

CHAPTER 1

BACKGROUND STUDY

1.1 INTRODUCTION

Interaction and communication are vital in everyone's life. It is proven that Islam has the basic foundations for communication in the Quran and Sunnah. As Allah says in the Holy Quran:

﴿يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ لِتَعَارَفُوا ۚ إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتْقَاهُمْ ۚ إِنَّ اللَّهَ عَلِيمٌ خَبِيرٌ﴾

"O mankind, indeed, We have created you from male and female and made you people and tribes that you may know one another.

*Indeed, the noblest of you in the sight of Allah is the most righteous of you. Indeed, Allah is Knowing and Acquainted."*¹

From this verse, Allah encourages people to socialise with each other, rejects any kind of racism, material privileges and something that may bring people to vainglory. He affirms that the determinations of true standards of values are only for fear of Him.

¹ Al-Quran, Al-Hujuraat 49:13 (All Quranic translations in this writing are based on Mufti Taqi Usmani through The King Saud University Electronic Moshaf Project, <http://quran.ksu.edu.sa/>)

As time goes by, people are always trying to improve their way of communicating with one another. When face-to-face discussions seem impossible, challenging, or difficult, they devised a lot of creative solutions.² Social media represents a new revolutionary trend that interests the world, particularly children.

Social media can be viewed as a group of users who use websites or electronic applications to create or share something and communicate through the internet media. Nowadays, it plays a crucial role in everyone's life as it is captivating and perhaps even addictive for many reasons including Malaysian citizen.

When the COVID-19 pandemic struck the world in 2019, people, especially children, rely heavily on the utilization of social media in their learning process, reaching out to friends and playing online. It creates a new norm where more activities and transactions are digitised, which contributes to the accelerated use of social media. The Internet Use Survey 2020 launched by the MCMC established those online children aged 5-17 has skyrocketed to 155 percent from 2016³ and that was exacerbated further by the implementation of Movement Control Order (MCO). Unfortunately, the survey also found that 56.3 per cent of children surfing social media on their own device⁴ and 62.5 per cent of them accessing social media without using any parental control service.⁵ Without any proper guidance from parents, children may misuse the social media to commit cyber delinquencies.

Dangers posed such as, cyberbullying, online gambling, cyber pornography, cyber suicide, and cyberstalking have become national epidemics that are sometimes

² Hendricks, D. 2013. Complete History of Social Media: Then and Now, Small Business Trends, <https://smallbiztrends.com/2013/05/the-complete-history-of-social-media-infographic.html>

³ MCMC. 2020. Internet Use Survey 2020. Malaysia, p.p. 88

⁴ *Ibid*, p.p. 135

⁵ *Ibid*, p.p. 136

committed by children. The number of children involved in cyber delinquencies has increased from time to time and this can be a disturbing trend. It is getting worse when social media is used by children who are not properly guided by adults because they cannot simply comprehend the risk, the laws, and the consequences of their actions.

Plus, anonymity and modern technology also make them easily exposed to strangers who may induce them to commit delinquent acts. For instance, WeChat application made it easy for children to find new friends by providing many interesting features. By using a simple effort, as easy as *shaking* the phone or searching for people nearby, children may filter the gender, then contact the other user through chat rooms without any censorship. They also can hide behind a fake identity and offend other children without fear of being reported too.

What prompted the researcher to undertake this research was curiosity and concern about recent negative phenomena in children particularly in social media. Many unreported instances involving Malaysian children who becoming "perpetrators" of cyber delinquency are being disclosed and viral through social media and online news which not being reported to the authorities. There are hundreds or even thousands sexual oriented Facebook pages where children can share their obscene photos and videos, access soft-core and hard-core materials, talking online about sex with strangers and sexting each other for sexual gratification.

Consequently, the researcher feels responsible for investigating this issue and hopes to contribute to society by providing an additional source of reading about the children cyber-delinquency from Malaysian law and Shariah perspectives. Alongside the niche of USIM, this research will analyse this study according to the integration of *'aqli* and *naqli*, which focuses on the general phenomenon of children cyber

delinquency, followed by a brief study of its social and legal position under the legislation and the Islamic principles and regarding this issue. At the end of this study, it will also examine the guidelines from Shariah perspectives.

Apart from that, this research aims to contribute structured information in terms of Malaysian Legal and Shariah perspectives and Shariah guideline to the readers and increase their knowledge on the issue of cyber delinquencies on social media usage so that it can help them to raise their awareness.

