



Body Shaming Act as A Crime in Indonesian Criminal Law

Ratri Novita Erdianti

Faculty of Law, University of Muhammadiyah Malang, Indonesia
ratrinovita83@gmail.com

Wasis

Faculty of Law, University of Muhammadiyah Malang, Indonesia
[wasiss@gmail.com](mailto:wasisss@gmail.com)

Echaib Samira

Faculty of Political Sciences and International Relations, University of Algiers III, Algeria
echaibss@gmail.com

Sholahuddin Al Fatih

Faculty of Law, University of Muhammadiyah Malang, Indonesia
jurnal.legality@gmail.com

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Abstract

Body shaming is an act that often occurs in society. Body shaming is an act that refers to the activity of criticizing and commenting negatively on the physical or other person's body or the act of mocking / insulting a person's body shape or body size or someone's appearance. Often this body shaming is carried out only for jokes or jokes among the public, but basically if viewed from a criminal law perspective, basically this body shaming meets the criteria for a criminal offense in the defamation article regulated in the Criminal Code. criminal offense in contempt which can be punished by using article 315. Considering the legal rules regarding body shaming in the Criminal Code and outside the Criminal Code which in the regulation do not mention directly about body shaming, it is necessary to review the rules governing body shaming so that it does not give rise to multiple interpretations. The formulation of the problem in this study is the regulation of criminal acts in insulting body image (body shaming) in terms of the Criminal Code and Legislation Outside the Criminal Code. The method used in this article uses a normative juridical research method. Later this study will review the legal construction of the law on body shaming in criminal law in Indonesia. In the regulation of the Criminal Code, body shaming is regulated in the elements of a criminal act, article 315. In addition, Indonesia already has a number of rules that regulate behavior on the internet, such as Law No. 11 of

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2008 concerning Electronic Information and Transactions, which was later amended in Law No. 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Transactions. Electronic (UU ITE)

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1. Introduction

Current technological developments have an impact on the public to access information from various media, one of which is through cyberspace. Access to information, including communicating among people, is currently mostly done in cyberspace. The use of electronic transactions Nowadays, it is easier for anyone to access information and express themselves in cyberspace. Children, teenagers, and adults can open social media anytime and anywhere.

It turns out that the use of electronic media is very possible to be misused for actions that are contrary to existing regulations (Aditya and Al-Fatih 2020). One form of internet abuse is *body shaming*. Body shaming is a form of psychological violence that often occurs in society, including in cyberspace. And the majority of this body shaming occurs in women but often does not receive special attention.

The term Body Shaming in the community is still considered unfamiliar, but if you look deeper, Body Shaming is basically an act that often occurs in society. The term Body Shaming itself if translated, namely Body shaming consists of two syllables consisting of body and shaming. Body in Indonesian means body and shaming means to humiliate. Body shaming is the activity of criticizing and commenting negatively on the physical or body of others or insulting actions by commenting on the physical (body shape and size) and appearance of a person (Mutmainah, 2020, Pp. 975-987). Body Shaming is the act of humiliating the body or physically. Meanwhile, in its broadest sense, Body Shaming is an act of mocking or insulting by commenting on a person's physical (body shape and size) and appearance. In other words, Body shame is defined as an emotional response that arises from the act of measuring or judging an individual's body which is deemed to be contradictory or inconsistent (failed to meet) cultural standards or internalized standards regarding the ideal body. judge and humiliate someone's body that is considered not ideal (Naibaho, 2018, Pp. 11-26).

This type of crime is a new form of crime that is increasingly developing in the community and it is feared that it will occur more often if it is not immediately addressed (Ndruru et al. 2020, Pp. 288-295). Besides being found in the real world, body shaming is often found in cyberspace such as social media Facebook, Instagram, Twitter, Youtube and so on.

