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Cyberbullying in the Perspective of Legal Philosophy: Considering the Dignity of Victims and Freedom of Expression after the Enactment of the National Criminal Code

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Abstract

Cyberbullying or cyberbullying includes a wide variety of acts, ranging from repeated taunts, accusations that damage reputation, threats, to the dissemination of personal data, so that one social label can touch different legal interests. The problem becomes more complicated after the National Criminal Code takes effect on January 2, 2026, because Article 27A of the ITE Law is limited in its applicability by the transitional provisions of Law Number 1 of 2024. This study aims to map the position of forms of cyberbullying in Indonesian criminal law after that date and formulate a legal philosophical framework to assess the legal response to it. The research uses normative juridical methods with legislative and conceptual approaches, as well as grammatical, systematic, and teleological interpretations. The results show, first, that cyberbullying does not have a single criminal basis. The explanation of Article 29 of the ITE Law does mention bullying in the digital space, but only in the scope of threats sent directly to the victim, while attacks on honor carried out after January 2, 2026 are more appropriately read through Article 433 and Article 441 of the National Criminal Code. Second, this article proposes a layered test model that combines dignity as a social position (Waldron), the priority of basic freedom and self-esteem (Rawls), the requirements for criminal eligibility (Bentham), and legal certainty (Fuller and Radbruch). This model results in the principle that freedom of expression can only be limited if expression attacks a person's position as a fellow citizen, not just offending him, and that criminal punishment is only appropriate when non-criminal means are inadequate.

INTRODUCTION

Bullying that used to occur in the school or workplace can now take place through conversation groups, comment columns, and anonymous accounts. This form is known as *cyberbullying*. Psychological studies have long noted that victims face pressure that doesn't stop when they go home, as attacks also enter their mobile phones and personal spaces.[1] A meta-analysis of research in different countries also linked *cyberbullying* victimization to anxiety, depression, and decreased adolescent well-being.[2] More recent studies have shown that prevalence varies between countries, but the pattern of risk factors is relatively consistent, so prevention cannot be left to criminal law alone.[3]

It is the digital nature that distinguishes it from conventional bullying. Uploaded material can be copied, stored, and redistributed by people who never intend to attack the victim. The magnitude of the loss therefore depends not only on the first message, but also on the extent of its spread, the length of the material lasts, and the difficulty of removing digital traces.[4] Research in Indonesia has come to a similar conclusion: the impact *of cyberbullying* is psychological, social, and legal, so a response that only centers on punishing the perpetrator does not necessarily answer the needs of the victim.[5]

The legal problem stems from the incompatibility between the social language and the language of the law. Rude comments, accusations that damage reputation, threats of violence, dissemination of home addresses, and exclusion from the group can both be perceived as bullying, even though each touches on different legal interests and is subject to different elements of crime. The explanation of Article 29 of Law Number 1 of 2024 does mention that bullying in the digital space (*cyber bullying*) is an act referred to in the article.[6] However, the reference lies in the explanation of a crime of sending threats directly to the victim, so it cannot be read as a general definition. Other regulations are

[1] Robert S. Tokunaga, 'Taking You Home from School: A Critical Review and Synthesis of Research on Cyberbullying Victimization', *Computers in Human Behavior*, 26.3 (2010), 277–87.
[2] Robin M. Kowalski et al., 'Bullying in the Digital Age: A Critical Review and Meta-Analysis of Cyberbullying Research among Youth', *Psychological Bulletin*, 140.4 (2014), 1073–1137.
[3] Chengyan Zhu et al., 'Cyberbullying among Adolescents and Children: A Comprehensive Review of the Global Situation, Risk Factors, and Preventive Measures', *Frontiers in Public Health*, 9 (2021), 634909.
[4] Peter K. Smith et al., 'Cyberbullying: Its Nature and Impact in Secondary School Pupils', *Journal of Child Psychology and Psychiatry*, 49.4 (2008), 376–85.
[5] P. Hikmawati, 'Regulation of Cyberbullying and Legal Protection of Its Victims', *The State of Law: Building Law for Justice and Welfare*, 15.1 (2024).
[6] Explanation of Article 29 of Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Information and Electronic Transactions.

scattered in several laws, and previous research assesses that this distribution has not yet formed a complete protection of victims.[7]

The norm map changes on January 2, 2026. Article II number 1 of Law Number 1 of 2024 states that a number of provisions, including Article 27A concerning attacks on honor or good name and Article 45 paragraph (4) which contains criminal threats, are valid until the enactment of Law Number 1 of 2023 concerning the Criminal Code.[8] The National Criminal Code comes into force on that date, along with Law Number 1 of 2026 concerning Criminal Adjustment, which adjusts criminal threats in laws outside the Criminal Code. [9] At almost the same time, the Constitutional Court through Decision Number 105/PUU-XXII/2024 has narrowed the meaning of the phrases "other person" and "something" in Article 27A.[10] Maipauw, Subekti, and Paramitha noted that this series of changes gave rise to a debate about the applicability of Article 27A after the National Criminal Code came into effect.[11] For victims, reported persons, and law enforcement, the debate is not just a technical issue, because determining which articles are valid as the basis for the report.

