



The Application of Due Process of Law in Cyberbullying Crimes Committed by Children at the Investigation Stage

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ABSTRACT

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This study examines the application of due process of law in cyberbullying cases committed by children at the investigation stage. Using a normative juridical method, the paper evaluates the legal protection framework, particularly in the absence of specific cyberbullying regulations. Key findings reveal legal uncertainty, lack of digital evidence capacity among law enforcement, and the use of cumulative charges ignoring restorative justice principles. The study contributes to legal scholarship by emphasizing the need for regulatory harmonization and increased competence in handling digital crimes, advocating for a child-centered approach to justice in the digital era.

INTRODUCTION

The development of information and communication technology has had a wide-ranging positive impact across various aspects of societal life. One such impact is the ease of accessing information rapidly and broadly through digital platforms, which has become an integral part of everyday human activity. However, this advancement has also given rise to new legal and social challenges, including the alarming rise of cyberbullying offenses.

In Indonesia, cyberbullying has shown a concerning upward trend in recent years, as evidenced by the increasing number of cases, the variety of platforms used, and the severity of their impact. In today's digital era, where social media is often misused, words can be expressed without restraint. Online insults have become easily disseminated through fake identities, making it difficult to trace perpetrators. Initially considered a mere joke, cyberbullying has evolved into a serious issue involving acts of humiliation and defamation, causing significant distress to victims. Freedom of expression is often misused to justify online intimidation, while many especially adults fail to recognize that certain behaviors in digital interactions may constitute serious criminal offenses.

Data from the United Nations International Children's Emergency Fund (UNICEF) reveals that 45 percent of Indonesian youth aged 14-24 have experienced cyberbullying. Pew Research Center (2021) also found that more than 40% of adults have been victims of online harassment or abuse, often resulting in stress and anxiety, which are major contributors to mental health disorders. A 2021 study by the Center for Digital Society reported that 45.35% of junior and senior high school students had been victims, while 38.41% had committed cyberbullying. The Coordinating Minister for Human Development and Cultural Affairs, Muhadjir Effendy, confirmed that the number rose to 45% in 2022.

Cyberbullying has severe consequences, particularly for children and adolescents. The negative impacts are both psychological and physical. In extreme cases, victims of cyberbullying have been driven to suicide. Furthermore, cyberbullying can damage the victim's reputation and result in social isolation. Compared to adults, underage children are more vulnerable to the psychological consequences of cyberbullying, which may disrupt their mental health and developmental growth.

With the increasing use of modern communication technologies among children, academic and legal attention to cyberbullying has significantly increased over the past decade. As a relatively new phenomenon compared to traditional bullying, cyberbullying presents complex challenges for conventional legal frameworks. In a society increasingly reliant on technology, this issue tests the capacity of existing legal systems in terms of both law enforcement and legal protection, thereby necessitating effective and equitable legal responses.

Indonesia has enacted several regulations addressing cybercrime, including the Indonesian Penal Code (KUHP) and Law No. 11 of 2008 on Electronic Information and Transactions (ITE Law), as amended. Although the Penal Code does not specifically regulate cyberbullying, it is applied in conjunction with the ITE Law to provide a more comprehensive legal approach. However, the

enforcement of these regulations has been subject to criticism, as they are considered insufficient in ensuring justice for both victims and perpetrators.

In the context of law enforcement, the principle of due process of law is essential to ensure that all individuals whether victims or suspects receive fair treatment within the legal process. Due process of law refers to a legal proceeding that is fair, impartial, and appropriate, involving procedures that uphold substantive justice. As a core element of equitable law enforcement, this principle guarantees the protection of human rights and the adherence to established legal procedures.

The application of due process of law becomes increasingly significant in cyberbullying cases, which often involve digital evidence that is difficult to access and authenticate, requiring adequate technical expertise from law enforcement authorities. Its relevance is amplified in light of the evolving nature of cybercrime. Nevertheless, the practical implementation of due process in handling cyberbullying remains challenged by the lack of specific and detailed regulations governing such offenses. Therefore, it is imperative to further examine the implementation and obstacles of applying the principle of due process of law in the investigation of cyberbullying crimes involving children as perpetrators..