1.2 PROBLEM STATEMENT

Social networking sites have changed how human socialise with one another, acting as a giant digital coffee shop for the exchange of ideas and connection of individuals regardless of geographical borders. This incredible growth of social media not only happen among adults but surprisingly among children as well. Now, learning process through social media in schools is widely used as it can help students extend the way they learn and communicate. Whenever the pandemic Covid-19 hits the world, social media become the main medium for teaching and learning process. E-learning process through video telephony software program, assignment submission through e-mail and discussion between educators and students through WhatsApp group, are examples that elaborate how children can use social media as a platform of their learning process.

Nevertheless, this explosion of information without boundaries sometimes brings negative effects. As many children are involved in online activities and some are more advanced than adults, they sometimes misuse the social media, especially chat applications such as WhatsApp, Telegram, and WeChat. The criminal justice

system faces a dilemma when children break the laws. Children are considered as minors and have less communication experience, making them not legally responsible for their faults committed on social media.

Many incidents reported in daily Malaysian newspapers related to children who committed cybercrimes such as cyberbullying, cyber pornography, frauds, online gambling and cyberstalking where sometimes these online crimes can lead further to offline crimes such as cyber suicide. As we know, children are prone to make mistakes in the real world and in cyber world. They sometimes become the offender who offends their peers or other children. They contribute the pornography materials, bullying others, convincing their friends to involve distributing rumors and many more. Unfortunately, the children are not aware of their wrongs because they cannot distinguish between right and wrong. Thus, this has worsened the phenomena.

Then, the problem of delinquent children in social media was clearly of the utmost gravity. The lack of knowledge about the dangers, risks of social media misuse, related laws and low religious knowledge could be the factor to children's involvement in social media crimes. It is therefore incumbent upon us to give more attention and educate them about the etiquette, values and religious knowledge as an effort to prevent them from being involved in such negative issue.

There is a gap on literatures on how the law responds to the child offender who commits wrongs or delinquent acts on social media,⁶ as some of the literatures tend to overlook the protection of children from being victimised on the internet.⁷

⁶ Hendun ARS, Syahirah AS, Norfadhilah MA, Abidah AG, Nisar MA, Nabilah Y., & Nurul Atira, M. (2018), "Child Delinquency on the Internet", *International Journal of Engineering and Technology*, 7(3.30), pp. 321

1.3 RESEARCH QUESTIONS

Research questions in this study are;

- 1) What is the nature and extent of cyber delinquency among children in Malaysia?
- 2) What is the criminal responsibility of delinquent children?
- 3) What are the measures to curb the cyber delinquency?

1.4 RESEARCH OBJECTIVES

The objectives of the research are:

- 1) To study the nature and extent of cyber delinquency among Malaysian children.
- 2) To examine the criminal responsibility of delinquent children in Shariah and law.
- 3) To identify measures to curb and prevent cyber delinquency from the Shariah and legal perspectives.

1.5 RESEARCH METHODOLOGY

1.5.1 Information gathering

This study employs a qualitative method, based on library research and desktop review. The researcher utilised the library research as to collect data an

⁷ *Ibid*, pp. 322

information from library sources such as books, article journal, *kitab turath* and legal provisions.

Plus, the researcher used a desktop review and exploratory method in exploring the current situations of cyber delinquency that commonly occurred among Malaysian children. As the issue is related to social media usage, the researcher relied heavily on the materials on internet and social media such as in Facebook, WhatsApp, WeChat, and blogs to get some useful information and to explore the real scenario of children cyber delinquency. Despite that, the information is only taken from the authorised person's website and pages.

1.5.2 Primary Data

The researcher analysed some Malaysian legal provisions that relating to internet such as the Penal Code, the Child Act 2001, Computer Crime Act 1997, Communication and Multimedia Act 1998, the Sexual Offences Against Children 2017 and so on to study the legal views of the definition of children, the provisions related to crime or cybercrime and the punishment imposed to the offender.

For the Islamic primary references, the Quran and Hadith, Islamic traditional scholars' textbook (*kitab turath*) are being referred to examine the Islamic principles regarding the definition of child, the minimum age of criminal responsibility, the permissibility of social media and Islamic views on cyber delinquencies.

1.5.3 Secondary Data

Meanwhile, secondary data may assist in the analysis of the primary sources. They consist of, among others, previous survey, commentaries of law and news databases, and internet sites of relevant organizations.

