

## **The Urgency of Criminalizing Stalking and Its Offense Formulation**

**M. Syamsudin**

*Faculty of Law, Universitas Islam Indonesia Yogyakarta*

**Sukardi**

*Faculty of Sharia, IAIN Pontianak & Faculty of Law, Universitas Islam Indonesia Yogyakarta*

**Huzaimah Al-Anshori**

*Faculty of Law, Universitas Islam Indonesia Yogyakarta*

**Grees Selly**

*Faculty of Law, Universitas Islam Indonesia Yogyakarta*

(\*) correspondent author: [m.syamsudin@uii.ac.id](mailto:m.syamsudin@uii.ac.id)

### **Abstract**

In the digital age, issues related to privacy invasion, repetitive monitoring, and harassment have become increasingly prevalent. One of the most concerning manifestations of these issues is stalking, a pattern of persistent, unwanted behavior that leaves victims feeling threatened, disturbed, and emotionally distressed. As technology advances, opportunities for stalking have expanded, particularly through digital platforms, which enable stalkers to monitor, contact, and manipulate victims more easily than ever before. Unfortunately, in Indonesia, there is a significant gap in the legal framework to address stalking effectively, as existing criminal laws do not yet include specific provisions for such actions. This study examines stalking from legal, social, and psychological perspectives to explore how criminalizing stalking could offer much-needed protection for victims. By adopting a juridical-normative approach, the research reviews relevant laws, regulations, and existing literature to analyze how Indonesia's legal system can adapt to manage stalking incidents better. Findings reveal that stalking profoundly impacts victims, threatening their safety, mental health, and personal freedom. The research underscores the necessity for Indonesia to establish precise legal definitions and clear criteria to classify behaviors as stalking. A well-formulated legal provision addressing stalking would not only provide clarity on the actions that constitute stalking but also outline suitable penalties to deter offenders. Such regulation could serve as a powerful tool to protect victims' rights and ensure that they are safeguarded against persistent harassment. In conclusion, the study advocates for a comprehensive draft offense formulation on stalking within Indonesia's criminal law framework to ensure that victims receive the legal protection they need and that perpetrators are held accountable for their actions,

**Keywords:** *Criminalization, Stalking, Delict, Criminal Law, Victim Protection, Psychic Crime, Individual Security*

## INTRODUCTION

In the digital age, violations of human rights, particularly the right to privacy, are a growing concern. As technology advances, Stalking as a crime that threatens individual privacy is becoming more prevalent.<sup>1</sup> Stalking is the act of secretly and repeatedly watching or following someone without their knowledge or permission, often causing fear and insecurity as their privacy is violated.<sup>2</sup> One of the cases that grabbed attention occurred in May 2023, when a woman in Cileungsi, Bogor, was followed into her house by a mysterious man in an online motorcycle taxi jacket. The victim only realized the perpetrator's presence when she saw him at the door, thinking it was her brother.<sup>3</sup> Although the case was resolved in a family manner without involving the authorities, the incident shows the real impact of Stalking, not only psychologically but also physically threatening the victim. Therefore, the urgency of regulating Stalking as a criminal offense in Indonesian criminal Law becomes increasingly essential to protect individuals' right to privacy and security.

Stalking is not a new phenomenon; the term has been around since the late 1980s and refers to the behavior of stalking someone with unwanted intentions by the victim. Stalkers can take a variety of actions, such as following or calling the victim repeatedly, sending unwanted gifts, visiting their home or workplace, and using threats or physical violence.<sup>4</sup> In addition, Stalking can also be done through technology, such as spy software or online activity monitoring, which makes the perpetrator more difficult

---

<sup>1</sup> Wahyudi Djafar, 2019. "Personal Data Protection Law in Indonesia: Landscape, Urgency, and Need for Renewal." in *Seminar on Law in the Era of Big Data Analysis, Journal of the Graduate Program, Faculty of Law UGM*. Vol. 2, No. 5. pp. 26.

<sup>2</sup> Farid Muhammad Farid and Febrianto Dita, 2021. "Model Regulation of Criminal Law Provisions in Policy Efforts to Counter Cyberbullying Crimes against Children." LPPM-UNILA-IR. p 37.

<sup>3</sup> Muchamad Sholihin, 2024. "Woman Stalker to Room in Bogor: Sorry, Please Do not Extend the Problem," *Detiknews*. <https://news.detik.com/berita/d-6705283/penguntit-wanita-sampai-kamar-di-bogor-maaf-mohon-tak-perpanjang-masalah>. Accessed June 20, 2024 at 20.09

<sup>4</sup> Anita Br Sinaga, et al, 2021. "Stalking in the Perspective of Indonesian Criminal Law Policy." *PAMPAS: Journal of Criminal Law*. Vol. 2, No. 2. pp. 15-28.



to detect.<sup>5</sup> These crimes are inconvenient for the victim and pose a severe threat to their safety.<sup>6</sup>

Stalking is secretly and continuously monitoring or surveilling a person, often without the person's knowledge, to gather information.<sup>7</sup> Stalking can be carried out through various methods, such as physical surveillance, using technology (e.g., spy or eavesdropping software), or monitoring online activity.<sup>8</sup> Some countries, such as California, Germany, Japan, and the U.K., have made stalking a criminal offense. However, in Indonesia, Stalking has not been regulated explicitly in Criminal Law. Nevertheless, the crime still causes victims, as revealed in a survey by the Coalition for Safe Public Spaces (KRPA) and Komnas Perempuan at the end of 2018. The survey showed that 1,215 respondents, or around 1.95% of the 62,224 survey participants, had experienced Stalking.<sup>9</sup>

Several scholars and intellectuals highlight the importance of criminalization in the context of criminal Law, especially Stalking.<sup>10</sup> This research focuses on the urgency of criminalizing Stalking and its offense formulation, referring to Article 493 of the Criminal Code, which regulates violations of public security against individuals, goods, and health.<sup>11</sup> Although there is a substantial aspect of legal protection for victims of stalking crimes, there are regulations that specifically regulate it.<sup>12</sup> In

---

<sup>5</sup> Philip Stenning, Trishima Mitra-Kahn, and Clare Gunby, "Sexual Violence against Female University Students in the U.K.: A Case Study," *Rivista Di Criminologia, Vittimologia e Sicurezza* 7, no. 2 (2013).

