

Handling Cases of Bullying Practices in the School Environment in Terms of Criminal Law

Dedi Dores¹, M. Khusni Mubarak², Hery Setiawan¹, Milka Kumala¹, Muhammad Khilmi¹

¹Universitas Kristen Cipta Wacana, Malang, Indonesia

²Universitas PGRI Delta Sidoarjo, Sidoarjo, Indonesia

Article history

Received: 10 June 2024

Revised: 11 June 2024

Accepted: 14 June 2024

Keywords

Bullying;

Criminal offense;

Victim protection;

Abstract

This research aims to find out what are the backgrounds of bullying, law enforcement for perpetrators, protection for victims and how to find solutions so that bullying cases do not mushroom in places that should be a place of knowledge. The research method used is normative research method using regulatory approach. Legal protection for victims of bullying crimes is regulated in Article 76C of the Child Protection Law No. 35 of 2014. This article contains content that prohibits violence against children. Legal protection against the perpetrators of bullying, where the perpetrator also has rights that are his rights, protection can be achieved by prioritizing differences in efforts to overcome the problem of bullying and by overriding criminal penalties, if diversion does not find an agreement, then specifically the perpetrators of child crimes are tried taking into account the principles contained in Law Number 11 of 2012 concerning the Juvenile Justice System. Crime prevention efforts can be divided into penal prevention (criminal law) and non penal prevention (other than criminal law).

1. Introduction

Children are the younger generation, the successor of the nation, the people who will realize the ideals of the nation in the future, so it is necessary to have children who have good qualities to meet a good future. Children have a strategic role and have special traits and personalities, so coaching and protection are needed to ensure balanced physical, mental and social growth and development. In the process of growth and development of children, of course, affect the formation of personality and behavior of children in the future. If in the process of growing up, children are often abused, and even become victims of violence, then the formation of the child's personality will be disrupted.

The protection of children deserves our attention because children are the future owners of the country. Article 28B paragraph (2) of the 1945 constitution stipulates: "every child has the right to life and development, entitled to protection from violence and discrimination." The number of cases of violence against children that have occurred lately is increasingly heartbreaking and alarming. Violence against children that is carried out in an aggressive and repressive way, both in the form of physical acts and verbal attacks, also occurs in the school environment. This is often referred to as bullying or harassment. Bullying or bullying is a phenomenon that is familiar in Indonesia and abroad. The parties involved are usually school-age children, and today bullying is still common in elementary to high school, even in schools, universities, although in relatively small numbers.

Today, the perpetrators are not only carried out by students in schools but also by teachers and community members in the school environment. Violence that occurs in this school will cause feelings of resentment, hate, fear and lack of trust. Students will hate and fear their teachers, upperclassmen will hate and hold grudges against their upperclassmen, there will arise rivalries and disputes between students, gangs will form between students. , which can prevent the child from focusing on learning due to pressure from teachers, upperclassmen, as well as strong gang members (trauma). Violence can be understood as an act that causes discomfort or harm to others, both physically and psychologically. Violence that is not only in the form of physical exploitation but also as psychological violence needs attention because it will have a traumatic impact on the victim. Violent behavior in education is often called bullying.

Students are students or students who are entitled to a decent and quality education in accordance with legislation. The right to be mentioned is not only limited to education but is also legally protected in schools. Legal protection in question is the legal protection against all forms of violence, both physical,

*Corresponding author, email: dedidoresukcw@gmail.com

doi:

© 2024 The Authors

This work is licensed under a [Creative Commons Attribution-ShareAlike 4.0 International License](https://creativecommons.org/licenses/by-sa/4.0/)

sexual, and psychological violence. Legitimate protection of learners is necessary to ensure the continuity of the teaching and learning process. The protection of students against all types of violence is generally regulated in the Child Welfare Law No. 23 of 2002, Article 13(1) which states that "every child in the care of his mother, guardian or other person in charge of Education, has the right to protection from discrimination, economic and sexual exploitation, neglect, cruel treatment, violence and abuse, injustice and other ill-treatment".