In Indonesia, people often do not realize that body shaming occurs in daily interactions and is not considered a serious problem. If it is examined that body shaming can make the victim suffer physically not only psychologically. This is

usually due to ridicule of a body shape that is considered not ideal for example because it is too fat which then the victim ends up trying to diet that is too heavy which has an impact on his body health and can even threaten his soul if the victim gets too much. Body shaming in Indonesia is also very often experienced by artists, such as discussing more about the appearance and body size of these celebrities.

Body shaming is an important phenomenon and should be paid more attention to because it is a form of verbal bullying. that body shaming can be interpreted as an attitude or behavior that looks at weight, body size and appearance of oneself and others. Body shaming has the main characteristics, namely criticizing and comparing one's appearance with others and criticizing the appearance of others with or without that person's knowledge. If body shaming is only aimed at body shape and size, bullying is a big circle, where this bullying can be defined as a form of aggression in which one person or group of people repeatedly harass the victim verbally or physically without provocation. Body shaming, which is a form of verbal abuse, has many serious effects on its victims. One of the impacts caused by this body shaming behavior is eating disorders. Body shaming behavior itself is mostly carried out by those closest to us, such as our own friends who often mock an imperfect body shape and this makes the victim not confident, feels humiliated by people and tries to form a more ideal body (Febrianti and Fitria, 2020, Pp. 12-25).

The effects of body shaming are very negative, the results of the study show that the treatment of body shaming can have an impact on a person's negative mindset. This shows that body shaming treatment can lead to poor self-assessment. Disturbances that can occur to a person due to body shaming include distrust in himself, depression, and even if it is very severe, the victim can commit suicide. The effect of shame on the body can have a negative effect so that it tends to follow what other people say related to the condition of the body to the extent that the experience of shame is experienced so that it makes you feel insecure, unattractive, and so on (Hidayat et al. 2019, Pp. 79-86). In the aspect of criminal law in Indonesia, the act of bodyshaming can be categorized as a criminal act. In this article the author will examine how the legal construction of body shaming in criminal law in Indonesia?

2. Discussion and Result

The development of criminal acts in Indonesia is experiencing developments and changes in people's lives, especially due to technological developments that influence people to carry out actions that are considered normal actions to be carried out. solutions how to deal with it.

An action that is currently rife in the community is the act of bodyshaming, bodyshaming can be done directly to victims or done indirectly through cyberspace which is currently a medium for people to communicate or socialize. The most recent case was that during the welcoming ceremony for the return of Indonesian athletes at Soekarno Hatta International Airport, Thursday, August 5, 2021, remarks appeared

that were suspected of being body shaming for Nurul Akmal. At that time, Nurul was serving a photo session with the media crew, when he heard a voice saying, "the thinnest." The incident was widely discussed and the unknown perpetrator was also criticized. Nurul admitted that he did not really hear the remarks (Admin, 2021, p. 1). Some of the actions that this person did may think that it was just a joke, but if we look deeper, the act can actually be interpreted as an insult to the victim that can cause embarrassment to him. This is what makes that bodyshaming brings harm to the victim in the form of shame that makes the victim distrust himself over their body. *Body shaming* is not merely criticizing someone who is overweight, but even those who are underweight. People of all shapes and sizes can fall victim to *body shaming*. There are various ways a person expresses the words of *body shaming*, ranging from a joking tone, subtly, which may be without realizing it.

Body shaming is the act of someone who criticizes another individual's body shape where the body shape is not ideal or not like body shape in general. In Body Shaming there are 2 (two) types, including: (Anggraini, 2019, Pp. 113-124) a) Acute Body Shaming behavioral aspects of the body, such as movement and behavior. This term is usually called embarrassment, a type of body shaming that usually occurs in preparations that would not have been anticipated or planned in advance. b) Chronic body shaming is an action in a permanent form that is carried out continuously on an appearance or body, such as weight, height and skin color. In addition, chronic body shaming is related to bodily functions and anxiety that are commonly experienced such as acne, disease, defecation, aging and so on.

