



LEGAL PROTECTION AND DETERRENT EFFECT ON BULLYING PERPETRATORS IN INDONESIA

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Article Info	Abstract
<p>Article History Received : 2024-09-03 Revised: 2024-09-05 Published: 2024-10-01</p> <p>Keywords: <i>Legal Protection,</i> <i>Deterrent Effect,</i> <i>Bullying, Diversion,</i> <i>Restorative Justice.</i></p>	<p>This study discusses legal protection and deterrent effects on perpetrators of bullying in Indonesia, with a primary focus on bullying committed by children in the school environment. Bullying is a form of physical or psychological violence that can have significant negative impacts on perpetrators and victims. In a legal context, bullying is considered an unlawful act that requires serious attention. This study uses a normative juridical method with a descriptive approach to analyze related laws and regulations, especially the Child Protection Law (Law No. 35 of 2014) and the Juvenile Criminal Justice System (Law No. 11 of 2012).</p> <p>The results of the study indicate that there are various forms of legal protection for child perpetrators, such as the right to diversion to avoid formal trials, as well as other basic rights in accordance with the principles of restorative justice. The deterrent effect on perpetrators can be achieved through the application of criminal sanctions and proportional actions, such as imprisonment as regulated in Article 80 of Law No. 35 of 2014. In addition, diversion as an out-of-court settlement approach is considered effective in reducing the negative impact of the judicial process on children, while encouraging recovery for victims.</p> <p>This study concludes that legal protection and the implementation of diversion for perpetrators of bullying are important steps in creating a just, rehabilitative, and preventive legal system. The recommendations of this study include increasing consistent legal implementation and socialization to the community to reduce the number of bullying among children.</p>

I. INTRODUCTION

Bullying is any form of oppression or violence that is carried out intentionally by one person or a group of people who are stronger or more powerful against another person, with the aim of hurting and is carried out continuously. There are many definitions of bullying, especially those that occur in other contexts such as at home, work, society, virtual communities. However, in this case it is limited to the context of bullying children at school. Bullying in children is aggressive behavior that is carried out repeatedly by one or a group of students who have power, against other children and teenagers who are weaker, with the aim of hurting that person.

Criminal acts in the form of crimes viewed from a formal perspective (according to law) are acts that are punished by society (in this case the state), if reviewed more deeply to the point, then crimes are acts that are contrary to morality. Crime is identical to a violation of the law. Crime is an act that is done intentionally (*doleus*) and is

done consciously with a certain intention to benefit oneself which is detrimental to others or society. Bullying is unpleasant behavior either verbally, physically, or socially in the real world or cyberspace that makes someone feel uncomfortable, hurt and depressed whether carried out by individuals or groups. Bullying is considered to have occurred if someone feels uncomfortable and hurt by the actions of others towards them. Bullying can be likened to the seeds of many other forms of violence, for example: brawls, intimidation, mob attacks, murder, and others. As the seeds of violence, if bullying can be suppressed, then more severe violence can be prevented.

The definition of Bullying according to Komnas HAM (Human Rights) is a form of long-term physical and psychological violence carried out by a person or group against someone who is unable to defend themselves from a situation where there is a desire to hurt or scare people or make people depressed, traumatized, depressed

and helpless. The habit of ganging up as a form of taking the law into one's own hands in resolving disputes or conflicts also seems very strong among students and not only that, there is the fact that one in three children admits to having committed acts of bullying against their friends.

Legal protection for every Indonesian citizen without exception can be found in the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), for that every product produced by the legislature must always be able to provide legal protection for everyone, and must even be able to capture the aspirations of law and justice that are developing in society. This can be seen from the provisions governing the equality of legal standing for every citizen.

Child Protection Law is a law that guarantees the rights and obligations of children. Child protection law is in the form of customary law, civil law, criminal law, child procedural law. Child protection concerns various aspects of life and livelihood, so that children can grow and develop properly in accordance with their basic rights.