The alarming impact of bullying is that it can cause a person to have suicidal thoughts. There is no denying that the practice of bullying has quite a "terrible" impact, especially for those who are often bullied or people who are victims of physical violence. intimidation. This physical abuse is often recognized by the presence of signs of violence such as bruising (slap, slap, and/or beating). In addition, there is verbal abuse that is more difficult to recognize because there are no visible signs to recognize verbal abuse. Verbal means saying something with the intention of hurting or making fun of someone, such as making a joke by calling/greeting a name that hurts feelings, or lying or spreading false rumors about someone. Although it is not visible, this does not mean that verbal bullying does not pose a danger to the victim, on the contrary, it is a psychological attack that, if left unchecked, can also generate suicidal thoughts.

This study aims to find out what the background of bullying, law enforcement for perpetrators, protection of victims and how the solution so that bullying cases do not proliferate in a place that should be a place of science.

2. Method

The research method used is a normative research method using a regulatory approach. This research method is related to the legal standards contained in the legislation. According to Peter Mahmud Marzuki in his book "Legal Studies: Edivi Review", a legislative approach is done by reviewing all legislation relevant to the legal issues being addressed. Legal documents used are primary legal documents, according to Peter Mahmud Marzuki primary legal documents are mandatory or primary legal documents. in this study using the Criminal Code (KUHP) and the law relating to this case. While secondary legal documents are complementary legal documents, while legal documents used in this article are legal documents, including law journals, related legal cases, etc.regarding writing. Both of these documents use literary research techniques. Basically, this paper uses legal research methods that are normative or consistent with existing legislation in Indonesia (Irawan, 2019).

3. Result and Discussion

Bullying behavior that occurs among students needs to attract the attention of many parties because bullying is a common problem, because it is necessary to have common interests to fix the problem of bullying, such as: parents, schools, law enforcement officers, government and others. also a community to help overcome and prevent bullying. Bullying is a complex problem and bullying is not an easy thing. So to solve the problem must start from the root of the problem is to find the factors that cause bullying behavior among students. Because coping with bullying without addressing the root of the problem will not work. If it works, it will not last long, so bullying will definitely reappear. External factors that influence a child to be a bully are the child's home environment, school environment, and social environment.

There are many reasons why people commit offenses. To find out why a person commits a bad deed, you should study criminology. Criminology is the study of crime. The name criminology was coined by the French anthropologist P. Topinard (1830-1911), which literally means the word "crimen" means crime or Crime and "logos" means science, so criminology can be understood as the science of crime or Crime. , 2001) as cited by Topo Santoso and Eva Achjani Zulfa, Bonger defines criminology as a science that aims to investigate the broadest symptoms of crime also contrary to decency (Santoso, 2001). By Jack D. Douglas and Frances Chalut Waksler, the term violence is used to describe actions or behaviors, both exaggerated and concealed, both offensive and defensive in nature, which are followed by the use of violence against others. (Salampessy, 2009) Abuse is a foreign language equivalent that can be interpreted as violent behavior. In Barker's Dictionary of Social Work cited by Abu Huraerah, violence is inappropriate behavior that results in misery or harm physically, psychologically or financially, both to individuals and groups (Huraerah, 2007). abuse that later developed and was used to refer to violence against children.

If violence is committed in education, according to W. What is called W. Charters as corporal punishment, is a response to violations of school rules in the name of disciplining children using corporal punishment, even when punishment/violence is not necessary (Anshori, 2009). The element of corporal

punishment is the perpetrator, the person or people closest to him such as teachers, parents, clerics and others who should have the authority, duties and opportunities to protect children.

