

## **AN OVERVIEW OF THE LEGAL FRAMEWORK GOVERNING CYBERBULLYING AMONG CHILDREN IN MALAYSIA\***

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### **ABSTRACT**

The Internet has changed people's lifestyles since its inception in the nineties. Since then, it has become an essential tool and daily need for all generations, including children. Despite its significant advantages for online class, gathering knowledge and information, it also has its disadvantages. One of the disadvantages is that children can be potentially exposed to cyberbullying, either as a victim or a perpetrator. Easier access to the Internet via various types of electronic devices such as smartphones, tablets, laptops, and desktop computers has contributed to the increase in child cyberbullying incidents. A survey conducted by the United Nations Children's Fund (UNICEF) in 2019 discovered that 28% children in Malaysia were victims of online violence. In global statistics among 28 countries, Malaysia was ranked 6th place and 2nd place among the Asia countries in cyberbullying. The objectives of this study are to examine the scenario of child cyberbullying in Malaysia and identify related legal provisions that existed in Malaysia. The method used in this study is doctrinal research by referring to journals, books, conference papers, newspapers, and other periodicals. This research found out that the existing laws are not adequate to protect children from cyberbullying. Thus, it is suggested that there should be specific provisions on cyberbullying protection especially for child in Malaysia.

**Keywords:** Cyberbullying, children, legal provisions, Malaysia.

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\* This paper is adapted from a paper presented at the International Conference on Law and Globalisation 2020.

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## **SOROTAN KERANGKA UNDANG-UNDANG MENGENAI BULI SIBER DI KALANGAN KANAK-KANAK DI MALAYSIA**

### **ABSTRAK**

Internet telah mengubah gaya hidup manusia sejak kemunculannya pada tahun 1990-an. Sejak itu, ia telah menjadi alat terpenting dan keperluan harian untuk semua lapisan masyarakat, termasuk kanak-kanak. Meskipun terdapat banyak kelebihan yang digunakan bagi kelas dalam talian serta pengumpulan ilmu pengetahuan dan maklumat, ia juga mempunyai keburukannya. Salah satunya ialah kanak-kanak terdedah kepada risiko buli siber, sama ada sebagai mangsa atau pelaku buli siber. Capaian yang lebih mudah kepada Internet melalui pelbagai peranti elektronik seperti telefon pintar, tablet, komputer riba dan komputer meja telah menyumbang kepada peningkatan insiden buli siber kanak-kanak. Satu tinjauan yang dijalankan oleh Tabung Kecemasan Kanak-kanak Antarabangsa Pertubuhan Bangsa-Bangsa Bersatu (UNICEF) pada 2019 mendapati bahawa 28% kanak-kanak di Malaysia adalah mangsa keganasan dalam talian. Dalam satu statistik melibatkan 28 buah negara di seluruh dunia, Malaysia berada di kedudukan ke-6 dan ke-2 dalam kalangan negara Asia dalam buli siber. Objektif kajian ini adalah untuk mengkaji senario buli siber kanak-kanak di Malaysia dan mengenal pasti peruntukan undang-undang berkaitan yang wujud di Malaysia. Kaedah yang digunakan dalam kajian ini ialah kajian doktrinal dengan merujuk kepada jurnal, buku, kertas persidangan, surat khabar dan majalah berkala. Kajian ini mendapati bahawa undang-undang sedia ada tidak mencukupi untuk melindungi kanak-kanak daripada buli siber. Oleh itu, adalah dicadangkan supaya terdapat peruntukan khusus mengenai perlindungan daripada buli siber di Malaysia, terutamanya untuk kanak-kanak.

**Kata kunci:** Buli siber, kanak-kanak, peruntukan undang-undang, Malaysia.

### **INTRODUCTION**

Rapid development of information and communication technology (ICT) and widespread use of the Internet have a great impact on our daily activities. The Internet is currently being utilised for many purposes such as communication, education, business transactions, and leisure. The Internet is however not an exclusive domain for adults.

The young persons or children have also participated in the digital bandwagon for online learning, research for school projects, connecting, and socialising with families, friends, and teachers as well as playing online games at such a tender age. As such, the Internet at present is indispensable to almost all people of all life stages, including children for a myriad of objectives and purposes.

Despite all these benefits, the Internet has been regarded as a double-edged sword as there are risks associated with the use of the Internet.<sup>1</sup> By engaging in the digital world, the Internet users, in particular children and young persons, are exposed to cyber threats and online harassment such as bullying, stalking, and flaming.<sup>2</sup> Apart from that, their online informational privacy is also at risk as the laws in Malaysia are lacking in safeguarding children's rights.<sup>3</sup> Out of these cyber abuses, cyberbullying is claimed to cause severe negative consequences to children and young persons.<sup>4</sup>

There is no universally agreed definition of the 'cyberbullying' term, and its interpretation varies according to the understanding and perspectives of different scholars or organisations. In its simplest form, cyberbullying emerges through the means of modern technology, involving the combination of the words 'cyber' and 'bullying'.<sup>5</sup> On a similar note, the United Nation International Children's Emergency Fund (UNICEF) defines cyberbullying as "bullying with the usage of

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<sup>1</sup> Ramli Abdul Samad, "The Double Edge Sword: A Brief Comparison of IT and Internet Development in Malaysia and Some Few Neighboring Countries in the Context of Digital Divide," *IFLA Journal* 27, no. 5-6 (October 2001): 314, <https://doi.org/10.1177%2F034003520102700505>.

<sup>2</sup> Nancy E. Willard, "Cyberbullying and Cyberthreats: Responding to the Challenge of Online Social Aggression, Threats and Distress" (Illinois: Research Press, 2007), 5 – 11.

<sup>3</sup> Zainal Amin Ayub and Zuryati Mohamed Yusoff, "Right of Online Informational Privacy of Children in Malaysia: A Statutory Perspective," *UUM Journal of Legal Studies* 9 (July 2018): 225, <https://doi.org/10.32890/uujls.9.2018.9116>.

