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PERSPECTIVE OF CONVENTION ON THE ELIMINATION OF ALL FORMS OF
DISCRIMINATION AGAINST WOMEN (CEDAW) ON THE CYBER HARASSMENT IN
INDONESIA

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Abstrak

In 2017, there are 3,528 cases of violence against women in Indonesia, in which 76% of violence occurs in the form of sexual harassment. Sexual harassment is a part of discrimination against women, therefore the United Nations issued the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) as a safeguard of women's rights. Nowadays, sexual harassment has developed into a new form, namely cyber harassment. Unfortunately, in CEDAW, there is no clear and specific statement related to it. This study is a normative legal research with Statute Approach and Case Approach. By using the qualitative descriptive method, this study will elaborate on the protection of women from cyber harassment in Indonesia based on the perspective of CEDAW. The result shows that, as the international treaty, CEDAW does not provide any punishment for the suspect to be prosecuted. Fortunately, Indonesia has Law No. 11 of 2008 on Electronic Information and Transactions to deal with cyber harassment cases. The author recommends the Indonesian government to formulate a new law dealing with cyber harassment. Aside of that, education to the society on cyber harassment itself needs to be conducted by the government to prevent more victims in the future.

Keywords: Sexual Harassment; Cyber Harassment; CEDAW.

A. Background

1. Introduction

In 2017, there are 3,528 cases of violence against women in Indonesia, in which 76% of violence occurs in the form of sexual violence, namely 911 cases of sexual abuse, 704 cases of sexual harassment, and 699 cases of rape.⁴ According to this data, sexual harassment is one of the most significant cases that happen frequently. Sexual harassment is a form of overwhelming discrimination suffered mostly by women; it usually includes unwelcomed sexual advances, requests for sexual favors, and also sexual conducts which are directed to a person because of gender.⁵

The United Nations and Regional Human Rights Systems⁶ have recognized sexual harassment as a form of discrimination and violence against women.⁷ Sexual harassment is one of

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⁴ Komisi Nasional Anti Kekerasan terhadap Perempuan, *Tergerusnya Ruang Aman Perempuan Dalam Pusaran Politik Populisme* (Jakarta: Catatan Tahunan tentang Kekerasan terhadap Perempuan, 2018).

⁵ Marry L Boland, *Sexual Harassment in the Workplace* (United States: Sphinx Publishing, 2005).

⁶ Regional human rights system is regional human rights bodies monitor, promote and protect human rights in several geographic regions around the world.

the forms of discrimination against women because it can be part of a genocide strategy.⁷ It can inflict life-threatening bodily and mental harm of the individuals. Sexual harassment can imposed to bring about the ultimate destruction of a person, especially women.

Due to the rising number of cases concerning discriminations against women, on December 19th, 1979 the United Nations General Assembly approved a draft from the Commission on the Status of Women, namely the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). This Convention is a form of awareness of the United Nations (UN) to be a safeguard of rights of women. This treaty came into force on December 3rd, 1981.

CEDAW is the Convention that regulated gender equality between men and women. Although there is no specific and clear statement on sexual harassment in this Convention, CEDAW affirmed that sexual harassment, as a part of critical manifestation of sex discrimination and a violation of human rights.⁹ Nowadays, sexual harassment is a very complex issue which not only occurs face-to-face but also in online settings. Sexual harassment in online settings can be categorized as cyber harassment. Jennifer A. Scard (2017) defines cyber harassment as the use of the inter connected network (internet) to threaten, intimidate, or shame an individual.¹⁰ The method is various in example such threats, stalking, insults, and spreading a private information with others.¹¹

Currently, cyber harassment is one of the most frequently discussed topics in society. Data records from the National Commission on Violence against Women about internet sex abuse in 2017 are cyber violence with 14 cases, cyber grooming for women as victims with 1 case, 20 cases of cyber harassment for threatening and disturbing, 16 cases of illegal content, and 19 cases of malicious distribution such as distribution of photos or personal videos.¹²

Cyber harassment can be categorized as a crime that is difficult to be prosecuted because it is a violence that surfaces massively but lacks reporting. The impact of cyber harassment can bring down a woman's life, victimize her repeatedly and may harm her for life. Many factors make this crime challenging to prosecute, even though the regulation is already enacted. One of the main reasons is that the crime occurs on the internet, and it is not easy to identify the perpetrators because most use fake accounts.