Treating *body shaming* has consequences for mental and physical health in the short and long term. Several mental health problems arise from *body shaming*, such as low self-esteem, anxiety, and symptoms of depression. When a person is humiliated especially in a body part it can cause feelings of avoidance and choose to isolate themselves because of the perceived humiliation. There were also records of increased feelings of low self-esteem, self-image, and self-esteem. Worse, *body shaming* can make a person feel lonely and sorry for himself, which can lead to depression. In addition, *body shaming* can lead to unhealthy eating habits and go to extremes to improve physical condition. This can lead to a two way spectrum. First, eat too much to gain weight. Second a person refuses to eat to lose weight. Which can put people at risk for eating disorders.

Explicitly, the regulation regarding body shaming cannot be found in the Criminal Code or other laws and regulations, but if we examine it further, basically if someone commits body shaming, they can be charged with using the article on insults in the Criminal Code and the Law. Law number 19 of 2016 Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, hereinafter referred to as the ITE Law. Regulations that can be used as a reference for acts of insulting body image (body shaming) are Article 310, Article 311 and Article 315 of the Criminal Code. However, in the meantime, the most suitable legal basis for the

criminal act of insulting body image (body shaming) is Article 315. With regard to the act of body shaming, it can be seen from the formulation of Article 315 of the Criminal Code which states: "Every intentional insult that is not libel or written defamation which is committed against a person, either in public orally or in writing or in front of the person himself, verbally or by deed or by a letter sent or received to him, shall be threatened with light insult and be punished by a maximum imprisonment of four months and two weeks or a maximum fine of a lot of four thousand five hundred rupiah" If one observes the contents of the provisions of Article 315, it has the character of not being libelous or defamatory.

Slightly different from insults which are categorized as defamation which requires the perpetrator to accuse something that is offensive to honor, then the insults regulated in Article 315 of the Criminal Code does not require that the perpetrator has to accuse something. In the context of Article 315 of the Criminal Code, any insult that is not polluting can be said to be a light insult. This insult which is not defamatory is every insult in its sociological sense. So in this case, because *humiliation* is generally defined as an attempt to vilify another person, then this light insult can be interpreted as any attempt to vilify another person that is not polluting. Slandering other people who are not libelous (not accusing something that is offensive to honor) can be done with words or actions. Thus, it is clear here, that in order to distinguish "mild insults" from defamation, it must be seen whether the insult is an accusation (about something that attacks honor) or not. If the insult is carried out by accusing something that is offensive to honor, then it is referred to as defamation, whereas if the insult is not carried out by accusing but is carried out with words or actions, for example by saying *a dog, asu* and so on, then the insult is categorized as light insult (Tongat, 2003, p. 167).

We need to analyze the elements of the insulting sentence in the act of body shaming first. This act of body shaming is a new thing, in the criminal realm in Indonesia. There needs to be a legal interpretation or what is better known as legal interpretation, in order to be able to answer from the existing problem formulation, namely whether this body shaming act can be classified as a criminal act. Body shaming acts when interpreted using extensive interpretation, which means that extensive interpretation is an interpretation carried out by expanding the meaning of the words contained in the legislation, so that an event can be included in it. The act of body shaming, if interpreted from the words, that the notion of body shaming here is the words commenting on or mocking the shape of a person's body size. The sentence that contains the act of body shaming which is the object of his actions here is a reproach to the shape of the body, be it the size of the growth or the shape of the limbs. Reproach or ridicule that insults the shape of the body or the shape of the limbs, with inappropriate imagery can also be made as insults (Putra and Rusdiana, 2019, 1-13).

In connection with the crime of body shaming, Article 315 is used to trap the perpetrator if the act of body shaming is done directly or in front of the person himself.

This article is also categorized as a minor insult crime and is of a delicate nature of complaint. Although this article does not specifically mention body shaming but can be seen from the elements of delicacy. In Article 315 of the Criminal Code consists of several elements, namely objective elements and subjective elements. Objective elements, consisting of:

1. Every insult which is not contaminating either verbally or in writing
2. What is done to someone
3. In public both orally and in writing
4. In front of or in front of his own person, both verbally and by deeds
5. By a letter sent or received to him.

