

Article Title

Criminal Liability for Fraud through Short Message Service (SMS) by Children

Author

Tajuddin Tajuddin

Universitas Widya Gama Mahakam Samarinda

Correspondence Email

bonetajuddin5577@gmail.com

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ABSTRACT

This research aims to discover the criminal responsibility of the crime of fraud by spreading spam via SMS by children and its handling. This research uses the empirical method, which in this case uses field data such as the results of interviews and observations as the main data. The results of this study indicate that criminal liability for fraud by spreading spam via SMS by children in Sidrap Regency is based on Article 7 section (1) of Law Number 11 of 2012, namely by being returned to parents/guardians after diversion efforts by investigators. The handling is in the form of pre-emptive efforts, namely socialization and repressive efforts, namely imposing warning and criminal sanctions. Based on this research, it is suggested that the Legislative Body form a law that regulates criminal liability for children who commit criminal offenses other than imprisonment or return to parents, which can provide a strong deterrent effect but can also be more beneficial for the child's life in the future. It is also suggested that the Police improve their performance in overcoming the criminal offense of fraud by spreading spam through SMS committed by children.

Keywords: Children; Criminal Liability, Fraud, SMS.

INTRODUCTION

The era of globalisation is often associated with the rapid advancement of technology and information. This phenomenon does not recognise the boundaries of developed or developing countries, but occurs throughout the world. As part of the global community, every country is faced with the demand to keep up with technological and information developments in order to survive in an increasingly modern, practical and efficient global competition. The development of technology and information has changed people's behaviour and changed the direction of civilisation globally. In addition, this development has also resulted in the world becoming more open and undergoing significant social changes rapidly (Adhianto et al., 2019). However, it needs to be recognised that technology and information also have a dark side. Apart from making a positive contribution to the improvement of welfare and the advancement of human civilisation, technology can also be used as an effective means for activities that are contrary to the law. In line with the growing needs of the global community, information technology has an important impact in directing change, both now and in the future. This is due to its ability to provide answers to various challenges faced by the global community, but it also creates new problems that need to be overcome.

Article 378 of the [Penal Code](#) regulates the criminal offence of fraud, which basically describes an attempt to obtain benefits for oneself or others by means that are contrary to the law. This can be done by using false identities, false situations, deceit, or misleading words to influence others to give something or do something that should not be done. In addition, fraud also includes the act of creating debt or cancelling receivables, which carries a maximum prison sentence of four years.

Fraud can be committed by utilising the SMS feature, which is one of the common features of mobile phones. One of the reasons why the SMS feature is often used in fraud offences is because of its relatively low cost and ease of use compared to other features (Adedoyin et al., 2017). The misuse of SMS feature to commit fraud has become a problem that often occurs and is felt by the community lately. Various cases of SMS fraud have been disclosed to the public, televised, investigated by the authorities, and some have even gone unreported, causing material and immaterial losses to the public. The perpetrators of SMS fraud are difficult to catch by law enforcement officials because they often delete the card used after the transaction is completed. In addition, because these crimes occur quickly and through cyberspace, where the perpetrators and victims do not know each other, and have never even met before, it is difficult to trace the perpetrators of these crimes. Therefore, SMS fraud is also known as a form of cybercrime (Munandar, 2019).

According to the Global Spam Report 2021, Indonesia has again ranked in the top six among the 20 countries most affected by phone and SMS spam for the second consecutive year. Data from the patrolisiber.id website also noted that the most reported content was related to fraud, with a total of 4,601 cases, of which the use of telephone or SMS platforms reached 2,324 cases. Cases of fraud via SMS can be subject to Article 28 section (1) Jo. Article 45A section (1) of Law Number 19 of 2016. This law is an expansion of Article 378 of the Penal Code with a heavier penalty. It is hoped that Law Number 11 of 2008 can be a tool to prevent cases of fraud via SMS by enforcing applicable laws, as well as providing a basis for law enforcement to take action against perpetrators of criminal acts of fraud via SMS.

The previously mentioned penalties for SMS fraud only apply to adult offenders within the age limit set by law (Permatasari, 2023). However, when the offence involves minors below a certain age, as in one of the cases in Sidrap District, where two of the five arrested SMS fraud suspects were minors, the handling will follow different legal procedures in accordance with the law governing justice for minors. They are then released after undergoing the legal process in accordance with the applicable provisions in the Police.