⁷ United Nations Women, "Sources of International Law Related to Sexual Harassment" <<http://www.endvawnow.org/en/articles/492-sources-of-international-law-related-to-sexual-harassment.html>>.

⁸ United Nations Division for the Advancement of Women, "Sexual Violence and Armed Conflict: United Nations Response Published to Promote the Goals of the Beijing Declaration and the Platform for Action," *United Nations*, 1998, 3.

⁹ Romana Asmat and Miss Sidra Mehboob, "International Laws and Policies for Addressing Sexual Harassment in the Workplace," *International Research Journal of Interdisciplinary & Multidisciplinary Studies (IRJIMS)*, ISSN.32 (2016), 32.

¹⁰ Jennifer A. Scarduzio, Sarah E. Sheff, and Mathew Smith, "Coping and Sexual Harassment: How Victims Cope across Multiple Settings," *Springer Science Business Media*, 47.2 (2018), 327 <<https://doi.org/10.1007/s10508-017-1065-7>>.

¹¹ *Ibid.*

¹² Jabbar Ramdhani, "Tak Cuma Via Vallen, Ada 91 Laporan Pelecehan Seksual Online Di 2017," *Detik.Com*, 2017 <<https://news.detik.com/berita/d-4056007/tak-cuma-via-vallen-ada-91-laporan-pelecehan-seksual-online-di-2017>>.

The forms of sexual harassment have developed with time; cyber harassment is now one of today's biggest concerns relating to sexual harassment matters. In CEDAW, there is no specific statement relating to the violation of cyber harassment. Therefore, the author would like to explore about the perspective of an international Convention towards sexual harassment matters, especially from CEDAW.

2. Problem Formulation

Based on the background that has been described above, it can be stated that the research problem is "how is the protection of women from cyber harassment in Indonesia based on the perspective of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)?"

3. Research Method

This research are using normative legal research which related to the issue of the cyber harassment in Indonesia on the perspective of CEDAW. Normative legal research can be defined as legal studies. The studies use statute approach that related to the case of cyber harassment in Indonesia. The data is collected from the library by literature learning, and more focus on reading and analysis of secondary data which consist of primary legal materials and secondary legal materials.

B. Discussion

1. Protection of Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

The equality is one of the basic principle of United Nations. The preamble of United Nations Charter was regulated in refirming fundamental human rights. Human Rights is rights that exist and are inherent in human self or dignity, because he or she is human.¹³ CEDAW is a human rights treaty that affirms of women's rights.

The objective of CEDAW is to acknowledge and accomplish the *de jure* and *de facto* of the equality of gender, which to be accomplished by a policy of elimination of discrimination against women incorporating all appropriate legislative and programmatic procedures.¹⁴ CEDAW has three main principles. The first is the principle of equality, which is the effort to uphold substantive equality of men and women.¹⁵ Second, non-discrimination principle is the equal treatment between men and women, such as: the fulfillment of fundamental freedoms, and human rights.¹⁶ Third, the principle of state obligations, in this case, the state is responsible for the realization of the equality of women rights in enjoying all economic, social, cultural, civil and political rights.¹⁷

¹³ Martinus Sardi, "Menuju Masyarakat Berwawasan Hak Asasi Manusia," *Pusat International Pengembangan HAM*, 2011.

¹⁴ Dubravka Šimonović, "Convention on the Elimination of All Forms of Discrimination against Women," *United Nations*, 2007 <<http://legal.un.org/avl/ha/cedaw/cedaw.html>>.