Some supporting data from a survey conducted by the USIM research team are also included in the chapter.⁸ The data were collected through fieldwork study by questionnaires to 20 schools in Nilai, Bangi, Putrajaya and surroundings, involving 1900 primary and secondary students. However, the researcher merely used it for the purpose of supporting data and to show the knowledge of the risks sociated with the usage of social media.

Other than that, the contemporary books, textbooks, article journals, social media posts are also some secondary materials which also being referred to explore the additional information regarding the cyber delinquency issue.

1.5.4 Analysis Information

For this study, the researcher adopted legal analysis technique to establish the relations between two sets of data, the facts, and the law to determine the criminal responsibility of children for their offensive conduct in social media. For instance, the legal and syariah analysis of some provisions are conducted in Chapter 3 and 4 such as on the discussion of cyber delinquency and the minimum age of criminal responsibility.

Apart from that, the comparison between Malaysian legal perspectives and Shariah principles also will be examined in this study. The limitation of childhood

⁸ Hendun ARS, *et.al.* 2018. *Developing a Social Media Legal Guide for Children*, FRGS Grant, Ministry of Higher Education.

age, minimum age of criminal responsibility and the method used to combat the issue of children cyber delinquency will be discussed in chapter 2, 4 and 5.

1.6 RESEARCH SCOPE

Overall, this study focuses on current cyber delinquency situations among children from Malaysian and Syariah perspectives. A survey has been done to explore the reality happened among children which covered around Nilai and surroundings, including 1900 students from primary and secondary schools who took part in this survey. Hence, the researcher will only use some of the findings related to this study.

Besides that, this research also analyses the general issue without focusing on any specific act of delinquency. The scenario and related legal provisions are examined through the desktop review of the Malaysian statutes. Some of provisions from the other countries in this research are only for comparative purpose.

Finally, the researcher will use the general principles from Islamic Law that can be applied to this study in terms of child age, minimum age of criminal responsibility, guidelines and some ethics taken from the Quran and hadith. The Islamic scholars' opinions from *Ahli Sunnah Wal Jamaah* mainly from the four sects; sect of Hanafi, sect of Maliki, sect of Shafiee and sect of Hanbali also being analysed in determining the minimum age of criminal responsibility. Since this is a contemporary issue, there are not many published articles and books written by Islamic scholars related to delinquent children on social media.

1.7 LITERATURE REVIEW

1.7.1 Social media and children

Social media plays a crucial role in the lives of networked teens. Although the specific technologies change, they collectively provide teens with a space to hang out and connect with friends.⁹ Danah Boyd in her article stated teens love turn to social media sites for sociality supports amongst pre-existing friend groups, maintain connections with their friends and for entertainment, and some for social voyeurism.¹⁰

Research conducted at the University of Westminster, United Kingdom has classified online children into eight types of virtual world players; *explorer investigator, self-stampers, social climbers, fighters, collector-consumer, power-users, life-system builders and nurturers*.¹¹ Anonymous communication over the internet allows our children to open their hearts when surfing the social media. As a medium for finding friends, many social networking users tend to reveal information, such as name, gender, photos, and age, with others. Some of them even share their contact number and sexual preferences.¹²

⁹ Boyd, D. 2014. *It's Complicated: The Social Lives of Networked Teens*, US: Yale University Press, p.5

¹⁰ Boyd, D. 2007 "Why -Youth (Heart) Social Network Sites: The Role of Networked Publics in Teenage Social Life." *MacArthur Foundation Series on Digital Learning – Youth, Identity, and Digital Media Volume* (ed. David Buckingham). Cambridge, MA: MIT Press.

¹¹ Gauntlett, David and Lizzie Jackson. 2009. Virtual worlds - Users and producers, Case study: Adventure Rock, *Communication and Media Research Institute (CAMRI)*, University of Westminster, UK.

¹² James, P., Lawler, John C. Molluzo, 2010. A survey of First Year College Student Perceptions of Privacy in Social Networking. *Journal of Computer Sciences in Colleges.*, 26(3): 36-41. Consortium of Computing Sciences in Colleges. USA. <http://dl.acm.org/citation.cfm?id=1859168>

1.7.2 Children delinquency in social media

Kids love to explore and experiment as it is the way they learn.¹³ While online computer exploration opens a world of possibilities for children, expanding their horizons and exposing them to different cultures and ways of life, they can be exposed to dangers as they hit the road exploring the information highway. As well as the 'illegal and offensive content' of the social media may harm them too. Sometimes they have that curiosity in exploring cyberspace without proper guidance from adults, which can easily bring them into children cyber-delinquents.¹⁴