There has been quite a lot of research on the protection of cyberbullying victims in Indonesia, but the emphasis is different. Hikmawati focuses on the adequacy of regulations and concludes that the ITE Law and the Criminal Code are used more to deal with perpetrators, while victim protection depends on witness and victim protection laws and child protection.[12] Sitihastuti and Solikhah came to a similar assessment, namely that the existing arrangements are stronger in terms of enforcement than restoration.[13] Regita and Widowaty trace the form of protection for victims of bullying on social media by relying on Article 27 of the ITE Law before the second amendment and the rights of victims in Article 7A of the Witness and Victim Protection Law.[14] Adnan and colleagues highlight children as victims,[15] Chakan and Millenio read the issue of victims from the

[7] Sholikah Sitihastuti and Solikhah Solikhah, 'The Urgency of Legal Protection for Victims of Cyberbullying in Indonesia', *Journal of Legal Horizons*, 15.1 (2024), 61–68.
[8] Article II number 1 of Law Number 1 of 2024.
[9] Law Number 1 of 2026 concerning Criminal Adjustment, Statute Book of the Republic of Indonesia Number 1 of 2026, Supplement to Statute Book of the Republic of Indonesia Number 7153.
[10] Constitutional Court Decision Number 105/PUU-XXII/2024, pronounced on April 29, 2025.
[11] Charlly Richarth Everth Maipauw, Subekti, and Vallencia Nandya Paramitha, 'The Applicability of Article 27A of the Electronic Information and Transaction Law after the Enactment of the National Criminal Code', *Lex Journal: Law and Justice Review*, 10.S1 (2026), 452–71.
[12] Hikmawati, 'Regulation of Cyberbullying'.
[13] Sitihastuti and Solikhah, 'The Urgency of Legal Protection'.
[14] Dhea Ayu Regita and Yeni Widowaty, 'Forms of Legal Protection for Victims of Bullying through Social Media', *Indonesian Journal of Criminal Law and Criminology*, 5.2 (2024).
[15] Alinda Julietha Adnan, Dewi Putriyani, Hycal Asmara Wibowo, and Suta Ramadan, 'Legal Protection of Children as Victims of Cyberbullying', *Indonesian Journal of Criminal Law and Criminology*, 5.1 (2024).

perspective of victimology,[16] and Salsabila and Ibrahim compare the right to be forgotten in Indonesia and South Korea as a means of recovery.[17] Maipauw and colleagues, on the other hand, do not discuss the victim, but rather the status of Article 27A in transition.[18]

From the comparison, two gaps can be seen. The first group works on the level of the availability of norms and forms of protection, but has not explained why the state has the right to punish one form of bullying while other forms are adequately handled in a non-criminal manner. The second group discusses the practicality of norms without linking them to the needs of the victim and the risks to freedom of expression. A normative analysis of the regulation can answer whether an article applies and what its elements are. The analysis cannot answer the question that precedes it, namely what interests are actually violated by the bullying, when the protection of those interests can limit the freedom of others, and when the criminal justice system is a viable means. These questions are the domain of legal philosophy, and the answers determine how to read the existing positive norms.

The contribution of this article is not just to use several values of legal philosophy at the same time. This article compiles the relationship between these values into a layered test model that can be used to assess the legal response to a cyberbullying case. The model starts from one main distinction: bullying that deserves a legal response is bullying that degrades a person's position as a fellow citizen, not just one that offends them. This distinction is then used to resolve the conflict between the protection of the victim's dignity and freedom of expression, as well as to place crime as the last resort in the legal situation after the National Criminal Code comes into effect.

Based on this description, this article answers two formulations of the problem. First, what is the position of forms of *cyberbullying* in Indonesian criminal law after the National Criminal Code takes effect on January 2, 2026, especially in relation to the status of Article 27A of the ITE Law? Second, how can a legal philosophy framework be formulated to assess the legal response to *cyberbullying* and balance the protection of the dignity of victims with freedom of expression?