¹⁵ ARIFAH MILLATI AGUSTI, "Hak-Hak Perempuan Dalam Pengarusutamaan Ratifikasi Cedaw Dan Nqasid Asy-Syari'Ah," *Al-Ahwal: Jurnal Hukum Keluarga Islam*, 9.2 (2017), 204 <<https://doi.org/10.14421/ahwal.2016.09205>>.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

The purposes of this Convention are presented in Article 1, stating the term on discrimination against women. The definition of discrimination on this article includes gender-based violence, which means violence directed against women due to reasons of gender or the issue influencing women inequality. It incorporates actions that impose physical, mental or sexual harm, threats, coercion, and hardships of freedom. This Article is one of the principles of non-discrimination on CEDAW.

Most of the articles of CEDAW consist of protection encouraging the equality and quality of women. Some parts of the protection on this Convention are about protection from gender-based violence or sexual harassment. Article 2 of CEDAW is one of the forms of protection of women from sexual harassment. It is stated that the State Party agree to pursue every single aspect, such as the procedure of eliminating discrimination against women, undertaking to find a way to eliminate discriminatory laws, approaches, and practices in the national legal framework.

This Article stated that the State Party should condemn all forms of unjust acts against women, including sexual harassment. Aspects which are regulated in this Article to protect women from sexual harassment include:

- a. To embody the principle of equality in the national constitution between men and women means that states party should encourage the position of women through law and other appropriate to keep women from sexual harassment matter;
- b. To adopt the appropriate legislation, including sanctions for prohibiting all discrimination against women. On this part, the State Party shall provide sanctions for the perpetrators especially on the case of sexual harassment which needs special attention to be handled;
- c. To establish lawful insurance on the privileges of women equal with men. Moreover, to guarantee through capable national tribunals the effective protection of women against any discrimination, including sexual harassment. This part requires the state to build up national tribunals to handle cases of discrimination against women;
- d. To refrain from participation in any action of discrimination against women and to ensure public authorities will act in incongruity with this responsibility. State Party shall protect women who are sexually harassed and ensure that there is a strict action to protect women from sexual harassment by the public authority;
- e. To take every single suitable measure to eliminate sexual harassment matters by person, organization, or enterprise. Based on this, the State Party should protect women from any possibility of sexual harassment in any fields;
- f. To taking all appropriate measures, including enactment, to adjust or annul present laws, regulations, customs, and applies which constitute as discrimination against women. CEDAW requests that State Party change laws and customs in their nation to guarantee women from sexual harassment matters;
- g. To cancel all national correctional arrangements which establish sexual harassment;

In this Article, many aspects that should be done by the State Party to protect women from discrimination start from the regulation and the individuals. This includes all forms of protection in CEDAW for women's lives, including sexual harassment cases. Besides that, Article 3 of CEDAW also regulated the protection of equality between men and women. The Article stated that States Parties would take in all fields including national law or legislation to make sure of the

full development and advancement of women, in the aim to fulfill the implementation of human rights and fundamental freedoms with men.

Furthermore, Article 3 of the Convention requires the State Party to actively protect women's full improvement and advancement, with the goal that they enjoy human rights and fundamental freedoms on the same level as men. This is a form of the protection of CEDAW to improve the position of women similar to men in society, as well as to abolish case of sexual harassment. CEDAW expects State Party give guarantee for women in all fields such as culture, political, social, economic, and all appropriate measures as well as abolish sexual harassment, which often occurs among women. The forms of CEDAW on protecting women from sexual harassment are to ensure gender equality of women that should be fulfilled by the State Party.

Moreover, Article 4 discusses the protection on the rights of women which States Parties should take of temporary special measures leading the accelerate of *de facto* equality of women. The scope and meaning of Article 4 must be determined in the context of the purpose of this Convention, which is to eliminate all forms of discrimination against women including gender-based violence or sexual harassment with an understanding to achieve *de jure* and *de facto* equality of women in the enjoyment of the human rights and fundamental freedoms.

