

Legal Responsibility of Minors in Online Fraud Cases: Between Justice and Child Protection in Indonesia

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ABSTRACT : The rapid development of digital technology has facilitated the emergence of new forms of cybercrime, including online fraud. Alarmingly, such offenses are not only committed by adults but also increasingly involve minors. This study examines the legal liability of children as perpetrators of online fraud within the framework of the Indonesian juvenile justice system. The research uses a normative juridical method to analyze relevant legal instruments, particularly Law No. 11 of 2012 on the Juvenile Criminal Justice System and the amendments to the Electronic Information and Transactions (ITE) Law. The findings reveal that criminal responsibility for child offenders must differ from that of adults due to the child's psychological, emotional, and social development stages. Children are categorized into three age groups regarding criminal liability: under eight years old (not subject to criminal process), eight to twelve years old (prosecutable but not punishable), and above twelve years old (subject to both prosecution and criminal sanctions, but prioritizing restorative justice). The study also identifies key contributing factors to juvenile online fraud, including peer influence, environmental conditions, and socio-cultural background. It concludes that restorative justice should be prioritized in handling children who commit online fraud to facilitate rehabilitation and prevent recidivism. This approach is consistent with the objectives of juvenile justice, which emphasize education and reintegration rather than punishment. Strengthening legal frameworks and promoting community involvement are essential strategies to reduce the incidence of cybercrime involving minors.

KEYWORDS: *children, online fraud, legal liability, restorative justice, juvenile criminal justice system*

I. INTRODUCTION

The development of technology can be likened to a double-edged sword. On one side, it can benefit society at large, and on the other, it allows individuals to commit crimes or offenses. Technological advancements naturally progress in parallel with the rise of various crimes. Therefore, the government must take strategic steps to prevent crimes as technology develops. One of the crimes that evolves with technology is criminal activity carried out through social media. Social media is often used to spread information, news, advertisements, and other similar content. This is because social media is considered one of the most effective and efficient tools. Its wide reach, rapid spread, and low cost make it attractive.¹ The advent of social media also seems to replace conventional media such as television, newspapers, and other forms of communication. However, it is not uncommon for social media to be used as a tool for committing crimes such as fraud.

Online fraud, committed through social media, is often due to the ease of access. Perpetrators only need a social media account to carry out their crime. Obtaining a social media account is also relatively easy, as there are no strict requirements to do so. Moreover, social media accounts can be anonymous, further complicating the process of tracing fraudsters. The ease of obtaining social media accounts creates opportunities for individuals, including minors, to commit online fraud. Children are the future generation of the nation, and they play a strategic role in ensuring the continuity of family, national, and state values. Therefore, legal protection for children in various aspects is crucial and strategic, becoming a shared responsibility for the state and all components of society.² Children, as a trust from God, must be protected, as they carry dignity, rights, and human status that must

¹ Yogesh K. Dwivedi, Setting the future of digital and social media marketing research: Perspectives and research propositions, *International Journal of Information Management*, Volume 59, 2021, 102168, ISSN 0268-4012, <https://doi.org/10.1016/j.ijinfomgt.2020.102168>

² Hariram, N. P., Mekha, K. B., Suganthan, V., & Sudhakar, K. (2023). Sustainableism: An Integrated Socio-Economic-Environmental Model to Address Sustainable Development and Sustainability. *Sustainability*, 15(13), 10682. <https://doi.org/10.3390/su151310682>

be upheld. Children's rights are part of human rights, as outlined in the 1945 Constitution of the Republic of Indonesia and the United Nations Convention on the Rights of the Child.

Children have several exclusive rights that must be fulfilled by the state and recognized by international conventions. However, having these rights does not mean that children are exempt from committing crimes. If this happens, children, who should be the future of the nation, could become a threat to the nation. Moreover, it is concerning when children are used by adults to commit crimes, using the excuse that children cannot be given criminal sanctions. Even in education, children are taught to bear responsibilities through school assignments, exams, and similar tasks. This education aims to provide insight into the importance of responsibility. Similarly, in the education system, children are given sanctions if they do not fulfill their responsibilities, such as receiving low grades, being suspended, or not advancing to the next grade. From this, it can be concluded that children who commit criminal acts must still be held accountable and given appropriate sanctions to teach them the importance of adhering to laws. However, the criminal sanctions given to children should be different from those given to adults. Based on this, a system for juvenile justice has been established in Law No. 11 of 2012.³