<sup>4</sup> Alison V. King, "Constitutionality of Cyberbullying Laws: Keeping the Online Playground Safe for Both Teens and Free Speech," *Vanderbilt Law Review* 63, Issue 3 (2010): 849–852.

<sup>5</sup> Umesh Bindal, Ali N.N., Rabita Farzana, Priyadarshni Bindal and Aminah N.N., "Student and Teachers Perspective on Cyber-Bullying," *Journal of Forensic Psychology*, 3, no. 1 (2018): 1.

digital technologies that can take place on social media, gaming platforms, messaging platforms, and mobile phones”.<sup>6</sup>

A number of scholars have contributed some conceptual ideas to the meaning of cyberbullying and its features. The term is simply referred to as electronic bullying or online social cruelty<sup>7</sup> by individuals or groups of people that repeatedly communicate hostility towards the victims.<sup>8</sup> It is also referred to as “wilful and repeated harm inflicted through the medium of electronic text”<sup>9</sup> on others.<sup>10</sup> Apart from that, cyberbullying has also been described as a strategic behaviour<sup>11</sup> using the information and communication technology by individuals or groups to inflict deliberate and repeated harassment or threat via cruel text and/or graphics to dominate other individuals or groups.<sup>12</sup> In fact, cyberbullying has been described as a form of bullying using

<sup>6</sup> UNICEF, “Cyberbullying: What Is It and How to Stop it,” accessed October 10, 2021, <https://www.unicef.org/end-violence/how-to-stop-cyberbullying>.

<sup>7</sup> Robin M. Kowalski and Susan P. Limber, “Electronic Bullying Among Middle School Students,” *Journal of Adolescent Health* 41, 6 Suppl (December 2007): S22, <https://doi.org/10.1016/j.jadohealth.2007.08.017>.

<sup>8</sup> Vimala Balakrishnan, “Cyberbullying among Young Adult in Malaysia: The roles of gender, age and Internet frequency,” *Computers in Human Behavior* 46 149-157 (2015) <https://doi.org/10.1016/j.chb.2015.01.021>.

<sup>9</sup> Justin W. Patchin and Sameer Hinduja, “Bullies Move Beyond the Schoolyard: A Preliminary Look at Cyberbullying,” *Youth Violence and Juvenile Justice* 4, no. 2 (2006): 152, <https://doi.org/10.1177%2F1541204006286288>; Sameer Hinduja and Justin W. Patchin, “Cyberbullying: An Exploratory Analysis of Factors Related to Offending and Victimization,” *Deviant Behavior* 29, no. 2 (2008): 131, <https://doi.org/10.1080/01639620701457816>.

<sup>10</sup> Robert S. Tokunaga, “Following you home from school: A critical review and synthesis of research on cyberbullying victimization,” *Computers in Human Behavior*, 26, 277-287 (2010). <http://dx.doi.org/10.1016/j.chb.2009.11.014>.

<sup>11</sup> Tjeert Olthof, Frits A. Goossens, Marjolijn M. Vermande, Elisabeth A. Aleva and Matty van der Meulen “Bullying as strategic behavior: Relations with desired and acquired dominance in the peer group” *Journal of School Psychology* 49 339-359 (2011) <https://doi:10.1016/j.jsp.2011.03.003>.

<sup>12</sup> Kimberly L. Mason, “Cyberbullying: A Preliminary Assessment for School Personnel,” *Psychology in the Schools*, 45 no. 4, (2008): 323, <https://doi.org/10.1002/pits.20301>.

information and communication technology to disseminate hurtful comments or non-positive random text by anonymous offenders to the victims in cyberspace.<sup>13</sup>

Regardless of the diverse interpretations offered by those scholars, cyberbullying incidents have gravely affected the victims, particularly children or young persons, to the extent that some of them have resorted to committing suicide as they could not cope with severe mental distress resulting from the cyberbullying acts.<sup>14</sup> Therefore, this study aims to investigate cyberbullying incidents and their effects on children in Malaysia as well as to identify relevant statutory provisions that may be extended and applied to combat cyberbullying in the country.

## METHODOLOGY

This study involves qualitative method that adopts doctrinal legal research, which is the most applied research methodology among members of the legal fraternity.<sup>15</sup> Doctrinal research is characterised as library-based research that “relies on the primary and secondary sources almost monotonously that aims a coherent exposition of the law with diverse arguments”.<sup>16</sup> It was further highlighted that doctrinal research directs its attention towards legal principles formulated by judges in provisions of statutes, reported cases, constitutional or

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<sup>13</sup> Anna Costanza Baldry, David P. Farrington and Anna Sorrentino, “‘Am I at Risk of Cyberbullying’? A Narrative Review and Conceptual Framework for Research on Risk of Cyberbullying and Cybervictimization: The Risk and Needs Assessment Approach,” *Aggression and Violent Behavior* 23 (July-August 2015): 37–38, <https://doi.org/10.1016/j.avb.2015.05.014>.

<sup>14</sup> Lee Lam Thye, “Lam Thye: Cyberbullying among Students Getting Serious,” *Borneo Post Online*, June 1, 2017, <https://www.theborneopost.com/2017/06/01/lam-thye-cyber-bullying-among-students-getting-serious/>.

<sup>15</sup> Terry Hutchinson and Nigel Duncan, “Defining and Describing What We Do: Doctrinal Legal Research,” *Deakin Law Review* 17, no. 1 (2012): 117–118.

<sup>16</sup> P. Ishwara Bhat, “Doctrinal Legal Research as a Means of Synthesizing Facts, Thoughts, and Legal Principles,” in *Ideas and Methods of Legal Research*, P. Ishwara Bhat (Oxford: Oxford University Press, 2019), 164–165.

international doctrines for coherence in the conceptual framework of the legal principles.<sup>17</sup>

Utilising the doctrinal research methodology, the study has scrutinised related provisions that fall under the purview of the Computer Crimes Act 1997 (CCA) and the Communications and the Multimedia Act 1998 (CMA). These statutes are the specific set of laws that are enacted to regulate online activities and digital content in the country. Further, provisions of the Penal Code have also been examined, although the statute has existed prior to the digital era, as there are certain provisions that can be extended to regulate illegal activities or unlawful acts committed in the cyberspace. Nonetheless, no judicial decisions relating to cyberbullying shall be discussed because so far, there is not even a single case reported on this issue.

