

CHAPTER 3

CYBER DELINQUENCY IN SOCIAL MEDIA

3.1 INTRODUCTION

The growth of social media is inevitable. Although it gives benefits to the society and the children by developing their social skills and talents, it also gives negative impacts such as behaviour problems, exposure to harmful substance, crime, sexual behaviour, and solicitation, cyberbullying and many others.¹¹⁷ Apart from the existing rules and regulations pertaining children delinquency, it is suggested that there is a need to have suitable mechanism to minimise the harmful effect of social media to children. This may include important Shariah principles that may be used to govern social media usage.

Thus, this chapter exploring the current situation on cyber delinquency among Malaysian children which will answer the first research question. Relevant to this, this chapter explores the reality of cyber delinquency that happened among Malaysian children in which few cyber-delinquent acts are selected namely; cyberbullying, cyber pornography and sexting. It also examines the violation of laws among them where some provisions such as Communication and Multimedia Act 1998, Personal Data Protection Act 2010, Film Censorship Act 2002 and Penal Code are analysed.

¹¹⁷ Flinsi, M. D. 2018. "Impact of Technology and Social Media on Children", *International Journal of Pediatric Nursing*, Vol.4 (1), pp. 68

Although some legal provisions emphasize on offences against children, this study focuses on the possibility that the online offences may involve both children as offenders and victims.

The second part of this chapter will identify the potential risk when children using the social media. It also may affect their mental health and cause many problems to the children.

The final part of this chapter investigates the Shariah views on child delinquency in social media. The prohibition of cyber delinquency is analysed based on Quranic verses and hadith.

3.2 THE ONLINE POTENTIAL RISKS ON CHILDREN

Kids may be more cyber-savvy than older adults as they grow up with access to the computer. With the sophistication of the internet and gadgets, there are many kinds of social media sites nowadays such as Facebook, WhatsApp, WeChat, Tiktok and Twitter which allow children to share their activities and communicate with their distant ‘pen-pal’ across the globe through real time audio and video conversations.

Unfortunately, it may also be the hotspot for cyber delinquencies such as cyberbullying, cybersex or cyberpornography, scamming, online gambling and many more. Their exploration and experimentation can lead them exploring the ‘virtual’ places where there are legally off limits, it might turn them into criminals which sometimes without being aware they have committed anti-social behavior.¹¹⁸

¹¹⁸ Shinder, D. 2012. “Juvenile Cyber-Delinquency: Laws that are Turning Kids into Criminals”, *TechRepublic*, <https://www.techrepublic.com/blog/it-security/juvenile-cyber-delinquency-laws-that-are-turning-kids-into-criminals/>

With the proliferation of online interaction, the meaning of media literacy has evolved, where the interactive exploration of internet and the critical use of social media and social network sites are also included.¹¹⁹ Livingstone defines the media literacy as “*the ability to access, analyse, evaluate, and create messages across a variety of contexts*”.¹²⁰ It has been found that while children are good at accessing and surfing things on the internet, yet they are insufficiently competent in judging the quality of the information they found and not as good in avoiding some of the risks posed to them by the internet.¹²¹

Generally, the online contents can be categorised into two: illegal and harmful content. The differences between illegal and harm content are the criminalization of the content. Illegal content is content that is criminalised by national law since it can offend some children or be taught to harm others, while harmful content on the other hand, is offensive and repulsive to some users, but is not criminalised in some countries.¹²² Some online contents on the social media might not be suitable and unreliable for children as they are harmful to them. The typical examples of provocative content that might come across on social media are spreading rumors, hateful messages, false information, browsing sexually explicit contents and downloading other’s copyright without permission which may make the offender

¹¹⁹ Venderhoven, E., Schellens, T., Valcke, M., 2014. “Educating Teens about the Risks on Social Network Sites. An Intervention Study in Secondary Education= Enseñar a los adolescentes los riesgos de las redes sociales: Una propuesta de intervención en Secundaria”. *Comunicar*, 22(43), pp. 124.

¹²⁰ Livingstone, S. 2004. “Media Literacy and the Challenge of New Information and Communication Technologies”. *The Communication Review*, 7(1), pp. 5.

¹²¹ Livingstone, S. 2004. “What is Media Literacy?”, *Intermedia*, 32(3), pp. 4

¹²² Akdeniz, Y., n.d. “Controlling Internet Content: Implications for Cyber-Speech”

accountable under the law as well. Thus, children need to develop critical thinking skills as to judge the merits of the information they found.¹²³

On the other hand, several risk factors had been identified to increase the likelihood of delinquency from different domains. It has various domains that might be the constitutive elements of delinquency.¹²⁴ There are five broader organised under the domains: individual, family, school, peers, and the community. Low self-control, impulsive or defective moral beliefs, higher level of computer skills, poor parental bonding, poor school performance, delinquent behavior of friends and poverty may be the triggers for online delinquency as well.¹²⁵ Hyperactivity, restlessness, limited ability to focus, harsh or erratic parental discipline, early sexual activities, and substance abuse involving drugs and alcohols could also be the risk factors that lead children to offensive behaviors.¹²⁶

In addition, anonymity¹²⁷ and pseudonymity¹²⁸ also have fueled online delinquency among children who believe it can help them conceal their deviant acts

¹²³ Venderhoven, E., Schellens, T., Valeke, M. 2014. "Educating Teens about the Risks on Social Network Sites. An Intervention Study in Secondary Education= Enseñar a los adolescentes los riesgos de las redes sociales: Una propuesta de intervención en Secundaria". *Comunicar*, 22(43), pp. 124.

¹²⁴ Farrington, D. P. 2003. Developmental and life-course criminology: Key theoretical and empirical issues. *Criminology*, 41(2), 221-256.; Lipsey, M. W., & Derzon, J. H. 1998. Predictors of violent or serious delinquency in adolescence and early adulthood: A synthesis of longitudinal research. In R. Loeber & D.P. Farrington (Eds.), *Serious and violent juvenile offenders. Risk factors and successful interventions* (pp. 86-106). London: Sage.

¹²⁵ Josja J. Rokven, Gijs Weijters, Marinus G.C.J. Beerthuisen & André M. van der Laan. 2018. "Juvenile Delinquency in the Virtual World: Similarities and Differences between Cyber-Enabled, Cyber-Dependent and Offline Delinquents in the Netherlands", *International Journal of Cyber Criminology*, v.12(1), pp. 30

¹²⁶ Muzammil B. 2014. "Young and Certainly Getting Dangerous: The Rise of Juvenile Criminals", *malaysiandigest.com*, Oct 16, <http://malaysiandigest.com/features/523273-young-and-certainly-getting-dangerous-the-rise-of-jvenile-criminals.html>

¹²⁷ Anonymity is referred as "the situation which someone's name is not given or known"- (Cambridge English Dictionary); "the condition of being anonymous, lack of outstanding, individual or unusual features; impersonality"- (English Oxford Living Dictionaries).

¹²⁸ Pseudonymity is a variant of anonymity. According to Merriam-Webster Dictionary, it refers to the use of pseudonym (fictitious name). Sometimes, the real name behind a pseudonym is a well-known person. A person may use multiple pseudonyms for different purposes.

on social media.¹²⁹ Indeed, anonymity is vital for people to keep their privacy and enable them to express their opinion on complex issues, political opinion, or discuss about their personal matters that would be embarrassing to tell people, without divulging their real identity.¹³⁰ Though there are so many benefits behind the good purposes of anonymity and pseudonymity, there has always been a dark side to it. Children may be left with the impression that their identity and personal information can be securely hidden and cannot be easily captured.

The magical power of social media has always been enticing them to explore more and makes them addicted to it. Based on the brain-imaging research, it shows that glowing screens may stimulate the brain's pleasure center and increase the dopamine level (the primary feel-good neurotransmitter) as much as sex does.¹³¹ It may bring to brain-orgasm effects where it makes people addicted to screen, and it gets worse when it happens to children with still-developing brains that just are not equipped to handle that level of stimulation.¹³²

Excessive use of the internet caused many problems such as poor time management, disruption of relationships, addictions and so on.¹³³ The internet addiction has been classified into five different types of behavioral: cyber affair or cyber relationship addiction (where people rely heavily in online relationship and isolate himself/herself from being engaged with real people), net compulsion (someone who addicted and obsessed to online shopping or online gambling),

¹²⁹ Palme, J., & Berglund, M. 2002. "Anonymity on the Internet". Retrieved August, v.15, pp.2009.

¹³⁰ *Ibid*

¹³¹ Kandaras, N. 2016. "Glow Kids: How Screen Addiction Is Hijacking Our Kids- And How to Break the Trance", St. Martin's Press; New York, pp. 3.