While the subjective element: intentionally

If we look at the elements contained in Article 315, then the criminal act of insulting the image of the body (body shaming) fulfills the delicate elements contained in this article. It should be noted, that for minor insults, then the insult can not only be done *in public* either orally or in writing can also be done *in front or in front of the person himself* either in the form of words or deeds. A person who insults another person by saying *fat, his face looks like it is not paved* and so on or by acts such as *spitting on people's faces* are acts (criminal) that can be categorized as *minor insults*. Acts or speeches such as the above to be a criminal act mild insults should not be done in public, but can also be done in the face of the person being insulted.

Based on the characteristics of body shaming that have been described above, it can be said that body shaming has fulfilled the elements of Article 315 of the Criminal Code, such as insults in the form of oral libel or written libel which is carried out in public orally or in writing, or in front of the person himself in front of the person himself. verbally or by deed, as well as by letters sent or received to him, so that body shaming is part of a criminal offense of minor insults committed against a person's body image. Thus Article 315 of the Criminal Code can be used to ensnare netizens who write body shaming either in the column comments or direct messages, because they are written in nature and carried out in public or can be accessed by many people. Article 315 of the Criminal Code can also ensnare someone who sends a message of body shaming because it is in accordance with the elements of Article 315 of the Criminal Code which is carried out in front of the person himself.

In addition to direct insults, the use of internet technology can be misused for negative things. Social media has grown very rapidly so many people easily comment on other people through social media. The comments made are often negative comments, someone gives negative comments to others without thinking about how the person's condition is. Nowadays, body shaming is often happening or insulting someone about their body shape. While body shaming itself is an act of criticizing others or yourself because of their physical appearance. The act of body shaming is often done through social media or even directly thrown at someone in front of him. Not a few people who do body shaming against someone in public or public places.

Body shaming can also be classified as a cyber crime if it is done through cyberspace or the internet. Cyber crime itself is a crime activity in cyberspace by utilizing a computer network as a tool and the internet network as a medium. In a broad sense, the definition of cyber crime is all illegal actions carried out through computer networks and the internet to harm others. So that the act of body shaming on the internet can be punished if it meets the qualifications of a pre-existing crime (Shafa et al. 2020, 104-113).

The legal regulation of the criminal act of insulting body image in the Electronic Information and Transaction Law is regulated in Article 27 paragraph (3) and the criminal provisions are regulated in Article 45 paragraph (3) of the latest ITE Law. Article 27 paragraph (3): "Every person intentionally and without rights distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that contain insults and/or defamation. ". Article 45 paragraph (3): "Everyone who fulfills the elements as referred to in Article 27 paragraph (3) shall be sentenced to a maximum imprisonment of 4 (four) years and/or a maximum fine of Rp. 750,000,000.00 (seven hundred fifty million) rupiah". This article contains several elements, namely an element of error, an element of violating the law and an element of behavior if it is associated with a criminal act of insulting body image. The elements of the ITE Crime in Article 27 paragraph 3 are:

- a. Mistakes on purpose
- b. Against the Law Without Rights
- c. The act of distributing and/or transmitting
- d. Information object
- e. The purpose of attacking someone's honor and reputation is to insult someone physically or non-physically.

As a criminal act, a countermeasure is needed so that the crime can be minimized or even eliminated in social life. In this regard, there is a criminal law policy effort that becomes a crime prevention tool which can be done using 2 approaches, namely the penal approach and the non-penal approach. The Penal Approach (Criminal Law), means the application of criminal law, namely if someone commits a criminal act, there is a handling procedure up to the imposition of sanctions in the form of criminal acts and/or actions. Efforts to overcome crime through penalties are more focused on repressive nature, namely in the form of suppression, eradication, and suppression after the crime has occurred. In the implementation of crime prevention through this legal route, the embodiment of a criminal sanction can be seen as a process that includes three stages, namely: (Nawawi, 2005, p. 1)