METHODS

This research is a normative juridical research. The choice follows the character of the problem formulation: the first problem formulation asks about the applicable norms and

[16] Arron Chakan and Muhammad Fauzan Millenio, 'Protection of Cyberbullying Victims in Indonesia (An Overview of Law and Victimology)', *Semarang State University Undergraduate Law and Society Review*, 3.1 (2023), 1–26.
[17] Z. Salsabila and A. L. Ibrahim, 'The Right to Be Forgotten as the Implementation of Legal Protection for Cyberbullying Victims (A Comparative Study of Indonesia and South Korea)', *Kertha Patrika*, 45.2 (2023).
[18] Maipauw, Subekti, and Paramitha, 'The Practicability of Article 27A'.

the relationship between norms, while the second problem formulation asks about the value basis that justifies or limits the use of these norms. Both questions are answered through legal materials, not through field data.

The legislative approach is used for the formulation of the first problem. The primary legal material is selected with two criteria, namely containing a formulation of acts or protection related to the form *of cyberbullying* discussed, and the status of being valid on or after January 2, 2026, or regulating the transition to that date. The materials that meet the criteria are the Constitution of the Republic of Indonesia in 1945, Law Number 1 of 2023 concerning the Criminal Code, Law Number 1 of 2024 concerning the Second Amendment to the Law on Information and Electronic Transactions, Law Number 1 of 2026 concerning Criminal Adjustment, Law Number 35 of 2014 concerning Child Protection, Law Number 12 of 2022 concerning the Crime of Sexual Violence, Law Number 27 of 2022 concerning the Protection of Personal Data, Law Number 31 of 2014 concerning the Protection of Witnesses and Victims, Law Number 12 of 2005 concerning the ratification of the International Covenant on Civil and Political Rights, and Constitutional Court Decision Number 105/PUU-XXII/2024. These provisions are interpreted grammatically to read the text sound, systematically to read the relationship between the transitional provisions of the ITE Law and the provisions for the repeal of the Criminal Code, and teleologically to read the purpose of lawmakers during the transition period.

A conceptual approach is used for the formulation of the second problem. The secondary legal material consists of the primary works of legal philosophy thinkers and journal articles. The primary works were chosen because they provide concepts that are directly needed to answer the conflict of values in *cyberbullying*: Rawls for the priority of basic freedom and self-respect, Bentham for the requirements of criminal eligibility, Mill for the principle of loss, Waldron for dignity as a social position, and Fuller and Radbruch for legal certainty. Journal articles are selected when discussing the protection of victims *of cyberbullying* in Indonesia, the applicability of Article 27A, or empirical findings and platform governance relevant to the concept. Each article is judged by the suitability of its focus with the formulation of the problem and by the clarity of the identity of the publication.

The analysis was carried out qualitatively in three stages. The first stage maps the form of the act, the legal interests violated, and its legal basis after January 2, 2026. The second stage degrades each concept of legal philosophy into an assessment indicator and compiles it into a multi-layered test model. The third stage applies the model to three hypothetical scenarios to show that different theories produce different assessments, and

then draws the normative implications of the results of the application. The scenarios in this article are compiled by the authors as analytical test tools and do not represent a specific case.

RESULTS AND DISCUSSION

1. Cyberbullying Juridical Map after January 2, 2026

The first step is to separate social labels from legal qualifications. The term *cyberbullying is* commonly used for repeated and deliberate patterns of attacks on people who find it difficult to defend themselves. The element of repetition is important sociologically, but Indonesian criminal law does not make it an element of delicacy. A single defamatory upload can cause great losses because it is spread by thousands of other accounts, while a series of repeated ridicule does not necessarily meet the elements of any criminal act. Therefore, legal qualifications must depart from the legal interests violated by concrete acts. Table 1 summarizes the mapping.

Table 1. Forms of *cyberbullying*, legal importance, and legal basis after January 2, 2026

Form of deed	Legal interests	Relevant legal basis	Analytical notes
Accusations that defame through posted posts or messages	Honor and good name	Article 433 jo. Article 441 paragraph (1) of the Criminal Code. Defamation: Article 434. Minor insult: Article 436	Delik complaint (Article 440 of the Criminal Code). Not punished if it is in the public interest or self-defense (Article 433 paragraph (3))
Threats of violence or intimidating messages sent directly to victims	Sense of security and freedom from bullying	Article 29 jo. Article 45B OF THE ITE LAW	The explanation of Article 29 mentions bullying in the digital space. The element of "directly to the victim" limits its reach
Sharing of addresses, phone numbers, or other personal data (*doxing*)	Privacy and protection of personal data	Article 65 paragraph (2) jo. Article 67 paragraph (2) of the PDP Law	The elements of "unlawful" and "not his" must be proven
Dissemination of sexually charged content without consent	Sexual integrity and autonomy	Article 14 of the TPKS Law	Special victim protection regime in the TPKS Law

Attacks that cause psychological suffering in children	Growth and development and special protection of children	Article 76C jo. Article 80 of the Child Protection Law	If the perpetrator is also a child, the juvenile criminal justice system and diversion apply
Repeated taunts, exclusion from the group, or abusive comments without accusations and threats	Self-esteem and social relations	Generally does not meet the elements of delicacy	Addressed through the discipline of education units, workplaces, and moderation of the platform

The table shows that the distinguishing element does not lie in the media used, because all forms occur equally through an electronic system. The distinguishing elements are the content and direction of the act. Accusations of attacking honor, threats attacking security, and data dissemination attacking privacy. All three can appear in a series of bullying, but each must be proven according to its own elements. For victims, this distinction is useful because the report is directed at the right legal basis. For the reported, this distinction is a protection against criminalization that only relies on labels.