¹³² *Ibid*

¹³³ Young, K., S. 1998. "Internet addiction: the emergence of a new clinical disorder". *Cyber Psychology & Behavior*. v. 1, pp. 237–244. This paper also presented at the 104th Annual Meeting of the American Psychological Association; August 1996; Toronto, Canada.

cybersex addiction (the addicts spent a lot of time surfing the websites for cyber porn and cybersex, they also get a thrill out of online sexual fantasy role-playing), computer game addiction (obsessive online game players) and information overload (addiction on displaying compulsive web surfing and database searches).¹³⁴

3.3 CYBER DELINQUENCY AMONG CHILDREN IN MALAYSIA

In order to create a conducive environment and encourage the growth of ICT industry in Malaysia, the government has pledged the non-censorship policy of the internet¹³⁵ through the Bill of Guarantee in 1996.¹³⁶ Hence, the responsibility of “appropriate and proper use” is entrusted to families to determine a wise accessibility and exposure from millions of websites and usage of the internet by their children.¹³⁷

Nonetheless, there is always a bad side of this policy. People, particularly in respect to children who are vulnerable, fragile, and innocent sometimes are exposed to negative elements and harmful contents that appear on their screen. Apart from being victimised on social media, they also could be influenced to be an online delinquent.

The study below shows the trend of cyber delinquency committed by school children around Nilai and surroundings when they are online.

¹³⁴ Young K., S. 1999. “Internet addiction: symptom, evaluation, and treatment”. VandeCreek L, Jackson TL, editors. *Innovations in Clinical Practice: A Source Book*. Vol. 17. Sarasota, Fla, USA: Professional Resources, pp. 19–31.

¹³⁵ Latiffah P. and Samsudin Rahim, A. 2001. “Internet Usage Among Adolescents: Patterns of An Emerging Lifestyle on a Changing Media Landscape”, *Internet Malaysia*, Bangi: Department of Communication, UKM, pp. 107.

¹³⁶ Zuhuda, Sonny. 2015. *Cyberlaw on pornography*. In: National Law Students Convention IV (PEMUDA IV), 2 Oct 2015, Universiti Utara Malaysia, Kedah. (Unpublished)

¹³⁷ Latiffah P. and Samsudin Rahim, A. 2001. “Internet Usage Among Adolescents: Patterns of An Emerging Lifestyle on a Changing Media Landscape”, *Internet Malaysia*, Bangi: Department of Communication, UKM, pp. 107.

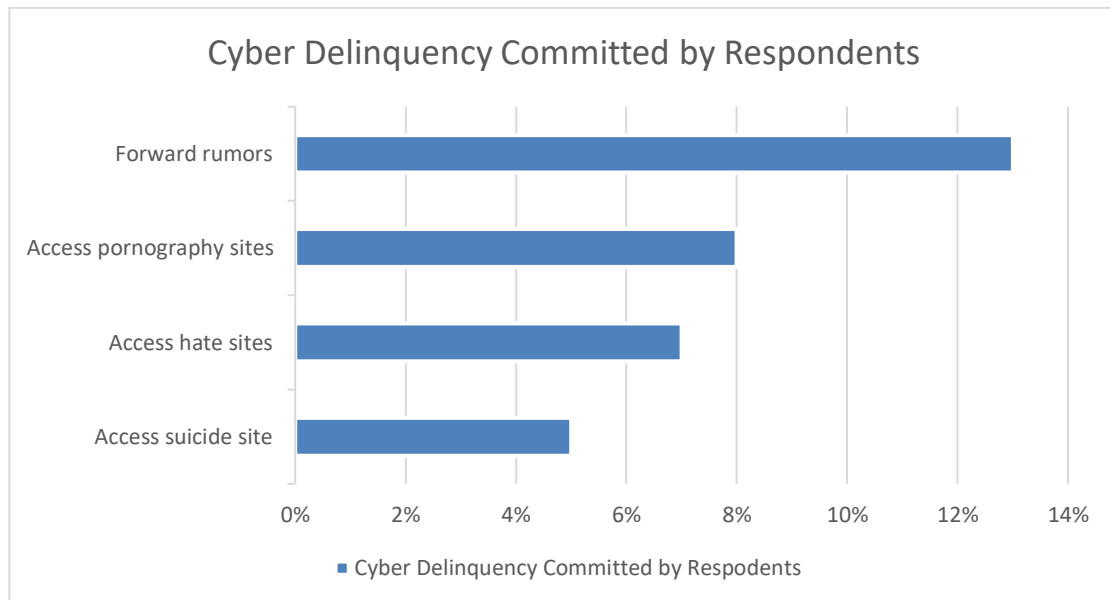


Figure 5: Cyber Delinquency Among Respondents¹³⁸

From the study above, it is found that 13 percent of the respondents who took part in this study have spread rumors to their friend without ascertaining the truth of the news or issues. Meanwhile, 8 percent of them accessed the pornography sites with or without intention, 7 percent of them have accessed the hate sites and 5 percent accessed the suicide sites.

Here are some examples of cyber delinquency that omnipresent committed by Malaysian children such as cyberbullying, cyber pornography, and sexting. Some of the relevant laws governing the delinquencies also are discussed here.

3.3.1 Cyberbullying

Cyberbullying is a form of harassment through electronic means. According to Ipsos' recent Global Advisor Cyberbullying Study¹³⁹, they defined cyberbullying as a

¹³⁸ Hendun ARS, *et.al.* 2018. *Developing a Social Media Legal Guide for Children*, FRGS Grant, Ministry of Higher Education.

child or group of children (aged under 18) intentionally intimidate, offend, threaten, or embarrass another child or group of children, through the use of information technology.¹⁴⁰ Olweus defined bullying as “a person is bullied when he or she is exposed, repeatedly and over time, to negative actions on the part of one or more other people, and he or she has difficulty defending himself or herself”.¹⁴¹

It happened among children and adults. He also identified some factors on why children bully, such as they have a strong need to be power and influence over others, they feel satisfied on causing injury and suffering to their victims and they are often rewarded in some ways for their behavior with psychological or material rewards.¹⁴²

The worst three social media sites for cyberbullying are Facebook, Instagram and Ask.fm.¹⁴³ Sometimes on Facebook, children spread rumors, libel their friends and misuse the messenger app by sending offensive messages back and forth, or creating groups in order to isolate the victim.¹⁴⁴ While on Instagram, they leave harsh comments on photos, particularly on someone self-photos (selfie) talking about their body shaming or featuring their physical appearance.¹⁴⁵ Apart from that, their usage on Snapchat also should be monitored to prevent them from harassing others online.

¹³⁹ Ipsos' is a global market research and global opinion who runs recent Global Advisor Cyberbullying Study, carried out in 28 countries, finds that awareness of cyberbullying is increasing globally, up 9 percentage points from 2011.

¹⁴⁰ n.a. 2018. “Malaysian and Global Views on Cyberbullying”, Ipsos, 28th June 2018, <https://www.ipsos.com/en-my/malaysian-and-global-views-cyberbullying>

¹⁴¹ Olweus, D., Limber, S.P. & Breivik, K. 2019. Addressing Specific Forms of Bullying: A Large-Scale Evaluation of the Olweus Bullying Prevention Program, *Int Journal of Bullying Prevention*

¹⁴² *Ibid*

¹⁴³ Lindsay B., S., J., D., 2014. “Cyberbullying: Which 3 Social Networks are the Worst?”, *moms Team: The Trusted Source for Sports Parents*, <https://www.momsteam.com/health-safety/cyberbullying-which-3-social-networks-are-worst>

¹⁴⁴ n.a., n.d., “Social Media Bullying”, *Bullying Statistic: Anti-Bullying Help, Facts and More*, <http://www.bullyingstatistics.org/content/social-media-bullying.html>

¹⁴⁵ *Ibid*.

Known for sending easy-to-delete photos, children may post inappropriate and hurtful images as to make funny or harass their peers.¹⁴⁶

Cyberbullies or aggressors can be classmates, online acquaintances, or even anonymous users, but normally, the bullies know their victims.¹⁴⁷ In Malaysia, 51 percent of the abusers are among schoolmates and 39 percent are from strangers.¹⁴⁸ It could be in terms of harassing, humiliating, damaging, embarrassing and many more. The statistic also indicates that cyberbullying can occur in a variety of ways, including disseminating nasty messages and embarrassing information to peers, spreading rumors online, pretending to be others in order to trick another person online, stealing other's account information to hack the account or send damaging messages as that person, posting hurtful or threatening messages, sexting or disseminating sexually suggestive images or messages of a person and taking an ill-fitting image of someone and spreading them through internet.¹⁴⁹

Moreover, the bullies could be those who tie online identity to their real name and face or anonymous. Some of them believe that if they are anonymous, they will not easily be caught because their identity is securely hidden.¹⁵⁰ The anonymity of the attacker had caused the greater feeling of harm and helplessness to the victim as they

¹⁴⁶ n.a., n.d., "Social Media Bullying", *Bullying Statistic: Anti-Bullying Help, Facts and More*, <http://www.bullyingstatistics.org/content/social-media-bullying.html>.

