

LEGAL PROTECTION FOR CHILD PERPETRATORS OF THEFT DUE TO BRAINWASHING BY THEIR PARENTS: AN ANALYSIS OF PARENTAL CRIMINAL LIABILITY IN THE PERSPECTIVE OF INDONESIAN CRIMINAL LAW

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Abstrak

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Children who commit theft do not always act freely; their conduct may result from psychological domination or brainwashing by their own parents, undermining their capacity for independent decision-making. This raises questions about the extent of a child's criminal responsibility and whether manipulative parents can themselves be held liable. This study, using a normative legal method with statutory, conceptual, and case approaches, examines the legal protection available to such child offenders and the possibility of parental criminal liability under Indonesian law. Findings show that children who steal due to sustained parental psychological domination should be treated as victims of exploitation rather than independent offenders, entitled to protection under the best interests of the child principle within Indonesia's Juvenile Criminal Justice System. Parents who deliberately shape a child's intent to steal may be held liable under the doctrine of criminal participation, particularly as indirect perpetrators (doen pleger) or instigators (uitlokker), provided intent, psychological control, and causal links to the offense are established. The study concludes that brainwashing should be recognized as a legally relevant form of psychological domination in determining criminal liability, strengthening child protection while ensuring parental accountability.

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INTRODUCTION

Children represent both a divine trust and the future generation of the nation. They have fundamental rights to grow, develop, receive comprehensive protection, and live free from any form of violence, exploitation, or harmful influences that could impede their physical and mental growth. Protecting children is not only a moral duty but also a constitutional obligation, as explicitly stated in Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia. This article affirms that every child is entitled to the right to life, growth and development, as well as protection from violence and discrimination. These core principles are realized through Law No. 35 of 2014, which



amends Law No. 23 of 2002 on Child Protection, and Law No. 11 of 2012 on the Juvenile Criminal Justice System (UU SPPA). Both laws emphasize a protective approach, restorative justice, and the best interests of the child as their primary considerations.

In reality, children do not always commit crimes out of their own free will. Numerous studies reveal that family environment is one of the key factors contributing to the emergence of deviant behavior in children. Rather than serving as protectors and educators, parents may, under certain circumstances, encourage, instruct, manipulate, or even deliberately condition their children to engage in criminal acts for economic gain or personal benefit. This situation highlights that children are not merely offenders (children in conflict with the law), but also victims of psychological exploitation who urgently require comprehensive legal protection.

Brainwashing represents one of the critical forms of psychological manipulation that should receive greater attention within criminal law discourse. Psychologically, brainwashing is a deliberate and systematic process designed to reshape, modify, or dominate an individual's way of thinking by employing psychological pressure, repetitive indoctrination, emotional manipulation, and dependency creation. This process ultimately strips the victim of their capacity to make autonomous decisions. When carried out by parents against their own children, the natural power imbalance in the parent-child relationship renders the child particularly vulnerable, increasing the likelihood that they will obey their parents' directives including instructions to commit acts of theft.

This matter grows even more complicated when viewed through the lens of Indonesian criminal law. On the one hand, the child technically fulfills the legal elements of a theft perpetrator as stipulated in the Criminal Code (KUHP). On the other hand, the child's criminal intent (*mens rea*) has actually been influenced and in some cases even formed by the psychological control exerted by their parents. This situation gives rise to critical questions about the extent to which the child can be held criminally liable, and whether the parents should instead be regarded as the principal offenders, accountable under the doctrine of criminal participation (*deelneming*), either as indirect perpetrators (*doen pleger*) or as instigators (*uitlokker*).

This problem becomes significantly more complex when viewed through the framework of Indonesian criminal law. Contemporary child protection paradigms in the criminal justice system regard children primarily as legal subjects who need to be rehabilitated, rather than simply punished. Consequently, handling cases of children influenced by their parents should not be limited to imposing penalties on the child alone. Instead, it must also identify the intellectual actor (*intellectual offender*) who orchestrated the crime. This approach is in line with the core principles of the Juvenile Criminal Justice System, which emphasizes safeguarding children's rights, rehabilitation, and social reintegration over mere retribution. In addition, the concept of restorative justice demands that criminal responsibility be assigned to the party with the greatest culpability in the offense.

This perspective resonates with the thoughts of Abraham Ferry Rosando, who asserts that Indonesian criminal law has evolved toward a resolution model that moves beyond punishment and instead prioritizes the restoration of substantive justice via restorative mechanisms. However, until now, Indonesian criminal law has not provided any explicit regulation that recognizes brainwashing by parents as a ground for criminal liability. Consequently, law enforcement officials often concentrate the criminal process

exclusively on the child as the direct offender, without adequately investigating the underlying psychological domination that prompted the crime. This legal vacuum risks creating injustice, because the child who is actually a victim of manipulation ends up facing heavier legal consequences than the parents, who are the true architects behind the formation of the criminal intent.