According to Article 1 number 15a of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection (Child Protection Law), "violence is any act against a child that results in physical, psychological, sexual misery or suffering, and/or neglect, including threats to commit acts, coercion, or unlawful deprivation of liberty". Based on the opinions above in relation to the definition of violence in the Child Protection Law, it can be concluded that bullying is included in the form of violence against children.

Things that can cause someone to become a Bully are that generally the perpetrators are in a higher social class compared to the victims of Bullying, they have the power to intimidate the victims so that the victims become powerless to fight back, the perpetrators seem to get satisfaction from what they do to the same victim over a relatively long period of time.

Children in conflict with the law according to Article 1 number 2 of Law No. 11 of 2012 are children in conflict with the law, children who are victims of criminal acts and children who are witnesses to criminal acts. Based on Article 1 number 3 of Law No. 11 of 2012, children in conflict with the law referred to as children are children who are 12 years old, but not yet 18 years old who are suspected of experiencing physical, mental, and/or economic suffering caused by criminal acts.

Children as perpetrators or children in conflict with the law are children who are suspected, accused, or found guilty of violating the law and require protection. It can also be said that children must follow legal procedures due to the delinquency they have committed. According to Setya Mulyadi, diversion for child perpetrators is to provide a better alternative compared to the official procedure of going to court.

The extraordinary impact of bullying will occur on the perpetrator and the victim. The perpetrator will have a tough character, and feel they have power, the victim of bullying will feel anxious, can increase towards depression which can end in suicide. The victim of bullying will reflect on what actions have been received, another extreme action the victim will take revenge on the perpetrator of bullying which of course in a more extreme form. The victim of bullying will change condition to become a perpetrator of bullying.

The above legal provisions become interesting to discuss when faced with a case that demands a resolution, in this case a case of bullying or what we often know as bullying committed by children. Bullying or better known as bullying is a phenomenon that has long occurred among teenagers.

With the laws and regulations governing the problem of Bullying, it is expected to create a deterrent effect for the perpetrators so that in the future this problem can be resolved and can also provide a deterrent effect on the perpetrators so that the community can be more careful about carrying out Bullying. Based on the background description above, the author is interested in studying and knowing more about the problem in a scientific work entitled, Legal Protection and Deterrent Effects on Bullying Perpetrators in Indonesia.

With the formulation of the problem How is the legal protection and granting of rights that can be given to perpetrators of bullying? And How are the deterrent effects and sanctions applied to perpetrators of bullying?

II. RESEARCH METHODS

This research is a normative legal research, namely research conducted by collecting and analyzing secondary data. This research is descriptive, namely research by means of presentation that aims to obtain a complete picture (description) of the state of applicable laws and regulations related to legal theories and

practices of implementing positive law concerning protection of victims of cybercrime. The research method is used as a systematic way to search for, find, develop, analyze a problem, test objective and optimal truth and carry out the correct method in research. This research uses a normative legal research method. Normative legal research is legal research that examines written law from various aspects, namely aspects of theory, history, philosophy, comparison, structure and composition, scope of material, and consistency. The types of data used are secondary legal materials (legal journals), non-legal materials (Big Indonesian Dictionary (KBBI), and information from the internet with credible sources). The data collection technique in this study is document study or library research, and the data analysis used in this study is qualitative analysis.

III. RESULTS AND DISCUSSION

A. Legal protection and granting of rights that can be given to perpetrators of bullying

Criminal acts in the form of crimes viewed from a formal perspective (according to law) are acts that are given a penalty by society (in this case the state), if reviewed more deeply to the point, then crimes are acts that are contrary to morality. Crime is identical to a violation of the law. Crime is an act that is done intentionally (*doleus*) and is done consciously with a certain intention to benefit oneself which is detrimental to others or society.

Legal protection for every Indonesian citizen without exception can be found in the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), for that reason every product produced by the legislature must always be able to provide a guarantee of legal protection for everyone, and must even be able to capture the aspirations for law and justice that are developing in society.