LITERATURE REVIEW

The principle of due process of law constitutes a fundamental pillar in the criminal justice system, ensuring that every individual including children is granted the protection of human rights through fair legal procedures. In the context of Indonesian law, this principle is enshrined in Article 28D paragraph (1) of the 1945 Constitution, the Criminal Procedure Code (KUHAP), and is specifically affirmed in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. The theory of procedural justice emphasizes that the legitimacy of law enforcement lies not merely in its outcomes but in a transparent, accountable, and non-discriminatory process, particularly for children who are vulnerable to criminalization.

Cyberbullying, as a form of cybercrime, presents complex characteristics and remains unregulated explicitly within the national criminal legal framework. Provisions under the Electronic Information and Transactions Law (UU ITE) and the Indonesian Penal Code (KUHP) are frequently applied in an overlapping manner without due regard to the *lex specialis* principle, thereby potentially violating the principle of legal certainty. This creates a legal gap, wherein the absence of a specific offense formulation leads to difficulties in evidence assessment, disproportionate sentencing, and inconsistency with the principles of child protection.

METHODOLOGY

The research method used in the writing of this article is the normative juridical approach. A normative juridical approach refers to legal research conducted through library research, which involves reading, noting, quoting, summarizing, and analyzing information from laws, regulations, or literature related to the issue at hand. This research is carried out by analyzing applicable statutory regulations.

RESEARCH RESULT AND DISCUSSION

a. The Application of the Due Process of Law Concept in Cyberbullying Crimes Committed by Children at the Investigation Stage

Due process of law is a fundamental principle within the legal system that requires the state to treat every individual fairly and in accordance with established legal procedures. In the context of criminal law, due process encompasses the procedural rights that must be granted to individuals undergoing judicial proceedings to prevent arbitrary treatment by the state.

Cyberbullying refers to acts of intimidation or harassment conducted through electronic media, such as the internet and other digital communication devices. This criminal offense may include the dissemination of harmful personal information, threats, defamation, or verbal abuse carried out through online platforms. Cyberbullying occurs across various platforms including social media, instant messaging, and email, with the intent to cause psychological or social harm to the victim.

In Indonesia, cyberbullying is regulated under Law No. 11 of 2008 on Electronic Information and Transactions (ITE Law), as amended by Law No. 19 of 2016. These laws contain provisions concerning the use of electronic media for defamation, insults, and threats directed at others. Additionally, cyberbullying can be linked to Articles 310 and 311 of the Indonesian Penal Code (KUHP), which govern defamation and libel.

In the context of law enforcement, due process of law plays a critical role in ensuring that all individuals whether victims or suspects are treated fairly throughout legal proceedings. Due process may be defined as a fair, impartial, and appropriate legal process that involves a proper procedural framework to ensure substantive justice.

Due process of law serves as a key foundation in the enforcement of cyberbullying laws. It ensures that all legal proceedings are conducted fairly and impartially, covering the suspect's right to adequate defense, the victim's right to legal protection, and the obligation of law enforcement officers to carry out their duties professionally, transparently, and without bias.

Law enforcement officials are obligated to safeguard the rights of suspects from the outset, including the right not to be subjected to torture, the right to legal counsel, and specific protections for children under investigation, as mandated by Law No. 11 of 2012 on the Juvenile Criminal Justice System (SPPA). In this process, digital evidence must be lawfully obtained and analyzed in accordance with the fair trial principle. At the prosecutorial stage, the prosecutor must assess the completeness of case files and formulate proportional charges that are not excessive, while also considering the possibility of diversion in cases

involving minors. However, in practice, challenges persist, such as overlapping regulations among the Penal Code, the ITE Law, and the Child Protection Law, as well as the limited capacity of law enforcement personnel to interpret digital evidence.

Therefore, regulatory harmonization and the capacity-building of law enforcement officers are crucial to ensuring the effective implementation of due process of law. The absence of explicit legal provisions governing child-related cyberbullying contributes to the ineffectiveness of both legal protection and procedural safeguards in law enforcement practices in Indonesia.

b. Investigative Constraints in the Application of the Principle of Due Process of Law in Cyberbullying Criminal Cases

The application of the principle of due process of law in handling cyberbullying crimes against children in Indonesia faces a number of structural and normative obstacles. One of the fundamental issues is the absence of explicit legal provisions concerning cyberbullying offenses in the national legislation. At present, law enforcement regarding cyberbullying still relies on the interpretation of general provisions under Law No. 11 of 2008 concerning Electronic Information and Transactions (ITE Law), as amended by Law No. 19 of 2016, as well as defamation and insult provisions under the Indonesian Penal Code (KUHP).

