

## **Criminal Liability of Perpetrators of Criminal Acts of Sexual Harassment Against Children**



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**ABSTRACT:** In today's world, the sustainability of children's lives, growth, and development is often threatened by actions that degrade human dignity. One of the most disturbing forms of violation of human dignity is cases of sexual harassment against children. Children are particularly vulnerable to acts of cruelty and sexual crimes. Perpetrators of sexual violence often pose a significant threat to children, even though they are aware of the legal consequences. The purpose of this writing is to explore the criminal liability for the actions of perpetrators of sexual harassment against children using a juridical-normative method. The research findings indicate that the criminal liability for sexual harassment against children can be attributed to individuals or the perpetrators themselves. This responsibility is not exempt from the burden of proof, as the elements of criminal liability must be established. Furthermore, it is crucial to consider aspects of criminal liability, such as the ability to be held accountable, guilt, and the absence of legal excuses.

**KEYWORDS:** Sexual Violence, Criminal Liability, Child Protection

### **INTRODUCTION**

Child protection is an evolving issue closely tied to the dynamics of human life development. The position of children as a family's future naturally makes it a significant concern for all societal groups, giving rise to various efforts and measures to provide protection for children to ensure their proper growth and development as the next generation of our nation in the future. With children playing a crucial role in the future of the nation, their rights must be safeguarded. Children's rights are explicitly stated in the constitution, Article 28B paragraph (2) of the 1945 Constitution of Indonesia, which affirms that the state guarantees every child's right to live, grow, develop, and be protected from violence and discrimination.

In today's society, the continuity of life, growth, and development of children is frequently disrupted by actions that degrade human dignity. One of the most profound violations of human dignity is sexual harassment, which is increasingly prevalent among vulnerable groups, such as women and children (Rahayu, 2021). Sexual harassment, or sexual violence, encompasses all forms of sexual threats and coercion. In other words, it involves unwanted sexual contact and is fundamentally rooted in verbal threats and physical force (Yuwono, 2018). In the Indonesian Criminal Code (KUHP), the regulations regarding the criminal act of sexual harassment are found in the sections concerning indecent acts and violations of decency. However, the Indonesian Criminal Code does not explicitly use the term "sexual harassment." Instead, it uses the term "cabul (indecent)" and is regulated from Article 289 to Article 296 of the Criminal Code I (Ayu, 2022).

Perpetrators of sexual violence often threaten children, even though they are aware of the additional punishment, such as castration, that has been prescribed. The age of children makes them particularly susceptible to acts of cruelty and sexual crimes. This is because children are more easily influenced and lack the arguments or strength to resist the advances of individuals who act irresponsibly (Laurensius Arliman S., 2017). Fundamentally, anyone who commits a criminal act may be subject to criminal charges if their actions meet the elements of the crime. Elements that must be satisfied include an act that conforms to legal definitions and is contrary to the law, committed by an individual or a group of people deemed capable of being held accountable (Altar Adi Unas, Daniel F. Aling, 2022).

Legal rules regarding crimes differ from guidelines for responding when someone violates the law. To enforce this commitment, the criminal liability system must be used. Criminal rules are not behavioral norms that society must follow but guidelines for dealing with those who break these regulations. In this regard, guilt determines criminal liability. In criminal cases, law enforcement must determine whether the perpetrators are eligible for prosecution (Farid, 2022). The widespread occurrence of sexual violence and physical violence experienced by children is highlighted in the Child Protection Commission's (KPAI) 2021 Child Rights Violation Report. Out of 2,982 complaints received by the KPAI, the highest number of cases were as follows: first, children who were victims of physical and psychological violence, totaling 1,138 cases; second, children who were victims of sexual offenses, totaling 859 cases; third, children who were victims of pornography and cybercrimes, amounting to 345 cases; fourth,

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children who were victims of abuse and neglect, totaling 175 cases; fifth, children who were economically or sexually exploited, totaling 147 cases; and sixth, children who came into contact with the law as perpetrators, totaling 126 cases (KPAI, 2022). Based on this data, it is evident that sexual crimes against children occur every year.