METHOD

This research uses an empirical legal research method. This research seeks to comprehend legal practices as a social phenomenon by analyzing facts or data (Qamar & Rezah, 2020). It examines how various social, economic, political, psychological, and anthropological factors influence community behavior (Irwansyah, 2020). It utilizes both primary and secondary data sources. Data collection is conducted through interviews with key informants, field observations, the literature study technique, and document analyses of criminal responsibility in cases of fraud via SMS committed by

children. All collected data is then qualitatively analyzed to describe the problem and answer the research objectives (Sampara & Husen, 2016).

RESULTS AND DISCUSSION

A. Criminal Responsibility in the Criminal Offence of Fraud by Spreading Sending and Posting Advertisement in Mass (SPAM) through Short Message Service (SMS) Committed by Children

Article 28 section (1) Jo. Article 45A section (1) of Law Number 19 of 2016 confirms that perpetrators of fraud via SMS can be subject to a maximum imprisonment of 6 years and/or a maximum fine of IDR 1,000,000,000.00. The article states that any person who intentionally and without right spreads false and misleading news in electronic transactions, resulting in consumer losses, will be subject to these sanctions (Sulolipu, 2019). Article 28 section (1) of Law Number 19 of 2016, regulates that:

“Every person intentionally and without the right to spread false and misleading news that results in consumer harm in Electronic Transactions.”

Article 45A section (1) of Law Number 19 of 2016, regulates that:

“Any person who intentionally and without right disseminates false and misleading news resulting in consumer harm in Electronic Transactions as referred to in Article 28 section (1) shall be punished with a maximum imprisonment of 6 (six) years and/or a maximum fine of IDR 1,000,000,000.00 (one billion rupiah).”

The liability of perpetrators of criminal offences of fraud through spamming via SMS includes a maximum imprisonment of six years and/or a fine of up to one billion rupiah. However, if the perpetrator is a child, their criminal liability may be affected by Law Number 11 of 2012 (Rosyadi, 2023). The age of the child will be a determining factor in whether they can be held criminally responsible. Children under 12 years old cannot be held legally responsible and will be returned to their parents or guardians. Children aged between 12-14 years old can only be subject to measures, while children aged 14-18 years old are considered mature enough to be held accountable for their criminal offences with imprisonment as a sanction.

In addition, Law Number 11 of 2012 also emphasises the importance of diversion, which is the transfer of the settlement of juvenile cases from the criminal justice process to a process outside of criminal justice (Rivanie et al., 2021). This diversion must be pursued in accordance with the legislation, with the conditions that have been set.

Diversion is the transfer of the settlement of children's cases from the criminal justice process to a process outside criminal justice, based on which there are the following conditions:

1. Threatened with imprisonment for less than 7 (seven) years; and
2. Not a repetition of a criminal act.

Article 3 of [Supreme Court Regulation Number 4 of 2014](#) confirms that diversion must also be sought for children charged with criminal offences punishable with imprisonment under 7 (seven) years and also charged with criminal offences punishable with imprisonment of 7 (seven) years or more in the form of subsidiarity, alternative, cumulative or combined indictments ([Anatasia, 2021](#)). The objectives of Diversion are:

1. Achieve peace between the victim and the Child;
2. Resolving children's cases outside the judicial process;
3. Avoiding children from deprivation of liberty;
4. Encourage community participation; and
5. Instil a sense of responsibility in children.

The diversion process involves deliberation between the child and his/her parents/guardians, the victim and his/her parents/guardians, community advisors, and professional social workers. The approach used is a restorative justice approach, which prioritises the resolution of criminal cases by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties ([Mahmud et al., 2019](#)). The aim is to achieve a fair settlement with a focus on restoring the situation to its original state, not just punishment ([Gurusi, 2021](#)). For cases of criminal offences that are misdemeanours, minor offences, victimless offences, or where the victim's loss does not exceed the value of the local provincial minimum wage, a diversion agreement does not require the consent of the victim and/or the family of the child victim. In this case, the diversion agreement can be carried out by the investigator together with the perpetrator and/or his/her family, community counsellors, and involving community leaders.

The result of a diversion agreement initiated by the investigator based on the recommendation of the community advisor can be:

1. Settlement, which includes restitution or settlement without indemnification.
2. Return of the child to the parents/guardians.
3. Participation in an education or training programme at an educational institution or Social Welfare Development Institution (LPKS).
4. Implementation of community services.

However, if the diversion process does not result in an agreement or the diversion agreement is not implemented, then the juvenile criminal justice process will continue. In this case, the child can be held criminally responsible with a maximum imprisonment of half of the maximum imprisonment for adults.