1. formulation stage by legislators (criminal determination)
2. the stage of giving or imposing a crime by the court
3. the stage of criminal execution by the criminal execution apparatus

In the framework of a unified process, the first policy stage can be said to be the legislative policy stage, where this stage is usually referred to as the "giving

punishment in abstracto" stage, while the second and third stages are commonly referred to as "giving punishment in concreto". Seen as a process of law enforcement mechanisms, then the three stages are expected to be a network of interrelated links in a single system. Of the three stages, the most important subject matter to be studied is in the first stage, namely regarding the stages of determining the criminal by the law which includes criminal acts committed, accountability for criminal acts committed and regarding the punishment given for the crime committed. The purpose of the policy of establishing a criminal sanction cannot be separated from the goal of criminal politics in the overall sense of protecting the community to achieve welfare. This determination stage is the stage of careful planning regarding the action policies that must be taken in terms of punishment in the event of a violation.

Relating the problem of giving this crime to the development of criminality, the problem must be returned to the concept of rationality from the crime prevention policy mechanism itself, meaning that any problems that arise in connection with the development of crime must be studied in the policies of giving criminal that have been running, whether it has been implemented in accordance with with rational policy. Each plan contains a policy of selecting and determining various criminal alternatives. It also contains the meaning that the selection is carried out based on rational considerations. Draft Criminal Code that a crime is said to be effective if:

- a. can prevent criminal acts
- b. can guide the convict to be a good and useful person, and
- c. can remove stains caused by criminal acts.

As has been explained above that criminal policy is essentially a rational effort from the community in tackling crime. The link between criminal policy and conditional crime here can be understood that with the renewal of criminal law which includes reorientation and reform of criminal sanctions must be a comprehensive countermeasures. is integrated, which is not only seen in the renewal of criminal law but can also be seen in terms of criminal policies.

In the case of body shaming that is carried out, the perpetrators can be taken action against the acts of body shaming committed against the victim, this body shaming crime is a complaint offense in which only the victim can report it to the authorities.

This second countermeasure uses a non-penal approach (non-criminal law), namely efforts in the form of coaching, and or other non-formal education efforts. The non-penal approach focuses more on preventive properties in the form of prevention, deterrence, and control before crime occurs, considering that crime prevention efforts through non-penal channels are more of a preventive measure for the occurrence of crime, the main target is to handle the conducive factors that cause crime. These conducive factors, among others, are centered on social problems that can directly or indirectly lead to crime.

Various problems that often arise in the stages of crime prevention policies are on the issue of formulation/formulative authority. The problem is not only a matter of the extent to which criminal law (the state) regulates and limits a person's rights or authority in behaving, but also about how far criminal law regulates and limits the authority of state officials or officials in imposing or imposing criminal (criminal) sanctions. This is because so far there has been no national punishment pattern (reference, guideline or guideline for making or compiling legislation containing a criminal sanction system) at the legislative policy stage (formulative/formulation) and there is also no national sentencing guideline (guidelines for judges to impose or apply punishment) at the stage of judicial policy (applicative). So that in legislative practice so far, it can be seen that there is a diversity of patterns in determining the type of sanctions (criminal/action), the system for formulating sanctions, the amount/duration of sanctions and the pattern of weighting/reducing sanctions (Shafa et al. 2020, Pp. 104-113).

3. Conclusion

Bodyshaming is an act that denounces someone related to body image and in this case can be categorized as a criminal act. The criminal act in question is related to the criminal act of humiliation as regulated in Article 315 of the Criminal Code if it is carried out directly to the victim. If it is carried out through social media, the offense can be subject to the ITE Law article 27 paragraph 3. Countermeasures against such crimes can be carried out with penal and non-penal means. Non-penal facilities are carried out as a form of prevention that can be done by educating the public not to do bodyshaming. Penal Efforts Can be done by taking action against the perpetrators of bodyshaming and criminalizing the acts of bodyshaming committed.

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