Besides Article 4, State parties are required by Article 6 to take measures to eliminate all forms of the trafficking of women and exploitation of the prostitution of women, which is a form of the protection and the rights of women. Women are generally trafficked for sexual and economic exploitation, especially forced labor, prostitution and pornography, including for work in commercial agriculture and arranged marriages or to be sold as brides, enrolment for participation in hostilities and such related purposes as sexual services, postage and private functions in conflict situations.¹⁸ Around the world, women are trafficked and exploited continue for low-paid work or sex.¹⁹ Trafficking of women is one of the gender-based violence or sexual harassment. In this Article, the protection of women is the State Party ensures to end the exploitation, trafficking, and prostitution in women, taking all appropriate measures to suppress the cases.

Article 14 Paragraph 2 Point (c), (f), and (h) are forms of protection of CEDAW on women from the case of sexual harassment. This article stated that State parties should take every single suitable measure to eliminate discrimination of women in rural areas to guarantee the equality of men and women, in which women should participate in and get benefit from rural development, thus guaranteeing women's right:

1. To profit legitimately from social security programs
2. To take an interest in all community activities
3. To enjoy adequate living conditions, especially about housing, sanitation, electricity and water supply, transport, and communications.

State Party should fix the problems of women in rural areas and help women to look after and also contribute to their families and communities. All of the purposes mentioned in the Convention should be applied to women in rural area, and the State Party ensure that they get

¹⁸ Amy Russell, "'Victims of Trafficking': The Feminisation of Poverty and Migration in the Gendered Narratives of Human Trafficking," *Societies*, 4.4 (2014), 533 <<https://doi.org/10.3390/soc4040532>>.

¹⁹ *Ibid*, p. 534.

benefit from rural development as equal as men. The particular needs of women in rural communities must be met on the access of services, training, employment opportunities, social equity schemes, and state party need to eliminate the discriminatory barriers against rural women.²⁰ This is an important provision dedicated to rural women in an international treaty.

The entire Article in CEDAW above is related to the regulation on the protection of women from sexual harassment cases. The protections of CEDAW have a purpose to eliminate the discrimination of gender between men and women. The protection of this Article is to the empowerment of women. Moreover, the State Party should also ensure the stability and equality of women in society that are already regulated in this Convention.

2. General Recommendation No. 35 of Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Article 17 of CEDAW stated that for the implementation of the Convention, there should be an established Committee of CEDAW, which from now on will be referred to as the Committee. The Committee on the Elimination of Discrimination against Women (CEDAW) involves the independent experts that keep track of the implementation of CEDAW.

Recently, on July 14th, 2017 Committee has issued General Recommendation No. 35 on Gender-based Violence against Women, updating General Recommendation No. 19 which acknowledged cyber harassment. General Recommendation No. 35 is the awareness of the Committee of CEDAW of crime on the cyber space.

Article 20 of General Recommendation No. 35 stated that sexual harassment happens in all aspect and spheres of human life, in public or private cases. Those include the public spaces, educational settings, health services, workplace, politics, leisure, sport and technology-mediated environments, such as contemporary forms of cyber harassment happening in the Internet and cyber spaces. On the other word, General Recommendation No. 35 extends the definition of gender-based violence against women by adding that sexual harassment may occur on the internet and digital spaces.

Moreover, to prevent the cases concerning sexual harassment, CEDAW recognized the direct obligation of the state party, which state party shall take appropriate measure. Further, explained in the article 26 of General Recommendation 35 that the obligation of state party encompasses all aspects of women life, including the area of state actors such as legislative, executive, and judicial branches, at the national, local and decentralized level as well as the private sphere. The obligation to prevent sexual harassment is for all people, both state actors, and non-state actors. The adoption and implementation of the appropriate measures are to eradicate prejudices, stereotypes, and practice that a root of sexual harassment against women.