¹⁴⁷ National Crime Prevention Council, 2017. "What is cyberbullying?", *National Crime Prevention Council Online Website*. <https://www.ncpc.org/resources/cyberbullying/what-is-cyberbullying/>

¹⁴⁸ n.a. 2018. "Malaysian and Global Views on Cyberbullying", Ipsos, 28th June 2018, <https://www.ipsos.com/en-my/malaysian-and-global-views-cyberbullying>

¹⁴⁹ n.a. 2018. "Malaysian and Global Views on Cyberbullying", Ipsos, 28th June 2018, <https://www.ipsos.com/en-my/malaysian-and-global-views-cyberbullying>

¹⁵⁰ National Crime Prevention Council, 2017. "Cyberbullying FAQ for Teens", *National Crime Prevention Council Online Website*, <https://www.ncpc.org/resources/cyberbullying/cyberbullying-faq-for-teens/>

did not know the orientation of the attacker and they are not able to confront it.¹⁵¹ The anonymity on the internet enables children to be involved in the “*online disinhibition effect*” where it increases self-disclosure and feel free to express or say abusive things online that they would never say in person offline.¹⁵² Unfortunately, they sometimes did not understand the consequences and coming in conflict with the law.

In fact, cyberbullying can cause a real problem. The harm can be more lasting, borderless, and more severe than traditional bullying.¹⁵³ The online bullying can easily turn into offline bullying as well.¹⁵⁴ Most disturbingly, some children had committed suicide after got bullied by their peers in social media.

There have been high-profile cases where children have committed suicide because they have been harassed or mistreated on the internet by their peers or strangers.¹⁵⁵ The advocacy group, Cyberbullying Research Centre has adopted the term ‘cyberbullicide’ which is defined as ‘*suicide directly or indirectly influenced by the experience with online aggression*’.¹⁵⁶ It is also a hybrid of cyberbullying and suicide, which explains when a person takes his or her own life after being bullied

¹⁵¹ Lee, G. and Sanchez, M. 2018. “Cyber Bullying Behaviors, Anonymity, and General Strain Theory: A Study of Undergraduate Students at a South Eastern University in the United States”, *International Journal of Cyber Criminology*, January-June 2018, v.12(1), pp. 85

¹⁵² Erin E. Hollenbaugh Marcia K. Everett, 2013. The Effects of Anonymity on Self-Disclosure in Blogs: An Application of the Online Disinhibition Effect, *Journal of Computer-Mediated Communication*, v.18, no.3

¹⁵³ National Crime Prevention Council. 2017. “Social Media Bullying”, *National Crime Prevention Council Online Website*, <http://www.bullyingstatistics.org/content/social-media-bullying.html>

¹⁵⁴ PBS’s Offbook Series

¹⁵⁵ van der Wal, M. F., de Wit C. A., Hirasing, R. A. M. 2003. “Psychosocial Health Among Young Victims and Offenders of Direct and Indirect Bullying”, *Pediatrics*, 111: 1312-1317

¹⁵⁶ Hinduja, S., & Patchin, J. W. 2009. “Bullying beyond the schoolyard: Preventing and responding to cyberbullying”. Thousand Oaks, CA: Sage Publications (Corwin Press).

online and he or she experiencing depression due to physical and emotional pain, constant fear and continued embarrassment..¹⁵⁷

Children should be educated with some related legal knowledge related to cyberbullying. This is because, although Malaysia did not have a specific cyberbullying law, they are considered to be liable to their conduct if it has fulfilled the element of crime and can be punished under the Penal Code.

Certain provisions in Malaysia have criminalised the utilisation of internet facilities by any person to transmit any messages deemed to be offensive and can cause annoyance to another person.

In the Communication and Multimedia Act 1998, in section 233 explains anyone who is convicted for committing an improper use of network facilities or network services might be liable to a fine of not more than RM50,000 or a prison term of not more than one year.¹⁵⁸ It also prohibits people from making any comment, request, suggestion or any other communication which sounds obscene, indecent, is false, menacing or offensive in character, with the intention to annoy, abuse, threaten or harass another person, which considered to be an offence.¹⁵⁹

Thus, children who are above 10 years old who are making any offensive comments, with the intention to annoy or harassing other children in social media are liable under the law. Even the repercussion of their commits might as be bad as adults, but they cannot be tried like adults. They must be handled accordance to the special

¹⁵⁷ n.a. n.d. "Bullycide", *Bullying Statistic: Anti-Bullying Help, Facts and More*, <http://www.bullyingstatistics.org/content/bullycide.html>

¹⁵⁸ Malaysia. 1998. *Communication and Multimedia Act 1998* (Amendment 2006). (Act 588). Section 233.

¹⁵⁹ Anandarajah, A. 2004. "Cyberbully", *New Straits Times*, Sept. 30th; CyberSecurity Malaysia, http://www.cybersecurity.my/en/knowledge_bank/news/2004/main/detail/904/index.html

provisions on the Child Act 2001.¹⁶⁰ This is because their intellectual development is still not complete as adult's.

3.3.2 Cyber Pornography

Pornography may be defined as “*the depiction of erotic behavior (sexual display in pictures or writing) that is intended to cause sexual excitement*”.¹⁶¹ While cyberpornography is “*the act of using cyberspace to create, display, distribute, import, or publish pornography or obscene materials*”.¹⁶²

Nowadays, the availability of pornography has become almost ubiquitous in social media. Children may accidentally stumble across pornography through clicked links, advertisements or mistyping in their searching.¹⁶³ They may also come into contact with pornographic materials owned by their parents or their close adults.¹⁶⁴ As interest in sex is a part of human nature, children who have attained their puberty are awash in hormones and their sexuality begins to emerge, plus the availability of porn on the internet is far easier to find than it ever used to be, it makes this offence becomes almost inevitable.¹⁶⁵ Viewing pornography may be a compulsive act because of the pleasure and can fulfil the sexual gratification.

¹⁶⁰ Ministry of Women, Family and Community Development and UNICEF Malaysia. 2013. The Malaysian Juvenile Justice System: A Study of Mechanisms for Handling Children in Conflict with the Law, pp.23, iccnwtnispcanarc.org/upload/pdf/1672867150Malaysian%20Juvenile%20Justice%20System.pdf

¹⁶¹ “Pornography.” Merriam-Webster.com, Merriam Webster, www.merriamwebster.com/dictionary/pornography. Accessed 18 Feb. 2019.

¹⁶² “Cyberpornography”. n.d. YourDictionary, Retrieved January 22nd, 2019, from <https://www.yourdictionary.com/Cyberpornography>

¹⁶³ n.a. n.d. “Children and pre-teens”, *Childnet International*, <https://www.childnet.com/parents-and-carers/hot-topics/online-pornography/children>

¹⁶⁴ Flood, Michael. 2009. “The Harms of Pornography Exposure Among Children and Young People”, *Child Abuse Review*. Vol. 18, pp. 385

¹⁶⁵ Kumar, K., S., IPS. 2018 “Cyber Juvenile Delinquencies – Side Effects of Internet and Social Networking Sites”, *Live Law in.; All about Law*, <https://www.livelaw.in/cyber-juvenile-delinquencies-side-effects-of-internet-and-social-networking-sites/>

The mainstream cyber pornography has grown rapidly due to its accessibility on just a few keystrokes away on the social media. It is also affordable as some online sites offer free pornography to lure viewers to their website, sometimes by posted third party videos and no web traffic charges and anonymous where it can be viewed in the person's home (in private).¹⁶⁶

Pornography videos and images often depict sexual practices which are outside from common cultural norms or even criminal such as anal intercourse, multiple partners, sadomasochism, bondage, transsexual sex, urination or defecation, bestiality (sexual intercourse between a person and an animal) and rape where minors do encounter such materials.¹⁶⁷ Some of them may assume what they have seen as an accurate representation of normal sexual activities. Parents who notice their children are accidentally viewing such sites need to educate and supervise them that what they are seeing are not real.¹⁶⁸ Pornography is just a poor and dangerous sex educator which is not a good example of regular sexual behavior.¹⁶⁹

The number of young people who deliberately consume pornography has skyrocketed. Males are more likely to use pornography repeatedly than females for their sexual excitement and masturbation, to initiate its use, to view it when they are alone and in same-sex peers or to view more types of images.¹⁷⁰ It is very shocking

¹⁶⁶ Perry, L., D. 2016 "The Impact of Pornography on Children". *American College of Pediatricians: Best for Children*, <https://www.acped.org/the-college-speaks/position-statements/the-impact-of-pornography-on-children>

¹⁶⁷ Sabina C, Wolak J, Finkelhor D. 2008. "The nature and dynamics of internet pornography exposure for youth", *Cyberpsychology & Behaviour*, v.11, pp. 692.