Apart from the statutes, textbooks, journal articles, seminar papers and reputable websites which are deemed as the secondary sources are also referred to in this study. The works of literature are analysed to fulfil the objectives of this study.

## **INTERNET ACCESS AND USE IN MALAYSIA**

Regarding the use of the Internet in Malaysia, the most recent official report issued by the Malaysian Communications and Multimedia Commission (MCMC) in 2020 disclosed that there are increased Internet users from 2012 until 2020.<sup>18</sup> The upward trend of the Internet access and its widespread use in the country is reflected in Figure 1.

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<sup>17</sup> Hutchinson and Duncan, “Defining and Describing What We Do: Doctrinal Legal Research,” 116–117.

<sup>18</sup> Malaysian Communication and Multimedia Commission, “Internet User Survey 2020,” accessed May 1, 2021, <https://www.mcmc.gov.my/skmmgovmy/media/General/pdf/IUS-2020Report.pdf> page 123.

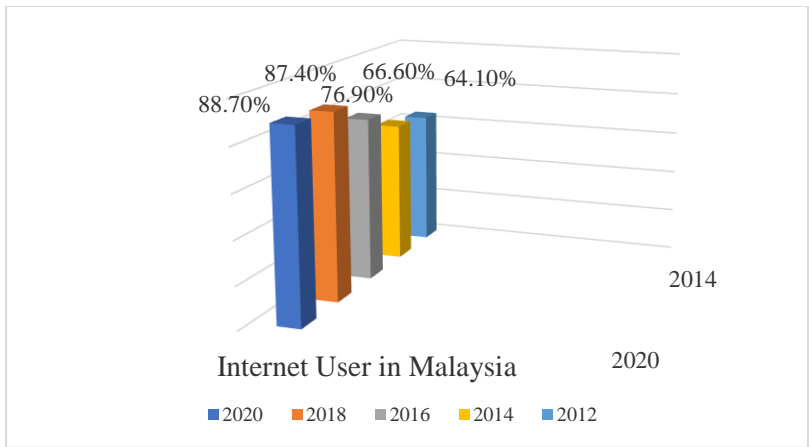


Figure 1: Percentage of the Internet Users among the Malaysian Population from 2012 to 2020

Looking at the age breakdown of the Internet users, the report reveals that all walks of life in Malaysia, either adults, youth, or children, are now having access to the Internet.<sup>19</sup> Details of the age breakdown of the Internet users in Malaysia are summarised in Table 1.

<sup>19</sup> Malaysian Communication and Multimedia Commission, “Internet User Survey 2020.” accessed May 1, 2021, <https://www.mcmc.gov.my/skmmgovmy/media/General/pdf/IUS-2020-Report.pdf> page 139.

Age	2014 (%)	2016 (%)	2018 (%)	2020 (%)
Below 15 years	1.6	0.4	0.5	0.4
15-19 years	13.9	12.6	7.6	9.3
20-24 years	24.2	21.4	15.6	34.1
25-29 years	19.3	16.7	14.3	11.8
30-34 years	13.1	15.4	15.3	11.7
35-39 years	8.7	10.5	10.6	9.5
40-44 years	7.3	8.0	10.8	6.4
45-49 years	4.6	6.2	7.1	5.9
50-54 years	7.3	3.7	6.7	4.5
55-59 years	-	2.4	4.9	2.9
60-64 years	-	1.4	3.7	1.4
65 years and above	-	1.2	2.8	2.0

Table 1: Summary of the age breakdown of the Internet users in Malaysia

According to Table 1, the highest percentage of Internet users are those in the age group of 20 to 24 years old. It is interesting to note that the percentage of users from this age group keeps increasing within the seven years period from 2014 to 2020 as indicated by Table 2 below. This age group is among the majority number of internet users because of their needs and daily usage of the technology. Therefore, it is very much anticipated that this age group will be the dominant Internet user in years to come. Regarding Internet users among children, MCMC indicates that its percentage has grown by 155% from 2016 to 2020.<sup>20</sup>

<sup>20</sup> Malaysian Communication and Multimedia Commission, "Internet User Survey 2020." accessed May 1, 2021, <https://www.mcmc.gov.my/skmmgovmy/media/General/pdf/IUS-2020-Report.pdf> page 88-89.

Year	Age Breakdown	Internet user among children
2020	Below 15 years old: 0.4% 15 years old to 19 years old: 9.3%	47.0%
2018	Below 15 years old: 0.5% 15 years old to 19 years old: 7.6%	28.5%
2016	Below years old: 0.4% 15 years old to 19 years old: 12.6%	18.4%
2014	Below 15 years old: 1.6% 15 years old to 19 years old: 13.9%	-
2012	Below 15 years old: 2.3% 15 years old to 19 years old: 14.2%	-

Table 2: Internet Users Among Children

The increased percentage of Internet users among children is relatively associated with the COVID-19 pandemic and the implementation of the Movement Control Order (MCO) in Malaysia by the government. In line with the enforcement of MCO throughout the country, the Ministry of Education (MOE) has instructed all schools, be it primary or secondary, to conduct online teaching and learning (T&L) from home.<sup>21</sup> For this reason, children need to be equipped with devices to access the Internet for virtual classrooms and online T&L activities. According to the survey by MCMC, it was reported that 56.3% of children have their own electronic devices such as smartphones, laptops, personal computers, tablets, and other gadgets to access the Internet.<sup>22</sup>

<sup>21</sup> This matter is stated by the Ministry of Education Malaysia (MOE) in the official circular of MOE dated 8 November 2020 which requires all schools including Vocational Colleges (KV) to implement teaching and learning from home (PdPR). For details see <https://www.moe.gov.my/en/muat-turun/teks-ucapan-dan-slide/tu2020/3831-teks-ucapan-sidang-media-ybmk-pengoperasian-institusi-pendidikan-di-bawah-kpm-serta-peperiksaan-awam-tahun-2020/file>.