Acts of violence in education are often referred to by the term "bullying". There are many definitions of bullying, especially those that occur in other contexts (workplace, community, virtual community). The term menacing is inspired by the English word Bull which means "Bull" who likes to Gore. Bullying is the abuse of power by a person or group (Sejiwa, 2008) according to Ken Rigby, bullying is the desire to hurt. This desire is manifested in actions, causing suffering. These actions are carried out directly by a stronger person or group, are more irresponsible, are often repeated and are carried out energetically. (Retno, 2008) in the context of education, specifically we are talking about bullying in schools. Riauskina, Djuwita, and Soesetio define school bullying as repeated aggression by a strong student/group of students, against a weaker student/group of students, with the intent to harm the person. Violent acts, including "harassment", can be classified as crimes. In criminal law literature, the term offense is a term used as a translation of the Dutch term, namely strafbaarfeit. (Hadiati, 1983) in the Criminal Code (KUHP/WvS) known term forgery, but in the criminal law literature is often used the term offense. While the legislator in formulating legislation using the term criminal cases, criminal acts or criminal acts (Poernomo, 1994).

Crime or criminality is one form of deviation. This deviant behavior has always flourished in society. According To Dr. social order. Thus, in addition to humanitarian problems, crime is also a social problem. According To Benoit S. The Alps are the "oldest social problem" (Muladi, 2005). To tackle crime, especially violence related to bullying, various countermeasures can be carried out. Both prevention and enforcement efforts, both through criminal and non-criminal means. Combating crime through the use of criminal law is the oldest way, as old as human civilization itself. Violence, including intimidation, can be classified as a crime. In the fight against bullying, the concept of crime prevention in general is inseparable. Crime prevention policies or efforts are essentially an integral part of community protection efforts (social Defense) and efforts to ensure social welfare (Nawawi, 2008). (Dutch.) Of the two foreign terms, the term "criminal law politics" can also be called "Criminal Law Policy". "or" strafrechtpolitiek" (Nawawi, 2008).

Understanding the policy or criminal law policy can be seen from the Legal Policy and criminal policy. According To Prof. Sudarto, "legal policy" is:

1. Efforts to achieve good regulation in accordance with the circumstances and situations that coincide
2. The policy of the state through the ruler to establish the desired regulations should be used to express what is contained in the society and to achieve what is desired (Nawawi, 2008).

Therefore, according to Pr. Sudarto, the implementation of "criminal law politics" means efforts to achieve criminal legislation that is appropriate to the circumstances and situations at a certain time and for the future. Efforts or policies to make laws and regulations are essentially aimed at combating crime. Crime prevention is part of crime policy. Crime prevention policies are often called "crime policies". According To G.P. Hoefnagels, crime prevention efforts can be done with:

- (a) Execution of a criminal decision (execution of a criminal decision)
- (b) prevention without punishment (prevention without punishment) compared with
- (c) Influence People's views on crime and Punishment/Mass Media

Among the precautions taken by G.P. Hoefnagels suggests, points (b) and (c) can be included in the crime-free route. Criminal policy adjustment efforts are more focused on enforcement efforts, namely crime prevention efforts after the crime is committed, while non-criminal policies are more focused on prevention or efforts to prevent crime.

Acts of violence including bullying are classified as crimes, so that efforts to overcome them are no different from handling criminal acts in general. Efforts to combat bullying can use policies both criminal (criminal law) and non-criminal (other than criminal law). A criminal policy is used when a crime has been committed and has been prosecuted in court. The punishment policy aimed at handling criminal acts, especially threatening crimes, can use applicable legal provisions such as Article 170 paragraph (1), (2) of the Criminal Code, Article 351 to 355 of the Criminal Code, Article 80 of the Criminal Code. Code. Criminal Code-Law No. 23 year 2002.

This criminal attempt can be made if the case of bullying that occurs at school is within the scope of the law. However, not all cases of bullying are resolved through criminal means (criminal law), punitive measures or learning processes that are also used as a means of combating bullying when bullying occurs in schools. Family peace is the best way to overcome this bullying before it comes to legal proceedings and provide counseling support for teachers, clerics, families or psychiatrists of bully victims, those who experience psychological violence.