The law in Indonesia concerning sexual harassment only provides restrictions on specific acts by explicitly identifying what is prohibited. Understanding sexual harassment has a perspective that cannot be equated with other criminal offenses. Crimes of a sexual nature possess a universal dimension. However, when it comes to the practical enforcement of punishments, it often results in various interpretations and different understandings of sexual harassment itself (Saladin, 2020). Hence, there is a need to take steps to strengthen penalties for perpetrators of sexual offenses to discourage potential wrongdoers. The theory used in this research relates to the principle of criminal law, "*Geen straf zonder schuld*," which means "no punishment without guilt (Atmasasmita, 2017). From this principle, it is evident that guilt is a primary element that significantly determines whether an action can be considered a criminal offense and whether an individual can be held criminally responsible under the law (Sriyanto, 1993).

### PROBLEM STATEMENT

How is the criminal liability for perpetrators of sexual harassment against children?

### RESEARCH METHOD

Research is a process, a series of planned and systematic steps taken to obtain solutions to a problem or answers to specific statements. Research is essentially a systematic, methodological, and consistent way of seeking the truth rather than simply observing an object that is easily held in hand. This is because research aims to reveal the truth systematically, methodologically, and consistently. Through the research process, an analysis and construction of collected and processed data are conducted. To achieve the best results, the research method and approach used are juridical-normative, consisting of:

1. Primary legal materials are legally binding documents. In this thesis, primary legal materials will be used, including Law Number 11 of 2012 regarding the Juvenile Justice System, Law No. 11 of 2012 regarding the Criminal Justice System for Juveniles, and Law No. 3 of 1997 regarding Juvenile Justice.
2. Tertiary legal materials, on the other hand, provide guidance and explanations for primary legal materials, and secondary legal materials can include Law Dictionaries or the Great Dictionary of the Indonesian Language to clarify the meanings of terms that may be difficult to interpret. This research uses a juridical-normative research method with a descriptive nature and secondary data sources. Data is collected through library research and summarized in qualitative analysis (Soerjono Soekanto, 2010).

### DISCUSSION

Criminal liability, often referred to as "*teorekenbaardheid*" or criminal liability, relates to the prosecution of the accused to determine whether an individual can be held accountable for a criminal act that occurred or not. Criminal liability leads to the prosecution of an individual if they have committed a criminal act and fulfill the elements defined in the law. From the standpoint of engaging in prohibited actions (mandatory), an individual will be held criminally liable for such actions if the actions contravene the law (Ilyas, 2012).

Criminal liability is the accountability of an individual for the criminal act they have committed. Specifically, the person held accountable is the one who committed the criminal act. Therefore, the establishment of liability is based on the presence of a criminal act committed by an individual. When it comes to matters of criminal liability, it cannot be detached from the criminal act. Individuals cannot be held criminally liable if they did not commit a criminal act. Criminal liability is essentially a mechanism constructed by criminal law to react to violations by imposing penalties for rejecting certain actions. The rejection of society towards a particular action is manifested in the form of prohibition (and the threat of punishment) against that action. This reflects that society, through the state, condemns such actions. Anyone who commits them is likewise condemned (Candra, 2013).

Criminal liability is defined by principles directed at judges to determine whether, in certain circumstances, the perpetrator of a criminal act can be held accountable for their actions. The condemnation of the perpetrator depends on whether the perpetrator could have avoided committing the criminal act. The assessment of the perpetrator's culpability is one part of the adjudication principles in criminal liability, forming the basis for their prosecution. Criminal liability is broadly understood as a process and adjudication guideline for judges to determine how an individual can be held accountable and consequently subject to criminal penalties.

Furthermore, it should be understood that, in addition to the definition of criminal liability, it is also accompanied by an understanding of the capacity to be accountable. The capacity to be accountable (*toerekeningsvatbaarheid*), according to Pompe, is as follows: (a) the psychological capacity of the perpetrator that allows the perpetrator to control their thoughts and determine their thoughts, (b) the ability of the perpetrator to understand the meaning and consequences of their actions, (c) and, therefore, the perpetrator can determine their will in accordance with their opinion (about the meaning and consequences of their actions). The ability to think, as in Pompe's opinion, is found in normal individuals. Those considered capable of being accountable are individuals

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whose mental and psychological state is normal, and normal individuals do not fall within the three criteria as individuals who are not capable of being accountable, as stated by Pompe above. The capacity to be accountable is always related to the psychological state of the normal perpetrator, so only individuals with their psychological state in normal condition can be blamed or held accountable. In conclusion, criminal liability involves psychological aspects related to the capacity to be accountable (Rusianto, 2016). Most countries' legal regulations generally do not address the capacity to be accountable; instead, what is regulated is the opposite, namely the incapacity to be accountable. This aligns with the provision stated in Article 44 of the Indonesian Criminal Code (KUHP).