<sup>6</sup> Edwin Manumpahi, et al, 2016. "Study of Domestic Violence on Child Psychology in Soakonora Village, Jailolo Sub-district, West Halmahera Regency." *Acta Diurna Komunikasi*. Vol. 5, No. 1. p. 67.

<sup>7</sup> Ratu Ainun Jariah, Fathu Rahman, and M. Amir P, "Social Problems in Drama 13 Reasons Why: Peirce Semiotics Approach," *TEKSTUAL* 20, no. 1 (2022), <https://doi.org/10.33387/tekstual.v20i1.4508>.

<sup>8</sup> Paul E Mullen, et all. 2001. "Stalking: New Constructions of Human Behavior." *Australian & New Zealand Journal of Psychiatry*. Vol. 35, No. 1. pp. 9-16. <https://doi.org/10.1046/j.1440-1614.2001.00849.x>.

<sup>9</sup> Anita Br Sinaga and Dheny Wahyudhi, 2021. "Stalking in the Perspective of Indonesian Criminal Law Policy." *PAMPAS: Journal of Criminal*. Vol. 2, pp. 16

<sup>10</sup> Bunga, Dewi. The politics of criminal Law against cybercrime. *Journal of Indonesian Legislation*, 2019, 16.1: 1–15.

<sup>11</sup> Sari, Utin Indah Permata. Law Enforcement Policy in Efforts to Handle Cyber Crime Committed by Virtual Police in Indonesia. *Studia Legalia Journal*, 2021, 2.01: 58-77.

<sup>12</sup> Ray Kalangi, 2019. "Following Another Person Disturbingly under Article 493 of the Penal Code as an Offense of Public Safety for Persons or Goods and Health". *Juornal Lex Lex Et Societatis*. Vol. 7, No. 12. 32–37.

addition, *Stalking is an act that invades the privacy rights of others, and the Criminal Code has not explicitly regulated it as a criminal offense.*<sup>13</sup>

The state is responsible for criminal law liability in Indonesia in its regulation, which is against the perpetrator of Stalking that occurs in the presence of psychiatric disorders of legal psychological influence.<sup>14</sup> Meanwhile, the urgency of regulating the act of *Stalking* as a criminal offense in Indonesia emphasizes the right to protect citizens in preventing and dealing with criminal acts aimed at stalking acts of punishment.<sup>15</sup> In addition to regulating *stalking* acts that exist abroad, such as in Florida, South Dakota, Texas, and the United Kingdom, criminal law reform includes a concept of regulating Stalking acts committed directly or indirectly (*cyberstalking*).<sup>16</sup>

Meanwhile, the formulation of legal protection for victims of criminal Stalking is part of human rights (HAM) because legal protection for victims of Stalking is a form of violence that can harm victims physically, mentally, and socially.<sup>17</sup> On the other hand, legal protection has a policy in overcoming criminal acts with *cyberstalking* through electronic media more to *Stalking*, but more focused on aspects of *cyberstalking* efforts to protect privacy rights.<sup>18</sup> In addition, existing laws and regulations are insufficient to guarantee legal protection for *cyberstalking* victims.<sup>19</sup>

Criminal law reform is inseparable from the principle of legality, which means that an act can only be subject to punishment if it has been regulated in Law.<sup>20</sup> This principle guarantees legal certainty for the community. However, over time, criminals develop new ways to commit crimes by utilizing various available resources and access, so the

---

<sup>13</sup> Anita Br Sinaga, et all. 2021. "The Act of Stalking in the Perspective of Indonesian Criminal Law Policy." *Journal of Kriminal*. Vol. 2, No. 2. pp. 15-23.

<sup>14</sup> Umam, Fathya Chalida. 2024. "Criminal Liability for Stalkers with Mental Disorders." *Journal of Kertha Semaya*. Vol. 12, No. 5. Page 823 - 833

<sup>15</sup> Putri, Y. R. 2017. "The Urgency of Regulating *Stalking* as a Criminal Offense in Indonesia." *Brawijaya Law Student Journal*. pp. 1 - 6

<sup>16</sup> Purnama, Yan Fathahillah, et al. Cyberstalking as a Wrongful Act in Indonesian Criminal Law. *Halu Oleo Legal Research*, 2024, 6.1: 103-121.

<sup>17</sup> Lisnawati, et all. 2014. "Formulation of Legal Protection for Victims of Stalking Crimes from Human Rights Perspective." *Proceeding*. pp. 30.

<sup>18</sup> Muhammad Hasan Rumlus, et all. T.th. "Unemployment Policy of *Cyberstalking* Crime in Electronic Media." pp. 101 - 106

<sup>19</sup> ZAKI, Muhammad Maulana. Criminal Aspects of Cyberstalking as a Form of Cybercrime. *Jurist-Diction*, 2022, 5.3.

<sup>20</sup> Djoko Prakoso, 1987. *Criminal Law Reform in Indonesia*. Liberty, Yogyakarta: pp. 91



Law often lags behind the development of society (*het recht hink achter de feiten aan*).<sup>21</sup> In the Criminal Code, no article explicitly regulates stalking as a criminal offense. However, the right to privacy is implicitly guaranteed in Article 28G Paragraph (1) of the 1945 Constitution, which states that "Everyone has the right to protection of self, family, honor, dignity, and property against threats of fear of doing or not doing something that is their human right." This right to privacy is also affirmed in Article 12 of the Universal Declaration of Human Rights (UDHR) and Article 17 of the International Covenant on Civil and Political Rights (ICCPR)<sup>22</sup>, stipulating that no one shall be subjected to arbitrary interference with his private affairs, family, or correspondence, and everyone shall be entitled to legal protection.<sup>23</sup>

In addition, everyone has an explicit right to privacy and should not be violated by others acting unreasonably or accessing personal information without authorization.<sup>24</sup> However, many victims of Stalking feel that the perpetrator has violated their right to privacy, as Stalking is done for no legitimate purpose and without consent. This points to the need for specific legislation on Stalking. Currently, although there are several articles in the Criminal Code, such as Article 368 paragraph (1) and Article 493, which can be linked to the act of Stalking, they are not sufficient to address this crime, especially in the private sphere of victims. The vagueness and diversity of interpretations in the existing articles make it difficult for the Law to be applied effectively. Unclear and unequivocal rules of Law will make it difficult to enforce the Law against perpetrators of criminal acts.<sup>25</sup>