<sup>22</sup> Malaysian Communication and Multimedia Commission, "Internet User Survey 2020." page 88.

However, children do not only use the Internet for online classes, in fact, they are actively engaged in various social media platforms. Unfortunately, social networking sites such as Facebook, Instagram, and Twitter are often used by cyberbullies to target their victims.<sup>23</sup> Consequently, the use of social networking sites also contributes to the increased Internet usage among children.<sup>24</sup>

The frequent use of the Internet among children has exposed them to the risk of online harm,<sup>25</sup> especially when there is no or minimal control and monitoring by their parents or guardians.<sup>26</sup> Indeed, some Internet users in the country have claimed that they enjoy greater freedom in cyberspace than in the real world.<sup>27</sup> Furthermore, due to the unique features of the Internet, online perpetrators may hide their true identities behind the anonymity cloak, and this renders it difficult for the authorities to trace and prosecute anonymous criminals.<sup>28</sup>

Consequently, previous studies have shown that children in Malaysia are vulnerable to online threats such as cyberbullying, cyber

<sup>23</sup> C.S. Lai, M.M. Mohamad, M.F. Lee, K. Mohd Salleh, N.L. Sulaiman, D.I. Rosli, and W.V.S. Chang, "Prevalence of Cyberbullying among Students in Malaysian Higher Learning Institutions," *Advanced Science Letters* 23 no. 2 (February 2017): 782, <https://doi.org/10.1166/asl.2017.7492>.

<sup>24</sup> Sharifah Sajidah Syed Noor Mohammad, "High Time to Teach Cyber Ethics in Primary School," *E-Security CyberSecurity Malaysia* 44, no. 1 (2018): 10–14.

<sup>25</sup> Vimala Balakrishnan, "Cyberbullying Among Young Adults in Malaysia: The Roles of Gender, Age and Internet Frequency," *Computers in Human Behavior* 46 (2015): 156, <https://doi.org/10.1016/j.chb.2015.01.021>.

<sup>26</sup> Malaysian Communication and Multimedia Commission, "Internet User Survey 2020." Accessed May 1, 2021, <https://www.mcmc.gov.my/skmmgovmy/media/General/pdf/IUS-2020-Report.pdf> page 89.

<sup>27</sup> Nazli Ismail Nawang, "Greater Freedom in the Cyberspace? An Analysis of the Regulatory Regime of the Internet in Malaysia," *South East Asian Journal of Contemporary Business, Economics and Law* 5, no. 4 (December 2014): 43.

<sup>28</sup> Nazli Ismail Nawang, "Combating Anonymous Offenders in the Cyberspace: An overview of the Legal Approach in Malaysia," *2nd International Conference on Anti-Cyber Crimes*, (2017):14, doi: 10.1109/Anti-Cybercrime.2017.7905255.

grooming, cyber pornography, and identity theft.<sup>29</sup> Notwithstanding the existence of cyber abuses, it is argued that cyberbullying has the most devastating effects on the victims including depression, isolation, anxiety, and more serious consequences such as attempted suicides or even suicides.<sup>30</sup> Thus, it is pertinent to assess the incidents of cyberbullying among children in Malaysia.

## CHILDREN AND CYBERBULLYING IN MALAYSIA

The Child Act 2001 (CA) has been consolidated for “the care, protection, and rehabilitation of children...” as they need specific statutory safeguards, care, and assistance due to their “physical, mental and emotional immaturity”.<sup>31</sup> According to the Cambridge Dictionary, a child is defined as “a boy or girl from the time of birth until he or she becomes an adult, or a son or daughter of any age”.<sup>32</sup> Since the general interpretation does not provide specific age for a person to be regarded as a child, then the statutory interpretation of the local laws is used as the reference. Section 2 of the CA explicitly provides that the word ‘child’ means “a person under the age of 18 years”.<sup>33</sup> Such interpretation is in line with Article 1 of the United Nations Convention on the Rights of the Child (UNCRC) which regards a child as “every human being below the age of 18 years”.<sup>34</sup>

When it comes to the nexus between children and cyberbullying, many reports show that children have become the main targets in most

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<sup>29</sup> Nik Mazwin Nik Anis, Rahimy Abd Rahim, and Yvone Lim, “Najib: Cyberbullying a Serious Threat to Kids,” *The Star*, October 10, 2012, <https://www.thestar.com.my/news/nation/2012/10/10/najib-cyber-bullying-a-serious-threat-to-kids/>.

<sup>30</sup> Vimala Balakrishnan, “Cyberbullying Among Young Adults in Malaysia: The Roles of Gender, Age and Internet Frequency,” *Computers in Human Behavior* 46 (2015): 156, <https://doi.org/10.1016/j.chb.2015.01.021>.

<sup>31</sup> Preamble to the Child Act 2001 (Act 611).

<sup>32</sup> “Child,” Cambridge Dictionary Online, accessed October 10, 2021, <https://dictionary.cambridge.org/dictionary/english/child>.

<sup>33</sup> Pertaining to criminal responsibility of a child under 10 years old, section 82 of the Penal Code excludes offence committed by a child below that age limit.

<sup>34</sup> The United Nations Convention on the Rights of the Child (CRC) is an international treaty that has been acceded by Malaysia in 1995 prior to the introduction of the Child Act 2001.

cyberbullying cases. In a study conducted by the United Nations International Children's Emergency Fund (UNICEF) and the United Nations Special Representative of the Secretary-General on Violence against Children in 2019, it was discovered that more than a third of the respondents in 30 countries<sup>35</sup> aged between 13 and 24 years old have become cyberbullying victims, with one out of five refuse to go to school due to cyberbullying and harassment.<sup>36</sup> Besides, three-quarters of the respondents revealed that social media networking sites like Facebook, Instagram, Snapchat, and Twitter are the most common platform used in cyberbullying incidents. Therefore, the prevalent use of social media among children has now contributed to the cyberbullying occurrences among them.

