being publicly shamed.

Online public shaming is realized that it can have very fatal consequences for those who experience public shaming. As mentioned, online public shaming can have a negative impact on mental health, social and economic life. This impact can affect everyone around people who are subject to online public shaming, including family and close friends. Therefore, online public shaming should be done carefully and really measurably whether people deserve to receive online public shaming or not. In other words, giving online public shaming needs to be considered very carefully. Citing Cecilia Dintino, online shaming can create a very big emotion for a person and can change the behavior of a person or institution or organization to better maintain their attitude or the policies they issue, especially through cyberspace. But it would be nice if social media users started to think and have strong facts when they were going to provide online shaming. Cecilia Dintino reminded the importance of strong facts when giving online shaming so that online shaming does not have strong facts and worse, people who are given online public shaming turn out to have no faults at all.

In criminal law, the provision of criminal sanctions will be carried out if a person has been proven to have committed a criminal act that is legalized by the issuance of a judge's decision on the matter. The imposition of criminal sanctions on a suspected perpetrator of a criminal act must be carried out carefully and with the mechanism of the criminal justice system so that there is no violation of the human rights of the suspect. In the context of social sanctions, public shaming is also carried out carefully, even tending to use a hand-held mechanism. It is a little different from online public shaming that occurs in cyberspace.

If this situation occurs in the real world, then the person who deliberately embarrasses can be said to have committed an act of defamation which in Indonesian criminal law clearly has a law. In cyberspace, this kind of act can be categorized as another form of cyberbullying that can be threatened by Article 27 paragraph (3) of Law No. 19 of 2016 concerning Information and Electronic Technology which regulates insults, defamation, and the dissemination of immoral content. But what is unfortunate is that often the cyber community is not aware of the legal consequences if they do online public shaming which can be categorized as a form of cyberbullying. The following are common forms of cyberbullying such as flaming (a war of words that are rude and emotional in a digital public space), harassment (sending hurtful or threatening messages repeatedly), denigration (spreading false information to damage the reputation of others), impersonation (impersonating someone else to spread negative content), outing and trickery (leaking personal or confidential information publicly), and exclusion (excluding someone from a group or online community). In addition, victims of cyberbullying are also often reluctant to report because cyberbullying perpetrators (including those who do online public shaming) hide behind fake or anonymous accounts and then it is not clear until their identities are not visible, there are no pictures or use fake images and many more. Not to mention the permissive digital culture of sarcasm, irony, and dark humor that exacerbates victims' reluctance to report, including victims of online public shaming who have absolutely no fault but are bullied on social media.

Online public shaming of innocent people is a form of human rights violation and clearly violates Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that everyone has the right to the protection of personal self, family, honor, dignity and property. Online public shaming of innocent people also violates the principles of criminal law such as the principle of legality, the principle of guilt, and the principle of presumption of innocence. Law enforcement for online perpetrators of public shaming against innocent people can still be done using the ITE Law and when involving children and adolescents, it can use Law No. 35 of 2014 concerning Child Protection. However, the government still needs to review whether existing laws are sufficient or still need to be updated, especially related to online public shaming of innocent people. Even though there has been an article to overcome this, whether the criminal threat is enough considering that online public shaming, especially against innocent people, has quite a terrible impact because it is labeled for life. Not only that, other impacts of online public shaming on innocent people are related to their mental health, social and economic life. In this regard, the government needs to consider the development of new legal norms on cyberbullying by including online public shaming of innocent people as a form of their actions and providing appropriate criminal threats to the perpetrators. There needs to be a mechanism for drafting a more specific and firm criminal law policy on cyberbullying in an effort to implement Article 28D of the 1945 Constitution of the Republic of Indonesia that everyone has the right to fair legal guarantees, protection and certainty.

## CONCLUSIONS AND RECOMMENDATIONS

Online public shaming of innocent people from the perspective of criminal law is a form of defamation crime committed through cyberspace. Therefore, the perpetrator of online public shaming against an innocent person can still be punished using Article 27 paragraph (3) of the ITE Law and when involving children as perpetrators or victims of online public shaming can also apply Law No. 35 of 2014 concerning Child Protection.

The difficulty faced in punishing online perpetrators of public shaming is when there is more than one perpetrator, even the perpetrator and the victim do not know each other. This causes the victim to be reluctant to report because the perpetrator often uses fake accounts and identities. This situation will have an impact on innocent victims of online public shaming because they have to endure things they did not do in their entire lives and will have an impact on their mental health, social and economic life.

In this case, it is necessary to consider carrying out more comprehensive crime prevention measures not only using criminal law but also using preventive mechanisms by educating about the good use of social media, especially for the younger generation starting from an early age. Instilling moral values related to the use of social media needs to be done from an early age. Not only that, the role of the family is also needed to provide education related to the use of civilized social media.

## FURTHER STUDY

This article is still very far from perfect because there is still a lot that has not been researched in depth, especially in the context of the implementation of preventive mechanisms in preventing cyberbullying crimes which can be done by educating the public, especially the younger generation, starting from an early age about the use of good and civilized social media so that in the future they have the ability to filter what is and is not allowed to be done in cyberspace.

## ACKNOWLEDGMENT

The authors would like to express their sincere gratitude to all parties who have contributed to the completion of this article. Appreciation is extended to colleagues, academic mentors, and reviewers who have provided valuable insights, constructive feedback, and encouragement throughout the research and writing process.

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