Criminal law reform to regulate Stalking as a criminal offense is essential.<sup>26</sup> The principle of legality, which stipulates that new acts are punishable only if provided for in Law,

---

<sup>21</sup>Ng, Hansel Kalama, et al. 2017 "Urgency of Legal System Based on Legal Community Empowerment to Minimize Victims of Trafficking for Sexual Purposes against Women in Indonesia." Vol. 2, No. 3. pp. 37

<sup>22</sup>Anita Br Sinaga, et. al., 2021. "Stalking in the Perspective of Indonesian Criminal Law Policy." *Journal of Criminal Law*. Vol. 2, No. 2. pp. 18

<sup>23</sup>James J Heckman, et al. 1, 1967. "Decision Number 50/PUU-IV/2008," *Angewandte Chemie International Edition*, 6 (11), pp. 951-952

<sup>24</sup>Anita Br Sinaga et al., 2021. "Stalking in the Perspective of Indonesian Criminal Law Policy." *Journal of Criminal Law*. Vol. 2, No. 2. pp. 19

<sup>25</sup>Ardi Saputra Gulo, et al, 2020. "Cyber Crime in the Form of Phishing Based on the Electronic Information and Transaction Law." *Journal of Criminal*. Vol. 1, No. 2. pp. 68-81.

<sup>26</sup>Zainal Arifin, et all, 2024. "Formulation of Legal Protection for Victims of Stalking Crimes from a Human Rights Perspective." in *Proceedings of the Actual Law Seminar*,

often hinders law enforcement against new crimes, including Stalking.<sup>27</sup> In the age of technology, stalkers can conduct surveillance in ways that are difficult to detect, so criminal Law needs to adapt to the times to provide adequate protection for victims.<sup>28</sup> Since no specific law governs the crime of Stalking, especially for physical Stalking, the author would like to examine criminal law policies that can prevent, mitigate, and protect stalking victims in the future.

## **METHODOLOGY**

Research article is entitled "The Urgency of Criminalizing the Act of Stalking and its Delict Formulation" and is included in the category of normative legal research. This research examines and analyzes document studies using various secondary legal materials, such as laws and regulations, court decisions, legal theories, jurisprudence, and opinions from scholars.<sup>29</sup> This research adopts the legal theory of development launched by Kusuma Atmadja, who argues that Law will develop if the rules are understood and updated by the times.<sup>30</sup> The Law regulates people's lives through its principles and rules. Therefore, it is essential to understand the Law to modernize national life. Furthermore, Kusuma Atmadja also emphasized that the rule of Law must align with the times, so legal reform is needed. In this context, the theory of legal reform referred to by Barda Nawawi Arief shows that reform can be carried out through substance, structure, and legal culture.<sup>31</sup> Theoretically, the importance of criminal law reform in regulating Stalking as a criminal offense is evident.<sup>32</sup> The principle of legality, which states that no act can be criminalized if it has not been regulated in legislation, often becomes an obstacle in law enforcement against new crimes that arise.<sup>33</sup> Thanks to technological developments, Stalking, for example, can

---

<sup>27</sup> Mahrus Ali, 2022. *Basics of Criminal Law*. Jakarta: Sinar Grafika.

<sup>28</sup> Masduki Khamdan Muchamad, 2023. "Cyber Crime Threats and Problems: A Juridical Review of Prevention and Eradication Efforts in Indonesia." Syiah Kuala: University Press.

<sup>29</sup> Peter Mahmud Marzuki, *Legal Research*, 12th Cet. (Jakarta: Prenada Media, 2016).

<sup>30</sup> Mochtar Kusuma Atmadja. Soetandyo Wignjosebroto, 2012. *Legal Theory of Development Extensions and Implications*. Jakarta: Epistema Institute. pp. 10 - 12.

<sup>31</sup> Barda Nawawi Arief, 2010. *Bunga Rampai Kebijakan Hukum Pidana*. Jakarta: Prenada Madia Group. p. 29.

<sup>32</sup> Zainal Arifin, et all, 2024. "Formulation of Legal Protection for Victims of Stalking Crimes from a Human Rights Perspective." in *Proceedings of the Actual Law Seminar*,

<sup>33</sup> Mahrus Ali, 2022. *Basics of Criminal Law*. Jakarta: Sinar Grafika.



be done in ways that are difficult to detect.<sup>34</sup> Therefore, criminal Law needs to evolve and adapt to the changing times to provide adequate protection for victims of crime. To date, no specific law regulates the crime of Stalking, especially regarding legal protection for victims of physical Stalking. In this context, the author discusses criminal law policies that prevent, overcome, and provide adequate protection for victims of criminal Stalking in the future.

## RESULT AND DISCUSSION

### Criminalization of Stalking in Criminal Law

Stalking is an act committed by someone to intimidate, harass, or threaten another person by following, monitoring, or constantly contacting that person without consent. This action has a very detrimental psychological impact on the victim, such as feelings of fear, threat, and anxiety, which in turn can interfere with the victim's daily life. In Indonesia, the criminalization of Stalking has not explicitly been regulated in a specific article in the Criminal Code (KUHP). However, various articles in the Criminal Code and other laws can be used to ensnare perpetrators of Stalking, especially if the actions lead to threats or other unpleasant actions.

Although there is no specific article that explicitly regulates stalking, there are several provisions in the Criminal Code that can be used to criminalize the act of Stalking, including Article 335 of the Criminal Code; this article can be used to ensnare the perpetrator of stalking if the action is carried out in ways that are unpleasant, intimidating, or force the victim to do, not do, or let something.<sup>35</sup> This article can be applied by using violence or threats of violence in Stalking, such as sending threatening messages.<sup>36</sup>

In addition, under Article 368 of the Criminal Code (Extortion and Threats), if Stalking is accompanied by threats aimed at forcing the victim to hand over something, create a

<sup>34</sup> Masduki Khamdan Muchamad, 2023. "Cyber Crime Threats and Problems: A Juridical Review of Prevention and Eradication Efforts in Indonesia." Syiah Kuala: University Press.