Concerning the cyberbullying incidents in Malaysia, it was revealed that three out of ten young people have become cyberbullying victims.<sup>37</sup> In another survey, it was discovered that the majority of children in Malaysia experience cyberbullying at least once a year, but unfortunately, some of them are unaware that such incidents are deemed as acts of cyberbullying.<sup>38</sup> A study conducted by UNICEF Malaysia in 2019 found out that 28% or 3 out of 10 children were victims of online violence<sup>39</sup> with 43% of them were bullied via personal

<sup>35</sup> The study was conducted among respondents from Malaysia, Albania, Bangladesh, Belize, Bolivia, Brazil, Burkina Faso, Côte d'Ivoire, Ecuador, France, Gambia, Ghana, India, Indonesia, Iraq, Jamaica, Kosovo, Liberia, Malawi, Mali, Moldova, Montenegro, Myanmar, Nigeria, Romania, Sierra Leone, Trinidad & Tobago, Ukraine, Vietnam and Zimbabwe.

<sup>36</sup> UNICEF, "UNICEF Poll: More than a Third of Young People in 30 Countries Report Being a Victim Online Bullying," accessed October 10, 2021, <https://www.unicef.org/press-releases/unicef-poll-more-third-young-people-30-countries-report-being-victim-online-bullying>.

<sup>37</sup> A thira Nortajuddin, "Does Malaysia Have A Cyberbullying Problem?," *The Asean Post*, July 22, 2020, <https://theaseanpost.com/article/does-malaysia-have-cyberbullying-problem>. Accessed April 5, 2021.

<sup>38</sup> Sarina Yusuf, Md Salleh Hj. Hassan, and Adamkolo Mohammed Ibrahim, "Cyberbullying Among Malaysian Children Based on Research Evidence," in *Encyclopedia of Information Science and Technology*, ed. Mehdi Khosrow-Pour (Hershey: IGI Global, 2018), 1714.

<sup>39</sup> UNICEF, "Executive Summary: Malaysian Edition, Our Lives Online, Use of Social Media by Children and Adolescent in East Asia - Opportunities, Risk and Harms," accessed October 10, 2021, [https://www.unicef.org/malaysia/media/1501/file/Our\\_lives\\_online\\_-\\_Executive\\_Summary.pdf](https://www.unicef.org/malaysia/media/1501/file/Our_lives_online_-_Executive_Summary.pdf).

messaging application, in particular on Facebook and Instagram.<sup>40</sup> Furthermore, out of 5,000 respondents who participated in the study, 457 respondents surprisingly admitted to having used digital platform technology to harass and bully others. To make this situation worse, 63% of respondents in Malaysia have no knowledge of the availability of online help services for cyberbullying victims.<sup>41</sup>

A study conducted by Yatiman<sup>42</sup> among 322 respondents from secondary school students in Samarahan, Sarawak revealed that 61.8% of the respondents, which is equivalent to 199 students, had been cyberbullied. This statistic alone shows how serious is the issue of cyberbullying among children as more than half of the respondents had become victims of cyberbullying.

Other studies on cyberbullying include a survey conducted by Telenor Group in 2016, which discovered that 40% respondents (the study involves 1896 children) in the Asian countries admitted that they have experienced cyberbullying or used to be the subject of cyberbullying.<sup>43</sup> Further, a study conducted by Vimala in 2015<sup>44</sup> reported 40% of young adults of 17-30 years old have been cyberbullied, whilst 61% of the respondents have witnessed bullying incidences in the cyber world. Later, a study by Vimala in 2017

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<sup>40</sup> Siti Zarinah Sahib, "Cegah Buli Siber," *Harian Metro Online*, September 10, 2019, <https://www.hmetro.com.my/hati/2019/09/495010/cegah-buli-siber>.

<sup>41</sup> Sahib, "Cegah Buli Siber." Accessed March 20, 2021.

<sup>42</sup> Yatiman Karsodikromo, Mohd Razimi Husin, Abdul Rahim Razali and Hazalizah Hamzah "Buli siber dalam kalangan murid sekolah menengah di daerah Samarahan, Sarawak" *Jurnal Pendidikan Bitara UPSI*, Vol. 13 No. 2 (2020) ISSN 1394 -7176 (38-47) <https://doi.org/10.37134/bitara.vol13.2.4.2020>.

<sup>43</sup> Marcus Adaktusson, "Telenor Group Supports 'Stop Cyberbullying Day 2016' Across Its Markets in Asia," Telenor Group, accessed October 10, 2021, <https://www.telenor.com/media/press-release/telenor-group-supports-stop-cyberbullying-day-2016>.

<sup>44</sup> Vimala Balakrishnan, "Cyberbullying among Young Adult in Malaysia: The roles of gender, age and Internet frequency," *Computers in Human Behavior* 46 149-157 (2015) <https://doi.org/10.1016/j.chb.2015.01.021>.

discovered that 35% of the respondents have bullied others, 44% have been bullied and 70% have witnessed cyberbullying incidences.<sup>45</sup>

DIGI Telecommunications Sdn Bhd and Telenor Group had also conducted a survey which revealed that one out of four students had experienced cyberbullying.<sup>46</sup> In addition, according to a study by Tech Compare and comparitech.com website in 2018, Malaysia is ranked the sixth out of 28 countries in the world, and second in Asia for cyberbullying cases.<sup>47</sup> According to the Global Youth Online Behaviour Survey that was conducted from 11 January to 19 February 2012 by Microsoft Corp, it was revealed that 33% or 2,508 out of 7,600 children in Malaysia aged 8 to 17 years old have been bullied online.<sup>48</sup>

To sum up, though those statistics do not represent comprehensive and in-depth records of cyberbullying incidents among children in the country, these reports however clearly indicate how serious the issue of cyberbullying is among children in Malaysia. Therefore, serious attention and appropriate actions need to be adopted promptly by the government and related agencies or bodies to tackle the issue of cyberbullying.

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<sup>45</sup> Vimala Balakrishnan, "Unraveling the underlying factors SCulPT-ing cyberbullying behaviours among Malaysian young adults" *Computers in Human Behavior* 75 194-205 (2017) <https://doi.org/10.1016/j.chb.2017.04.062>.