In every proof related to the incapacity to be accountable, it must be based on the opinion of a mental health expert. Through the results of a diagnosis by a mental health expert, it can be determined whether the perpetrator of a criminal act is experiencing a mental disorder. Consequently, the judge can determine whether the perpetrator of the criminal act has the incapacity to be held accountable for the act. Unlike the capacity to be accountable, which emphasizes the internal capacity of the perpetrator of the criminal act, the focus of culpability is on external conditions that manifest in the assessment of society towards the perpetrator, whether under such circumstances, the perpetrator can be condemned for the criminal act committed. In his book, Andi Hamzah mentions that in the concept of criminal law, the characteristics or elements of culpability can be broadly defined as follows: (Hamzah, 2017)

- 1) The perpetrator can be held accountable.
- 2) The presence of a psychological connection between the perpetrator and the act, which involves intent or fault in a narrow sense (culpa).
- 3) The absence of a legal basis that eliminates the possibility of holding someone accountable for a particular act by the perpetrator.

From those mentioned above, in point 3), we can see the connection between fault and the act being contrary to the law. It is impossible for there to be fault without the act being contrary to the law. The act being contrary to the law relates to an objectively abnormal act. If the act itself does not contravene the law, it means it is not an abnormal act. For this, there is no longer a need to answer who the perpetrator is. If the act does not contravene the law, the perpetrator is not at fault. Fault is a subjective element that pertains to a specific perpetrator.

The Crimes Against Morality in Book III of the Indonesian Criminal Code, Chapter XIV, are as follows: crimes resulting from open violations of public morality (Article 281), pornography crimes (Article 282), pornography crimes when carrying out its trade (Article 283b), indecent assault crimes (Article 284), rape crimes for sexual intercourse (Article 285), sexual intercourse crimes under conditions where the victim is not conscious or unable to resist without marriage (Article 286), sexual intercourse with a female child (Article 287), sexual intercourse with a female who is not yet of marriageable age, resulting in injury or severe harm (Article 288), rape and indecent assault crimes that attack the dignity of public morality (Article 289), indecent assault crimes against individuals who are unconscious or not yet of marriageable age (Article 290). If crimes in Articles 286, 287, 289, and 290 result in severe harm (Article 291), crimes of indecent assault on children of the same sex (Article 292), crimes of inducing a minor to commit indecent assault (Article 293), crimes of indecent assault on a child (Article 294), crimes facilitating indecent assault on a child (Article 295), crimes of exploiting underage persons for either prostitution or debauchery (Article 296), crimes making a livelihood out of indecent acts carried out by others (Article 298) (Paradias & Sopyono, 2018).

It is crucial to understand that various forms of sexual violence against children have a very wide scope, including, among others, rape, sodomy, oral sex, sexual gestures (visual sexual assault, including exhibitionism), sexual remarks (verbal sexual assault), sexual harassment, and child prostitution. Therefore, law enforcement, as a state representation, must thoroughly comprehend the forms of sexual violence against children as a de facto part of community life (Yuwono, 2018).

The significant legal demand regarding the prevalence of child sexual abuse being widely reported through electronic and print media requires the Indonesian government to act promptly in addressing the increasing cases of sexual abuse against children. Furthermore, when considering the penalties imposed by the government, it appears that the punishment given to perpetrators does not seem to have a deterrent effect on those involved in sexual violence against children. This situation can lead to feelings of discomfort, insecurity, and disorder in society, as the impact of child sexual abuse is highly perilous to the lives of children, affecting their personal development.

Based on the high occurrence of such cases of sexual violence, which has a deterrent effect on perpetrators and aims to prevent child sexual abuse, the Government has enacted Government Regulation in Lieu of Law No. 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection, which has now been ratified into Law No. 17 of 2016 concerning the Determination of Government Regulation in Lieu of Law No. 1 of 2016 concerning the Second Amendment to the Law on Child Protection. Perpetrators who commit criminal acts of sexual abuse against children are no longer charged under the articles found in the Indonesian Criminal Code (KUHP) but are rather subject to the provisions of Law No. 17 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection. Following the principle of *lex specialis derogat legi generalis*, meaning that special laws, such as the Law on Child Protection, take precedence over general laws (KUHP) (Hasanah, 2023).