The position of Article 29 needs to be examined. This article criminalizes anyone who deliberately and without the right to send information or electronic documents directly to the victim that contains threats of violence and/or intimidation, and the explanation includes bullying in the digital space within the scope of that act.[19] Article 29 does not include provisions that are limited in their applicability by Article II number 1 of Law Number 1 of 2024, so it remains valid after January 2, 2026. The threat of fines is adjusted by Law Number 1 of 2026, while the threat of imprisonment does not change.[20] However, the mention of bullying in the explanation does not expand the elements of the article. The explanation serves as an official interpretation of the norm and must not contain the formulation of new norms.[21] As a result, ridicule posted in public spaces without being sent directly to the victim, or exclusion that does not contain threats, remains outside Article 29 even though it is socially called bullying.

The most difficult issue concerns an attack on honor. Before January 2, 2026, the act is formulated in Article 27A jo. Article 45 paragraph (4) of the ITE Law as a complaint

[19] Article 29 and Explanation of Article 29 of Law Number 1 of 2024.
[20] Article 45B of Law Number 1 of 2024 as adjusted by Attachment I of Law Number 1 of 2026 concerning Criminal Adjustment.
[21] Attachment II of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations, numbers 176 and 177.

offense, with exceptions for acts for public interest or self-defense.[22] The status of this provision after the National Criminal Code comes into force can be read in three ways of interpreting each other.

The grammatical interpretation departs from the reading of Article II number 1 of Law Number 1 of 2024. The provision does not repeal Article 27A, but sets a time limit for its enforcement, namely until the National Criminal Code is enforced. Once that date arrives, the applicability of Article 27A and Article 45 paragraph (4) ends according to the will of the law itself. Systematic interpretation explains why Article 622 of the Criminal Code does not mention Article 27A in the list of provisions of the repealed ITE Law. Article 622 paragraph (1) letter r was drafted when the Criminal Code was passed in early 2023 and repealed, among other things, Article 27 paragraph (3) jo. Article 45 paragraph (3) of the ITE Law.[23] Article 27A was only born a year later as a replacement formulation for Article 27 paragraph (3). The absence of Article 27A in Article 622 is the result of the order of time of its formation, not an indication that the lawmakers wanted to maintain it. Teleological interpretations corroborate that reading. In the case of testing Article 27A, the government explained that Article II was intended to prevent a legal vacuum until the National Criminal Code came into effect.[24] The function of Article 27A is thus the function of a bridge.

On that basis, the author argues that attacks on honor through electronic means carried out since January 2, 2026 are properly qualified through Article 433 of the Criminal Code on defamation, Article 434 on defamation, or Article 436 on minor insults, with one-third weighting if carried out by means of information technology as stipulated in Article 441 paragraph (1).[25] This opinion is the author's interpretation of the text and regulatory system, not a statement that has been affirmed by the court. For acts that occurred before that date but were only examined afterwards, Article 3 of the Criminal Code requires the application of regulations that are most favorable to the perpetrator. The restrictions made by the Constitutional Court remain relevant in both circumstances. The Court stated that "other persons" does not include a government agency, a group of persons with a certain identity, an institution, a corporation, a profession, or a position, and that "a thing" means an act that degrades a person's honor or good name.[26] In its consideration, the Court also referred to the explanation of Article 433 of the Criminal

[22] Article 45 paragraph (5) and paragraph (7) of Law Number 1 of 2024.
[23] Article 622 paragraph (1) letter r of Law Number 1 of 2023 concerning the Criminal Code.
[24] Constitutional Court of the Republic of Indonesia, *Summary of Case Decision Number 105/PUU-XXII/2024.*
[25] Article 433, Article 434, Article 436, Article 440, and Article 441 of Law Number 1 of 2023.
[26] Constitutional Court Decision Number 105/PUU-XXII/2024, amar numbers 2 and 3.

Code which excludes government institutions and a group of people from the object of pollution. The line drawn by the Court thus extends to the regime of the Criminal Code.

