

Research Article

The Disclosure of Sexual Assault on Social Media in Indonesia: A Criminal Law Perspective

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This study aimed to determine the factors that contribute to the prevalence of people speaking up and claiming to be victims of sexual assault, as well as to determine whether speaking up on social media is criminal defamation. This empirical legal research analyzed the issue by using sociological and victimological approaches. The results of this study showed that the factors which cause the 'victims' to speak up on social media for sexual harassment they have experienced comprised of awareness, mental readiness that manifested into psychological resilience, lack of knowledge of the law and means of filing reports, the culture of victim-blaming, difficulties in proof, benefits to others, a desire to receive an apology from the perpetrator and a sense of justice. Furthermore, if the sexual assault could not be proven, speaking up on social media raised the possibility of being reported by the alleged perpetrators for criminal defamation under Article 27, paragraph 3 of Law Number 19 of 2016 on the Amendment of Law Number 11 of 2008 on Information and Electronic Transactions.

Keywords: Criminal Defamation, Sexual Assault, Social Media

1. Introduction

People who believe that they are victims of sexual assault increasingly use the social media to disclose their unpleasant experiences, which is also known as the 'speak-up' phenomenon. Sexual assault is one of the underreported offences hence it is often disclosed to informal responders such as social media users.[1] An employee of the Indonesian Broadcasting Commission, namely MS, stated that she experienced bullying and sexual assault committed by her coworkers beginning in 2012, was one example of a social media speak-up related to the criminal act of sexual assault. The peak occurred in 2015 when she was diagnosed with suffering from Post Traumatic Disorder (PTSD) caused by the stress and frustration from the repeated events which she had

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experienced.[2] MS attempted to report the incident to Gambir Police Station in 2019 yet it did not receive the desired results hence she spoke up on her social media, specifically *Twitter*, until the story went viral.[2] She has since received assistance from the National Commission on Human Rights to report the incident to the police once again, however, the alleged perpetrators have returned to the victims with defamation allegations under Law Number 19 of 2016 on the Amendment of Law Number 11 of 2008 on Information and Electronic Transactions (ITE Law).[2]

On the other hand, Article 5 paragraph 1 of Law Number 31 of 2014 on the Amendment of Law Number 13 of 2006 on Witness and Victim Protection affirms that witnesses and victims are protected for their personal, family, and property security and are free from threats related to testimony that will be, is being, or has already been given. The law also regulates the victim's right to testify, stating that witnesses, victims, perpetrator-witnesses, and/ or whistleblowers cannot be prosecuted legally, either criminally or civilly, for testimony and/or reports that will be, are being, or have been given, unless the testimony or report is given deceitfully.

The act of speaking-up on social media is due to the development in this period of time which has not been properly regulated, hence the law is required to be able to follow the dynamics of change in society as well as the legal needs of the community that continues to experience developments and changes. With that being said, this research analyzes the factors that lead to the act of speaking-up on social media regarding sexual assault, as well as whether the act of speaking-up constitutes a criminal act of defamation. Moreover, no specific studies are currently being conducted on the two proposed legal problems, though some have evolved around the similar theme. For instance, the study by Renata Maharani *et al* (2021) that analyzed social media as a digital social movement (a case study of Instagram accounts @Aliskamugemash in voicing LWD sexual crimes against women); second, a study by Yayang Eka Januarda Nisa, *et al* (2022) that examined the cancellation culture of sexual violence cases among followers of the *Twitter* auto base @areajulid; and finally, a thesis written by Tresna Rahayu (2022) which analyzed the phenomenon of spilling-the-tea of sexual violence on social media by Generation Z in Bandung.

2. Methods

This is an empirical legal study that analyzes the proposed problems by using sociological and victimological approaches. This research data are in the form of primary data obtained through interviews with the subjects of the research, namely the people who speak-up on social media on sexual harassment that they have experienced (initials DN, EL, MJ), as well as a clinical psychologist and lecturer of the Psychology Study Program at Universitas Islam Indonesia (Phil. Qurotul Uyun, S.Psi., M.Si.). Furthermore, the primary legal materials used are Law No. 31 of 2014 on the Amendment of Law No. 13 of 2006 on the protection of Witness and Victim, and Law No. 19 of 2016 on the Amendment of Law No. 11 of 2008 on Information and Electronic Transactions.

3. Results and Discussion

Speak-up is the process of disclosing events that occur to a person to those around them, whether friends or relatives in order to seek legal protection, and perceived to be the right thing to do.[3] Disclosing sexual violence or abuse through social media is common nowadays since it provides new avenues for the 'victims' or survivors.[4] Thus, when the law enforcers and systems have failed to support them, they opt to post their 'voice' online.[4] Despite commonly receiving negative responses to disclosure, such as being blamed, having their experience questioned and invalidated, or even not being believed, the victims or survivors still disclose their experiences on digital platforms hoping their story will be heard and gain support from others.[5] To determine the factors causing 'victims' of sexual abuse to speak-up, this study will analyze data obtained by interviewing the research subjects, who are MJ and DN, who are victims of physical sexual assault, and EL, who are 'victims' of both physical and verbal sexual assault.