<sup>46</sup> Lee Lam Thye, "On the Alert for Cyberbullying," *The Star Online*, April 11, 2017, accessed September 12, 2020, <https://www.thestar.com.my/opinion/letters/2017/04/11/on-the-alert-for-cyberbullying#K3p98sAi9I5hEKaO.99>.

<sup>47</sup> Jamny Rosli, "Malaysia Sixth-Worst in Global Cyber-Bullying Ladder, Survey Shows," *Malaymail*, October 27, 2018, <https://www.malaymail.com/news/malaysia/2018/10/27/malaysia-sixth-worst-in-global-cyber-bullying-ladder/1687181>. Accessed March 13, 2021.

<sup>48</sup> Digital News Asia, "1-in-3 Malaysian Kids Victims of Cyber-bullying: Microsoft survey", *Digital News Asia*, August 10, 2012, <https://www.digitalnewsasia.com/testing123>. Accessed May 20, 2021.

## EFFECTS OF CYBERBULLYING ON CHILDREN

Cyberbullying can lead to a huge and serious impact on the psychological and emotional of the victims<sup>49</sup> including anger, fear, and self-blame.<sup>50</sup> Apart from psychological and emotional effects, the victims may also suffer physical problems such as loss of sleep and eating disorder.<sup>51</sup> Further, some victims may also experience social problems such as lower self-esteem<sup>52</sup>, higher levels of depression<sup>53</sup> and social anxiety.<sup>54</sup> The effects would be worse on children as they are prone to suffer from severe mental distress to the extent that some have attempted or even committed suicide.<sup>55</sup> Among the infamous bullying incidents occurred 20 years ago when a 15-year-old Canadian girl, Amanda Todd, who was severely bullied in the cyberspace, hanged

<sup>49</sup> Michele L. Ybarra, Marie Diener-West and Philip J. Leaf “Examining the Overlap in Internet Harassment and School Bullying: Implications for School Intervention” *Journal of Adolescent Health* 41 S42–S50 (2007) <https://doi.org/10.1016/j.jadohealth.2007.09.004>.

<sup>50</sup> Vimala Balakrishnan and Terence Fernandez, “Self-esteem, empathy and their impacts on cyberbullying among young adults”. *Telematics and Informatics* 35 2028-2037 (2018) <https://doi.org/10.1016/j.tele.2018.07.006>.

<sup>51</sup> Vimala Balakrishnan and Terence Fernandez, “Self-esteem, empathy and their impacts on cyberbullying among young adults”. *Telematics and Informatics* 35 2028-2037 (2018) <https://doi.org/10.1016/j.tele.2018.07.006>.

<sup>52</sup> Vimala Balakrishnan and Terence Fernandez, “Self-esteem, empathy and their impacts on cyberbullying among young adults”. *Telematics and Informatics* 35 2028-2037 (2018) <https://doi.org/10.1016/j.tele.2018.07.006>.

<sup>53</sup> Sara Mota Borges Bottino, Cássio M. C. Bottino, Caroline Gomez Regina, Aline Villa Lobo Correia, “Cyberbullying and adolescent mental health: Systematic review. *Cadernos de Saúde Pública* (2015) 31, 463–475.

<sup>54</sup> Allison G. Dempsey, Michael L. Sulkowski, Rebecca Nichols, “Differences between Peer Victimization in Cyber and Physical Settings and Associated Psychosocial Adjustment in Early Adolescence” *Psychology in the Schools*, Vol. 46(10), (2009) <https://doi.org/10.1002/pits.20437>.

<sup>55</sup> Lee Lam Thye, “Cyberbullying among Students Getting Serious,” *Borneo Post Online*, June 1, 2017, <https://www.theborneopost.com/2017/06/01/lam-thye-cyber-bullying-among-students-getting-serious/>. Accessed 12 September 12, 2020.

herself at her home in 2012.<sup>56</sup> A year later in Italy, a 14-year-old girl, Carolina Picchio, committed suicide by jumping out her bedroom window after she was repeatedly cyber bullied when her personal video was made viral on the Facebook by a group of cyberbullies.<sup>57</sup>

In Malaysia, a study conducted by Befrienders KL found that suicide is one of the causes of death among young people between 15 and 29 years old.<sup>58</sup> The study is based on the number of phone calls received via 24 Hour Online Assistance provided by this organisation. In May 2020, a 20-year-old teenager committed suicide by hanging herself in her home after receiving negative comments on her Tiktok videos that have been viral on Facebook.<sup>59</sup> A year before, the public was shocked by news of a 16-year-old child who killed herself by jumping from the roof of a building after her Instagram poll voted for her death.<sup>60</sup> These two tragic incidents show that cyberbullying is a profound issue and has become one of the main contributors to suicide among children.

## LAWS ON CYBERBULLYING IN MALAYSIA

The rapid development of technology renders the existing legal provisions unable to address the problems caused by the advancement

<sup>56</sup> Kemal Vali ACAR, "Sexual Extortion of Children in Cybersafe" *International Journal of Cyber Criminology*, Vol 10 Issue 2 July-December (2016) pp 111.

<sup>57</sup> Barbie Latza Nadeau, "Italy's Tragic Teen Cyberbullying Suicide". *The Mass Media*, May 31, 2013, <https://iheartgp.wordpress.com/2013/06/09/t2brkwk1-jia-rong-2aa1-italys-tragic-teen-cyberbullying-suicide/>. Accessed January 6, 2021.

<sup>58</sup> Lee Lam Thye, "Cyberbullying among Students Getting Serious."

<sup>59</sup> Athira Nortajuddin, "Does Malaysia Have A Cyberbullying Problem?"; Lo Tern Chern, "Cyberbullying Victim Leaves Suicide Note," *The Star Online*, May 22, 2020, <https://www.thestar.com.my/news/nation/2020/05/22/cyberbullying-victim-leaves-suicide-note>. Accessed April 20, 2021.