This clarity is important for victims of bullying. Victims who are attacked through personal accusations still have the basis of the report, but the report must meet the requirements of the complaint and the elements of Article 433. An institution or official who is criticized for its policies cannot use the same article under the pretext of bullying. It is at this point that juridical mapping begins to come into contact with the philosophical question: what makes an attack on a student different from a harsh criticism of an institution?

2. Legal Philosophy Framework: Dignity, Liberty, and the Limits of Punishment

The answer to this question requires a sharper concept than simply mentioning justice, certainty, and utility. This section breaks down five concepts from the primary work of legal philosophy thinkers, and then shows how each concept becomes an indicator of judgment.

The first concept is dignity as a social position. Waldron distinguishes between two things that are often mixed up in the debate on freedom of expression, namely the protection of dignity and the protection from offending. Dignity in its sense is a person's position as an equal member of society, which gives him or her the guarantee of living daily life without having to continue to defend himself from insults. Offendedness is an inner state that cannot be used as a measure of restriction of expression.[27] Waldron's thinking was developed for hate speech against groups, but the distinction is useful for *cyberbullying*. Ridicule that makes the victim uncomfortable does not necessarily damage his position. A campaign that makes a student treated as a laughing stock in front of his entire generation undermines that position.

The second concept comes from Rawls. Justice as *fairness* places equal basic freedoms, including freedom of thought and opinion, in the first priority. Basic freedoms can only be limited for the sake of freedom itself, i.e. to protect the system of equal freedoms for everyone, not for the sake of social or economic gain.[28] Rawls also mentions self-esteem as the primary item that is perhaps the most important, because without self-esteem one loses the belief that his or her life plan is worth pursuing.[29] The two ideas seem contradictory in the case of *cyberbullying*, even though they are the same measure. Restriction of expression is valid when necessary to maintain the social basis of the self-

[27] Jeremy Waldron, *The Harm in Hate Speech* (Cambridge, MA: Harvard University Press, 2012).
[28] John Rawls, *A Theory of Justice*, Revised Edition (Cambridge, MA: Harvard University Press, 1999), §§ 11, 39.
[29] Rawls, *A Theory of Justice*, § 67.

esteem of others, which is a condition that allows him to continue to participate in life together as equal citizens. Restrictions are not valid if they are only intended to alleviate inconvenience or maintain the reputation of the ruling party.

The third concept is Mill's principle of loss. Power can be lawfully exercised over a civilized member of society, against his will, only to prevent harm to others.[30] This principle filters out actions that are merely morally bad from those that are detrimental to the interests of others. Gross ridicule can be reprehensible, but as long as it does not harm identifiable interests, state interference has not been justified.

The fourth concept comes from Bentham. Bentham judged the law of its tendency to increase happiness and reduce suffering, and that since crime itself is suffering, crime can only be justified to the extent that it prevents greater suffering.[31] Bentham then details the circumstances that make a crime unjustified, namely when the crime is unfounded because there is no harm that needs to be prevented, ineffective because it is unable to prevent, unprofitable because it causes greater harm than it prevented, or is unnecessary because the harm could have been prevented by other, milder means. This fourth measure is particularly relevant for *cyberbullying*. Criminal proceedings can magnify the victim's exposure, and the removal of content can stop the harm faster than imprisonment.

The fifth concept is legal certainty. Fuller places clarity, openness, non-retrospective, non-conflict, relative regularity, and conformity between rules and their application as part of the internal morality of law. Laws that fail to meet those conditions cannot guide people's behavior.[32] Radbruch places legal certainty alongside justice and utility as elements of the idea of law, and in his famous formulation acknowledges that a positive law that is guaranteed certainty takes precedence, unless its conflict with justice reaches an intolerable level.[33] For *cyberbullying*, certainty is not a value that stands opposite to justice. The transition period of Article 27A shows that normative uncertainty harms both victims and reported persons at the same time.

The five concepts are derived into indicators and normative implications as seen in Table 2.

[30] John Stuart Mill, *On Liberty* (London: John W. Parker and Son, 1859), chapter I.
[31] Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (London: T. Payne, 1789), chapters I and chapter XIII.
[32] Lon L. Fuller, *The Morality of Law*, Revised Edition (New Haven: Yale University Press, 1969), chapter II.
[33] Gustav Radbruch, 'Statutory Lawlessness and Supra-Statutory Law (1946)', translated by Bonnie Litschewski Paulson and Stanley L. Paulson, *Oxford Journal of Legal Studies*, 26.1 (2006), 1–11.