Some kids are more susceptible to some of them, other kids to others of the dangers. Realistically, the cyber environment also has its natural threat that it poses to children. Most risks fall into the following categories: peer-to-peer, inappropriate content, lack of understanding of online privacy issues, and outside influences of third-party advertising groups. For several years, various antisocial conduct, including several numbers of defamation cases, cyberbullying and other offences have been found in many social media platforms such as Facebook and Twitter.¹⁵ These offenses may manifest conduct disorder, antisocial personality disorder, or various other forms of psychopathology.¹⁶

Research conducted by Cybersecurity Malaysia showed that the average age at

¹³ Shinder. D, 'Juvenile cyber-delinquency: Laws that are turning kids into criminals' (TechRepublic, February 6, 2012) <<http://www.techrepublic.com/blog/it-security/juvenile-cyber-delinquency-laws-that-are-turning-kids-into-criminals/>> [Cyber-delinquency]

¹⁴ Harshal Morwale, 'Juvenile Cyber Delinquency – Evaluation of legal implications, S.N.G. Law College, Akola.

¹⁵ Murray, Andrew. 2013. *Information technology law: the law and society*. Oxford University Press, Page:139

¹⁶ Hinduja, S. and Patchin, J.W., 2010. Bullying, cyberbullying, and suicide. *Archives of suicide research*, 14(3), pp.206-221.

which a child in Malaysia sees porn is eleven.¹⁷ In the worst scenario, children, especially teenagers not only view pornography materials, surprisingly they also contribute to sexual images and materials to the internet.¹⁸ And to some extent, when they misuse the chat applications, they not only contribute to internet addiction but also sex addiction.¹⁹

Apart from that, in cyberbullying cases, some teens suggested that it is the mediated nature of the communication that contributes to bullying, insulating teens from the consequences of their actions. One high school boy responded to the question whether he had heard of cyberbullying: "I've heard of it and experienced it. People think they are a million times stronger because they can hide behind their computer monitor".²⁰

Based on a study on sexting behaviour conducted by Suzen Abd Ghani *et.al.* which involved respondents from Pontian Johor, it testified that the modernization of communication technology and media has affected the growth and development of sexual behavior among the teenagers.²¹

1.7.3 Factors that contributing to delinquency

There are several risk factors that have been found to encourage children to

¹⁷ Cybersecurity Malaysia, Say No to Porn, <http://www.cybersafe.my/pdf/kids/Porn.pdf>

¹⁸ Hendun ARS, Syahirah AS, Norfadhilah MA, Abidah AG, Nisar MA, Nabilah Y., & Nurul Atira, M. 2018. "Child Delinquency on the Internet", *International Journal of Engineering and Technology*, 7(3.30), pp.323

¹⁹ Hendun ARS, Syahirah AS, Norfadhilah MA, Abidah AG, Nisar MA, Nabilah Y., & Nurul Atira, M. 2018. "Child Delinquency on the Internet", *International Journal of Engineering and Technology*, 7(3.30), pp.323

²⁰ Lenhart, A. 2007. "Cyberbullying and online teens.

²¹ Abdul Ghani, S., Ahmad. R. & Khan, A. 2017. "Sexting Phenomenon Among Teenagers. A Case Study in Pontian, Johor", *Studies in Applications of Psychology and Counselling in Asian Context. Serials Publications Pvt. Ltd. (Chapter in book)*, [researchgate.net/publication/325735503_Sexting_Phenomenon_Among_Teenagers_A_Case_Study_in_Pontian_Johor](https://www.researchgate.net/publication/325735503_Sexting_Phenomenon_Among_Teenagers_A_Case_Study_in_Pontian_Johor)

commit crimes. The identified risk factors include being brought up by criminal parents, growing up in a family with multiple problems, poor parenting, poor discipline in the family or at school, truancy and associating with delinquent friends.²²

Children and teenagers need attention and tend to explore their identities and test how to fit into the world of adults.²³ When they feel inadequate, isolated, rejected or misunderstood, they make an effort to obtain that acceptance and love, and crime is one way of getting that attention.²⁴ According to Tan Sri Lee Lam Thye, with the availability of technology and social media, the ease that one could commit a crime is also to blame for this upward trend among youth.²⁵

1.7.4 The solution to child delinquency problem

Now, youthful social networking is raising many safety concerns since the young are still developing the social and emotional competencies to manage self-expression, intimacy, and relationships.²⁶ Evidence of online bullying, harassment, grooming, and potentially harmful or inappropriate conduct and contact adds support to the view that, if young users are ineffective in managing online privacy and intimacy, the costs to their safety and well-being may be considerable.²⁷

The researcher will review some books that show the Muslim scholars' view

²² Home Office White Paper, 1997. *No More Excuses: A New Approach to Tackling Youth Crime in England and Wales*, pp 1-14

²³ Audrey Vijandren. 2014. *Rising Wave of Juvenile Crime*, <http://www.nst.com.my/news/2015/09/rising-wave-juvenile-crime>, 14 December 2014.