<sup>60</sup> Jamie Fullerton, "Teenage Girl Kills Herself 'After Instagram Poll' in Malaysia," *The Guardian*, May 15, 2019, <https://www.theguardian.com/world/2019/may/15/teenage-girl-kills-herself-after-instagram-poll-in-malaysia>. Accessed April 20, 2021.

of communication technology.<sup>61</sup> As such, there are *lacuna* or loopholes in the local laws that shall be evaluated to address the emerging online threats including cyberbullying. The Penal Code, which is the main statute that contains the penal provisions for criminal laws in Malaysia does not highlight any specific provisions on cyberbullying. Such a situation is very much expected as the provisions stipulated under the Penal Code are enacted long before the advent of the Internet.

Pertaining to the Computer Crimes Act 1997 (CCA), even though the statute is specifically enacted to regulate “offences relating to the misuse of computers”<sup>62</sup>, the act only provides for the offences of hacking, basic hacking, unauthorised modification of computer content, wrongful communication, and abetments or attempts to the commission of offences under CCA.<sup>63</sup> As such, cyberbullying is not regarded as an offence under CCA, and therefore cyberbullying case falls under the general provisions of criminal laws contained in the Penal Code.

A thorough analysis of the Penal Code shows that there are some provisions that can be extended and applied to prosecute cyberbullying perpetrators. Section 305 of the Penal Code criminalises the abetment of suicide of a child or insane person and upon conviction, the offender shall be sentenced to death or imprisoned up to 20 years and subject to a fine.<sup>64</sup> Apart from that, section 306 of the Penal Code states that it is an offence for abetment of suicide and the offender shall, upon conviction, be punished with a maximum of 10 years imprisonment and fine. Therefore, in cases where the victims of cyberbullying have committed suicide due to cyberbullying incidents, the bullies may be charged and convicted of the offences either under section 305 if the

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<sup>61</sup> Nurulhuda Ahmad Razali, Nazli Ismail Nawang, Sharifah Nuridah Aishah Syed Nong Mohamad, and Fadhilah Abdul Ghani. “Buli Siber Dikalangan Kanak-Kanak di Malaysia: Satu Tinjauan Undang-undang,” *Jurnal Dunia Pengurusan* 3, no. 1 (2021): 23.

<sup>62</sup> Preamble to the Computer Crimes Act 1997.

<sup>63</sup> List of offences is stipulated in Part II of the CCA (sections 3 – 8).

<sup>64</sup> Section 305 of the Penal Code provides “If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication, commits suicide, whoever abets the commission of such suicide shall be punished with death or imprisonment for a term which may extend to twenty years, and shall also be liable to fine”.

case involves children or section 306 of the Penal Code where the victim is an adult. Apart from these two, section 506 on the punishment for criminal intimidation; section 507 on criminal intimidation by an anonymous communication; and section 509 on word or gesture intended to insult the modesty of a person can also be relied upon to prosecute cyberbullies for criminal intimidation offences.<sup>65</sup>

In addition to the Penal Code, the prosecution may also rely on the provisions of the Communications and Multimedia Act 1998 (CMA) to prosecute perpetrators of cyberbullying.<sup>66</sup> Section 233(1) of CMA provides that a person who knowingly “makes, creates or solicits, and initiates the transmission of...” any forms of online content or communication that are “obscene, indecent, false, menacing or offensive in character with intent to annoy, abuse, threaten or harass another person...”<sup>67</sup> via network facilities or network service or applications service<sup>68</sup> is deemed to have committed an offence under CMA. Upon conviction, such offender shall be fined not exceeding RM50,000 or imprisoned up to one year or both. And if the offence

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<sup>65</sup> Zainal Amin Ayub, Zuryati Mohamed Yusoff, and Md. Zahurul Haq, “Legal Framework on Protection of Children against Cyberbully in Malaysia: A Cause of Great Concern,” *International Journal of Advanced Science and Technology*, 29, no. 08 (2020): 150–151, <http://serisc.org/journals/index.php/IJAST/article/view/16983>. Accessed October 10, 2021.

<sup>66</sup> Haeme Hashim, “Undang-Undang Antibuli Siber,” *Sinar Harian*, Julai 30, 2019, <https://www.sinarharian.com.my/article/40553/KOLUMNIS/Undang-undang-antibuli-siber>. Accessed May 10, 2021.

<sup>67</sup> The words ‘obscene, indecent, false, menacing or offensive in character’ are not defined in the CMA. However, general principles relating to these terms can referred to ‘Part 2: Guidelines on Content’ in the Malaysian Communications and Multimedia Content Code (Content Code) by the Communications and Multimedia Content Forum of Malaysia.

<sup>68</sup> Section 6 of the CMA defines the phrase ‘network facilities’ as “any element or combination of elements of physical infrastructure used principally for, or in connection with, the provision of network services, but does not include customer equipment”. Whilst the term ‘application services’ is defined as “a service provided by means of, but not solely by means of, one or more network services”.

persists even after conviction, the person shall be imposed with a further fine of RM1,000 per day.<sup>69</sup>

The aforesaid provisions do not criminalise the cyberbullying offence in explicit terms, but rather the commission of any acts that fall within the ambit of such provisions are regarded as an offence. Since cyberbullying fulfils the criteria of harassing and offending others using the aforesaid prohibited online content, it is thus deemed that cyberbullies shall also be charged under section 233 of CMA. And this provision shall be read together with section 305 (abetment of suicide of child or insane person) or section 306 (abetment of suicide) of the Penal Code to convict a cyberbullying offender in suicide cases.

It is apparent that the main constraint to criminalising any acts that could be regarded as cyberbullying offences is that the existing laws are always lagging and left behind the rapid advancement of information and communication technology. In certain cases, the general laws are not sufficient to encompass the latest computer and Internet-related activities.

To make the matters worse, currently there are no specific laws to regulate as well as to protect children when they use electronic devices.<sup>70</sup> The specific law should safeguard and protect children during their online activities from any online abuse or harassment that can cause them to become cyberbullying victims. For example, in Singapore, there is a specific law that safeguards any online harassment called Protection from Harassment Act 2014, whereas in United Kingdom, the law is known as Protection from Harassment Act 1997. In Malaysia, the Child Act 2001, which is supposed to accord protection to children, is also devoid of any statutory safeguard to children in the cyber world. The latest amendment to the Child Act 2001 in 2016 has raised public awareness of children's protection, yet it is still lacking in terms of online safety for children.