<sup>35</sup> Moeljatno, 2021. *Criminal Code (Kitab Undang-Undang Hukum Pidana)*. Bumi Aksara. 122.

<sup>36</sup> Rivaldy Rampengan, 2022. "Unpleasant Acts in Review of Article 335 Paragraph (1) Number 1 of the Criminal Code." *Journal of Lex Privatum*. Vol. 10, No. 4.

debt, or perform an act that harms the victim, this article can be charged.<sup>37</sup> For example, if the perpetrator stalks the victim to blackmail or threatens to harm the victim if his demands are not met, this action can be processed as extortion under Article 368 of the Criminal Code.<sup>38</sup>

#### Criminalization of Stalking in the ITE Law

In addition to the Criminal Code, Stalking can be criminalized through the Electronic Information and Transactions Law (ITE Law), mainly if Stalking is conducted through electronic media such as text messages, emails, or social media. Some articles in the ITE Law that are relevant to Stalking are Article 27, paragraph (3) of the ITE Law. If the act of Stalking is carried out by disseminating information that insults or defames the victim through electronic media, the perpetrator can be sanctioned under this article. Stalking and disseminating content that harms the victim's reputation can be processed as a criminal offense under this article. Article 29 of the ITE Law charges stalking committed by sending threatening or frightening messages to the victim through electronic media. For example, suppose the perpetrator continuously sends threatening messages to the victim via WhatsApp or other social media. In that case, this can be categorized as violating Article 29 of the ITE Law.

#### Criminalization of Stalking in the Perspective of International Law

Some countries have adopted specific laws governing Stalking. For example, in the United States, every state has an *anti-stalking law* that specifically criminalizes the act. Some European countries have also adopted similar laws that provide more protection to stalking victims.<sup>39</sup>

In the Indonesian context, although there is no specific law on Stalking, adopting other countries' experiences in dealing with Stalking can be an essential consideration for policymakers when developing a more comprehensive legal framework.

---

<sup>37</sup> Mohammad Kenny Alweni, 2019. "Review of the Crime of Extortion Based on Article 368 of the Criminal Code." *Journal Lex Crimen* . 8, No. 3. pp.

<sup>38</sup> Eka Febri Pamungkas, 2021. "Criminological Analysis of Pornography Crime Accompanied by Threats and Extortion Through the Media (Study of Case Decision Number: 128/Pid. Sus/2020/PN Kbu)." *Journal Petitem*. 1, No. 2. pp 107-34.

<sup>39</sup> Muhammad Farid and Dita, 2021. *Model Regulation of Criminal Law Provisions in Policy Efforts to Counter Cyberbullying Crimes Against Children. Final Research Report*. Pp 1-4.



Various studies have discussed the psychological impact of Stalking and the importance of strict legal regulations to protect victims. One of them is *The Impact of Stalking on Victims: Psychological Effects and the Need for Legal Protection*, which explains the psychological effects experienced by victims, such as fear, anxiety, and post-traumatic stress disorder (PTSD).<sup>40</sup> It emphasizes the importance of legal protection for victims and appropriate punishment for perpetrators. In addition, *Legal Responses to Stalking: A Comparative Analysis* compares anti-stalking laws in different countries and shows the effect of different regulations on victim protection.<sup>41</sup> This could be an essential reference for Indonesia in developing a more specific anti-stalking law.

In addition, Stalking in Indonesia is not explicitly regulated in one criminal law article. However, it can be criminalized through various articles in the Criminal Code, ITE Law, and PKDRT Law. Nonetheless, future regulatory developments should consider enacting a specific law that regulates Stalking, given its psychologically severe impact. Experiences from other countries that have adopted anti-stalking laws can be used as a reference to develop a better legal framework in Indonesia. In addition, the protection of victims must also be strengthened through legal regulations and psychological support so that victims can recover from the negative impacts caused by Stalking. Law enforcement officials need to understand Stalking and its impact to deal with stalking cases more effectively and fairly. Increasing public awareness about the dangers of Stalking also needs to be promoted so that people can be more vigilant and immediately report acts they experience or witness.

As such, although legal measures are currently in place to prosecute perpetrators of Stalking, there is still much room for development and improvement of regulations in Indonesia, legislation, law enforcement, and victim protection. In modern times, there are actions that others find extremely disturbing. One of these is an act called *Stalking* in English, which is usually translated as Stalking, and the person who commits it is called a *stalker*, also translated as a stalker.

---

<sup>40</sup> J Reid Meloy, 1998. *The Psychology of Stalking*, in *The Psychology of Stalking*. 1–23.

<sup>41</sup> Patricia Tjaden, Nancy Thoennes, and Christine J Allison, 2000. "Comparing Stalking Victimization from Legal and Victim Perspectives." *Journal of Violence and Victims*. 15, No. 1. 7–22.

In an electronic dictionary, the word stalking is also defined as "*stealthy pursuit: the act or process of stealthily following or trying to approach someone or something.*"<sup>42</sup> Following *stealthily: the act or process of following someone or something stealthily*. One website explains Stalking. Know what qualifies as Stalking. The type of harassment known as Stalking is the act of repeatedly contacting a person to whom you have no reply or desire.

1. Stalking can happen privately, for example, when someone follows you, spies on you, or approaches you at home or work.
2. Signs of Stalking include receiving unwanted gifts, receiving unwanted letters or emails, receiving unwanted phone calls, or making repeated phone calls.
3. In addition, Stalking can occur online in the form of cyberstalking or cyberharassment. This type of contact may be difficult to trace, but changing online privacy settings or email addresses is much easier to avoid.
4. All instances of cyberstalking turning into personal Stalking should be seriously considered and addressed immediately.<sup>43</sup>

By considering the elements of a criminal offense that have been explained previously, the act of Stalking can fulfill the elements of a criminal offense because Stalking fulfills the element of human action. This can be seen from the actions taken by (the stalker) towards his victim to make implied threats, threaten verbally or in writing, terrorize, harass, or cause someone to feel disturbed, frightened, or threatened with their safety repeatedly.