According to this article, the State Party must make a rule regarding cyber harassment, because as the international treaty, CEDAW does not have a legal banding to punish the perpetrators of the crimes. The appropriate measures of the State Party are provided at the legislative level, executive level, and judicial level to make a penalty unit. The Committee also

²⁰ Caroline Dookie, Yianna Lambrou, and Hajnalka Petrics, "A Tool for Gender-Sensitive Agriculture and Rural Development Policy and Programme Formulation," *Food and Agriculture Organization of the United Nations*, 2013, 6.

suggests that the State Party take measures on prevention, protection, prosecution, punishment, and redress to accelerate the elimination of cyber harassment. The purpose of this obligation is to protect women from cyber harassment.

Besides making rules regarding cyber harassment, Article 29 of General Recommendation also regulate that State party should ensure the rules are working correctly. The discrimination of women on all spheres, including cyber space, is criminalized and introduced without interruption and gives legal punishments commensurate. As well as for the victim and survivors of cyber harassment, all of the legal systems should ensure their protection.

Article 40 of General Recommendation no 35 is one of the forms of protection for women. In this Article, women are protected and assisted in their complainants and witnesses of cyber harassment before, during, and after litigation, including:

1. Protecting the privacy and safety

The General Recommendation No. 35 stated that the State party ensures that the victims, survivors, and witnesses of cyber harassment should be protected from their privacy and safety. The protection is including through gender-sensitive court procedures and measures.

2. Providing appropriate protection to prevent potential violence

This General recommendation stated that the State party ensures the accessible protection of appliances to prevent potential violence for the victim of cyber harassment. This includes immediate protection involving effective measure where appropriate, such as monitoring of eviction, protection of victims, restraining or emergency of victims, barring orders in contradiction of alleged perpetrators, including adequate punishments for non-compliance.

3. Providing low-cost, high-quality legal aid

The state party ensures access for the victim to get high-quality legal aid with low-cost. This is to make it easy for the victim to report their case concerning cyber harassment. As we know, the problem of the case concerning cyber harassment is the lack of reporting. Based on this General Recommendation, the state party should provide the best legal system to provide a low-cost to the legal proceedings of the cyber harassment cases.

4. Establishing appropriate multi-sectorial referral mechanisms

The state party should appliance appropriate multi-sectorial recommendation instruments to make sure sufficient access of women survivors to inclusive services. This is also ensuring contribution with non-governmental women's organization to make it easier for women to report their cases.

Those are all the protection of women in this Article that should be ensured by the State party. The obligations of the state party of CEDAW are not only to ensure the law of protected women working correctly, but also ensure that women can get protection before, during and after legal proceedings of cyber harassment cases.

Article 44 of General Recommendation No. 35 of CEDAW also regulates the protection of women, in which State party ensures sufficient access of victims to bring their cases to the courts

and tribunals. This is also to ensure powers that be adequately respond to cyber harassment cases, including applying criminal law and domestic law by the State party. Moreover, bring the alleged suspects to trial in a fair, efficient, expedition's manner, impartial, and imposing adequate punishments.

General recommendation No. 35 represents the awareness of the Committee of CEDAW on cases relating to gender based-violence which happen on the cyber space. This is also the harmful impact of the development of technology. The protection of CEDAW is also contained in the General Recommendation No. 35.

In other words, General Recommendation No. 35 gives the obligation to the State party to make regulation regarding gender based-violence, including cyber harassment cases. This regulation is under the authority of domestic law of State party itself, because as an International Treaty, CEDAW cannot give punishment to the perpetrators. The purpose of this regulation is to decrease the number of cases concerning cyber harassment against women.

All of the provisions of the protection in General Recommendation No. 35 are proof that it regulates cyber harassment cases. Although there is no specific statement in CEDAW that refers to cyber harassment, it is already included in General Recommendation No. 35 on Gender-based Violence against Women, which updated the General Recommendation No. 19. From the discussion above, it can be concluded that CEDAW may be used to handle the case regarding cyber harassment.

3. Implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in Indonesia toward Cyber Harassment

Cyber harassment is one of the negative forms of internet usage. Cyber harassment is the harassment conducted by email, online messages or internet. It can take many forms such as unwanted sexually explicit emails, threats of physical and sexual violence by email, inappropriate or offensive advances on social networking websites, and hate speech.²¹

Moreover, to find out more about cyber harassment, it must be known that cyber harassment is a part of sexual harassment. Sexual harassment can be a category of sexual invitation, involving unaccepted and unexpected invitations such as comments, jokes, and touching.²² There are several differences between sexual harassment and cyber harassment, one of them is that cyber harassment is done using electronic media in cyberspace. The impact of cyber harassment itself is not a result of directly disturbing the physical aspect, but also involves psychological and mental disorders.

Based on the previous discussion, CEDAW in Article 6 is regulated on the protection of women from sexual harassment that should be fulfilled by State party. The protection of the State party will be realized to take all appropriate measure, including legislation to suppress the case regarding cyber harassment. The General Recommendation No. 35 in Article 40 (e) already stated

²¹ European Institute for Gender Equality, "Glossary & Thesaurus" <<https://eige.europa.eu/thesaurus/terms/1486>>.

²² Hanafi Arief, "Legal Protection Against Women Victims By the Indonesian Domestic Violence Act," *Al-Adl Jurnal Hukum*, 9.1 (2017), 136 <<https://doi.org/10.28946/slrev.vol1.iss1.12.pp110-121>>.

the obligation of state party to ⁴ establish and implement appropriate multi-sectorial referral mechanisms to ensure effective access of women to report cases regarding discrimination.

Furthermore, to protect women in Indonesia from sexual harassment, there are several Articles in the Indonesian Penal Code relating to the case. The Indonesian Penal Code does not use the term sexual harassment, but the activities related to sexual harassment, in which one of them is decency. Article 281 of Indonesia Penal Code stated that:

1. "any person who with deliberate intent publicly offends against decency;"
2. "the people who with deliberate intent offend against decency whereby another person is present in spite of himself."

Decency is any action that is done intentionally and aimed at other people through physical contact. In other words, decency is the intentional action and being done by physical contact. The nature of decency from this Article is the impolite actions involving physical contact to the victim in the public or private area intentionally. The other Articles in the Indonesian Penal Code related to sexual harassment is about obscene acts in Article 289 of the Code. This Code stated that:

"Any person who by using force or threat of force forces someone to commit or tolerate obscene acts, shall, being guilty of a factual assault of the chastity, be punished by a maximum imprisonment of nine years."

The obscene acts in this Article are the actions that threaten or force someone to be harassed. This fulfills the requirements for sexual harassment. The nature of this crime is the actions of threat and forces someone for everything that violates modesty or vile actions, all of which are sexual lust, kisses, groping for genitals, breasts, and so on. Additionally, there is Article 315 of Indonesia Penal Code about hate speech, as elaborated below:

"A defamation committed with deliberate intent which does not bear the character of slander or libel, against a person either in public orally or in writing, or in his presence orally or by battery, or by a writing delivered or handed over, shall use simple defamation, be punished by a maximum imprisonment of four months and two weeks or a maximum fine of three hundred rupiahs."

Thus, it can be concluded that hate speech is an insult that is done intentionally to defame someone sexually or non-sexually. Moreover, Article 336 (1) of the Indonesian Penal Code is about violence. This Article stated that:

"Threat with open violence with united forces against persons or property, with a crime whereby the general security of persons or property is endangered, with rape, with actual assault of the chastity, with a crime against life, with grievous ill-treatment or with arson, shall be punished by a maximum imprisonment of two years."

Violence in this Article relates to the threat of the victim, which may occur physically or non-physically (threat of violence). All of the Articles of the Indonesian Penal Code are related to the case of sexual harassment toward women. Actually, Indonesia does not know of the term cyber harassment, because there is no Indonesian Law that specifically regulates on cyber harassment matters.