In the absence of specific laws to prosecute cyberbullies, the prosecution must invoke the general provisions in cyberbullying incidents. In such cases, the prosecution side is required to prove

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<sup>69</sup> Section 233(3) of the CMA.

<sup>70</sup> Syahirah Abdul Shukor, Hendun Abd Rahman Shah, and Nurul Atira Musa, "Regulating Children's Safety on the Internet: A Malaysian Perspective," *International Journal for Studies on Children, Women, Elderly And Disabled*, Vol 1 (January 2017): 152–56.

specific provisions that prescribe offences committed online and provision of general criminal offences committed online as a means of committing an offence.<sup>71</sup> In other words, the prosecution needs to look at the existing legal provisions that shall be read together to prosecute the offenders. Moreover, the lack of specific laws on cyberbullying among children may result in the laxity of law enforcement.<sup>72</sup> For that reason, it is indeed time for the legislative body in the country to formulate and enact specific laws on cyberbullying.<sup>73</sup>

## AGENCIES RESPONSIBLE FOR CYBER CRIMES

In Malaysia, there are a few government agencies that are responsible to contain and handle cybersecurity incidents in the country. This involves CyberSecurity Malaysia, the Malaysian Communications and Multimedia Commission (MCMC), and the Royal Malaysian Police. On top of these agencies, the Ministry of Education (MOE), as well as the school's authorities, may also be held accountable for cyberbullying incidents involving children at schools. All these entities play crucial roles and functions to prevent, combat and curb criminal activities in cyberspace. They have also organised programmes to create public awareness and promote online safety campaigns among the public.

CyberSecurity Malaysia is the national cyber security specialist agency under the MCMC. Its primary functions are to address the issue of information security and provide statistics of general cyber incidents in Malaysia. Also, CyberSecurity Malaysia has initiated several online platforms for the public such as the 24-hour Cyber999 Help Centre. This help centre will receive any report of cyber incidents encountered by the public. Apart from that, CyberSecurity Malaysia has launched

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<sup>71</sup> Mohd Sophian Zakaria and Akmal Hamdy Baharudin, "*Kesalahan Media Sosial Manual Siasatan Dan Pendakwaan*", 1st ed. (Jabatan Peguam Negara, 2021). page 9.

<sup>72</sup> Ayub, Yusoff, and Haq, "Legal Framework on Protection of Children against Cyberbully in Malaysia," 145.

<sup>73</sup> Mohd Hafiz Ismail, "Malaysia Wajar Kuat Kuasa Undang-Undang Khusus Buli Siber," *Sinar Harian*, September 22, 2020, <https://www.sinarharian.com.my/article/102087/BERITA/Nasional/Malaysia-wajar-kuat-kuasa-undang-undang-khusus-buli-siber>. Accessed May 10, 2021.

Cybersecurity Awareness for Everyone (CyberSAFE) to provide awareness to the public on safety guidelines on online activities via campaigns, books, and brochures. Such initiatives are carried out by CyberSecurity at the secondary and primary schools.

As for the MCMC, it is a super-regulator agency for the telecommunications and broadcasting industries as well as the postal service sector. MCMC consolidates its statutory powers to govern the communications and multimedia industry that are under the purview of the Malaysian Communications and Multimedia Commission Act 1998 (MCMCA), CMA, and the Postal Services Act 1991. MCMC has also served to prevent cybercrimes including cyberbullying by conducting investigations, initiating digital forensic, and commencing legal proceedings against online offenders for reported incidents such as improper use of network facilities that may include cyberbullying.

School authorities also play a crucial role to safeguard children, especially in schools, and to raise awareness of online safety. The school authorities can lodge a police report for any issues relating to cyberbullying that occurs within the school compound. They are bound by the provisions under the Education Act 1996. Section 130 empowers the Minister of Education to enact regulations while school principals have the authority on school regulations. The Director-General of Education may also issue circulars in compliance with the Education Act 1996.<sup>74</sup>

An analysis of the government agencies in Malaysia shows that there are specific bodies entrusted to safeguard, educate, and enhance public awareness on cyber security issues. Nonetheless, there is a lacuna on laws regulating cyberbullying incidents, especially the protection aspect. Thus, the government should scrutinise, revise, or even pass relevant provisions for the prevention and prosecution of cyberbullies and offer protection to cyberbullying victims, in particular, young persons and children as they are the future of our nation.

The advancement of technology leaves loopholes in the existing legislation. The criminal laws of Malaysia, in particular, the Penal Code does not specifically provide for any computer-related crimes,

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<sup>74</sup> Ayub, Yusoff, and Haq, "Legal Framework on Protection of Children against Cyberbully in Malaysia," 145.

and the Computer Crimes Act 1997 is not all-encompassing to cover many areas of computer-related crime activities. Therefore, certain acts that are deemed unlawful shall be determined according to the context of the existing laws. The main constraint is that these laws are not drafted by considering the computer technology aspect and in most cases, the current provisions are not sufficiently broad to encompass various types of computer-related activities.

## CONCLUSION

In conclusion, online safety among children should be given priority and much attention by the authorities as well as the government. Since the current legal provisions are not adequate and do not highlight the aspect of child cyberbullying, amendments and improvisations are required for a better future to safeguard our children. Apart from that, the definition of cyberbullying itself must be clearly spelled out in the provisions before any amendments are made on the types, characteristics, and sanctions to the cyberbullying perpetrators. The definition and understanding of child cyber abuse need to be made public, especially on the terms specified in the Child Act 2001 and the 2016 amendment. Therefore, besides improvising the legal provisions, society must play its role for social betterment to preclude and prevent child cyberbullying incidents. Moreover, parents and family members have the most significant task in providing early education on online safety. Public awareness and attention of the parents or guardians are crucial in preventing the occurrence of such incidents in the near future.