¹⁶⁸ Lange, A. 2018. "My Child Saw Pornography, What Should I Do?", *netnanny*, Feb 16, <https://www.netnanny.com/blog/my-child-saw-pornography-what-should-i-do/>

¹⁶⁹ Flood, M. 2009. "The Harms of Pornography Exposure Among Children and Young People", *Child Abuse Review*. Vol. 18, pp. 384

¹⁷⁰ Flood, M. 2007. "Exposure to pornography among youth in Australia", *Journal of Sociology*, v 43, pp. 56

when a study derived by Google Analytic shows that pornography searches spike by 4,700 percent when kids are using the internet after school hours ends.¹⁷¹

Most of statistics on pornography usage say the average age of a child encountered to pornography as early as 8 to 11 years old, but the recent study has just been released shows children are accessing hardcore porn sites earlier than ever.¹⁷² Even though most of the websites need age confirmation from the visitor (18 years old and above), but they cannot verify the real age of the user.¹⁷³ Children may lie about their age when they created social media accounts.¹⁷⁴ The research shows the percentages of children who consumed online pornography videos, where 22 percent are children who are under 10 years old, 36 percent children aged 10 to 14 and 42 percent children aged 15 to 18.¹⁷⁵ The results are very alarming and cannot be isolated as they require the attention of the authorities to deal with the situation.

Curiosity and excessive use without adequate supervision can expose children to misuse of 'facilities' on social media that exacerbate the situation. For instance, now Instagram has become the most popular social media among children behind YouTube

¹⁷¹ Lange A. 2018. "When Kids Are Home from School, Pornography Searches Increase 4700%", *netnanny*, June 4, <https://www.netnanny.com/blog/pornography-searches-increase-4700-when-kids-are-out-of-school/>

¹⁷² Mueller, W. 2012. "A Parent's Primer on Internet Pornography", *Centre for Parent/ Youth Understanding's: Digital Kids Initiative*, https://digitalkidsinitiative.com/files/2013/02/Parent_Primer_Internet_Pornography.pdf; n.a., 2018. "What's the Average Age of a Kid's First Porn Exposure?", *Fight the New Drug*, July 30, <https://fightthenewdrug.org/real-average-age-of-first-exposure/>

¹⁷³ Mureşan, R. 2016. "One in 10 visitors of Porn Sites is Under 10 Years Old", *Hot for Security. Bitdefender*, Sept. 20, <https://hotforsecurity.bitdefender.com/blog/one-in-10-visitors-of-porn-sites-is-under-10-years-old-16675.html>

¹⁷⁴ Stanescu, B. 2013. "Kids Watch Porn Online as Early as Age 6, Bitdefender Study Shows", May 22, *Hot for Security. Bitdefender*, <https://hotforsecurity.bitdefender.com/blog/kids-watch-porn-online-as-early-as-age-6-bitdefender-study-shows-6254.html>

¹⁷⁵ Stanescu, B. 2013. "Kids Watch Porn Online as Early as Age 6, Bitdefender Study Shows", May 22, *Hot for Security. Bitdefender*, <https://hotforsecurity.bitdefender.com/blog/kids-watch-porn-online-as-early-as-age-6-bitdefender-study-shows-6254.html>

as it is advertised as a family-friendly social media platform.¹⁷⁶ However somehow, porn has flourished on Instagram. However, they have now launched a strict "no nudity" policy in which almost all nudity and obscene images, videos, and some digitally created content have been restricted to a few exceptions such as post-mastectomy scarring, women actively breastfeeding, painting and sculptures.¹⁷⁷ By using the simple *instaporn* word or hashtag such as 'kiss', 'sexy', or 'hot' or variations thereof or the name of any porn stars in the site's search bar, it will reveal the accounts that featured nudity and uncensored pornographic images and videos.¹⁷⁸ More surprisingly, there are so many adult comics and 'hentai' anime videos (outside of Japan, hentai is anime and manga pornography however in Japanese language, it is not a type of media genre, it is a type of perverse or bizarre sexual desire or act) uploaded and categorised under comics that definitely attract children to explore into it.

Besides that, another popular trend among schoolchildren, particularly for the girls now is IG (Instagram) porn-stars.¹⁷⁹ WeChat, Instagram, Tumblr, Begolife, ICQ, Tiktok and various social media that offered camera and video live streaming where always become a platform for the delinquent girls to be a call girl. Their service can be paid just using some mobile prepaid, school's treat or cinema's ticket, some of

¹⁷⁶ n. a. 2018. "If Instagram Have a Strict 'No Nudity' Policy, why is there So Much Porn on the App?", *Fight the New Drug*, Oct. 12, <https://fightthenewdrug.org/if-instagram-strict-no-nudity-policy-but-still-porn/>

¹⁷⁷ Instagram Community Guidelines, [https://help.instagram.com/477434105621119/?helpref=hc_fnav&bc=368390626577968&bc\[1\]=285881641526716](https://help.instagram.com/477434105621119/?helpref=hc_fnav&bc=368390626577968&bc[1]=285881641526716) [0]

¹⁷⁸ n. a. 2018. "If Instagram Have a Strict 'No Nudity' Policy, why is there So Much Porn on the App?", *Fight the New Drug*, Oct. 12, <https://fightthenewdrug.org/if-instagram-strict-no-nudity-policy-but-still-porn/>

¹⁷⁹ n.a. 2017. "'Pornstar IG'- Trend Terkini Anak Gadis Sekolah", *Warga Prihatin*, June 3, <https://www.facebook.com/wargaprihatin/posts/10156158335687786>

them are really enjoying doing this ‘job’¹⁸⁰ and in another case, they just demand as low as RM10 per session. They attract their customer by sending their genitals and naked images or their previous sexual intercourse videos through DM (direct message on Instagram) or uploading it on Tumblr¹⁸¹, or sharing it through WhatsApp Messenger and Telegram.

Hence, there are some related laws that governing the cyberpornography. The laws supposedly less complicated (except on child materials) compared to the United States’ legislation because it is totally outlawed here.¹⁸² In the U.S., pornography is permitted and enjoys the constitutional protection freedom of speech under the First Amendment, unless it is legally obscene.¹⁸³ As Juriah Abdul Jalil elucidates on the legal landscape of obscenity law, Malaysia does not have any specific law criminalizing child pornography as all of the pornography are regarded as 100 percent illegal. The governing laws are scattered and govern all types of pornography.

Thus, the Printing Presses and Publication Act 1984 and Penal Code obviously prohibit obscene, indecent and offensive materials on whereas Communication and Multimedia Act 1998 and Content Code are responsible for governing obscene, indecent and offensive contents in the online medium.¹⁸⁴ Content Code is an industry self-regulatory instrument which is mandated by the Communication and Multimedia Act 1998 which comes with a relatively clear definition of obscenity. Such in Part 2,

¹⁸⁰ *Ibid*

¹⁸¹ *Ibid*

¹⁸² Zulhuda, S. 2015. *Cyberlaw on pornography*. In: National Law Students Convention IV (PEMUDA IV), 2 Oct 2015, Universiti Utara Malaysia, Kedah. (Unpublished).

¹⁸³ Zulhuda, S. 2015. *Cyberlaw on pornography*. In: National Law Students Convention IV (PEMUDA IV), 2 Oct 2015, Universiti Utara Malaysia, Kedah. (Unpublished).

¹⁸⁴ Juriah Abdul Jalil. 2015. “Combating Child Pornography in Digital Era: Is Malaysian Law Adequate to Meet the Digital Challenge”, *Pertanika Journal of Social Science and Humanities*. 23(S), pp. 137; Zulhuda, S. 2015. *Cyberlaw on pornography*. In: National Law Students Convention IV (PEMUDA IV), 2 Oct 2015, Universiti Utara Malaysia, Kedah. (Unpublished).

3.0 particular of note: Obscenity is referred as “*content that gives rise to a feeling of disgust by a reason of its lewd portrayal and is essentially offensive to one’s prevailing notion of decency and modesty*”.¹⁸⁵ Some content classes that have been categorised under the obscene material are explicit sex acts/pornography, child pornography; and sexual degradation.¹⁸⁶

However, in AskLegal website stated, it is technically permitted to watch porn online since there is no law against it (except on child porn).¹⁸⁷ Ones who watch online porn without creating, distributing, selling or sharing would contravene the Content Code.¹⁸⁸ As mentioned above, the Content Code is only a self-regulatory instrument and a code of conduct, not an actual Act of Parliament, so the viewers do not technically commit an offence.¹⁸⁹ But it is totally contradicting to the Islamic and eastern norms.