If the criminal offence committed is punishable by death penalty or life imprisonment, the maximum punishment given to the child is imprisonment for 10 years. Fines can be replaced with vocational training for a minimum of 3 months and a maximum of 1 year. Thus, criminal responsibility for the criminal offence of fraud by spreading spam via SMS committed by children can face a maximum imprisonment of 3 years and vocational training for at least 3 months and a maximum of 1 year.

Based on an interview with Mr Aipda Ibrahim, an investigator from the Sidrap Police Criminal Investigation Unit, the two underage suspects in the criminal offence of fraud through spamming via SMS in Sidrap District are 16 years old. Children who are 16 years old, according to the law, are considered mature enough to be responsible for the criminal acts they commit. However, in this case, the two children who were suspects were returned to their parents or guardians after diversion efforts were made. Diversion is an effort that must be carried out in the investigation, prosecution and examination stages of cases in the district court, in accordance with Article 7 section (1) of [Law Number 11 of 2012](#).

An interview with Bripda Syeh Arif Azhar, an investigator at the Sidrap Police Criminal Investigation Unit, revealed that if diversion efforts are unsuccessful, then the juvenile offender must be held responsible for the criminal offence. In addition, if the juvenile offender commits a repeat offence, he must also be held responsible for his actions without going through diversion efforts. This is because diversion only applies to cases of criminal offences that carry a prison sentence of less than 7 years and not to repeat offenders.

B. Countermeasures in the Criminal Offence of Fraud by Spreading Sending and Posting Advertisement in Mass (SPAM) through Short Message Service (SMS) Committed by Children

Based on an interview with Bripda Syeh Arif Azhar, an investigator at the Sidrap Police Criminal Investigation Unit, it was stated that if diversion efforts are unsuccessful, then the juvenile offender must be held responsible for the criminal offence he/she committed. In addition, if the juvenile offender commits a repeat offence, he must also be held responsible for his actions without going through diversion efforts ([Nasrullah, 2023](#)). This is because diversion only applies to cases of criminal offences that carry a prison sentence of less than 7 years and not to repeat offenders.

Countering criminal offences by Sidrap Police is in accordance with its mandate as regulated in Law Number 2 of 2002. However, according to Bripda Syeh Arif Azhar, to tackle the criminal offence of fraud through spam SMS committed by children, the role of family members, especially parents and the community is very important (Erdianti et al., 2022). They must be actively involved in educating, supervising, and providing guidance to children so that they are not involved in criminal offences. Thus, collaboration between the police, family, and community will help the effectiveness of efforts to tackle these criminal offences.

CONCLUSIONS AND SUGGESTIONS

Criminal responsibility for the criminal offence of fraud via SMS spam committed by children in Sidrap Regency, in accordance with Article 7 section (1) of Law Number 11 of 2012, includes a diversion process that diverts the settlement of children's cases from the criminal justice process to a process outside of criminal justice. The conditions include imprisonment under 7 years and not a repeat offence, which are determined by investigators at Sidrap Police. Countering the criminal offence of fraud through SMS spam by children in Sidrap Regency is carried out by Sidrap District Police in accordance with Law Number 2 of 2002. In this case, pre-emptive measures are socialisation and repressive efforts, namely imposing warning sanctions and criminal sanctions. The legislative body needs to develop a new law detailing criminal liability for children involved in criminal offences, focusing not only on imprisonment or return to parents, but also paying attention to the aspect of a strong deterrent effect and providing better benefits for the child's development and future. In addition, the Police are also advised to improve their performance in handling fraud offences involving the distribution of spam via SMS by children. Countermeasures need to be improved proactively and effectively to prevent and take action against perpetrators, in the hope of creating a safer environment free from such crimes.

REFERENCES

- Adedoyin, A., Kapetanakis, S., Samakovitis, G., & Petridis, M. (2017). Predicting Fraud in Mobile Money Transfer Using Case-Based Reasoning. In M. Bramer & M. Petridis (Eds.), *Artificial Intelligence XXXIV* (pp. 325-337). Springer, Cham. https://doi.org/10.1007/978-3-319-71078-5_28
- Adhjarso, D. S., Utari, P., & Hastjarjo, S. (2019). The Impact of Digital Technology to Change People's Behavior in Using the Media. *Social Sciences and Humanities*, 2, 35-40.
- Anatasia, Z. (2021). Diversion Against Crime by Children Confronting the Law to Achieve Restorative Justice. *Pancasila and Law Review*, 1(2), 149-158. <https://doi.org/10.25041/plr.v1i2.2120>