The awareness factor, or the possibility of victims being unaware of the occurrence of sexual assault against them, and the survivor's mental readiness due to trauma, which is likely to prevent them from telling or talking about the sexual assault they experienced, are the factors that cause the act of speaking up on social media related to sexual assault.[6] According to the three interviewees, subjects' research which are MJ, DN and EL, it took them a long time to tell those closest to them about their sexual assault, and they also isolated themselves. The existence of this awareness, based on

the interview with Qurotul Uyun (a clinical psychologist), based on the theory of the person's stage in dealing with depression or psychological shock, occurs when the victim has entered the second stage, namely beginning to realize that they are the victims, followed by another psychological impulse.

The support of the victim's immediate family or other victims comes next.[6] Disclosing these painful experiences can be healing for the victims or the survivors and can even lead to improved mental health if met with supportive people.[7]–[9] MJ stated that the support of her closest friends gave her mental strength, and she had the courage to speak up after a period of waiting for information about other victims who had also been harassed by the perpetrator. While DN claimed that after speaking up on social media, she felt a new spirit, support, and happiness that made her feel like she had new hope, MJ undertook the act of speaking up due to her increased calmness and decreased burden of the mind, which caused her prolonged tension.

According to MJ, the victim's desire to disclose her sexual assault experience, provide information on the location and the perpetrator, and the prudence of others to avoid the sexual assault she experienced motivates her to speak-up about it on social media. Speaking-up is done out of mental readiness and the desire to provide lessons for others, according to psychology. It is a manifestation of resilience, or a person's ability to adapt to difficult situations and rise above difficulties, as mentioned in the interview with Qurotul Uyun. The lack of attention given by law enforcement officials/authorities to the filed reports due to gender, the type of harassment experienced by the victim, and certain interests, as well as the crisis of trust in law enforcement, also contributes to the victim's frustration with the length of the legal process against the offender, which is one of the factors causing the victims (MJ and DN) to speak-up. For condition women shall be responsible to protect themselves against any kind of violence and even accepting it, not only the police who disbelieved the victims/ survivors, but also family members.[10] The difficulty of proving her sexual assault, given the lack of witnesses, is also one of the reasons EL spoke out on social media.

Disclosing sexual harassment on social media by these 'victims' raises the possibility of the 'perpetrators' reporting them for criminal acts of defamation, as experienced by MS. In Indonesian criminal law, defamation offences are governed by the provisions of articles in the Criminal Code and the ITE Law, which have a continuous relationship, namely the enactment of the principle of *lex specialis derogat legi generalist*.^[11] The act of verbal defamation (*smaad*) is governed by Article 310 paragraph (1), and defamation

through letters/writings (*smaadschrift*) is governed by Article 310 paragraph (2).[2] The prohibited acts are those committed "intentionally" with the intent of violating honor or attacking the honor or good name of others in such a way that the person feels aggrieved by the act.[12] Thus, the elements of the criminal act of defamation under the mentioned article are intentionally attacking honor or goodwill, accusing them of committing an act, and broadcasting accusations to the public.[13] Furthermore, the criminal act of defamation is regulated in Article 27 paragraph 3 of the ITE Law, which includes elements such as everyone, intentionally, without the right to distribute, transmit, and/ or make accessible electronic information and/ or electronic documents, having the content of contempt and/ or defamation.

The act of speaking-up on social media where the main platform used is an application or computer program reveals that the scope of the crime is included in the cybercrime space or, more precisely, includes the type of crime in the form of illegal content, namely crimes by using data or information about something that is untrue, unethical, and can be considered as violating the law of disturbing public order through the internet.[14] That being said, Article 27 Paragraph 3 of the ITE Law can be used as a legal basis imposed on the victim's actions in the form of Speak Up efforts made if the object of the Speak Up cannot be proven, including against sexual harassment victims with little evidence so that a person can sue for self-defamation as well as in the case of speak-up carried out by sexual harassment victims so that sexual harassment complaints must first be proven. This is in accordance with SEMA No. 4 of 2011, which states that the case of the suspect who is revealed or reported will be examined before the case of the whistleblower who is also reported as the perp of the crime. Furthermore, Article 10 paragraph (2) of the Witness and Victim Protection Law states that lawsuits against witnesses, victims, perpetrator witnesses, and/or complainants for testimony and/or reports that will be, are being, or have been given must be postponed until the case in which they report or give testimony is decided by the court and has obtained permanent legal force.[15]

4. Conclusions

The results of this study show that there are several factors that have causes a person to speak-up on social media about the sexual assault that they have experienced, including the factors of awareness, mental readiness to manifest psychological resilience, lack of attention of law enforcement officials/authorities to the reports given, victim blaming,

difficulties in proof, benefits to others, and a desire to obtain an apology from the perpetrator and a sense of justice. If the object of the speaking-up cannot be proven, the act of speaking-up on social media by these "victims" raises the possibility of being reported by the "victims" for criminal defamation under Article 27 paragraph 3 of Law Number 19 of 2016 on the Amendment of Law Number 11 of 2008 on Information and Electronic Transactions. Therefore, since the allegations are of a criminal nature, sexual harassment charges must first be proven. Moreover, based on the Joint Decree of the Minister of Communication and Informatics of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, and the Head of the National Police of the Republic of Indonesia Number 229 of 2021, Number 154 of 2021, and Number Kb/2/V1/2021, an act is not included in the offence of contempt and/or defamation in Article 27 paragraph (3) of the ITE Law if the content or content transmitted, distributed, and/or made accessible is in the form of an assessment, opinion, evaluation result, or reality.

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