While many studies have been conducted on the legal protection of children in conflict with the law, most of them continue to focus primarily on the application of diversion, restorative justice, and the safeguarding of children's rights during criminal proceedings. This research introduces novelty by specifically analyzing brainwashing perpetrated by parents as a form of psychological dominance that can serve as the foundation for establishing parental criminal liability under the doctrine of participation (*deelneming*) in Indonesian criminal law. Accordingly, this study goes beyond viewing the child solely as a perpetrator of theft; it also positions the child as a victim of psychological manipulation who deserves comprehensive legal protection in accordance with the principle of the best interests of the child.

LITERATURE REVIEW

Brainwashing can be defined as a purposeful and methodical type of psychological manipulation designed to fundamentally alter a person's thought patterns without their true consent. It achieves this by embedding new values or beliefs through prolonged emotional pressure, repeated indoctrination, and the slow undermining of critical thinking and personal autonomy. From the perspectives of cognitive and psychoanalytic theory, this process works by directly interfering with consciousness: continuous exposure to emotional stress combined with consistent ideological messaging leads to real cognitive transformation. Over time, it erodes an individual's psychological defenses until an entirely new belief system and identity become established. In this condition, the person increasingly loses the ability to differentiate between their own original values and those externally imposed, which accounts for why a child exposed to long-term parental manipulation might eventually view an illegal act such as theft as something ordinary or even morally required.

This psychological aspect is closely intertwined with the concept of legal protection, which refers to all efforts undertaken by the state to ensure legal certainty and safeguard citizens' rights, while imposing sanctions on violators in accordance with applicable laws (Hidayanti, Thahir, & S, 2024). In general, legal protection is divided into two main categories: preventive protection, which is carried out through regulations, legal education, and supervision aimed at preventing violations before they happen, and repressive protection, which involves the enforcement of sanctions after a violation has occurred. Both forms are implemented institutionally through the judiciary, public prosecutors, the police, and alternative non-litigation dispute resolution mechanisms.

The child, as the primary subject entitled to such protection, is legally defined under Law No. 35 of 2014 amending Law No. 23 of 2002 on Child Protection as any individual who has not yet attained the age of eighteen years. This definition also encompasses a child who is still in the womb (Marhayani et al., 2024). This legal understanding of childhood is closely linked to the issue of legal capacity. Since children have not yet achieved complete physical, mental, and emotional maturity, the law places

them under the guardianship of their parents or a legal guardian. This arrangement acknowledges that a child's limited capacity does not mean they lack rights, but rather that they require guidance and supervision in any legal actions involving them (Syam, 2023).

This guardianship role highlights the crucial position of parents in a child's overall development. Far beyond the biological act of giving birth, parenthood involves providing attentive care, proper guidance, and sincere affection, making parents a child's first educators and main protectors throughout every phase of their growth (Samta, Mulyani, & Cuacicha, 2023). In this context, the term "parent" is not limited to biological relationships; it also includes stepparents, adoptive parents, and any individual who takes on the responsibility of raising the child. This is because such closeness and authority place the child in a vulnerable position, making them highly susceptible to the parent's influence whether that influence is protective and positive or potentially harmful.

When such influence is misused or abused, the applicable framework shifts to the theory of criminal liability. This theory requires three key elements: an unlawful act, fault (in the form of intent or negligence), and the perpetrator's capacity to be held legally accountable. This aligns with the fundamental principle of *geen straf zonder schuld* no punishment without fault (Fridawati et al., 2024). Since accountability is strongly linked to psychological maturity, the law considers age as a critical determinant. A child below a certain age is presumed to lack the full ability to understand the consequences of their actions or to differentiate between right and wrong. Consequently, juvenile offenders are handled through a distinct legal process from adults, prioritizing guidance, restorative justice, and the rehabilitation of the child rather than punitive measures (Muhammad, 2020).

Finally, theft is commonly defined as the unlawful and unauthorized taking of another person's property, typically done in a secretive manner. Under Indonesia's new Penal Code (Law No. 1 of 2023), the offense is regulated in greater detail than before. Unlike the previous code, which only distinguished between ordinary and aggravated theft, the new law categorizes theft into three levels: ordinary theft, aggravated theft, and theft under certain aggravating conditions. It also increases the maximum penalty for ordinary theft from five to seven years' imprisonment (Harahap et al., n.d.). Nevertheless, the fundamental elements of the crime—namely, the unlawful taking of another's property and the presence of criminal intent—remain unchanged. As a result, a child's act of taking property still technically fulfills the formal elements of theft, even if, according to the concept of brainwashing, the intent behind the act did not arise independently from the child.