Recently, cyber harassment is a new form of sexual harassment, but not all of the regulation of sexual harassment can be used to cyber harassment. In the Indonesian Penal Code, some Articles relate to the case of cyber harassment, such as decency, violence, and hate speech. Unfortunately, their things cannot be reached by the Penal Code to ensnare cyber harassment cases. This is for the reason that the Penal Code is a regulation to ensnare actions committed in the real world while cyber harassment is an act committed in cyberspace. Therefore, the Penal Code cannot be used to ensnare cyber harassment cases.

In addition to the Indonesian Penal Code, there is Law No. 11 of 2008 about Electronic Information and Transactions. The objective of the Law is to provide legal certainty for the people who conduct transactions electronically, encourage economic growth, prevent the occurrence of information and communication technology-based crimes and protect service users who utilize information and communication technology.²³ Related to CEDAW, this Law is fulfilling the protection stated in the Convention. Article 27 (1) of Law No. 11 of 2008 stated that:

“Any person who knowingly and without authority distributes and transmits and/or causes to be accessible Electronic Information and/or Electronic Documents with contents against propriety.”

This Article regulates cyber harassment matters on the case of decency. Moreover, this Article is one of the examples of the protection of women from cyber harassment cases. Article 27 (3) of Law no 11 of 2008 stated that:

“Any Person who knowingly and without authority distributes and transmits and causes to be accessible Electronic Information and Electronic Documents with contents of affronts and/or defamation.”

Article 27 (3) can be used to ensnare cyber harassment actors, especially if the cyber harassment conducts hate speech, insult or defamation on the basis of gender. These actions must be done in the public sphere and in cyber space so that everyone can access them. Thus, cyber policies can be snared by this article. Article 27 (4) of Law no 11 of 2008 stated that:

“Any Person who knowingly and without authority distributes and transmits and causes to be accessible Electronic Information and Electronic Documents with contents of extortion and/or threats.”

Article 27 (4) can be used to ensnare suspects of cyber harassment, especially those who commit crimes that have elements of extortion. For example, if someone finds someone else's cellphone, then the cellphone has personal photos from the owner of the cellphone. Then the photo is used to threaten the photo owner to do something in accordance with the wishes of the perpetrator. The threat was made by threatening to spread the photo on social media. The existence of this Article can be used as protection for women, so that their dignity and secrets can be maintained. Thus, cyber harassment actors who contain elements of threats in their actions are liable to be charged with this article.

²³ Friskilla Clara, “Kebijakan Hukum Pidana Dalam Upaya Penanggulangan Cyberbullying Dalam Upaya Pembaharuan Hukum Pidana,” *Diponegoro Law Journal*, 5.3 (2017), 9.

Thus, Articles of Electronic Information and Transactions Act relates to cyber harassment. This Law can be used to handle the cases regarding cyber harassment, because this law regulates crimes of cyber space in Indonesia. In addition, based on the perspective of CEDAW, it is acknowledged that cyber harassment is a part of violation against women.

The protection of women in Indonesia cannot directly protect by using CEDAW, because as an international Treaty, CEDAW is defined as a soft-law. Soft-law is a law which does not have any punishment provision in it. In order to protect the right of women, CEDAW needs other Laws. In Indonesia, there is Law No. 11 of 2008 on Electronic Information and Transactions can be used to prosecute the offender of cyber harassment, because based on the perspective of CEDAW; cyber harassment is the violence against women.

C. Conclusion and Recommendation

1. Conclusion

In the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) there is no clear and specific statements related to cyber harassment. Aside of that, the presence of General Recommendation No. 35 on Gender-based Violence against Women of CEDAW acknowledge the term of sexual harassment in cyber space. However, as an international treaty, CEDAW does not provide any punishment for the suspect to be prosecuted. Fortunately, Indonesia has Law No. 11 of 2008 on Electronic Information and Transactions to deal with cyber harassment case itself.