Protection of children in a nation's society is a measure of the nation's civilization, therefore it must be attempted in accordance with the capabilities of the nation and state. Child protection aims to strive for fair and just treatment, to achieve child welfare. The increasing number of children in conflict with the law that can damage the social system, especially Indonesian society, is carried out by children under the age of 18 and as a result of their delinquency, a child must face the law and the Juvenile Correctional Institution.

Thus, there needs to be a paradigm shift in handling children in conflict with the law, based on, among other things, the role of society, government, and other state institutions that are obliged and responsible for providing special protection for children in conflict with the law.

Legal protection for perpetrators of crimes in the national criminal law system is widely regulated. Some forms of protection for perpetrators of crimes that can be found include the following:

- a. The right to know the basis/reasons for the arrest, detention and/or imposition of a criminal penalty against him/her.
- b. The right to receive compensation or rehabilitation, if the arrest, detention or imposition of a criminal penalty against him is not based on law.
- c. The right to express opinions both verbally and in writing.
- d. The right not to make a statement (right to silence).
- e. The right to be treated equally (without discrimination).

CST Kansil in his book *Dikdik* states that, basically, perpetrators of crimes are given rights, namely:

- a. To be clearly informed in a language he understands about what he is suspected or accused of.
- b. To receive visits from his personal doctor during detention for health reasons.
- c. To receive family visits to obtain guarantees for suspension of detention or to seek legal assistance or for work or family purposes.
- d. To contact and receive visits from clergy.
- e. To be tried in a court hearing open to the public.
- f. No obligation to provide proof is imposed.

According to Setya Mulyadi, diversion for child offenders is to provide a better alternative compared to the official court procedure. The goal is to prevent the child from the official court procedure and reduce the possibility of recidivism in the future.

B. The deterrent effect and sanctions applied to perpetrators of bullying

Meanwhile, handling children in conflict with the law in bullying cases can also be done through diversion efforts, as regulated in Article 1 number 7 of the SPPA Law that diversion is an

effort to divert the settlement of children's cases from the criminal justice process to a process outside the criminal justice system. This diversion concept is based on restorative law. Children as victims, the main focus of the restorative approach lies in the restoration and compensation of losses.

Protection of Bullying Criminals based on Law Number 11 of 2012 concerning the Juvenile Justice System. Law Number 11 of 2012 concerning the Juvenile Justice System replaces Law Number 3 of 1997 concerning juvenile justice which is no longer in accordance with the development of the times and the legal needs of society because it has not comprehensively provided protection to children in conflict with the law.

In the case of criminal acts of bullying, the emphasis is on the article that is closely related to violence, namely Article 76C of Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection. This article has regulations that if violated have consequences listed in Article 80 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, which reads:

1. Any person "who violates the provisions as referred to in Article 76C shall be punished with imprisonment for a maximum of 3 (three) years and 6 (six) months and/or a maximum fine of Rp. 72,000,000.00 (seventy-two million rupiah)."
2. In the event that a child as referred to in paragraph (1) is seriously injured, the perpetrator shall be punished with a maximum prison sentence of 5 (five) years and/or a maximum fine of IDR 100,000,000.00 (one hundred million rupiah).
3. In the event that a child as referred to in paragraph (2) dies, "the perpetrator shall be punished with a maximum prison sentence of 15 (fifteen) years and/or a maximum fine of IDR 3,000,000,000.00 (three billion rupiah)."
4. The penalty is increased by one third of the provisions as referred to in paragraph (1), paragraph (2), paragraph (3) if the perpetrator of the abuse is the parent. "Based on

the sanctions given in Article 80 paragraph (1) and paragraph (2), which states that the penalty threatened if Article 76C is violated is a maximum prison sentence of 3 (three) years 6 (six) months and/or a maximum fine of Rp. 72,000,000.00 (seventy-two million rupiah) and the perpetrator is punished with a maximum prison sentence of 5 (five) years and/or a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah), then based on Law Number 11 of 2012 concerning the Juvenile Justice System, it is mandatory to make efforts to divert children.