Taken together, the reviewed literature demonstrates that when brainwashing—understood as a legally recognizable form of psychological domination—is perpetrated by a parent against a child, leading the child to commit theft, three simultaneous outcomes emerge: the child technically meets the elements of theft under the Penal Code, the child is recognized as a victim entitled to protection under child protection laws, and the parent satisfies the elements of criminal participation as well as abuse of parental authority. This intersection provides the theoretical basis for the central argument of this study: in such cases, criminal liability should be imposed on the parent as the intellectual author of the offense, while the child should be handled through the Juvenile Criminal Justice System as a victim who requires rehabilitation rather than punishment.

RESEARCH METHOD

This research employs two approaches, namely the statute approach and the conceptual approach. The statute approach is carried out by examining various regulations relating to the legal protection of child offenders who commit theft as a result of brainwashing by their parents, in order to analyze the application of the applicable legal norms. The conceptual approach is used to examine relevant legal concepts, principles, and theories, particularly those concerning child protection, criminal liability, and the influence of parental psychological manipulation that leads a child to commit a criminal act. Both approaches serve as the foundation for analyzing the research problem and formulating a legal solution in accordance with the principle of the best interests of the child.

RESULTS AND DISCUSSION

Brainwashing as a Form of Abuse of Parental Power and Criminal Liability through the Concept of Participation

The right of every child to grow and develop, along with protection from all forms of violence, is explicitly guaranteed by the 1945 Constitution of the Republic of Indonesia and further detailed in Law No. 35 of 2014 concerning Child Protection. Article 14 of the Law states that every child has the right to be raised by their own parents, while Article 26 paragraph (1) places a responsibility on parents to care for, educate, build the character of, and instill moral values in their children. These provisions indicate that parental responsibility goes beyond fulfilling basic physical needs and includes the important task of shaping the child's personality and moral character; however, these articles are formulated in very general terms as they do not establish specific quality standards of care that address a child's psychological and emotional needs, so the state still lacks an effective instrument to evaluate whether the parenting practices being applied align with the principles of child protection and the best interests.

The absence of clear and specific standards in the existing regulations creates space for the emergence of toxic parenting, which is characterized by harsh, manipulative, and overly controlling behavior toward children. This study reveals that verbal abuse in the forms of insults, threats, and repeated belittling can cause deep psychological trauma that is invisible to the eye, yet leaves lasting impacts on a child's self-esteem and moral development, particularly their ability to distinguish between right and wrong. Furthermore, the unequal power dynamics between parents and children understood through Michel Foucault's perspective on power relations allow parents to misuse their authority when it is not exercised in line with the principles of respecting children's rights.

Such conditions can escalate into brainwashing when parents repeatedly apply psychological manipulation until the child loses their ability to think critically and make independent decisions. In practice, this occurs when children are prohibited or restricted without any clear justification, denied the opportunity to voice their opinions, wrongly blamed for mistakes, and burdened with expectations that are inappropriate for their age. This form of indoctrination gradually reshapes the child's mindset, leading them to perceive unlawful acts—such as theft—as acceptable, normal, or even as a duty to fulfill their parents' demands. Consequently, a child in this situation occupies two contradictory positions simultaneously: as an offender for committing the act, and as a victim whose will has been manipulated and controlled by their own parents.

Parents stand closest to the child and control the upbringing process. This creates legal consequences. Any act by the child shaped or directed by the parents cannot be separated from the parents' responsibility. Parents deliberately shape the child's mindset until the child commits theft. Criminal responsibility then applies to both the child and the parents. The parents exploit the power imbalance, the child's dependency, and the child's trust to commit the crime.

Parental responsibility is analyzed through the concept of participation (deelneming) in criminal law. The concept explains that a criminal act can involve multiple parties with different roles, including the person who orders the act (doen pleger), the instigator (uitlokker), or the joint perpetrator (medepleger). Articles 20 and 21 of Law No. 1 of 2023 on the Penal Code state that criminal responsibility applies not only to the direct perpetrator but also to those who order, participate in, or instigate others to commit a criminal act, with penalties equivalent to those imposed on the principal offender.