Table 2. Legal philosophy concepts, assessment indicators, and normative implications

Concepts and resources	Indicator questions	Normative implications
Dignity as a social position (Waldron)	Does the act degrade the victim's position as an equal member of society, or is it just offensive to him?	Offending alone is not enough to limit expression. Attacks on position are the basis of protection
Prioritizing freedom and self-esteem (Rawls)	Are restrictions necessary to protect the social basis of others' self-esteem?	Expressions about public ideas, policies, or actions are protected the strongest
Principle of loss (Mill)	Is there a loss to the interests of others that can be identified?	Acts that are purely morally reprehensible do not become a matter of state coercion
Criminal eligibility (Bentham)	Is the crime based, effective, profitable, and necessary compared to other means?	Crime is the last resort. Means of termination and recovery take precedence when it is more effective
Legal certainty (Fuller and Radbruch)	Are the norms used clear, applicable at the time of the act, and can be known in advance?	Doubts about the applicability of norms should not be borne by the reported. Victim protection is channeled through definite means

3. Layered Test Models and Value Conflict Resolution

The five concepts above do not work in isolation. Arranged sequentially, they form a multi-layered test model that answers different questions at each layer. The first layer asks what legal significance is being violated and whether the violation touches the victim's position or just his feelings. The second layer asks whether the expression in question belongs to a strongly protected territory, i.e. criticism of public ideas, policies, or actions, or whether it is an attack directed at the individual. The third layer asks whether the norms to be used are clear and applicable at the time of the act. The fourth layer asks what is the lightest but most effective means of stopping and recovering harm, and at that point the criminal means are weighed against the non-criminal means.

This sequence follows a logic that can be accounted for. The question of interest and liberty must take precedence because without real harm, there is nothing to weigh. The question of certainty is in the middle because criminal means can only be considered when there is a definite norm. The question of means is at the end because choosing the right response requires that all three previous questions have already been answered.

This model is in line with the restrictive test in Article 19 paragraph (3) of the International Covenant on Civil and Political Rights, which Indonesia has ratified through Law Number 12 of 2005. The Human Rights Committee interprets that restrictions on expression should be regulated by law, aimed at respecting the rights or good name of others or other legitimate purposes, and are necessary and proportionate. The Committee also called on the state to consider decriminalizing defamation and stated that imprisonment is never an appropriate punishment for it.[34] Indonesia's constitution strikes a similar balance. Article 28E paragraph (3) guarantees freedom of expression, Article 28G paragraph (1) protects honor, dignity, and security, and Article 28J paragraph (2) requires that restrictions on rights be established by law to respect the rights of others.

From this model, this article formulates four propositions. The first proposition: the interest that is protected by the law from *cyberbullying* is the victim's position as a fellow citizen and the social basis of his or her self-esteem, not the comfort of his or her feelings. The second proposition: expression can only be limited if it is directed at the person and degrades his or her position. Strong criticism of an action or policy is protected, even if it is painful for the person being criticized. Third proposition: doubts about the applicability or reach of criminal norms are resolved for the benefit of the reported, while victim protection in that circumstance is channeled through means that do not rely on doubtful norms, such as content removal, identity protection, and institutional discipline. Fourth proposition: criminal justice is appropriate only when non-criminal means are unable to stop the harm, or if the act seriously attacks the child's sense of safety, privacy, sexual integrity, or child.

These propositions resolve the conflict between the dignity of the victim and freedom of expression without sacrificing either of them absolutely. The dignity of the victim is not used as a general excuse for silence, because it only works when one's position is truly attacked. Freedom of expression is also not used as a shield for personal attacks, because its protection is strongest precisely when it contributes to collective talk. If not regulated in such a way, victim protection can easily turn into a tool for powerful parties to suppress their critics, something that is precisely intended to be prevented by the Constitutional Court Decision Number 105/PUU-XXII/2024.

4. Application of the Model to Three Scenarios

[34] Human Rights Committee, *General Comment No. 34, Article 19: Freedoms of Opinion and Expression*, CCPR/C/GC/34 (12 September 2011), paras. 22, 47.

This section tests the model on three hypothetical scenarios that the authors have compiled. The goal is not to decide the case, but to show that each theory produces a different judgment and that the layered model is able to resolve that difference.

Scenario A. A student uploads a thread on social media that harshly criticizes the way a lecturer gives grades, calls his assessment "perfunctory", and attaches a screenshot of the grade announcement. The upload went viral and the lecturer received hundreds of negative comments. A narrow utilitarian reading can conclude that the lecturer's suffering and disruption to the campus outweigh the benefits of the upload. The layered model yields different conclusions. In the first layer, what is disturbed is mainly the feeling and professional reputation for the actions in the position, not the lecturer's position as a fellow citizen. In the second layer, the upload concerns actions within the scope of duties, so they are in a strongly protected area. The public interest exception in Article 433 paragraph (3) of the Criminal Code is also relevant. As a result, the criminal penalty is not worth using. If there are comments from other users that turn into personal insults, those comments are handled through the platform's moderation, not the criticism's uploads.