Pursuant to the Penal Code, the Film Censorship Act 2002 and the Printing Presses and Publication Act 1984, these legislations are responsible to prohibit the creation, distribution, possession, circulation, public exhibition, sale, share, hire or display the pornographic materials in term of printed materials such as magazines, books or film or DVD’s or video clips.

In the Communication and Multimedia Act 1998 through Section 211, anyone who provides content which is indecent, obscene, false, menacing, or offensive in

¹⁸⁵ Malaysia, n.d., *The Malaysian Communications and Multimedia Content Code*, (Part 2, 3.0). (Obscenity Content), pp. 13.

¹⁸⁶ Malaysia, n.d., *The Malaysian Communications and Multimedia Content Code*, (Part 2, 3.0). (Obscenity Content), pp. 13.

¹⁸⁷ Lim C. 2018. “Is it a crime to watch porn online in Malaysia?”, *AskLegal*, Jan 10th, <https://asklegal.my/p/internet-porn-malaysia-illegal>

¹⁸⁸ Lim C. 2018. “Is it a crime to watch porn online in Malaysia?”, *AskLegal*, Jan 10th, <https://asklegal.my/p/internet-porn-malaysia-illegal>

¹⁸⁹ *Ibid*

character with intent to annoy, abuse, threaten or harass any person is committing an offence. If convicted, he/she is liable to a fine not exceeding RM50,000 or imprisonment for a term not exceeding one year or both. He/she is also liable for a further fine of RM1,000 per day or part of the day, if the offence is continued after conviction.¹⁹⁰ While Section 233 (a) explains where a person is committing an offence if he/she through the means of any network facilities or network service or application i) makes, creates or solicits or, ii) initiates the transmission of, any comment, request, suggestion or other communication which is obscene, indecent, false, menacing, or offensive in character, with intent to annoy, abuse, threaten or harass another person. If convicted, he/she is liable to a fine not exceeding RM50,000 or imprisonment for a term not more than one year or both. He/she also liable for a further fine of RM1,000 per day or part of the day, if the offence is continued after conviction.¹⁹¹ The subsection (b) of this section provides that it is an offence when someone initiates the communication whether continuously, repeatedly, or otherwise during which communication may or may not ensue.

While in the Penal Code in Section 292 stated it is an offence for anyone to sell, lets to hire, distributes, exhibits or circulates or has in his possession any obscene materials such as book, magazine, paper, pamphlet, drawing, painting, representation/ figure or any other obscene object whatsoever. If found guilty, the offender shall be liable for imprisonment for a term which may extend to three years or with fine or both.¹⁹² In Section 293, it is prohibited to sell, lets to hire, distributes, exhibits, or circulates any obscene materials to any person who is under 20 years of age or offers

¹⁹⁰ Malaysia. 1998. *Communication and Multimedia Act 1998* (Amendment 2006). (Act 588). Section 211

¹⁹¹ Malaysia. 1998. *Communication and Multimedia Act 1998* (Amendment 2006). (Act 588), section 233

¹⁹² Malaysia. n.d. *Penal Code*. (Act 574). Section 292

or attempts to do so. If convicted, the offender may be liable to a prison which may extend to five years or a fine or both.¹⁹³

In the Film Censorship Act 2002 in Section 5 (1), no one is allowed to i) have, possess, keep, control, or ownership, or ii) circulate, exhibit, distribute, display, manufacture, produce, sell or hire any obscene film or film publicity materials that against the public decency. If convicted, he/she shall be liable to a fine of not less than RM10,000 and not more than RM50,000 or prison for a term, not more than five years or both.¹⁹⁴ Thus, children who possess or share any cinematography materials that contain pornography or commit any cyber-porn delinquency above can be punished under the above provisions through detention, supervision or probation.

3.3.3 Sexting

Sexting is another modern danger that we need to worry. Children use new media technologies to send or distribute sexually explicit contents such as conversation or indecent images of themselves or others to peers.¹⁹⁵ Sexting is a sending and receiving sexually explicit messages, or nude or semi-nude photographs or videos electronically (primarily between cell phones, but can occur between any media-sharing device or technology).¹⁹⁶ It has become the highly charged issues involving children and the internet.¹⁹⁷ By using the mobile phone or laptop, they send and distribute the image through the mobile phone messaging or social media networks such as WhatsApp, WeChat, Telgram, Facebook, Pinterest and many more.

¹⁹³ *Ibid*, Section 293

¹⁹⁴ Malaysia. 2002. *Film Censorship Act 2002* (Amendment 2006). (Act 620). Section 5.

¹⁹⁵ Crofts, T., Lee. M. 2013. “‘ Sexting’, Children and Child Pornography”, *HeinOnline*, 35 Sydney L. Rev. 85 2013

¹⁹⁶ Leng, O., T., S., Khan, S., Rohani Abdul Rahim. 2015. “Anti Sexting and Cyberlaws in Malaysia”, *Australian Journal of Sustainable Business and Society*, v.1(1), p.p. 66.

¹⁹⁷ Leng, O., T., S., Khan, S., Rohani Abdul Rahim. 2015. “Anti Sexting and Cyberlaws in Malaysia”, *Australian Journal of Sustainable Business and Society*, v.1(1), p.p. 66

Research related to sexting behavior among youth was published in *JAMA Journal Paediatrics* from a meta-analysis of 39 separated international studies conducted between January 1990 to June 2016 with 110,380 participants took part in this study.¹⁹⁸ The findings showed the mean prevalence for children who aged 12 to 17 who sent sexts was about 14.8 percent and for children who received sexts was 27.4 percent and these rates increased in recent years and as youth age.¹⁹⁹ Besides, there was a fair prevalence of non-consensual sexting occurring with 12.0 percent forwarding sexts without consent and 8.4 percent receiving sexts forwarded without consent.²⁰⁰ Surprisingly, there is no significant difference in sending and receiving sexts; between the number of male and female who engaged in sexting are about on the same rate.²⁰¹ In fact, the JAMA paediatrics' study probably could be underestimating the percentage of teen who sexted as not many people will stand and declared that they are sexted or they may not readily admit that they sent sexts instead of only received the sexts.²⁰²

There are three main scenarios of sexting according to a study by the Pew Research Centre's internet & American Life Project. The scenarios are exchanges of sexts solely among two romantic partners, exchanges between partners that are shared with others outside the relationship and exchanges between people who are not yet in

¹⁹⁸ Sheri Madigan, Anh Ly, Christina L. Rash, et al. 2018. "Prevalence of Multiple Forms of Sexting Behavior Among Youth; Systematic Review and Meta-analysis", *JAMA Paediatrics Network*, <https://jamanetwork.com/journals/jamapediatrics/article-abstract/2673719>

¹⁹⁹ Sheri Madigan, Anh Ly, Christina L. Rash, et al. 2018. "Prevalence of Multiple Forms of Sexting Behavior Among Youth; Systematic Review and Meta-analysis", *JAMA Paediatrics Network*, <https://jamanetwork.com/journals/jamapediatrics/article-abstract/2673719>

²⁰⁰ Sheri Madigan, Anh Ly, Christina L. Rash, et al. 2018. "Prevalence of Multiple Forms of Sexting Behavior Among Youth; Systematic Review and Meta-analysis", *JAMA Paediatrics Network*, <https://jamanetwork.com/journals/jamapediatrics/article-abstract/2673719>

²⁰¹ *Ibid*

²⁰² Lee, B.Y. 2018. "Here is How Much Sexting Among Teens Has Increased", *Forbes*, Sept. 8, <https://www.forbes.com/sites/brucelee/2018/09/08/here-is-how-much-sexting-among-teens-has-increased/#d3dd13736f1f>

a relationship, but at least one member participating in sexts hopes to be.²⁰³ Boys are likely to ask, and girls are more likely to have been asked to send sexts.²⁰⁴

For some children, they might claim that this kind of activity is harmless since it does not involve any physical contact. Nonetheless, their activity is potentially illegal as they could be arrested and prosecuted because they are sharing or receiving sexually explicit images or obscene photos that are considered pornographic.²⁰⁵ Alternatively, it may fall into child pornographic if the subjects are minors where it is absolutely illegal and strictly prohibited in Malaysia.²⁰⁶ The offender sometimes is from victim's trusted friends, their classmates, which later use the private image sent to them to bully, harass and humiliate the girl by distributing it beyond the intended audiences.²⁰⁷

Teen's relationships are often transient. They may keep the secret when they have the closest relationship. Once a break-up occurs, their secrets such as sexts could be distributed to others easily.²⁰⁸ When the sexts were forwarded without sender's permission and consent, it may lead to harassment, cyberbullying and they are particularly vulnerable to sextortion.²⁰⁹ Sometimes, the child who becomes a perpetrator may distribute the given images without the sender's consent. In some

²⁰³ Lenhart, A. 2009 "Teens and Sexting", *Pew Research Center; Internet and Technology*, Dec 15, <http://www.pewinternet.org/2009/12/15/teens-and-sexting/>

²⁰⁴ Temple, J. R., Paul, J. A., van den Berg, P., et.al. 2012. "Teen sexting and its association with sexual behaviors". *Archives of paediatrics & adolescent medicine*, v. 166(9), pp.832.