Since no law clearly states that Stalking is a criminal offense, Stalking cannot be categorized as a criminal offense at this time. However, if we talk about the concept of "against the law," it is said that the acts that can be categorized as criminal offenses are not only those that the Law defines but also those that society deems inappropriate.

---

<sup>42</sup>Stalking 2003. "*In Encarta Dictionary Tools*" Microsoft Encarta Reference Library. Accessed August 24, 2024. 23.51

<sup>43</sup> "How to Deal with a Stalker," Wikihow.com, <https://id.wikihow.com/Berurusan-dengan-Penguntit>. It was accessed on August 1, 2024—3:22 p.m.



Bemmelen defines unlawful in two senses: material unlawful as contrary to society's reasonable care regarding persons or property and formal unlawful as contrary to the obligations imposed by Law.<sup>44</sup>

Fault is the subjective component of a criminal offense. It has two aspects: psychological and juridical. From a psychological perspective, fault must be found within the offender so that he can be held accountable for his actions. However, from a normative perspective, the perpetrator of a criminal offense is culpable because, from the perspective of society, he has the option to do something else if he does not want to.<sup>45</sup> Knowing the inner attitude of a criminal offender is difficult because there must be a measure that can determine whether there is a mental connection between the offender and his actions. As a result, the normative theory of fault is used as the standard for determining the issue of fault.

There are three essential components of the aforementioned normative fault theory. The first is culpability, which means offenders can be held accountable and punished for their actions under criminal Law. Second, culpable from society means that this is based on the Law's assessment of the offender's psychological state at the time of committing the criminal offense. Third, being able to do otherwise means that the offender always has the opportunity to avoid committing a criminal offense if they do not wish to do so. Therefore, it is a fault if the act does not conform to the standard that should be followed.<sup>46</sup>

In criminal responsibility, there is the principle of *Geen strap zonder schuld* or *Actus non facit reum nisi men sit rea*, which means that a person cannot be punished if he has not committed a mistake. The continuation of the objective reproach in the criminal act and subjectively qualifies a person to be punished for his actions is known as criminal responsibility. In short, criminal liability means that a person is responsible for the criminal offense they commit.<sup>47</sup>

---

<sup>44</sup> Ali, 2022. *Basics of Criminal Law*. pp. 141

<sup>45</sup> Teguh Prasetyo, 2010. *Criminal Law*. Jakarta: Rajawali Press. pp. 77

<sup>46</sup> Ali, *Basics of Criminal Law*. pp. 158

<sup>47</sup> Ali. pp. 156

*Men's rea*, the second element, is the mental attitude of the perpetrator. This includes doing a destructive or harmful act intentionally or unintentionally. In this case, the intentional element indicates that the perpetrator was aware that his or her actions would adversely affect the victim, which cannot be justified. Very similar to the element of negligence, where the perpetrator commits the wrong not out of negligence but out of recklessness or not having a proper understanding of the consequences that will occur.

Based on the elements proposed by Joel Samaha, the unfavorable outcome or unfortunate consequence of Stalking is to put the victim in fear. The fear in question can be subjective, which is the fear felt by the victim himself, or objective, which is the fear that will be felt by others or will be felt by everyone if others also experience stalking.

*Stalking* online (*cyber-stalking*) and physical behavior are legal concerns in Indonesia, even though no specific law governs them.<sup>48</sup> Article 335 paragraph (1) number 1 jo. Constitutional Court Decision No. 1/PUU-XI/2023 and Article 448<sup>49</sup> Paragraph (1) letter a of Law No. 1 of 2023 provides for imprisonment of up to one year or a fine of up to IDR 10 million for acts that force another person to do or not do something by force or threat. Article 368 paragraph (1) of the Criminal Code on extortion also threatens the perpetrators of extortion with imprisonment of up to nine years if they carry out coercion with violence or threats.<sup>50</sup> In addition, Article 29 of the ITE Law threatens *cyber-stalking* with a maximum prison sentence of four years and a fine of up to Rp 750 million.<sup>51</sup>

However, physical Stalking remains largely unregulated. Article 317 of Law No. 1 of 2023 does cover acts of obstructing freedom of movement or following another person in a disruptive manner. However, the formulation of this article has not explicitly highlighted repeated and persistent acts of Stalking. As such, this article is not fully

---

<sup>48</sup> Article 3 of Supreme Court Regulation Number 2 Year 2012 on the Adjustment of the Limitation of Minor Crimes and the Amount of Fines in the Criminal Code.

<sup>49</sup> "Article 448 Paragraph (1) Letter a of Law of the Republic of Indonesia Number 1 Year 2023".

<sup>50</sup> "Kitab Undang-Undang Hukum Pidana (KUHP) Article 368 Paragraph (1) on 'Extortion' Using Violence or Threat of Violence".

<sup>51</sup> "Article 45B of Law Number 19 of 2016 Concerning Amendments to Law Number 11 of 2008 Concerning Electronic



adequate to protect victims of Stalking or provide strict sanctions to perpetrators. This shows that while Indonesia has several articles that can be used as a temporary legal basis, there is an urgent need for a specific regulation on stalking to ensure the complete protection of individual human rights.

In addition, Article 493 of the Criminal Code stipulates criminal penalties for any person who, without right, endangers the freedom of movement of another person on a public road, forcibly pushes himself with another person to a person who expressly refuses it, or follows another person in a disruptive manner. Offenders who violate this article are imprisoned for up to one month or a maximum fine of one thousand five hundred rupiahs.

According to R. Sugandhi, three forms of behavior are punishable under this article: obstructing another person's freedom of movement on a public road; forcibly pushing oneself with others towards someone who has refused; and following another person in a disruptive manner, such as walking too close or performing physical actions that make the person uncomfortable. Examples of these disruptive behaviors include pushing oneself with friends towards another person or following someone from behind by engaging in indecent acts such as groping.

The Explanatory Letter to the Dutch Draft Penal Code states that the crime mentioned in Article 439 of the Penal Code is committed because, in these cases, a laborer working in a striking factory is harassed by striking workers, as stated in Article 493 of the Penal Code.<sup>52</sup> Article 493 KUHP does not mention the name of the criminal offense, but Wirjono Prodjodikoro discusses it by referring to it as "following people."