This is as regulated in Article 7 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which states that:"

1. At the level of investigation, prosecution and examination of children's cases in district courts, diversion must be attempted.
2. Diversion as referred to in paragraph (1) is implemented in cases where the crime is committed:
 - a) threatened with imprisonment of 7 (seven) years, and
 - b) not a repetition of the crime.

Article 80 paragraph (1) and paragraph (2) the criminal sanctions threatened against the perpetrator are imprisonment of less than 7 years, therefore it is mandatory to make efforts to divert for the benefit of the child. The diversion referred to in the Child Justice System Law is the transfer of the settlement of children's cases from the criminal justice process to a process outside the criminal justice system. Diversion efforts are efforts to create restorative justice, namely the settlement of criminal cases by involving the perpetrator, victim, the perpetrator/victim's family, and other related parties to jointly seek a fair settlement by emphasizing restoration to the original state, and not retaliation, so that diversion has a positive impact on the perpetrator and victim when the victim's demands have been met by the perpetrator.

Although the child perpetrator of "bullying" can be brought to court, investigators are required to make diversion efforts to achieve restorative justice for the child perpetrator of "bullying" by emphasizing recovery rather than retaliation. Based on Article 1 number 7 of the

SPPA Law, Diversion itself has the meaning of transferring the settlement of a child's case from the criminal justice process to a process outside the criminal justice system.

If the diversion efforts are unsuccessful, the case is referred to the public prosecutor to be resolved using the judicial system. The sanctions that can be imposed on children in trouble with the law consist of two, namely: criminal sanctions and action sanctions. Criminal sanctions are regulated in the SPPA Law Article 71 paragraph (1) which is the main criminal penalty and Article 71 paragraph (2) which is the additional criminal penalty. The second sanction is the action sanction regulated in the SPPA Law Article 82.

Criminal acts in the form of crimes, viewed from a formal perspective (according to law), are acts that are punished by society (in this case the state). If we look at them more deeply to the point, crimes are acts that are contrary to morality.

Crime is identical to a violation of the law. Crime is an act that is done intentionally (doleus) and is done consciously with a certain intention to benefit oneself which is detrimental to others or society.

Matter This can be seen from the provisions that regulate the existence of equal legal status for every citizen.

Protection of children in a nation's society is a measure of the nation's civilization, therefore it must be attempted in accordance with the capabilities of the nation and state. Child protection aims to strive for fair and just treatment, to achieve child welfare. The increasing number of children in conflict with the law that can damage the social system, especially Indonesian society, is carried out by children under the age of 18 and as a result of their delinquency, a child must face the law and the Juvenile Correctional Institution.

Thus, there needs to be a paradigm shift in handling children in conflict with the law, based on, among other things, the role of society, government, and other state institutions that are obliged and responsible for providing special protection for children in conflict with the law.

IV. CONCLUSIONS AND RECOMMENDATIONS

Basically, perpetrators of crimes are given the following rights: To be clearly informed in a language they understand about what they are suspected or charged with, To receive visits from their personal doctor during detention for health reasons, whether related to the legal process or

not, To receive visits from family to obtain guarantees for suspension of detention or for efforts to obtain legal assistance or for work or family reasons.

To contact and receive visits from clergy, To be tried in a court hearing that is open to the public, Not burdened with the obligation of proof. Article 80 paragraph (1) and paragraph (2) the criminal sanctions threatened against the perpetrator are imprisonment of less than 7 years, therefore it is mandatory to try diversion for the benefit of the child. The diversion referred to in the Child Justice System Law is the transfer of the settlement of a child's case from the criminal justice process to a process outside the criminal justice system.

Diversion efforts are efforts to create restorative justice, namely the resolution of criminal cases by involving the perpetrator, victim, the perpetrator/victim's family, and other related parties to jointly seek a fair resolution by emphasizing restoration to the original state, and not retaliation, so that diversion has a positive impact on the perpetrator and victim when the victim's demands have been met by the perpetrator.

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