While non-criminal bullying prevention is an effort to prevent the occurrence of criminal acts in the school environment. Efforts to prevent this crime can be carried out at a time when the threat has not yet

occurred. Before the occurrence of bullying, prevention efforts can be done by socializing the consequences of bullying to students and the rights of students when bullying occurs to them, as well as efforts to provide awareness to students as perpetrators of bullying by instilling in students the thought that bullying is despicable and hated by everyone. This can be done through a personal approach to the bully.

From research and interviews conducted with sources, it can be illustrated that efforts can be made in tackling bullying by related parties after bullying occurs can use penal means through trial in court, while efforts to prevent criminal acts can use non-penal means. However, not all bullying that occurs can be resolved through penal means, academic processes or academic sanctions can be used in efforts to combat bullying that occurs in the school environment.

Efforts to prevent bullying by non-penal means (outside the criminal law), namely a) providing information to students about bullying, emotional control efforts of students, b) providing counseling services for students at school, c) socialization, counseling on law, religious norms, planting good people by related parties such as teachers, clerics/spiritual mentors, Police, Law and Human Rights departments and NGOs, d) preparing students who are free from bullying, both as perpetrators and as victims of bullying, e) fostering empathy for students. Meanwhile, efforts to overcome bullying are through the learning process, namely a) individual/individual approach, b) peace between students related to bullying, c) assistance from counselors as mediators for students involved in bullying, d) involving parents in the peace process between students involved in bullying, e) taking punitive learning steps for bullies.

Protection of victims of abuse based on Law No. 35 of 2014 amends Law No. 23 of 2002 on child protection. In essence, every citizen has the right to a sense of security and the right to protection from threats, as stated in the Constitution of the Republic of Indonesia year 1945: "everyone has the right to protection of self, family, honor, dignity. and your dignity, your property, your rights, and the enjoyment of a sense of security and protection from the threat posed by the fear of doing or not doing something are human rights".

Including protection from criminal acts of intimidation, where criminal acts of intimidation can cause fear and other physical and psychological effects. In Indonesia itself there are rules about bullying, especially law No. 35 of 2014 which amended law No. 23 of 2002 on Child Protection.

Article 76C of Law No. 35 of 2014 "no one shall place, permit, commit, order or commit violence against children" in this article, it is interesting to note that the prohibited phrase is to prohibit violence against children, obviously because it is covered by Law No. 23 of 2002 on child protection. Article 16 Paragraph (1) on the rights of the child stipulates that:

"Every child has the right to be protected from abuse, torture or inhumane punishment."Even without laws, no one, especially children, should be treated with violence. Regarding parenting, parents should temporarily rule out violent parenting because children often easily remember what their parents teach. Repetitive parenting will imprint in the minds of children, children who are born and raised in a violent way are also capable of committing violent acts in the social environment.

Considering that one of the types of bullying is physical bullying, this article serves as an article to protect children from committing the crime of bullying, and without specifying the violence in question, this article tends to give a definition of violence that uses physical violence. violence, acts of physical violence repeated abuse can be recognized by the presence of scars, but physical abuse is not always physical abuse can also cause psychological harm such as trauma or even if violence occurs in the school environment, will cause the victim to make decisions. to not go to school.

Protection of bullying perpetrators based on National Education Law No.11 of 2012 replaced the children's Court Law No.3 year 1997 is no longer relevant to the Times and the legal needs of the community because of inadequate protection against child victims of bullying. in conflict with the law. For the crime of bullying, the focus is on provisions that are closely related to violent crimes, namely Article 76C of Law 35 of 2014 which amends and complements several articles of the Child Protection Law No. 23 of 2002. This section contains provisions that if violated will cause the consequences listed in Article 80 of Law No. 35 of 2014 amendment to Law No. 23 of 2002 on Child Protection, which reads as follows:: Any person who violates the provisions referred to in Article 76C, shall be punished with imprisonment for a maximum of 3 (three) years 6 (six) months and/or a maximum fine of Rp 72,000,000. 00 (seventy-two million rupiah).