As S.R. Sianturi explains, a public road is available or can be used by anyone. Streets in office complexes are only public roads if they have been used by anyone for many years, for example, thirty years, or are given to anyone.<sup>53</sup> This article does contain an element of Stalking, namely following another person in a disturbing manner, but what is meant by disturbingly following another person in this article is only intended when

---

<sup>52</sup> Wirjono Prodjodikoro, 2003. *Certain Criminal Offenses in Indonesia*. Bandung: Refika Aditama. pp. 142

<sup>53</sup> Kalangi, 2020. "Following Another Person Disturbingly Under Article 493 of the Criminal Code." *Journal of Lex Et Societatis*. pp. 35

it occurs on a public road, while the actions taken by the perpetrator of Stalking (stalker) in many cases are not just following the victim on a public road but extend to the victim's privacy such as following to the victim's home, to the victim's place of work, or to a private event where the victim is. In this article, following another person disturbingly does not contain the element of repeatedly, which is a typical element of Stalking. In addition, the punishment contained in this article is very light, considering that Article 493 of the Criminal Code is classified into Book III of the Criminal Code, namely Offenses. Therefore, this article is not appropriate to be applied against the perpetrators of Stalking.

### **Formulation of Stalking Offenses and Legal Protection for Victims of Stalking Crimes in the Future**

In English, Stalking is often translated *as Stalking*. Some other countries, like Japan, refer to Stalking as *Sokan-tsukai*, while Germany refers to Stalking as "*Nachstellung*". These three terms are used for Stalking that is done physically or not *online*.

Stalking is an increasingly alarming phenomenon in modern society. It occurs when a person engages in acts of surveillance, intensive monitoring, or reconnaissance of another person without consent.<sup>54</sup> These acts often cause fear, stress, and other mental disorders in the victim.<sup>55</sup> Although there is no specific article in the Indonesian Criminal Code that regulates stalking, the growing awareness of its profound impact demands a precise formulation of the offense and effective legal protection mechanisms for victims.

#### **a). Formulation of Stalking Offenses in the Future**

In the context of criminal Law, the offense of Stalking can be formulated as a criminal offense committed by a person who intentionally and without right conducts surveillance, reconnaissance, or repeated surveillance of another person, either directly or through electronic media, with the aim of frightening, intimidating,

---

<sup>54</sup> Rahel Octora, "PROBLEMATICS OF REGULATING CYBERSTALKING BY USING ANONYMOUS ACCOUNT ON SOCIAL MEDIA," *Dialogia Iuridica: Journal of Business and Investment Law* 11, no. 1 (2019), <https://doi.org/10.28932/di.v11i1.1902>.

<sup>55</sup> "FORMS OF CYBERBULLYING IN SOCIAL MEDIA AND ITS PREVENTION FOR VICTIMS AND PERPETRATORS," *Journal of Sociotechnology* 15 (2016).



or disturbing the peace of the victim. In formulating the offense of Stalking, there are several essential aspects to consider:

### **1. Main Elements of the Offense of Stalking**

**Element of Willfulness:** The perpetrator commits the act of Stalking intentionally, meaning that the perpetrator is aware of his or her actions and their impact on the victim. **Without Rights:** Stalking is done without the victim's right or consent. For example, the perpetrator has no legitimate legal reason to follow or surveil the victim continuously. **Repetition of Acts:** The offense of Stalking must involve repeated, rather than one-time, acts to demonstrate a pattern of behavior that threatens or harasses the victim. The purpose of Stalking is to frighten, intimidate, or disturb the victim's peace. The psychological impact on the victim is an important indicator in assessing the existence of this offense.

### **2. Types of Stalking**

**Physical Stalking:** This involves direct surveillance or Stalking of the victim, such as following the victim to work, home, or other places. **Electronic Stalking** involves using information technology, such as social media, email, text messages, or tracking devices, to surveil or harass the victim. **Stalking Through Others:** The perpetrator uses another person to conduct surveillance or reconnaissance of the victim, knowingly or unknowingly, by the person assigned.

### **3. Legal Sanctions**

**Imprisonment:** Prison sentences should be tailored to the severity and impact of the Stalking on the victim. For example, Stalking that causes the victim to suffer a severe mental disorder may warrant a longer prison sentence. **Fines:** In addition to imprisonment, offenders may be fined as an additional form of punishment to provide a deterrent effect. **Prohibition Order:** The court may issue a prohibition order against the perpetrator, prohibiting the perpetrator from approaching or contacting the victim in any form.

## **1). Strengthening of Evidence**

Electronic Evidence: In cases of electronic Stalking, evidence such as recorded messages, emails, or other digital footprints is essential to prove the act. Witnesses: Testimonies from third parties who knew or witnessed the Stalking can also be decisive evidence in judicial proceedings.

## **2). Comparative Approach**

Compared with other countries with anti-stalking laws, such as the United States and the United Kingdom, it can help formulate effective offenses based on social conditions in Indonesia. In the United States, for example, each state has an anti-stalking law that specifically regulates the types of Stalking and the sanctions given.

## **4. Legal Protection for Victims of Stalking**

In addition to the formulation of stalking offenses, legal protection for victims must also be a significant concern. This protection can include several aspects, among others:

### **a). Physical and Psychological Protection**

Shelter: The government or non-governmental organizations need to provide safe houses for victims of Stalking who feel threatened and need temporary shelter.

Psychological Counseling: Victims of Stalking often experience deep psychological trauma. Therefore, access to psychological counseling services should be provided free of charge or at a reasonable cost.

### **b). Complaint Mechanism and Law Enforcement**

Rapid Complaint Service: There should be a quick and responsive complaint channel for stalking victims, such as a 24-hour hotline or an easily accessible online platform.

Witness and Victim Protection: Victims of Stalking need to be provided with special protection throughout the investigation and judicial process, including anonymity where necessary, to prevent the perpetrator from retaliating or further intimidation.

### **c). Legal Protection in the Electronic Realm**

Regulation of Social Media Content: Stricter regulations are needed related to the use of social media for stalking purposes. Social media service providers must also cooperate in monitoring and removing content or accounts used for Stalking.