Scenario B. A high school student is the target of a conversation group of his classmates for several weeks. His photo is edited into ridicule and disseminated, he is expelled from the class group, and a friend sends him a private message containing a threat to hit him the next day. A retributive approach that only asks who is guilty will tend to criminalize the entire perpetrator. The Rawlsian approach highlights a different matter, namely the collapse of the social basis of the victim's self-esteem because he is used as a laughing stock. A layered model separates the acts. Threatening messages meet the pattern of Article 29 of the ITE Law because they are sent directly to the victim. Ridicule and exclusion attack the victim's position, but generally do not meet the element of delicacy. Psychological harm to children can fall under Article 76C jo. Article 80 of the Child Protection Act if the elements are proven. Since the perpetrator is also a child, the fourth layer leads to a juvenile criminal justice system and diversion for threat senders, as well as handling in educational units for other perpetrators. Bentham's measure explains this choice, because the criminalization of entire classes is unprofitable and unnecessary when the cessation of the spread, victim assistance, and disciplinary action more quickly stop the losses.

Scenario C. After a video of a street quarrel goes viral, netizens find and disseminate the home, workplace, and phone number of one party, then invite others to come to it. An approach that emphasizes freedom of expression may see it as a public reaction to an event that did occur in an open space. The layered model rejects that reading. The first

layer shows that the interests that are violated are privacy and security, not just feelings. The second layer shows that the dissemination of the address does not contribute anything to the public conversation about the event. The third layer finds clear norms in Article 65 paragraph (2) jo. Article 67 paragraph (2) of the Personal Data Protection Law. The fourth layer places criminal law as a viable option, especially for the initial disseminator, because the risk is serious and non-criminal means alone are not able to retract the data that is already circulating. Even so, the removal of content must still run at the same time as the criminal process.

The three scenarios show non-uniform results: criminality is not feasible in scenario A, selective in scenario B, and feasible in scenario C. The difference is not an inconsistency. The difference arises because the model assesses the interests of the attacked and the adequacy of the means, not the number of people who feel disadvantaged or the popularity of the cyberbullying label.

5. Victim Recovery and Platform Responsibility in the Fourth Layer

The fourth layer brings consequences that are often missed in the discussion of *cyberbullying*, namely that justice for victims is not synonymous with the severity of the crime for the perpetrator. Victim losses in the form of fear of opening social media, disruption of school or work, and concerns that material will reappear are not resolved with a court decision. Victimological studies emphasize that victims need to be seen as subjects who have protection and recovery needs, not just a source of information in criminal cases.[35] The Law on the Protection of Witnesses and Victims provides the right to restitution through Article 7A, but this mechanism is only available if the case is processed as a criminal act.[36] As a result, victims of forms of bullying that do not meet the elements of crime do not have a clear path to recovery.

The right to be forgotten fills some of that gap. Salsabila and Ibrahim show that the removal of information traces can be an important part of recovery, although its application to victims of *cyberbullying* in Indonesia is still constrained by mechanisms and low public understanding.[37] From the perspective of a layered model, this means is valuable because it restores the victim's control over the losses that are continuously extended by the digital system, without having to wait for proof of the criminal element. This right still needs to be limited by the public interest, because information about actions in office, as in scenario A, should not be deleted just because it is disliked.

[35] Chakan and Millenio, 'Protection of Cyberbullying Victims'.
[36] Article 7A of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning the Protection of Witnesses and Victims.
[37] Salsabila and Ibrahim, 'The Right to Be Forgotten'.

The role of platforms is at the same point. The design of the system determines how quickly content spreads, how reports are processed, and how easily victims limit interactions. Klonick describes platforms as "new rulers" who run their own system of rules, procedures, and decision-makers over online speech.[38] Gillespie points out that moderation is not complementary, but rather a core part of how platforms work.[39] Citron also shows that online harassment that is left unchecked can push victims, especially women, out of digital public spaces.[40] These findings do not mean that authorized platforms determine criminal wrongdoing. The findings mean that the most lenient but effective means in the fourth layer are often in the hands of platforms. In Indonesia, the obligation of electronic system operators to protect children has been further regulated in Government Regulation Number 17 of 2025.[41]

Restorative justice is also placed in this layer, but with strict conditions. Braithwaite distinguishes shame that separates the perpetrator from his or her community from the shame that condemns the act while still accepting the perpetrator back.[42] This distinction is relevant for cases such as scenario B, when the perpetrator and the victim are still in the same school. However, a restorative approach is inappropriate when there is a serious threat, an unequal power relationship, or a risk of repetition, and the victim should not be forced to reconcile. Braithwaite's distinction is also a reason to reject mass punishment of perpetrators on social media. Shaming perpetrators en masse only changes the position of the victim and the perpetrator, and it is contrary to the dignity to be protected.