- 1) in the event that the child as referred to in Paragraph (1) is seriously injured, the perpetrator shall be punished with a maximum imprisonment of 5 (five) years and/or a maximum fine of Rp 100,000,000.00 (One Hundred Million rupiah).

- 2) in the event that the child referred to in Paragraph (2) dies, the perpetrator shall be punished with a maximum imprisonment of 15 (fifteen) years and/or a maximum fine of Rp 3,000,000,000.00 (three billion rupiah).
- 3) Criminal plus one third of the provisions as meant in Paragraph (1), Paragraph (2), Paragraph (3) if the perpetrator is his parents.

Referring to the sanctions given in Article 80 paragraph (1) and Paragraph (2), which states that the criminal threatened if Article 76 C is violated is a maximum imprisonment 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 shall be punished with a maximum imprisonment of 5 (five) years and/or a maximum fine of Rp 100,000,000. 00 (One hundred million rupiah), then Under Law Number 11 in 2012 on the juvenile justice system, it is mandatory to seek diversion for children. This is as stipulated 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 child cases in the District Court shall be attempted diversion.

(2) diversion as in Paragraph (1) shall be carried out in the case of criminal acts committed:

- a. shall be punished with imprisonment under 7 (seven) years, and
- b. not constitute a repetition of a criminal offense.

Article 80 paragraph (1) and (2), the threat of punishment imposed is a prison sentence of less than 7 years, so it is considered a violation of the rules for child safety. Diversification carried out in the Child Protection Act is to protect the rights of children from the process of protection against outside the criminal protection system. Diversification efforts are efforts to improve the performance of restoration, especially housing construction involving perpetrators, victims, families of perpetrators/victims, and other stakeholders to jointly seek equitable recovery at the expense of interests, not Development. Diversification has a positive effect on both the perpetrator and the victim when the victim's obligations are borne by the perpetrator, as shown in (Rasdi and Saru Arifin, 2016) "amicably resolved will have a positive impact on the victim or perpetrator when the victim's demands have been met by the perpetrator. The benefit of the parties derived from the forum directives from the perpetrator, for example, is most if the discretionary application of the initiative makes them feel/shadow men will be imprisoned/imprisoned".

4. Conclusion

Based on the description that has been discussed, it can be concluded that the legal protection of victims of bullying is regulated in Article 76 C of the Child Protection Law No. 35 in 2014. This article contains content that prohibits violence against children. Legal protection against perpetrators of bullying, where the perpetrator also has the right to be entitled to, protection can be achieved by prioritizing differences in efforts to overcome the problem of bullying and by excluding criminal penalties, if the diversion does not find agreement, then specifically the perpetrators of child crimes are tried taking into account the principles contained in Law Number 11 of 2012 concerning the juvenile justice system.. Crime prevention efforts can be divided into penal prevention (criminal law) and non-penal prevention (other than criminal law/ criminal law). Handling bullying is also generally divided into two namely criminal and non-criminal. Criminal countermeasures are applied after bullying has occurred and legal action is taken, while non-criminal measures are applied when bullying has not occurred. Non-criminal bullying prevention efforts, in particular (1) providing information to students about bullying, (2) efforts to manage students ' emotions, (3) providing advice to students at school, (4) socializing, providing advice on laws , religious norms, instilling good morals by stakeholders such as teachers, ustad/spiritual mentors, police, Moh and NGOs, (5) preparing students to be free from bullying, both as perpetrators and victims of bullying, fostering a consensus of student feelings. However, not all bullying prevention efforts use sanctions (criminal law), academic processes or academic sanctions are also used to overcome bullying that occurs in the school environment. Efforts to overcome bullying through the learning process, namely 1) individual/personal approach, 2) peace between students involved in bullying, 3) teacher advice assistance as a mediator for students involved in bullying, 4) involvement of parents in the peace process among students involved in bullying, 5) taking academic sanctions against bullying perpetrators.

Author Contributions

All authors have contributed to the research and preparation of this manuscript

Funding

No funding support was received.