Parents who instill harmful doctrines in a child until the child is willing to commit theft fulfill the elements of Article 20 letter d of the Law. They induce another person to commit a criminal act through misdirection or by providing the means, opportunity, and information. Misdirection here refers to distorting the child's way of thinking, which remains highly vulnerable to influence from the closest adults. Parents who avoid being the direct perpetrator choose instead to indoctrinate the child until they control the child's emotional and mental state. The resulting criminal act then becomes the realization of the parents' will executed through the child's actions.

Economic Exploitation of Children and a Juridical Analysis of Parental Liability Based on Legal Theory

Parents who use a child to commit theft for their own benefit can also be qualified as engaging in economic exploitation of the child. Article 1 numbers 1 and 15 of Law No. 35 of 2014 on the Amendment to Law No. 23 of 2002 on Child Protection defines exploitation as any use of a child to obtain economic gain that disrupts the child's growth and development. A child whose stolen proceeds are enjoyed by the parents, while the child alone bears all the legal and social risks, shows the same pattern as other forms of economic exploitation such as forcing a child to beg or work on the street. The methods differ, yet the exploitative nature remains the same.

Article 76I of the Law expressly prohibits anyone from placing, allowing, committing, ordering, or participating in the economic exploitation of a child. This provision provides a strong legal basis to prosecute parents who order or influence a child to commit theft for their own economic benefit. The provision regulates criminal liability not only for the direct perpetrator but also for the party who orders or controls such exploitation. The connection between brainwashing and economic exploitation lies in the parents' ultimate goal of eliminating the child's ability to distinguish right from wrong so that the child willingly carries out instructions that bring financial benefit to the parents.

The impact of this type of exploitation goes beyond material loss. It disrupts the child's psychological, moral, and social development, including loss of self-confidence and the tendency to view criminal acts as normal. This condition shows that protecting the child cannot be resolved solely through a punitive approach toward the child. Criminal liability must also be imposed on the parents as the party who created, controlled, and profited from the offense. Such measures align with the principle of the

best interests of the child.

Imposing criminal liability on parents cannot be based solely on the existence of a family relationship. It must be analyzed through the theory of legal protection, the theory of criminal liability, and the principle of the best interests of the child. The theory of legal protection proposed by Satjipto Rahardjo views legal protection as an effort to safeguard rights that have been harmed through repressive sanctions or preventive measures to prevent violations. Children who have not yet reached physical, mental, and emotional maturity receive special attention due to their vulnerable position. The law therefore places a greater obligation on parents to protect the child from harmful influences that endanger their future. When parents instead perform brainwashing, they violate this legal obligation. Law enforcement must therefore not only restore the child's condition as a victim but also take action against the parents for abusing their authority.

The theory of criminal liability requires the presence of an unlawful act, an element of fault in the form of intent or negligence, and the perpetrator's capacity to be held accountable. This aligns with the principle of *geen straf zonder schuld*, which means there is no punishment without fault. Parents who consciously, deliberately, and repeatedly instill doctrines and psychological pressure in a child until the child believes that theft is the right thing to do demonstrate clear intent. This satisfies the requirements for criminal liability. Viewed through the doctrine of participation, such parents can be qualified as the intellectual perpetrator (*doen pleger*) or the instigator (*uitlokker*). The will to commit theft originates from the parents' direction and control, while the child merely serves as the executor of that will.

The principle of the best interests of the child serves as a fundamental principle in the Convention on the Rights of the Child, the Child Protection Law, and Law No. 11 of 2012 on the Juvenile Criminal Justice System. Every policy or law enforcement measure involving a child must prioritize the child's welfare and future. A child who commits theft due to brainwashing must be treated differently from an adult offender. Their will has been influenced by psychological manipulation. The appropriate approach for them consists of rehabilitation, psychological assistance, and social reintegration rather than punishment alone. Conversely, the parents hold the dominant role and benefit from the offense. They must be held fully criminally liable under the provisions on participation in the Penal Code combined with the criminal provisions of the Child Protection Law. This approach best achieves justice, provides legal certainty, and delivers balanced benefits for the child, the parents, and society.

CONCLUSION

Brainwashing carried out by parents against a child until the child commits theft constitutes an abuse of power. It contravenes the parental obligations stipulated in Article 14 and Article 26 paragraph (1) of Law No. 35 of 2014 on Child Protection. At the same time, it satisfies the elements of criminal participation under Article 20 letter d of Law No. 1 of 2023 on the Penal Code and the elements of economic exploitation under Article 76I of the Child Protection Law. Criminal liability should be imposed entirely on the parents as the party who controls and profits from the offense. The child should be treated as a victim entitled to a rehabilitative approach in the form of psychological assistance and social reintegration. This conclusion is based on the theory of legal protection, the theory of criminal liability, and the principle of the best interests of the child.

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