²⁰⁵ n.a. 2013. "Our Daughter is 'Sexting'", *the Star Online*, Dec. 13, <https://www.thestar.com.my/lifestyle/viewpoints/focus-on-the-family/2013/12/13/our-daughter-is-sexting/>

²⁰⁶ Lim C. 2018. "Is it a Crime to Watch Porn Online in Malaysia?", *AskLegal*, <https://asklegal.my/p/internet-porn-malaysia-illegal>

²⁰⁷ Gifford N.V. 2009. "Sexting in the USA. Washington, DC: Family Online Safety Institute Report 2009", *Family Online Safety Institute*, <http://www.fosi.org/downloads/resources/Sexting.pdf>.

²⁰⁸ Lee, B.Y. 2018. "Here is How Much Sexting Among Teens Has Increased", *Forbes*, Sept. 8, <https://www.forbes.com/sites/brucelee/2018/09/08/here-is-how-much-sexting-among-teens-has-increased/#d3dd13736f1f>

²⁰⁹ ElHage, A., 2018. "How Many Teens are Sexting?", *Institute for Family Studies*, Mar 8, <https://ifstudies.org/blog/how-many-teens-are-sexting>

cases, they use it as a threat or blackmail to sell the image to pornography websites or to distribute it to other peers to demand money or something else from the victim in return to stop them.²¹⁰

Behind the dark side of sexting, some people were trying to fortify the importance of sexting behaviors among children, particularly in public health, as their normal sign of teenage sexual activity, becoming a part of their growth and do not associate to any good or poor mental well-being.²¹¹ They also disagreed that the kids had committed a deviant action or life in a crime.²¹² It sometimes fueled by both personal experiences and media hype²¹³ or significantly associated with consuming pornography.²¹⁴ Some blogs had encouraged people by posting or sharing the best sexting apps so that they may rely on it to help them send their dirtiest sexts. They believed it is an alternative way to fulfil their sexual needs without putting themselves on any physical contact.²¹⁵ Unfortunately, children or young people may also use it when they are sexting with their partner. These sexting apps help them to keep pictures of their body confidential and their privacy safe (but some apps allow the users to screenshot the photos) such as Snapchat, Tinder, KIK, FaceTime, Dust, Match and many more.²¹⁶

²¹⁰ ElHage, A., 2018. "How Many Teens are Sexting?", *Institute for Family Studies*, Mar 8, <https://ifstudies.org/blog/how-many-teens-are-sexting>

²¹¹ Temple, J. R., Paul, J. A., van den Berg, P., et.al. 2012. "Teen sexting and its association with sexual behaviors". *Archives of pediatrics & adolescent medicine*, 166(9), pp. 829, 833

²¹² *Ibid*, pp. 833

²¹³ Van Ouytsel J, Ponnet K, Walrave M. 2014. "The associations between adolescents' consumption of pornography and music videos and their sexting behavior," *Cyberpsychology Behavior and Social Networking*. Dec; 17(12), pp.772

²¹⁴ *Ibid*

²¹⁵ Stokes, RJ. 2018. "The 6 Best Sexting Apps for Privacy (and Sending Sexy Selfies)", Nov 28, *Your Tango*, <https://www.yourtango.com/2017299617/6-best-sexting-apps-for-privacy-and-sexy-selfies>

²¹⁶ Pitti, D. 2019. "Is it possible to spice up your sex life without actually having sex? It is if you have these sexting apps", Jan 29, *MashableAsia*, <https://mashable.com/roundup/best-sexting-apps-pof-tinder-confide-match/#9YBhXFOWTiq7>

Children may face some online potential risks when they are committing sexting. Usually, girls are reported to be under pressure when their partner asks them to send their indecent images. Children who sent their nude or semi-nude images to their partner sometimes did not acquaint with the future effect and bad consequences. This explains the sexting's conduct risk.

The content risk also may arise as it is considered destructive to children. The photo of the private part of their body such as genitals, tits, penis, or others of their private part, is given as to raise their partner's sexual desire, yet circulated to their humiliation. Children also may put themselves on risk through contact by engaging with someone they knew or complete strangers that they should not trust at all.

Apart from that, it also may affect children's sexual behavior. Those who engaged in sexting behavior are more likely to begin dating and have had real sex rather than who did not sext.²¹⁷ Once they participated in sex, it escalates their level of flirtation to include nudity and they become more open to express themselves sexually.²¹⁸ Girl who participates in sexting behavior is at the high prevalence of risky sexual behavior, such as multiple partners or alcohol and drug usage before sex.²¹⁹

Syed Azmi Alhabshi, an activist who is often involved with child safety campaigns on the internet wrote on his Facebook account that a mother had revealed that her seven years old daughter had sexting with a male stranger via WeChat and now the child had opened an online sex group on social media.²²⁰ These unreported

²¹⁷ Temple, J. R., Paul, J. A., van den Berg, P., et.al. 2012. "Teen sexting and its association with sexual behaviors". *Archives of pediatrics & adolescent medicine*, 166(9), pp. 833

²¹⁸ *Ibid*

²¹⁹ Temple, J. R., Paul, J. A., van den Berg, P., et.al. 2012. "Teen sexting and its association with sexual behaviors". *Archives of pediatrics & adolescent medicine*, 166(9), pp. 833

²²⁰ Syed Azmi. 2016. *Facebook*, Dec. 21,
<https://web.facebook.com/syed.azmi.148/posts/10154289753541478>

cases are just the tip of the iceberg for sexual delinquencies in social media. The sophisticated features of social media apps make them easier to sext. In WeChat for example, there are many features that make it possible for users to connect with other people from all over the world by ‘*shaking*’ features, private group, drift bottle, QR Code, in app-wallet and people nearby.²²¹ With simple ‘*shaking*’ features, it may connect them to other users who are shaking their phone at the parallel time and the movement had been registered in WeChat. Most of the ‘new caught friend’ are usually asking for sex or nude images rather than want to be a new friend with the children. People nearby feature also exposes children to meet online friends offline.

It is questionable whether child pornography laws could be applied to sexting by children. Owing to the facts that sometimes there are some akin elements existed such as creating, downloading, and distributing the child obscene materials they got from their sexts. Children could be perpetrators when disseminating obscene or indecent images or videos received from their partners with or without their consent as an act of bragging or revenge as a result of the rupture of their relationship. This delinquent act clearly contradicts with the provision on UNCRC to protect children from sexual abuse, sexual coercion, sexual exploitation and unlawful practices such as child prostitution and being used in pornography.²²² Although this particular convention protects children’s participation rights for their harmonious development, but the children’s rights to ‘healthy sexual being and participation rights in exploring and expressing that sexual being’ is totally not provided or not mentioned.²²³ This is to

²²¹ Olamide, O.S. 2018. “5 Cools Features WeChat Has That WhatsApp Doesn’t Support”, *Dignited*, Sept 23, <https://www.dignited.com/35253/5-cool-features-wechat-has-that-whatsapp-doesnt-support/>

²²² UNCRC, Article 34, (Sexual Exploitation).

²²³ Commonwealth of Australia, (1997), *Telecommunication Act 1997*, section 7.

prevent them from exploiting other children which totally harmful for their intimate citizenship development.²²⁴

There are numerous potential risks of sexting. It is not just only by increasing demand for 'ever greater levels of depravity' but through the repeated distribution of the image, or images, through international networks.²²⁵ Teen's relationship, no matter how close their relationship is, once they break-up, their 'secrets' such as sexts will become viral on social media. It may affect their reputation where it might be destroyed by only one sext or their obscene image. They will also be bullied or harassed by the other child (sender) by threatening their partner to spread their sexts if the partner refuses to follow their favor. It clearly may damage their future relationship²²⁶ or it can be disastrous where children's self-esteem, self-respect and a sense of personal identity may erode.