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The law establishes specific regulations to protect children from various forms of violence, including physical, psychological, and sexual violence, as outlined in Articles 81 and 82 of Law No. 17 of 2016. These legal provisions serve as a formulation within the Indonesian Criminal Code (KUHP) that imposes criminal sanctions on perpetrators that are more stringent than those specified in the KUHP. These penalties may include the death penalty, life imprisonment, and a maximum of 20 years of imprisonment, along with additional penalties such as the public disclosure of the perpetrator's identity. In the application of criminal sanctions, it is fundamentally linked to criminal liability, which cannot be separated from the criminal act. Anyone proven to have committed a criminal act is accountable for criminal prosecution. The elements of a criminal act and culpability are central components of criminal law.

As for the forms of culpability, namely intent or negligence explicitly stated in the formulation of criminal acts, criminal liability is defined by principles aimed at judges to determine whether, in specific circumstances, the perpetrator of a criminal act can be held accountable for the act they have committed (Syamsu, 2016). Thus, within the legal system in Indonesia, responsibility implies a penalty that an individual must bear as a consequence of the criminal act they have committed and when they have fulfilled the elements stipulated in the law. So, the determination of the perpetrator's criminal liability is made after the elements of the criminal act have been met.

The form of criminal liability for perpetrators of sexual harassment against children that can be imposed if proven can be seen based on Law Number 17 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection. With the changing times, the Criminal Code (KUHP) imposing penalties cannot have a deterrent effect, resulting in even more children becoming victims of sexual violence. Therefore, legislators have created specific regulations designed to protect children from the violence they experience, whether it be physical, psychological, or sexual violence, as stipulated in Law No. 23 of 2002 as amended by Law No. 17 of 2016 concerning the Second Amendment to Law No. 23 of 2002 concerning Child Protection. This legislative form is a formulation of the Criminal Code (KUHP), which in this context gives criminal penalties to perpetrators more severely than the previous provisions in the Criminal Code I (Sitompul i2015). The penalties imposed on perpetrators of sexual harassment against children are stipulated in Article 81 and Article 82, which state that:

### Article 81 i

- (1) Anyone who violates the provisions as referred to in Article 76D shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a fine of up to IDR 5,000,000,000.00 (five billion Indonesian Rupiahs).
- (2) The criminal provisions, as referred to in paragraph (1), also apply to anyone who intentionally commits deceit, a series of lies, or persuades a child to engage in sexual intercourse with them or with another person.

### Article i82

- (1) Anyone who violates the provisions as referred to in Article 76E shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a fine of up to IDR 5,000,000,000.00 (five billion Indonesian Rupiahs).

Furthermore, the law mentioned above also stipulates additional penalties found in Article 81 Paragraph (7), which regulate the punishment of chemical castration, stating, "*Against perpetrators as referred to in paragraph (4) and paragraph (5), they may be subject to actions such as chemical castration and the installation of electronic monitoring devices.*" The government issued these regulations because Indonesia has entered a phase where sexual offenses against children are becoming more widespread. Criminal accountability for perpetrators of sexual violence against children is expected to be one of the steps to prevent such crimes from recurring, with the hope that many offenders will feel the consequences and these punishments will deter potential perpetrators.

## CONCLUSION

The criminal liability for child sexual abuse is imposed on the individual responsible, which is not exempt from the burden of proving the elements of criminal liability. Furthermore, when an act of child sexual abuse is proven, an examination of the perpetrator of child sexual abuse can be carried out. Additionally, the elements of criminal liability must be considered: capacity, guilt, and the absence of legal excuses. Thus, the perpetrator of child sexual abuse can be held criminally accountable for their actions. The increasing prevalence of child sexual abuse in society has also prompted preventive measures from the perspective of the child victims, as they often carry deep trauma from the experience.