2. Recommendation

The author recommends the Indonesian government to formulate a new law dealing with cyber harassment. The new law is specifically on prevention, protection, prosecution, punishment, and elimination of gender based-violation against women. Aside of that, education to the society on cyber harassment itself needs to be conducted by the government to prevent more victims in the future.

References

- AGUSTINA, ARIFAH MILLATI, "Hak-Hak Perempuan Dalam Pengarusutamaan Ratifikasi Cedaw Dan Maqāsid Asy-Syarī'Ah," *Al-Ahwal: Jurnal Hukum Keluarga Islam*, 9.2 (2017), 204 <<https://doi.org/10.14421/ahwal.2016.09205>>
- Arief, Hanafi, "Legal Protection Against Women Victims By the Indonesian Domestic Violence Act," *Al-Adl Jurnal Hukum*, 9.1 (2017), 136 <<https://doi.org/10.28946/slrev.vol1.iss1.12.pp110-121>>
- Asmat, Romana, and Miss Sidra Mehboob, "International Laws and Policies for Addressing Sexual Harassment in the Workplace," *International Research Journal of Interdisciplinary & Multidisciplinary Studies (IRJIMS)*, ISSN.32 (2016), 32
- Boland, Marry L, *Sexual Harassment in the Workplace* (United States: Sphinx Publishing, 2005)
- Clara, Friskilla, "Kebijakan Hukum Pidana Dalam Upaya Penanggulangan Cyberbullying Dalam

- Upaya Pembaharuan Hukum Pidana," *Diponegoro Law Journal*, 5.3 (2017), 9
- Dookie, Caroline, Yianna Lambrou, and Hajnalka Petrics, "A Tool for Gender-Sensitive Agriculture and Rural Development Policy and Programme Formulation," *Food and Agriculture Organization of the United Nations*, 2013, 6
- European Institute for Gender Equality, "Glossary & Thesaurus" <<https://eige.europa.eu/thesaurus/terms/1486>>
- Komisi Nasional Anti Kekerasan terhadap Perempuan, *Tergerusnya Ruang Aman Perempuan Dalam Pusaran Politik Populisme* (Jakarta: Catatan Tahunan tentang Kekerasan terhadap Perempuan, 2018)
- Ramdhani, Jabbar, "Tak Cuma Via Vallen, Ada 91 Laporan Pelecehan Seksual Online Di 2017," *Detik.Com*, 2017 <<https://news.detik.com/berita/d-4056007/tak-cuma-via-vallen-ada-91-laporan-pelecehan-seksual-online-di-2017>>
- Russell, Amy, "'Victims of Trafficking': The Feminisation of Poverty and Migration in the Gendered Narratives of Human Trafficking," *Societies*, 4.4 (2014), 533 <<https://doi.org/10.3390/soc4040532>>
- Sardi, Martinus, "Menuju Masyarakat Berwawasan Hak Asasi Manusia," *Pusat Internasional Pengembangan HAM*, 2011
- Scarduzio, Jennifer A., Sarah E. Sheff, and Mathew Smith, "Coping and Sexual Harassment: How Victims Cope across Multiple Settings," *Springer Science Business Media*, 47.2 (2018), 327 <<https://doi.org/10.1007/s10508-017-1065-7>>
- Šimonović, Dubravka, "Convention on the Elimination of All Forms of Discrimination against Women," *United Nations*, 2007 <<http://legal.un.org/avl/ha/cedaw/cedaw.html>>
- United Nations Division for the Advancement of Women, "Sexual Violence and Armed Conflict: United Nations Response Published to Promote the Goals of the Beijing Declaration and the Platform for Action," *United Nations*, 1998, 3
- United Nations Women, "Sources of International Law Related to Sexual Harassment" <<http://www.endvawnow.org/en/articles/492-sources-of-international-law-related-to-sexual-harassment.html>>

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