Removal Orders: The court may order an internet service provider to remove content or accounts used by the perpetrator to stalk the victim.

#### **d). Education and Public Awareness**

Awareness Campaign: The government must launch an awareness campaign on the dangers of Stalking and ways to protect oneself. This campaign could include information on how to report Stalking and the importance of social support for victims.

Training for Law Enforcement: Law enforcement officials, including police and prosecutors, need to be provided with specialized training on how to handle stalking cases, including how to collect evidence and provide support to victims.

This is why Stalking is a complex crime that requires a comprehensive legal approach. The future formulation of the offense of Stalking should include clear elements, such as intentionality, without rights, repetition of the act, and the purpose of the Stalking itself. This offense must be formulated in such a way that it can ensnare perpetrators who use various means, both physical and electronic, to stalk victims.

Legal protection for victims should be a priority in handling stalking cases.<sup>56</sup> This includes the provision of safe houses, psychological counseling services, and prompt and effective complaint and law enforcement mechanisms. In addition, protections in the electronic realm, such as content regulation on social media and takedown orders for content used for Stalking, should be implemented to prevent the misuse of technology in stalking cases.

Public education and awareness raising are also critical. People need to be educated about the dangers of Stalking and how to protect themselves. Law enforcement needs to be trained to handle stalking cases sensitively and professionally to ensure that victims receive adequate protection.

---

<sup>56</sup> Center, Society, and Culture.

The criminalization of Stalking and legal protection for victims in the future require an integrated and comprehensive approach. The formulation of stalking offenses must include clear and specific elements and accommodate technological developments that are often used in stalking cases. Legal protection for victims should include physical, psychological, and electronic aspects and be supported by responsive complaints and law enforcement mechanisms.

Experiences from other countries can serve as valuable lessons in developing effective legislation in Indonesia. Victim protection should be a top priority, providing victims with the support they need to recover from the impact of Stalking. In addition, public awareness raising and training for law enforcement should also be part of the strategy to prevent and deal with stalking cases.

With this comprehensive approach, it is hoped that Indonesia will have a solid legal framework to ensnare perpetrators of Stalking and provide adequate protection for victims so that the phenomenon of Stalking can be dealt with more effectively and fairly.

## CONCLUSION

In Indonesia, Stalking has not been expressly regulated in one article of Criminal Law. However, it can be criminalized through several provisions in the Criminal Code, ITE Law, and PKDRT Law. Although there are already some rules that can be used, future regulatory developments need to consider passing a specific law that expressly regulates stalking, given the severe psychological impact that victims can experience. The experience of other countries with anti-stalking laws can be used as a reference for Indonesia to develop a more comprehensive legal framework. In addition, protection for victims needs to be strengthened through legal regulations and psychological support so that victims can recover from the negative impacts caused by Stalking. In law enforcement, officers also need to understand Stalking and its impact to handle cases effectively and fairly. Raising public awareness about the dangers of Stalking is also essential so that people are more vigilant and immediately report if they experience or witness Stalking. Thus, although there are currently legal measures to ensnare perpetrators of Stalking, there is still ample room for development and improvement of regulations in Indonesia, both in terms of legislation, law enforcement, and victim protection.



The criminalization of Stalking and legal protection for victims requires an integrated and comprehensive approach. The formulation of stalking offenses needs to include elements that are clear, specific, and able to adapt to technological developments that are often utilized in stalking cases. Legal protection for victims must be comprehensive, covering physical, psychological, and electronic aspects, and supported by responsive complaint and law enforcement mechanisms. The experience of other countries can be a valuable reference for developing effective laws in Indonesia. Victim protection should be a top priority by providing the support needed for victim recovery. In addition, raising public awareness and training law enforcement officers should also be part of the strategy to prevent and handle stalking cases. With this comprehensive approach, it is hoped that Indonesia will have a solid legal framework to effectively and fairly address Stalking.

## ACKNOWLEDGMENTS

The authors may recognize those who helped in the research, especially funding supporters of research. The acknowledgment can include institutions or individuals who have assisted you in your study: Advisor, Financial support, or may other parties have involved on the research.

## COMPETING INTEREST

Please state any conflicting interests of this publication and research. If there is no, please state that there is no conflict of interest in the publication of this article

## REFERENCES

- Ali, Mahrus. *Dasar-Dasar Hukum Pidana*. Sinar Grafika, 2022.
- Alweni, Mohammad Kenny. "Kajian Tindak Pidana Pemerasan Berdasarkan Pasal 368 Kuhp." *Lex Crimen* 8, no. 3 (2019).
- Arief, Barda Nawawi. *Bunga Rampai Kebijakan Hukum Pidana*. Jakarta: Prenada Madia Group., 2010.
- Arifin, Zainal, Huzaimah Al-Ansori, Maria Febriana, and Rinni Puspitasari. "Formulasi Perlindungan Hukum Terhadap Korban Tindak Pidana Penguntitan Perspektif HAM." In *Prosiding Seminar Hukum Aktual Fakultas Hukum Universitas Islam Indonesia*, 2:30–47, 2024.
- Br Sinaga, Anita, and Dheny Wahyudhi. "Perbuatan Menguntit (Stalking) Dalam Perspektif Kebijakan Hukum Pidana Indonesia." *PAMPAS: Journal Of Criminal*

2 (n.d.): 2021.

Djafar, Wahyudi. "Hukum Perlindungan Data Pribadi Di Indonesia: Lanskap, Urgensi Dan Kebutuhan Pembaruan." In *Seminar Hukum Dalam Era Analisis Big Data, Program Pasca Sarjana Fakultas Hukum UGM*, Vol. 26, 2019.

Gulo, Ardi Saputra, Sahuri Lasmadi, and Kabib Nawawi. "Cyber Crime Dalam Bentuk Phising Berdasarkan Undang-Undang Informasi Dan Transaksi Elektronik" 1 (2020): 68–81.

Heckman, James J, Rodrigo Pinto, and Peter A. Savelyev. "Putusan Nomor 50/PUU-IV/2008." *Angewandte Chemie International Edition*, 6(11), 951–952., 1967.

Jariah, Ratu Ainun, Fathu Rahman, and M. Amir P. "Social Problems In Drama 13 Reasons Why: Peirce Semiotics Approach." *TEKSTUAL* 20, no. 1 (2022). <https://doi.org/10.33387/tekstual.v20i1.4508>.