## REFERENCES

- 1) Ali, Zainuddin. 2009. *Metode Penelitian Hukum*. Jakarta: Sinar Grafika.
- 2) Altar Adi Unas, Daniel F. Aling, Debby. T. Anto. 2022. "TINJAUAN YURIDIS TERHADAP TINDAK PIDANA PELECEHAN SEKSUAL DALAM PERTANGGUNGJAWABAN PIDANA." 11.
- 3) Anastasia, Oleh, and Hana Sitompul. 2015. "KAJIAN HUKUM TENTANG TINDAK KEKERASAN SEKSUAL TERHADAP ANAK DI INDONESIA 1 Oleh: Anastasia Hana Sitompul 2." *Lex Crimen* IV(1):46–56.
- 4) Atmasasmita, Romli. 2017. *Rekonstruksi Asas Tiada Pidana Tanpa Kesalahan*. Jakarta: Gramedia Pustaka Utama.
- 5) Candra, Septa. 2013. "Pembaharuan Hukum Pidana; Konsep Pertanggungjawaban Pidana Dalam Hukum Pidana Nasional Yang Akan Datang." *Jurnal Cita Hukum* 1(1). doi: 10.15408/jch.v1i1.2979.

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- 6) Farid, Hammi. 2022. "Pertanggungjawaban Pidana Terhadap Pelaku Pencabulan Anak Di Bawa Umur." *Jurnal Justisia : Jurnal Ilmu Hukum, Perundang-Undangan Dan Pranata Sosial* 7(1):245. doi: 10.22373/justisia.v7i1.13222.
- 7) Hamzah, Andi. 2017. *Hukum Acara Pidana Indonesia*. Jakarta: Sinar Grafika.
- 8) Hasanah, Risalatul. 2023. "PERTANGGUNGJAWABAN PIDANA BAGI PELAKU TINDAK PIDANA PENCABULAN TERHADAP ANAK (Studi Kasus Kejaksaan Negeri Kota Malang)." *Dinamika* 29:1–23.
- 9) Ilyas, Amir. 2012. *Asas-Asas Hukum Pidana: Memahami Tindak Pidana Dan Pertanggungjawaban Pidana Sebagai Syarat Pemidanaan (Disertai Teori-Teori Pengantar Dan Beberapa Komentar)*. Yogyakarta: Rangkang Education.
- 10) Intan Diah Permata Ayu. 2022. "Penerapan Hukum Tindak Pidana Pelecehan Seksual Melalui Media Online Di Indonesia." 5–2003:(8.5.2017)2 787.
- 11) Ismantoro Dwi Yuwono, S. H. 2018. *Penerapan Hukum Dalam Kasus Kekerasan Seksual Terhadap Anak*. MediaPressindo.
- 12) KPAI. 2022. "Catatan Pelanggaran Hak Anak Tahun 2021 Dan Proyeksi Pengawasan Penyelenggaraan Perlindungan Anak Tahun 2022." 5.
- 13) Laurensius Arliman S. 2017. "Reformasi Penegakan Hukum Kekerasan Seksual Terhadap Anak Sebagai Bentuk Perlindungan Anak Berkelanjutan." *Kanun Jurnal Ilmu Hukum* 19(2):305–26. doi: 10.1017/CBO9781107415324.004.
- 14) Paradiaz, Rosania, and Eko Sopyono. 2018. "Perlindungan Hukum Terhadap Korban Pelecehan Seksual Anak Di Kota Manado." *Lex Crimen* 7(7).
- 15) Rahayu, Ninik. 2021. *Politik Hukum Penghapusan Kekerasan Seksual Di Indonesia*. Bhuana Ilmu Populer.
- 16) Rusianto, Agus. 2016. *Tindak Pidana & Pertanggungjawaban Pidana: Tinjauan Kritis Melalui Natara Asas, Teori, Dan Penerapannya*. Jakarta: Kencana.
- 17) Saladin, Tomi. 2020. "Tinjauan Yuridis Hukum Korban Kekerasan Seksual Berbasis Nilai Keadilan." *Mahkamah : Jurnal Kajian Hukum Islam* 5(2):270. doi: 10.24235/mahkamah.v5i2.7284.
- 18) Sriyanto, Ignatius. 1993. "Asas Tiada Kesalahan Dalam Pertanggungjawaban Pidana Dengan Penyimpangannya." (April):158–72.
- 19) Syamsu, Muhammad Ainul. 2016. *Penjatuhan Pidana Dan Dua Prinsip Dasar Hukum Pidana*. edited by I. K. Makinara. Jakarta: Kencana.



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