Criminal behaviour committed by children is often referred to as juvenile delinquency in the community. This is done to maintain the emotional condition of children as perpetrators of criminal offences. Given that the growth and development of children should not be hampered by anything, including the juvenile justice process. This is inversely proportional to the nature of criminal law that provides sanctions with the aim of frightening and/or deterring the perpetrators of criminal offences, especially fraud. Whereas today, there is a criminal act of fraud committed by minors that has an impact on the victim with a fairly high value. In 2020, in Medan, there was a criminal act of fraud committed by four children aged between 15 and 16 years.⁴ According to Karo Penmas Humas Polri Brigadier General Awi Setiyono, the value of losses caused by online fraud is interpreted as more than one hundred million. The perpetrator committed the crime with the motive of selling several branded clothes, but after being paid by the victim, the perpetrator was not reluctant to send the promised goods. The proceeds from the criminal offence were used for extravagance or fun. So that the existence of children who commit these criminal offences has a considerable impact. However, on the other hand, if the perpetrator is given criminal sanctions, the Government will indirectly inhibit the development and growth of children as the nation's successor. With these problems, the author would like to conduct research with the title 'Legal Liability of Children as Online Fraud Offenders.'

II. RESULTS AND DISCUSSION

Legal Liability of Children as Perpetrators of Online Fraud

Responsibility in criminal law will always be associated with the provision of criminal sanctions. This is because criminal law has a compelling nature, by providing sanctions for someone who does something that is prohibited. By imposing sanctions on the perpetrators of criminal offences, it is expected to have a deterrent effect on the perpetrators so that they will not commit criminal offences repeatedly. In addition, the provision of criminal sanctions to the perpetrators of criminal offences is expected to make a person afraid to commit a criminal offence, to provide preventive measures. The coercive nature of criminal law, by providing the threat of criminal sanctions, will indirectly try to limit or reduce human rights. The reduction of human rights is allowed to guarantee other human rights by creating security and tranquillity for the wider community.⁵ The provision of sanctions is considered to be a motivation for someone to obey a law and regulation; it is like what John Austin said, 'orders and prohibitions must be accompanied by a sanction'.

A person who commits a criminal offence will certainly be given a sanction that indirectly reduces the human rights of the perpetrator of the crime. Criminal sanctions given to the perpetrators of criminal offences are not a means of revenge, but a provision of criminal sanctions as a deterrent effect, providing security to victims or the wider community.⁶ Because the provision of criminal offences can reduce human rights, those given criminal sanctions must be people who are truly proven guilty. However, there is the principle of no punishment

³ Nurini Aprilianda and Liza Agnesta Krisna, "Reconstruction of Types of Sentencing in the Juvenile Justice System in Indonesia (Discussion Against the Criminal Position of Warning)," *Jambura Law Review* 5, no. 1 (2023): 1–20.

⁴ Atmadianti, S., & Rizal M. (2024). Marriage Annulment Application Due to Lies and Fraud: A Case Study of Decree Number 3572/Pdt.G/2023/PA.Ckr. Al-Is, Al-Ishlah: Jurnal: Ilmiah Hukum, 27(2), 374-390. <https://doi.org/10.56087/aijih.v27i2.510>

⁵ Catherine Barnes, 2006, Agents for Change: Civil Society Roles in Preventing War & Building Peace, European Centre for Conflict Prevention /International Secretariat of the Global Partnership for the Prevention of Armed Conflict. Can be accessed at <https://www.gppac.net/files/2018-11/Agents%20for%20Change.pdf>

⁶ Amiruddin, The Essentials of Criminal Sanction Against Perpetrators of Corruption Committed by State Administrators in Indonesia, *IOSR Journal Of Humanities And Social Science (IOSR-JHSS)* Volume 24, Issue 9, Series. 9 (September 2019) 34-48

without guilt (geen straf zonder Schuld), so a person who is given a criminal sanction must first be proven to have committed a mistake. A person can be blamed if they commit a criminal act, if the act has been regulated in the legislation and fulfils the elements that have been formulated in the legislation. Starting from this statement, it can be concluded that a person who must be held accountable for their actions is someone who commits an act that is prohibited. The prohibition must also be stipulated and contained in a statutory regulation. This is often referred to as legal responsibility. Legal responsibility arises because of a legal event that causes a legal effect or impact. One example is the existence of a criminal act of fraud that can harm several people who become victims. As we generally know, the crime of fraud can be considered a legal event because the crime of fraud is an act that is not allowed and regulated in criminal law. The legal impact of the criminal offence of fraud is the loss of wealth or objects of the victim that have economic value.⁷

At this moment, the development of technology is growing very rapidly, so that it can have a positive impact on society. However, the rapid development of technology also has a negative impact, by misusing technology as a tool to commit a crime or crime. One example is fraud, which is currently slowly utilizing technological developments using social media, or can be called online fraud. According to data released by the Ministry of Communication and Information, in 2022, there were 130,000 (one hundred and thirty thousand) people who became victims of online fraud. With this data, it can be concluded that the criminal act of online fraud has reached a high number.⁸