The legislations on Communication and Multimedia Act 1998 and the Penal Code that related to cyberpornography also can be applied to the sexting offence since it includes uploading, sending, receiving, possessing, downloading and displaying the pornographic image and sex videos. Sexting among children and teens may involve an additional law in the Penal Code through Section 377E: It is a crime to incite a child under the age of fourteen years old to any act of gross indecency with him or another person. He shall be liable with an imprisonment for a term of not less than three years and not more than fifteen years, and also shall be punished to whipping.²²⁷ The

²²⁴ Lara Karaian. 2012. "Lolita Speaks: "Sexting", Teenage Girls and the Law", *Crime, Media, Culture*, pp. 57-73

²²⁵ Criminal Justice Division, Attorney-General's Department (Cth), *Proposed Reforms to Commonwealth Child Sex-Related Offences* (2009) 44 [245].

²²⁶ Lee, Y. B. 2018. "Here is How Much Sexting Among Teens Has Increased", *Forbes*, Sep 8, <https://www.forbes.com/sites/brucelee/2018/09/08/here-is-how-much-sexting-among-teens-has-increased/#46fb4ee36f1f>

²²⁷ Malaysia. n.d. *Penal Code*. (Act 574). Section 377E

discussion is to show the delinquent children who incite other children to a gross indecency act are liable to this provision too.

Thus, everything regarding to pornography including online pornography is governed under Chapter 9 of the Penal Code (Act 574) that is an offence affecting the public health, safety, convenience, decency, and morals. It may lead to the jeopardy of social structure such as family, friendship, and community.²²⁸ Thus, this section is being discussed here as sexting involves the exchanges of obscene and pornographic materials.

While Part II of the Sexual Offences Against Children Act 2017 is designed specifically for offences relating to child pornography. Section Four to Seven provide an offence for those who involved in making, producing, directing the making or production of, etc. child pornography. It declares that children pornography is strictly prohibited through any electronic means or manually crafted or combination of both.²²⁹ While in Section 5 stated that it is an offence for any person who involved in making, or production or directing for production of child pornography. If convicted, he/she is liable to prison for a term not more than thirty years and shall be punished with whipping of not less than six strokes.²³⁰ In Section 6, any person who involved in the preparation of making, or producing or direct for making or producing, if he/she found guilty, shall be punished with imprisonment not exceeding ten years and shall be liable for whipping.²³¹ Section 7 stated it is an offence for a person who involves or uses or causes to be used as a child in the preparation or the production of any child

²²⁸ Zulhuda, S., (2015) Cyberlaw on pornography. In: National Law Students Convention IV (PEMUDA IV), 2 Oct 2015, Universiti Utara Malaysia, Kedah. (Unpublished)

²²⁹ Malaysia. 2017. *Sexual Offences Against Children Act 2017*, [Act 792], Section 4

²³⁰ Malaysia. 2017. *Sexual Offences Against Children Act 2017*, [Act 792], Section 5

²³¹ Malaysia. 2017. *Sexual Offences Against Children Act 2017*, [Act 792], Section 6

pornography. If convicted, he/she shall be liable to prison for a term not exceeding twenty years and shall be liable to be punished with whipping not less than five strokes.²³²

Although the above legal provisions emphasize on offences against children, this study focuses on the possibility that these offences may involve both children as offenders and victims. Children who are involved in child pornography offences thus are also liable to these provisions.

Thus, parents should find out who their child is in contact with and make friends with. Parents also have the right to check their children's mobile phone. This is not about intruding their space and privacy; this is to make sure their children are safe from being involved with delinquent act. In the next topic, the Shariah views regarding child delinquency in social media will be discussed thoroughly.

3.4 SHARIAH VIEWS ON CHILD DELINQUENCY IN SOCIAL MEDIA

It is important to understand that Islam is a beautiful religion that protects the necessities of human being, namely religion, life, lineage, dignity, mind and property.²³³ Thus, any transgressions that against all of these interests are considered as unlawful and may be a punishable offence.²³⁴ For instance, the implementation of *qisas* in Islam as a manifestation of preserving the humanity.²³⁵

²³² Malaysia. 2017. *Sexual Offences Against Children Act 2017*, [Act 792], Section 7

²³³ Che Noh, Che Hasniza & Rahman, A.H. 2013. Cyber bullying: A general islamic outlook and response. *American-Eurasian Journal of Sustainable Agriculture*. 7. Pp. 217 (215-220)

²³⁴ *Ibid*; Zaydan, Abd al-Karim. 1986. *Majmu'at Buhuth Fiqhiyyah*. Baghdad: Maktabat al-Quds. Pp. 384; Imam Malik (nd). *Muwatta*. 422: 1797.

²³⁵ Zulkifli Bin Mohamad Al-Bakri. 2016. BULI: BAGAIMANA PENYELESAIANNYA? *Bayan Linnas Website*. <https://muftiwp.gov.my/en/artikel/bayan-linnas/1832-bayan-linnas-siri-51-buli-bagaimana-penyelesaiannya>

﴿ وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ وَحَمَلْنَاهُمْ فِي الْبَرِّ وَالْبَحْرِ وَرَزَقْنَاهُمْ مِنَ الطَّيِّبَاتِ وَفَضَّلْنَاهُمْ عَلَى كَثِيرٍ مِمَّنْ

خَلَقْنَا تَفْضِيلًا ﴾

“And We have certainly honoured the children of Adam and carried them on the land and sea and provided for them of the good things and preferred them over much of what We have created, with [definite] preference.”²³⁶

Any action which transgressing the interest of other people, whether by physically, emotionally or damaging their property is strictly prohibited in Islam. Hence, it seems hard to be controlled when it occurs in cyberspace. Rumors, insults, making fun of others are everywhere in social media. They become a part of entertainment for people nowadays. It may hurt people's emotion which they may face depression, low self-esteem, trauma, and anxiety.

In general, the term of cyberbullying is not being discussed at length by traditional or modern Muslim scholars. However, their discussions revolve around the issue of those who are oppressed, especially in terms of their rights as a result of ignorance or harmful cultural practices.²³⁷ Cyberbullying can be considered as *zulm* (oppression) because it attacks and disturbs other's rights through various mediums earlier.²³⁸ Prophet Muhammad (PBUH) mentions;

²³⁶ *Al-Isra* ' 17:70

²³⁷ Che Noh, Che Hasniza & Rahman, A.H. (2013). Cyber bullying: A general Islamic outlook and response. *American-Eurasian Journal of Sustainable Agriculture*. 7. Pp. 217

²³⁸ *Ibid*

“The Muslim is one from whose tongue and hand other Muslims are safe. The emigrant is one who abandons those things God has prohibited”²³⁹

This hadith defines who is true Muslims. The true Muslims are people of safety and trust, where other people can turn their backs on them without any fear and suspicion. They will not gossip others, provide full supports, and sacrifice spiritual pleasures for others as a part of Muslim’s duty.²⁴⁰

Apart from that, Allah says in the Holy Quran:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا اجْتَنِبُوا كَثِيرًا مِّنَ الظَّنِّ إِنَّ بَعْضَ الظَّنِّ إِثْمٌ وَلَا تَجَسَّسُوا وَلَا يَغْتَبَ بَعْضُكُم بَعْضًا ۚ أَيُحِبُّ أَحَدُكُمْ أَن يَأْكُلَ لَحْمَ أَخِيهِ مَيْتًا فَكَرِهْتُمُوهُ ۚ وَاتَّقُوا اللَّهَ ۚ إِنَّ اللَّهَ تَوَّابٌ رَّحِيمٌ﴾

“O you who have believed, avoid much (negative) assumption. Indeed, some assumption is sin. And do not spy or backbite each other. Would one of you like to eat the flesh of his brother when dead? You would detest it. And fear Allah; indeed, Allah is accepting of repentance and Merciful.”²⁴¹

Meanwhile, cyberstalking is another form of cyberbullying where someone is transgressing other’s privacy. It is strictly prohibited as it may involve identity theft, damaging to data, false accusation and many other offensive behaviors. As mentioned in the Quran in surah An-Noor:

²³⁹ Sahih al-Bukhari 10, Book 2, Hadith 3; USC-MSA web (English) reference Vol. 1, Book 2, Hadith 10

²⁴⁰ Che Noh, Che Hasniza & Rahman, A.H. 2013. Cyber bullying: A general Islamic outlook and response. American-Eurasian Journal of Sustainable Agriculture. 7. Pp. 217

²⁴¹ Al-Hujurat 49:12

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَدْخُلُوا بُيُوتًا غَيْرَ بُيُوتِكُمْ حَتَّى تَسْتَأْذِنُوا وَتُسَلِّمُوا عَلَى أَهْلِهَا ۚ ذَٰلِكُمْ خَيْرٌ لَّكُمْ لَعَلَّكُمْ تَذَكَّرُونَ﴾

“O you who have believed, do not enter houses other than your own houses until you ascertain welcome and greet their inhabitants. That is best for you; perhaps you will be reminded.”²⁴²

The verse above shows that Islam has recognised the right to privacy. A Muslim should not invade other’s privacy unless he gets permission from the owner.