Declaration of Conflicting Interests

The authors declare no conflict of interest in the study

References

- Arief, Barda, 2008, *Bunga Rampai Kebijakan Hukum Pidana Perkembangan Penyusunan Konsep KUHP Baru*, Kencana Prenada Media Group, Jakarta.
- Astuti, Retno, Ponny, 2008, *Meredam Bullying*, PT. Grasindo, Jakarta.
- Chazawi, Adami, 2007, *Pelajaran Hukum Pidana bagian I*, Raja Grafindo Persada, Jakarta.
- Fast, Jonathan. 2016. *Beyond Bullying (Breaking the Circle of Shame, Bullying, and Violence)*. New York: Oxford University Press
- Frisen, Ann and Kristina Holmqvist, dkk. 2008. 13 Years old's Perception of Bullying: Definitions, Reasons for Victimisation and experience of Adults response. *Educational Studies*, 105-117.
- Harris, Sandra, and Garth F. Petrie. 2003. *Bullying (The Bullies, The Victims, The Bystanders)*. United States of Amerika: The Scarecrow Press.
- Huraerah, Abu, 2007, *Child Abuse (Kekerasan terhadap Anak)*, cet ke-2 Edisi Revisi, Nuansa, Bandung.
- Indah, Maya. 2014. *Perlindungan Korban: Suatu Perspektif Viktimologi dan Kriminologi*. Jakarta: Kencana Prenadamedia group.
- Irawan, Anang Dony. (2019). "Status Hukum Outsourcing Pasca Putusan Mahkamah Konstitusi Perkara Nomoer 27/ PUU-IX/2011," *Arena Hukum* 12, no. 2.
- Koeswadji, Hermien Hadiati, 1983, *Delik Harta Kekayaan Asas -Asas, Kasus dan Permasalahannya*, Sinar Wijaya, Surabaya.
- Lamintang, 1997, *Dasar-dasar Hukum Pidana Indonesia*, Citra Aditya Bakti. Jakarta.
- Masyhar, Ali. 2008. *Pergulatan Kebijakan Hukum Pidana Dalam Ranah Tatanan Sosial*. Semarang: Universitas Negeri Semarang Press.
- Muladi dan Barda Nawawi Arief, 2005, *Teori-Teori dan Kebijakan Pidana*, Bandung. Nawawi
- Muladi, Barda Nawawi Arief. 2005. *Teori-Teori dan Kebijakan Hukum Pidana*. Bandung: PT Alumni.
- Poernomo, Bambang, 1994, *Asas-Asas Hukum Pidana*, Ghalia Indonesia, Jakarta.
- Prodjodikoro, Wirjono, 2003, *Asas-asas Hukum Pidana Di Indonesia*, Refika Aditama, Bandung.
- Rasdi, Saru Arifin. 2016. Model of Diversion and Its Implementation In The Criminal Justice System. *International Journal of Business, Economics and Law*, Vol 11, 88-93.
- Salampessy, Yahdi, *Kekerasan Dalam Dunia Pendidikan*, www.bloggaul.com.
- Santoso Topo, SH. MH dkk, 2001, *Kriminologi*, PT Raja Grafindo Persada, Jakarta.
- Sejiwa, 2008, *Bullying Mengatasi Kekerasan di Sekolah dan Lingkungan Sekitar Anak*, PT. Grasindo, Jakarta.
- Serombe, Howard, and Brian Donnelly. 2012. Bullying and Agency: Definition, Intervention, and ethics. *Journal of Youth Studies*, 491-502.
- Waluyo, Bambang. 2014. *Viktimologi Perlindungan Korban dan Saksi*. Jakarta: Sinar Grafika.
- Widyawati, A. 2014. Pendekatan Restorative Justice sebagai Upaya Penyelesaian School Bullying. *Jurnal Yustisia*, 27-37.
- Zainal Abidin Farid, Andi 1982, *Bunga Rampai Hukum Pidana*, Alumni, Bandung.