Kalama Ng, Hansel, Hery Firmansyah, and Dalam Upaya Meminimalisasi Korban Perdagangan Untuk Tujuan Seksual. "Urgensi Sistem Hukum Berbasis Legal Comunity Empowerment Dalam Upaya Meminimalisasi Korban Perdagangan Untuk Tujuan Seksual Terhadap Perempuan Di Indonesia." Vol. 2, 2017.

Kalangi, Ray. "Mengikuti Orang Lain Secara Mengganggu Menurut Pasal 493 Kuhp." *Lex Et Societatis VII*, no. 12 (2019).

Kitab Undang-Undang Hukum Pidana (KUHP) Pasal 368 ayat (1) tentang "pemerasan" menggunakan "kekerasan atau ancaman kekerasan" (n.d.).

Manumpahi, Edwin, Shirley Y V I Goni, and Hendrik W Pongoh. "Kajian Kekerasan Dalam Rumah Tangga Terhadap Psikologi Anak Di Desa Soakonora Kecamatan Jailolo Kabupaten Halmahera Barat." *Acta Diurna Komunikasi* 5, no. 1 (2016).

Marzuki, Peter Mahmud. *Penelitian Hukum*. Cet. ke-12. Jakarta: Prenada Media, 2016.

Meloy, J Reid. "The Psychology of Stalking." In *The Psychology of Stalking*, 1–23. Elsevier, 1998.

Microsoft® Encarta® Reference Library 2003. "'Stalking' Dalam Encarta Dictionary Tools," n.d.

Moeljatno, S H. *KUHP (Kitab Undang-Undang Hukum Pidana)*. Bumi Aksara, 2021.

Muchamad, Masduki Khamdan. *Kejahatan Siber Ancaman Dan Permasalahannya: Tinjauan Yuridis Pada Upaya Pencegahan Dan Pemberantasannya Di Indonesia*. Syiah Kuala University Press, 2023.

Muhammad Farid, Farid, and Febrianto Dita. "Model Pengaturan Ketentuan Hukum Pidana Dalam Upaya Kebijakan Penanggulangan Tindak Pidana Cyberbullying Terhadap Anak," 2021.

Mullen, Paul E, Michele Pathé, and Rosemary Purcell. "Stalking: New Constructions of Human Behaviour." *Australian & New Zealand Journal of Psychiatry* 35, no. 1



- (February 2001): 9-16. <https://doi.org/10.1046/j.1440-1614.2001.00849.x>.
- Octora, Rahel. "PROBLEMATIKA PENGATURAN CYBERSTALKING (PENGUNTITAN DI DUNIA MAYA) DENGAN MENGGUNAKAN ANONYMOUS ACCOUNT PADA SOSIAL MEDIA." *Dialogia Iuridica: Jurnal Hukum Bisnis Dan Investasi* 11, no. 1 (2019). <https://doi.org/10.28932/di.v11i1.1902>.
- Pamungkas, Eka Febri. "ANALISIS KRIMINOLOGIS KEJAHATAN PORNOGRAFI DISERTAI PENGANCAMAN DAN PEMERASAN MELALUI MEDIA ELEKTRONIK (Studi Putusan Perkara Nomor: 128/Pid. Sus/2020/PN Kbu)." *Petitum* 1, no. 2 (2021): 107-34.
- "Pasal 3 Peraturan Mahkamah Agung Nomor 2 Tahun 2012 Tentang Penyesuaian Batasan Tindak Pidana Ringan Dan Jumlah Denda Dalam KUHP," n.d.
- Pasal 448 ayat (1) huruf a Undang-undang Republik Indonesia Nomor 1 tahun 2023 (n.d.).
- "Pasal 45B Undang-Undang Nomor 19 Tahun 2016 Tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik," n.d.
- Prakoso, Djoko. "Pembaharuan Hukum Pidana Di Indonesia." Liberty, 1987.
- Pusat, Ranny Rastati, Penelitian Kemasyarakatan, and Dan Kebudayaan. "BENTUK PERUNDUNGAN SIBER DI MEDIA SOSIAL DAN PENCEGAHANNYA BAGI KORBAN DAN PELAKU FORMS OF CYBERBULLYING IN SOCIAL MEDIA AND ITS PREVENTION FOR VICTIMS AND PERPETRATORS." *Jurnal Sosioteknologi* 15 (2016).
- Rampengan, Rivaldy. "Perbuatan Tidak Menyenangkan Ditinjau Dari Pasal 335 Ayat (1) Angka 1 Kitab Undang-Undang Hukum Pidana." *Lex Privatum* 10, no. 4 (2022).
- Sholihin, Muchamad. "Penguntit Wanita Sampai Kamar Di Bogor: Maaf, Mohon Tak Perpanjang Masalah." *Detiknews*, 2023.
- Sinaga, Anita Br, Usman Usman, and Dheny Wahyudhi. "Perbuatan Menguntit (Stalking) Dalam Perspektif Kebijakan Hukum Pidana Indonesia." *PAMPAS: Journal of Criminal Law* 2, no. 2 (2021): 15-28.
- Soetandyo Wignjosoebroto, Mochtar Kusuma Atmadja. *Teori Hukum Pembangunan Ekstensi Dan Implikasi*. Jakarta: Epistema Institut, 2012.
- Stenning, Philip, Trishima Mitra-Kahn, and Clare Gunby. "Sexual Violence against Female University Students in the U.K.: A Case Study." *Rivista Di Criminologia, Vittimologia e Sicurezza* 7, no. 2 (2013).
- Teguh Prasetyo. *Hukum Pidana*. Jakarta: Rajawali Pers, 2010.
- Tjaden, Patricia, Nancy Thoennes, and Christine J Allison. "Comparing Stalking

Victimization from Legal and Victim Perspectives." *Violence and Victims* 15, no. 1 (2000): 7-22.

Wikihow.com. ""Cara Berurusan Dengan Penguntit"," n.d.

Wirjono Prodjodikoro. *Tindak-Tindak Pidana Tertentu Di Indonesia*. Bandung: PT Refika Aditama, 2012.