- Erdianti, R. N., Wasis, W., & Al-Fatih, S. (2022). Child Friendly Villages as a Effort To Prevent a Child as Victims and as Perpetrator Crimes. *Jurnal Pengabdian Hukum Indonesia (Indonesian Journal of Legal Community Engagement) JPFI*, 5(2), 284-300. <https://doi.org/10.15294/jphi.v5i2.55978>
- Gurusi, L. (2021). Juridical Analysis of The Application of Diversion in Child Crime Cases to Realize Restorative Justice at The Court Level: Case Study at Pasarwajo District Court. *Jurnal Hukum Volkgeist*, 6(1), 21-26. <https://doi.org/10.35326/volkgeist.v6i1.1462>
- Irwansyah. (2020). *Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel*. Mirra Buana Media.
- Law of the Republic of Indonesia Number 1 of 1946 on the Penal Code Regulations. <https://www.dpr.go.id/jdih/index/id/814>
- Law of the Republic of Indonesia Number 1 of 1960 on Amendment of the Penal Code (State Gazette of the Republic of Indonesia of 1960 Number 1, Supplement to the State Gazette of the Republic of Indonesia Number 1921). <https://www.dpr.go.id/jdih/index/id/1357>
- Law of the Republic of Indonesia Number 11 of 2008 on Electronic Information and Transactions (State Gazette of the Republic of Indonesia of 2008 Number 58, Supplement to the State Gazette of the Republic of Indonesia Number 4843). <https://www.dpr.go.id/jdih/index/id/138>
- Law of the Republic of Indonesia Number 11 of 2012 on the Child Criminal Justice System (State Gazette of the Republic of Indonesia of 2012 Number 153, Supplement to the State Gazette of the Republic of Indonesia Number 5332). <https://www.dpr.go.id/jdih/index/id/271>
- Law of the Republic of Indonesia Number 19 of 2016 on Amendment to Law Number 11 of 2008 on Electronic Information and Transactions (State Gazette of the Republic of Indonesia of 2016 Number 251, Supplement to the State Gazette of the Republic of Indonesia Number 5952). <https://www.dpr.go.id/jdih/index/id/1683>
- Mahmud, Y., Akili, R. H. S., Kadir, Y., & Moonti, R. M. (2019). *Restorative Justice* dalam Putusan Hakim Nomor: 31/Pid.Sus/2018/PN.Lbto Atas Kasus Persetubuhan terhadap Anak. *SIGn Jurnal Hukum*, 1(1), 52-69. <https://doi.org/10.37276/sjh.v1i1.37>
- Munandar, A. (2019). Criminological Analysis of the Crimes of Fraud and Embezzlement with Perpetrators Using False Identities Through Social Media. *Legal Brief*, 9(1), 31-39.
- Nasrullah, N. (2023). Implementing Chemical Castration Punishment: A Perspective on Criminal Law and Human Rights. *SIGn Jurnal Hukum*, 4(2), 402-413. <https://doi.org/10.37276/sjh.v4i2.282>

- Permatasari, E. (2023, May 4). *Criminal Penalty on Phishing and Its Methods*. HukumOnline.com. Retrieved May 18, 2023, from <https://www.hukumonline.com/klinik/a/criminal-penalty-on-phishing-and-its-methods-lt645375f9d1988/>
- Qamar, N., & Rezah, F. S. (2020). *Metode Penelitian Hukum: Doktrinal dan Non-Doktrinal*. CV. Social Politic Genius (SIGn).
- Regulation of the Supreme Court of the Republic of Indonesia Number 4 of 2014 on Guidelines for the Implementation of Diversion in the Child Criminal Justice System (Bulletin Gazette of the Republic of Indonesia of 2014 Number 1052). <https://jdih.mahkamahagung.go.id/index.php/legal-product/perma-nomor-4-tahun-2014/detail>
- Rivanie, S. S., Komuna, A. P., Putra, A. A., Utama, P. F., & Muzakkir, A. K. (2021). Protection of Children as Perpetrators of Criminal Act Stimulated by Pornography Based on Indonesian Laws. *Musamus Law Review*, 4(1), 1-15. <https://doi.org/10.35724/mularev.v4i1.3759>
- Rosyadi, I. (2023). Criminal Liability Against Perpetrators of HOAX Spread in Indonesia. *International Journal of Law Dynamics Review*, 1(1), 41-53. <https://doi.org/10.62039/ijldr.v1i1.5>
- Sampara, S., & Husen, L. O. (2016). *Metode Penelitian Hukum*. Kretakupa Print.
- Sulolipu, A. I. D. (2019). Analisis Tindak Pidana Pengancaman Melalui Pesan Singkat. *Al-Ishlah: Jurnal Ilmiah Hukum*, 22(1), 45-52. <https://doi.org/10.33096/aijih.v22i1.26>