The high number of fraud in Indonesia certainly provides unrest and insecurity to the people in Indonesia. It does not stop there, with the high number of criminal acts of fraud in Indonesia, it also affects the trust of investors from abroad, who might be able to provide jobs to the people in Indonesia. Thus, the high rate of fraud in Indonesia can cause losses, both for victims and for the community at large. Therefore, the Government of Indonesia must take quick and appropriate steps to reduce the high rate of fraud in Indonesia. The law, which functions as a tool of social engineering, can be applied to reduce the high rate of fraud. According to Rescoe Pound, in his theory Law as a Tool of Social Engineering argues that law is a tool for humans to become better humans. Seeing Pound's opinion, the law can be a means to change a society's habits for the better, so that the high rate of fraud can decrease. For this reason, on 2 January 2024, the Indonesian government passed Law No. 1 of 2024 on the Second Amendment to Law No. 11 of 2008 on Electronic Information and Transactions (hereinafter referred to as ITE Law).⁹

In this regulation, it can be concluded that there is a prohibition on disseminating or providing information that can harm consumers. By underlining the word harming consumers, it can also mean fraud. In addition, by underlining the words Electronic Information and Electronic Transactions, it can be concluded that the prohibition in this regulation is by using electronic devices, or commonly referred to as online. Article 28, Paragraph (1) of the ITE Law regulates the prohibition of online fraud. to provide fear for someone who commits the crime of online fraud, the threat of sanctions must be given. The threat of sanctions for perpetrators of online fraud criminal offences is regulated in Article 45 A, Paragraph (1) of the ITE Law.

Children as perpetrators of criminal offences

In 1995, the purpose of punishment in Indonesia changed from being a means of revenge to being a preventive measure. As we all know, one of the objectives of punishment was originally as a means of revenge using the Absolute Theory. However, at this time, the purpose of punishment in Indonesia has changed by carrying out prevention by applying the Relative Theory.¹⁰ This theory is based on the purpose of deterring, improving the person of the convict, and destroying or making the convict helpless. By underlining the word to improve the conviction, there is an urgency if the perpetrator of the criminal offence is a child. This is because the growth and development of minors should not be limited, even for law enforcement reasons. Not stopping there, children also have a vulnerable psychological side because they are still in their infancy.

Article 1, Point 5 of Law No. 21/2007 on the Eradication of the Crime of Trafficking in Persons states that a child is someone who is not yet 18 (eighteen) years old, including children in the womb.¹¹ This is of course,

⁷ Sofia Ramos, Jose A. Perez-Lopez, Rute Abreu, Sara Nunes, Impact of fraud in Europe: Causes and effects, Heliyon, Volume 10, Issue 22, 2024,

⁸ Bing Han, 2023, Individual Frauds in China: Exploring the Impact and Response to Telecommunication Network Fraud and Pig Butchering Scams, can be accessed at https://pure.port.ac.uk/ws/portalfiles/portal/81985344/Bing_Han_PhD_thesis.pdf

⁹ Nur Khalimatus, Vinata, 2016, Rekonstruksi Pembentukan National Cyber Defense Sebagai Upaya Mempertahankan Kedaulatan Negara, Perspektif: Kajian Masalah Hukum Dan Pembangunan

¹⁰ Tubagus Heru Dharma Wijaya, Punishment on Criminal Law Reform in Indonesia, Advances in Economics, Business and Management Research, volume 121, International Conference on Law Reform (INCLAR 2019)

¹¹ Putri Annisa Salsabillah, The Syndicate Pattern Of Human Trafficking From the Criminological Perspective in Indonesia, Simbur Cahaya, can be accessed at <https://journal.fh.unsri.ac.id/index.php/simburcahaya/article/view/3142/724>

different from the provisions in the Burgerlijk Weetboek, where what is meant by a child or an immature person is someone who is under 21 years old, so what is meant by a child in Indonesian criminal law is someone who is not yet 18 (eighteen) years old, including children in the womb. The purpose of punishment is to correct the convict, therefore, the criminal justice system for children as perpetrators of criminal offences must be distinguished from other criminal justice systems. Therefore, on 30 July 2012, President Susilo Bambang Yudhoyono enacted Law No. 11/2012 on the Juvenile Justice System (hereinafter referred to as SPA Law). Although in criminal law a child is considered a person under 18 years of age, the SPA Law has separate provisions regarding children who can be given criminal sanctions or children who can be held criminally responsible.