²⁴ *Ibid*

²⁵ Audrey Vijandren. 2014. *Rising Wave of Juvenile Crime*, <http://www.nst.com.my/news/2015/09/rising-wave-juvenile-crime>, 14 December 2014.

²⁶ Coleman, J., & Hagell, A., 2007. *Adolescence, risk, and resilience: Against the odds*. Chichester: Wiley

²⁷ Erdur-Baker, O. 2010. *Cyberbullying and Its Correlation to Traditional Bullying, Gender and Frequent and Risky Usage of Internet-Mediated Communication Tools*, *New Media & Society*, 12(1), p.109–125.

about social media, such as in *Tarbiah Al-Awlad fil Islam* written by Dr. Abdullah Nasih 'Ulwan²⁸. In this book, the writer has prepared some guidelines of preparation how to educate the children physically, mentally, and spiritually. At one point, Dr. Abdullah has clearly mentioned that parents should not let their children watching movies and read magazines that contain the element of vicious, obscene and atheism because there are the main factors that bring children to perversion and delinquency.²⁹ This guideline also can be applied by parents in guiding their children whenever they surf the social media.

The punishment for the juvenile offender should be corrective rather than punitive and it needs to be enhanced.³⁰ The juveniles were placed at the Henry Gurney and other rehabilitation institutions instead of prison as many of them were managed to be rehabilitated after being released.³¹

Obviously, children especially those who are underage cannot understand delinquency on cyber. To some extent, some of them were assuming that it is okay to do anything on the internet as no one can know what they are doing. As they develop their knowledge, thought and relationships, they will do anything to explore more and more. Thus, we as adults have the responsibility to guide them, especially for the government. It is necessary to provide a proper education as they are very advance to use the internet. The systems such as the existing laws also need some improvement to ensure the rights of the children are not deprived.

²⁸ Nasih U'lwan. 2005. *Tarbiyatul Awlad fil Islam*, Dar Al-Salam

²⁹ *Ibid*

³⁰ Haikal Jalil. 2018. "Need to Review Juvenile Laws: Ahmad Zahid". *The Sun Daily*. 9 January. Retrieved from <http://www.thesundaily.my/news/2018/01/09/need-review-juvenile-laws-ahmad-zahid>

³¹ Haikal Jalil. 2018. "Need to Review Juvenile Laws: Ahmad Zahid". *The Sun Daily*. 9 January. Retrieved from <http://www.thesundaily.my/news/2018/01/09/need-review-juvenile-laws-ahmad-zahid>

This thesis is expected to give readers information about the related laws regarding children cyber-delinquency in social media from the eyes of Malaysian law and Shariah perspectives. The researcher has put some guidelines on social media usage following the Islamic principles as it can help people especially children to use the social media in proper ways and prevent them from exceeding the Islamic and Eastern norms. Although some research has been done on this issue, it is still important and always relevant to be highlighted due to the continuous problems and the correlations of social media to the youth. More importantly, the problem that exists due to the misuse of social media by children can be prevented if we are aware of the driving factors. Therefore, it is essential to discuss the governing provisions and Shariah principles to avoid cyber delinquency on social media especially among Malaysian children.

1.8 LIMITATION OF STUDY

In recent years, several research have explored about the protection of children on the internet. Unfortunately, there is a limited number of research done from Islamic perspectives especially related to children cyber-delinquency, which is more applicable to the context of Malaysia, which about 60 percent of its population are Muslim.

The lack of Islamic literature regarding delinquency in social media has also become a challenge to the researcher. The literature pertaining to this matter have not exhilarated scholarly in Malaysia as much as victimization and protection of children in social media.

Finally, the limited access of data from the government institutions. As any data and reported cases related to juvenile delinquency are considered as private and confidential, it is hard to get the actual data and official report of cyber delinquencies in Malaysia. However, it just simple and general data without details and most of them are taken from newspapers, blogs, and social media posts