6. Normative Implications for Lawmakers and Law Enforcers

The following implications are derived directly from the results of the model's application, not from the general assumption that victim protection needs to be strengthened.

For law enforcement, the findings in the first part demand certainty about the legal basis for attacks on honor after January 2, 2026. Guidelines for prosecution and investigation that affirm the use of Article 433 jo. Article 441 of the Criminal Code for acts after that date, and the application of Article 3 of the Criminal Code for previous acts, will end the uncertainty that according to the third proposition should not be borne by

[38] Kate Klonick, 'The New Governors: The People, Rules, and Processes Governing Online Speech', *Harvard Law Review*, 131.6 (2018), 1598–1670.
[39] Tarleton Gillespie, *Custodians of the Internet: Platforms, Content Moderation, and the Hidden Decisions That Shape Social Media* (New Haven: Yale University Press, 2018).
[40] Danielle Keats Citron, *Hate Crimes in Cyberspace* (Cambridge, MA: Harvard University Press, 2014).
[41] Government Regulation Number 17 of 2025 concerning the Governance of the Implementation of Electronic Systems in Child Protection.
[42] John Braithwaite, *Crime, Shame and Reintegration* (Cambridge: Cambridge University Press, 1989).

the reported. The guidelines also need to include restrictions on the object of the Constitutional Court Decision Number 105/PUU-XXII/2024, so that reports from institutions, corporations, or officials on criticism of their positions are not processed as defamation.

For lawmakers, scenario B shows the most obvious loophole. Bullying that attacks the victim's position through ridicule and repeated exclusion does not meet the elements of delicacy, so the victim does not obtain a redress route, while restitution is only available in criminal proceedings. The fourth proposition does not suggest the establishment of a broad new delicacy to close this loophole, as such delicacies will fail at the level of certainty and threaten legitimate expression. More appropriate are binding non-criminal mechanisms, such as a content removal order and a cessation of interaction that the victim can request without waiting for criminal proceedings, accompanied by a mentoring service that does not depend on the status of the case.

Scenario A and the second proposition lead to other implications. Lawmakers and law enforcers need to treat the public interest exception in Article 433 paragraph (3) of the Criminal Code as part of the assessment from the start, not just as a defense at trial. An initial examination asking whether the expression is directed at public actions or at the private will filter out reports that are actually intended to silence criticism.

Finally, scenario C shows that the dissemination of personal data is the most clearly criminally qualified form of *cyberbullying*, but also the most difficult to recover. The platform's obligation to follow up on requests for the deletion of personal data that is disseminated without rights within the specified time needs to be emphasized in the implementing regulations, so that criminal proceedings and termination of losses run simultaneously.

CONCLUSION

The formulation of the first problem is answered with the finding that *cyberbullying* does not have a single criminal basis in Indonesian law. The explanation of Article 29 of the ITE Law mentions bullying in the digital space, but the reference is limited to threats sent directly to the victim and does not expand the element of delicacy. Other forms of bullying must be qualified according to the legal interests attacked: honor through the Criminal Code, privacy through the Personal Data Protection Law, sexual integrity through the Sexual Violence Crimes Act, and children through the Child Protection Law. Regarding Article 27A, grammatical, systematic, and teleological interpretations show that its applicability ends on January 2, 2026 based on Article II number 1 of Law Number 1 of 2024, and its absence in Article 622 of the Criminal Code is due to the order of time

of its formation. The attack on honor after that date is correctly read through Article 433 jo. Article 441 of the Criminal Code, while still paying attention to the object restrictions in the Constitutional Court Decision Number 105/PUU-XXII/2024.

The formulation of the second problem is answered through a multi-layered test model that links dignity as a social position, the priority of freedom and self-esteem, the principle of loss, criminal feasibility, and legal certainty. The theoretical contribution of this model lies in the balancing principle it produces: freedom of expression can be limited only when the expression is directed at the individual and degrades his position as a fellow citizen, not simply offensive to him, and the penalty is appropriate to be used only when non-criminal means are unable to stop the harm or if the act seriously attacks the sense of security, privacy, sexual integrity, or the child. Its application to three scenarios shows that this rule produces different responses according to the interests attacked.

The normative implications are on two sides. Law enforcement needs guidelines that affirm the legal basis for attacks on honor after January 2, 2026 and screen reports directed at criticism of public actions. Lawmakers need to close the redress gap for victims of bullying who do not meet the elements of the offense through content removal mechanisms and assistance that do not rely on criminal proceedings, rather than through the establishment of broad new offenses. Further research can test this model against court decisions after January 2, 2026 to see if judicial practice has distinguished an attack on a position from simply offense.

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