The practice of restorative justice in many countries around the world is still limited to certain criminal offences, and the most widely applied is in cases of criminal offences committed by children and adolescents, such as New Zealand, England, Wales, the United Kingdom, the Philippines, and Canada. Restorative justice has been translated into various formulations with various variations in philosophical values or foundations, requirements, strategies, mechanisms, program, and even types of crimes and who can be involved in it. In some regulations, this mechanism is even translated in detail. In the mechanism of resolving criminal cases with a restorative justice approach, the position of the community is only as participants of the perpetrator or victim. The community can be given a broader role to monitor the implementation of an agreement as part of the settlement of criminal cases through this approach. the implementation of this activity in various ways, for example, monitoring victim rehabilitation efforts, as examples in various countries. The implementation of perpetrator responsibility can take various forms such as repairing damaged facilities, returning goods, fulfilling customary fines, and so the others.

Legal Liability of Children as Online Fraud Offenders

Online fraud offenders are often difficult to detect. Because the victim does not directly meet the perpetrator of the criminal fraud committed online. This provides an opportunity for minors to commit criminal acts of fraud because the victim does not know it is being committed by the child. However, if the perpetrator of a criminal offence is a child, it is very unfair if the child gets the same treatment as an adult criminal offender. Considering the predicate that adult prisons are often referred to as a school for people who want to commit more severe criminal offences. Meanwhile, one of the objectives of child punishment is to provide a deterrent effect and change the child's behaviour for the better. Therefore, if children as perpetrators of criminal offences are given the same sanctions as adults, it is far from the purpose of child punishment.

Criminal responsibility for children who commit online fraud must be seen first, at least in the age categorization is divided into three. First, the age below eight years old, where at that age the child is not subject to criminal proceedings, so if there is a criminal offence of online fraud committed by a child under the age of eight, then no prosecution can be carried out against the child. This is because children under the age of eight are still under the supervision of their parents.¹²

Second, children aged between eight and twelve years old, if the child commits a criminal offence of online fraud, then the child can be prosecuted, but cannot be given criminal sanctions. This means that children aged between eight and twelve years old can only be prosecuted without being given criminal sanctions. Thus, the child in question cannot be given a criminal sanction of imprisonment or detention, but the victim can claim the losses that have been committed by the child in question against his parents. In addition, if a child between the ages of eight and twelve commits the crime of online fraud, then the child can be rehabilitated at a social protection institution. The rehabilitation is, of course, aimed at providing education or changing the child's mindset in viewing a crime. Children between eight and twelve years old also do not need rehabilitation if the parents can provide guarantees to the victim.

Third, children above twelve years of age, if the child commits the crime of online fraud, then the child can be prosecuted or given criminal sanctions. However, at the time of prosecution, the legal apparatus must first offer law enforcement through restorative justice. Case settlement through restorative justice is carried out by deliberation between the perpetrator, the perpetrator's parents, and the victim. If no agreement can be reached, the case is transferred to the juvenile court, as well as if the victim refuses to participate in restorative justice. The judge's decision against children over twelve years of age who commit online fraud also cannot exceed 1/3 of the maximum penalty. As stated in Article 45 E Paragraph (1), the maximum penalty is 6 years, so the judge in deciding the criminal offence of online fraud committed by children, may impose a maximum of 2 years imprisonment.

¹² Das, Nikhita & Dihingia, Sabita & Bhuyan, Dhrubajyoti & Bora, Kavary. (2023). Parental Supervision and Its Relation With Emotional and Behavioral Problems in Secondary School Children. *Cureus*. 15. 10.7759/cureus.35291.

III. CONCLUSION

This study concludes that the legal accountability of children who commit online fraud must be approached with a restorative justice perspective, emphasizing rehabilitation over punishment. The classification of children into three age groups under eight years old, eight to twelve years old, and above twelve years old provides a differentiated legal response by their developmental stages and psychological maturity. Children under eight are not subject to criminal proceedings; those aged eight to twelve can be prosecuted but not punished with criminal sanctions; and children over twelve may face legal sanctions, with a strong preference for restorative resolution mechanisms. Furthermore, the study identifies three dominant factors influencing juvenile involvement in online fraud: environmental influence, socio-cultural factors, and peer pressure. These external factors highlight the need for a preventive approach that involves not only law enforcement but also families, educational institutions, and communities.

To reduce the increasing number of juvenile online fraud cases, the government must reinforce the implementation of restorative justice as mandated by the Juvenile Criminal Justice System Law. Legal frameworks should be supported by early preventive education, active parental supervision, and increased digital literacy among minors. These efforts are essential to uphold children's rights while ensuring accountability and protection for victims in the digital era.

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