While cyberpornography can cause children and teens to engage in immoral activities with their new social media partners. It will have ended with illegal sexual activities, abortion, baby dumping, sextortion, and suicide.²⁴³ It is in line with Allah’s command, where Muslims are prohibited from committing fornication and adultery. This is evidence from the following verse of Quran:

﴿وَلَا تَقْرَبُوا الزِّنَىٰ إِنَّهُ كَانَ فَاحِشَةً وَسَاءَ سَبِيلًا﴾

“And do not approach unlawful sexual intercourse. Indeed, it is ever an immorality and is evil as a way.”²⁴⁴

Even though children or teenagers who commit cyber-pornography and sexting do not do so physically, they are completely deviating from Islamic values. These immoral activities may lead them to do something worse that is physical sexual activities, and it may damage the dignity and their lineage.

²⁴² An-Nuur, 24:27

²⁴³ Mohamed, Duryana 2011. Islam In Cyber Environment and The Legal Issues in Malaysia. In: National seminar on “New Media and Islamic Issues: Challenges and Opportunities”, 26th September 2011, ISTAC, Kuala Lumpur. (Unpublished), pp. 12

²⁴⁴ Al-Isra’ 17:32

Thus, children should be educated on modesty, and early sexuality education as such is now widespread among children. As in another verse, Allah says:

﴿قُلْ لِلْمُؤْمِنِينَ يَغُضُّوا مِنْ أَبْصَارِهِمْ وَيَحْفَظُوا فُرُوجَهُمْ ۚ ذَٰلِكَ أَزْكَىٰ لَهُمْ ۚ إِنَّ اللَّهَ خَبِيرٌ بِمَا يَصْنَعُونَ﴾ ﴿وَقُلْ لِلْمُؤْمِنَاتِ يَغْضُضْنَ مِنْ أَبْصَارِهِنَّ وَيَحْفَظْنَ فُرُوجَهُنَّ وَلَا يُبْدِينَ زِينَتَهُنَّ إِلَّا مَا ظَهَرَ مِنْهَا ۚ وَلْيَضْرِبْنَ بِخُمُرِهِنَّ عَلَىٰ جُيُوبِهِنَّ ۚ وَلَا يُبْدِينَ زِينَتَهُنَّ إِلَّا لِبُعُولَتِهِنَّ أَوْ آبَائِهِنَّ أَوْ أَبْنَائِهِنَّ أَوْ إِخْوَانِهِنَّ أَوْ بَنِي إِخْوَانِهِنَّ أَوْ نِسَائِهِنَّ أَوْ مَا مَلَكَتْ أَيْمَانُهُنَّ أَوْ التَّابِعِينَ غَيْرِ أُولِي الْإِرْبَةِ مِنَ الرِّجَالِ أَوِ الطِّفْلِ الَّذِينَ لَمْ يَظْهَرُوا عَلَىٰ عَوْرَاتِ النِّسَاءِ ۚ وَلَا يَضْرِبْنَ بِأَرْجُلِهِنَّ لِيُعْلَمَ مَا يُخْفِينَ ۚ زِينَتُهُنَّ ۚ وَتَوْبُوا إِلَى اللَّهِ جَمِيعًا أَيُّهَ الْمُؤْمِنُونَ لَعَلَّكُمْ تُفْلِحُونَ﴾

“Tell the believing men to reduce [some] of their vision and guard their private parts. That is purer for them. Indeed, Allah is Acquainted with what they do. And tell the believing women to reduce [some] of their vision and guard their private parts and not expose their adornment except that which [necessarily] appears thereof and to wrap [a portion of] their headcovers over their chests and not expose their adornment except to their husbands, their fathers, their husbands' fathers, their sons, their husbands' sons, their brothers, their brothers' sons, their sisters' sons, their women, that which their right hands possess, or those male attendants having no physical desire, or children who are not yet aware of the private aspects of women. And let them not stamp their feet to make known what they conceal of their adornment. And turn to Allah in repentance, all of you, O believers, that you might succeed.”²⁴⁵

Our Prophet Muhammad (May peace and blessings be upon him) has informed us that Adultery is not only through intercourse. Prophet Muhammad (PBUH) said:

²⁴⁵ An-Nuur 24:30-31

“Verily Allah has noted down the amount of Zina sons of Adam was to commit, the adultery of the eyes is looking, the adultery of the tongue is talking and the soul wishes and desires, and a person’s private parts succumbs to that desire and sometimes they don’t.” In another narration it is mentioned, “the adultery of the ears is listening, the adultery of the hand is touching, and the adultery of the feet is walking (towards the act)”²⁴⁶

All in all, Islam has prepared general rule and ethics in communication. All these guidelines can be applied while using the social media. Everyone should be aware of their deeds because even the smallest deed, it will be recorded according to the verse of Al-Quran below.

﴿يَوْمَئِذٍ يَصْدُرُ النَّاسُ أَشْتَاتًا لِّيُرَوْا أَعْمَالَهُمْ﴾ ﴿فَمَنْ يَعْمَلْ مِثْقَالَ ذَرَّةٍ خَيْرًا يَرَهُ﴾ ﴿وَمَنْ يَعْمَلْ مِثْقَالَ ذَرَّةٍ شَرًّا يَرَهُ﴾

“That Day, the people will depart separated [into categories] to be shown [the result of] their deeds. So, whoever does an atom's weight of good will see it, and whoever does an atom's weight of evil will see it.”²⁴⁷

The transgression that occurred in social media hence needs a thorough study from Islamic scholars as most of them such as privacy, fraud and harassment are not physically occurred. A detailed guideline in using social media with manners should

²⁴⁶ Ṣaḥīḥ al-Bukhārī 6238, Ṣaḥīḥ Muslim 2657

²⁴⁷ Az-Zalzalah 99:6-8

be provided as guidance for all Muslims in the world to ensure everyone can use the social media with the blessings of Allah.

3.5 CONCLUDING REMARKS

Children also are good at accessing and surfing the social media. Overall, this chapter has answered the meaning of child delinquency as stated in the second objective of the thesis. Children cyber delinquency can be defined as a criminal act committed using computer means and internet, carried out by someone who aged under eighteen years old. It can be divided into two types, which are cyber-enable offences (also known as digitised delinquents) and cyber-dependent offences (also known as cyber delinquents).

The cyber delinquencies discussed above are just the tip of the iceberg. Their insufficient ability to judge the validity of the information they received and might not be able to avoid the risks posed to them when they are online. They are risky to wander into negative activities in social media such as pornographic sites, online gambling, cyberbullying, scamming etc. What is stated above are the many incidents that occur among teenagers in Malaysia. In general, there are also children involved in cyber grooming, scamming, and online gambling. This matter is very worrying, especially to adults because these children will be a leader in the future.

The scenario occurred among children also has been viewed through the survey results as the percentage of respondents who commit delinquency in social media is still low yet there are children admitted to being involved in the delinquent act. Hence, precautionary steps should be taken by the government, society, and family. Even more so now where we need to live in a new norm after the pandemic of

Covid-19, children should be exposed to technology for their online learning process (online distant learning). Learning from home could give the opportunity to their parents to monitor their children continuously and nurturing them with ethics while using the social media.

Some improvements on the legal system, particularly related to cyber delinquency are needed. The elaboration of the governing cyber laws is to show the seriousness of the government to combat the cyber security issues in Malaysia as it is limitless, has zero boundaries and erodes national borders. Children also should be educated with it to ensure their adherence to the law. Even though the existing legislations are seemed sufficient to adjudicate the online offences, they need to be refurbished, where there are some lacunae that indirectly affect the empowerment of the act.

Apparently, there are no specific verses in the Quran that describe the prohibition of cyber offences or delinquencies as all verses are related to physical offences. However, the principles can be applied to the social media usage since the Islamic Legal Maxim also emphasize the principle such as “*No Harm and No Reciprocated Harm*” in which any act which will affect the wellbeing of others, either physically or mentally must be avoided. Bear in mind that in most jurisdictions what is illegal offline are also considered illegal online.

How to keep children’s private moments from going public? Parents may educate them by practicing these useful tips; save (think twice before share), password (use a personal password to all devices to prevent someone from intruding on the phone without permission) and delete (do not keep personal information or intimate

moments on the mobile phone unless they put a password on it).²⁴⁸ In the next chapter, delinquent children's criminal responsibility is examined through their minimum age from Malaysian legal framework and Syariah perspectives.

²⁴⁸ n.a. n.d. "How We Expose Ourselves Today", *McAfee Secure: Together is Power*, <https://promos.mcafee.com/offer.aspx?id=605366&culture=en-us&cid=140612>