This situation gives rise to legal uncertainty, as law enforcement officers must construct legal norms through analogy, which may result in violations of the principles of *nullum crimen sine lege* and due process of law. The absence of specific legal norms leads to a significant substantive legal vacuum in protecting child victims of digital crimes and poses difficulties in safeguarding the rights of child suspects during fair legal proceedings. Moreover, in cyberbullying cases, there are obstacles at the reporting stage, as victims often hesitate to pursue legal actions due to concerns over personal and family reputation.

In terms of evidence, cybercrime presents unique challenges in ensuring adherence to the principle of due process of law. Cyberbullying offenses typically leave behind complex digital evidence, such as electronic traces, metadata, and online communications. The limited technical competencies of law enforcement personnel both at the investigative and prosecutorial levels often result in suboptimal verification and authentication of digital evidence.

Research findings indicate that due to the perpetrators' ease of access to electronic traces, there is a high likelihood of evidence being destroyed, such as by deleting offensive posts on social media even though digital footprints are never truly erased. A further challenge is the removal of physical evidence/devices (e.g., mobile phones), which hinders investigators in establishing proof of cyberbullying.

As a result, there exists a potential violation of both the suspect's and the victim's rights, as inadmissible evidence may undermine the principle of a fair trial. Limited understanding of electronic evidence among law enforcement personnel frequently leads to errors in classifying legal acts and in identifying the elements of offenses, thereby affecting the validity of the law enforcement process itself.

Furthermore, the overlap between multiple legal instruments applied in handling cyberbullying cases leads to legal disharmony, resulting in procedural ambiguity and inconsistent legal treatment. Cyberbullying cases involving children are often prosecuted using a combination of provisions from the ITE Law, Penal Code, and Child Protection Law, without due regard to the principles of *lex specialis derogat legi generali* and *lex posterior derogat legi priori*. This creates a risk of disproportionate prosecution, particularly when the perpetrator is a minor, as public prosecutors tend to file cumulative charges that aggravate the legal position of the child suspect. The prevailing criminal justice policy still focuses on punitive measures rather than restorative justice, as mandated by the Juvenile Criminal Justice System Law.

On the other hand, the low level of digital legal literacy among the public including children and parents is also a barrier to the effective implementation of the principle of due process of law. Public ignorance of the legal consequences of digital activities leads to underreporting by victims and unawareness among perpetrators that their actions constitute criminal offenses. In the context of child perpetrators, this situation is exacerbated by the lack of legal education in primary and secondary schools.

CONCLUSIONS AND RECOMMENDATIONS

The application of the principle of due process of law in handling cyberbullying crimes against children in Indonesia remains suboptimal. The absence of specific positive legal norms regulating cyberbullying has resulted in the analogical construction of legal provisions from the Indonesian Penal Code (KUHP), the Electronic Information and Transactions Law (ITE Law), and the Child Protection Law. This condition has led to regulatory disharmony, creating legal uncertainty and posing potential violations of the principles of *nullum crimen sine lege* and *lex certa*, both of which are integral components of the rule of law (*rechtsstaat*).

From a technical standpoint, the greatest challenge lies in the evidentiary aspect, which depends heavily on the ability of law enforcement officers to interpret and authenticate digital evidence. The limited technical capacity of authorities in handling electronic evidence, coupled with a weak understanding of digital legal instruments, may result in violations of the rights of both suspects and victims, particularly in cases involving children. The application of cumulative charges without due regard to the principle of *lex specialis derogat legi generali* and the restorative justice approach further exacerbates this situation especially when the offender is a minor. Therefore, preventive measures through digital literacy education and the strengthening of legal awareness in society are crucial steps toward building a law enforcement ecosystem that upholds justice and legal certainty in cyberbullying cases.

ADVANCED RESEARCH

Future research should focus on the formulation of comprehensive legal frameworks that explicitly regulate cyberbullying involving minors, both as perpetrators and victims, in order to address the current normative vacuum and ensure the effective application of due process of law. It is also recommended to conduct empirical studies on the investigative practices of law enforcement officers in handling digital evidence, as well as the assessment of their technical competencies in cybercrime cases. Additionally, research exploring the integration of restorative justice mechanisms in cyberbullying cases involving children could contribute valuable insights into developing a more child-centered and rehabilitative approach to justice. These directions may support the harmonization of legal instruments and strengthen the procedural guarantees for children in the digital age.

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