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Criminalization of Teachers Due to Case of Bullying Committed by Students

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Abstract

Children are individuals who are not yet adults and have a fundamental right to education. A child's education starts at the family level and continues at an educational institution like a school. Teachers play a crucial role in education and are responsible for instructing their students. In addition to this responsibility, teachers must uphold laws, regulations, and ethical codes as specified in Article 20 of Law No. 14/2005. This includes adhering to child protection laws outlined in Law No. 35/2014. Everyone needs to protect children from violence, as Article 76C of Law No. 35/2014 explicitly prohibits any person from committing or allowing violence against children. The law also mandates teachers to protect their students from violence, as stated in Article 9(1a) and Articles 54(1) and (2) of Law No. 35/2014. Issues arise when teachers allow bullying to occur among their students. This neglect constitutes a violation of Article 76C of Law No. 35/2014. This study uses a normative legal methodology to apply child protection rules to teachers who ignore bullying among their students. The



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study concludes that teachers who tolerate bullying violate Article 76C of Law No. 35/2014, as this neglect causes suffering to children. Such teachers could face criminal sanctions as outlined in Article 80 of Law No. 35/2014. The research team suggests increased criminal penalties for teachers who allow such neglect should be imposed.

Keywords

Child Protection; Bullying; Teacher; Neglect.

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Introduction

Children are human beings with personal circumstances and awareness that can be categorized as “immature human beings.” In essence, when humans are in the Childhood Phase, they play, study, go to school, socialize, and learn about things that are happening around them. Children are entrusted and gifted by Almighty God and have the dignity and honor of being complete human beings.¹ Sugiri states that as long as an individual is still experiencing physical growth and development, that person can still be considered in the childhood phase, and only after the process of growth and development is complete can a human being be referred to as an adult.² The growth and development of a child are greatly influenced by the education that the child receives.

A child will enter a phase where they learn. The family is the initial institution or place for a child to learn. All knowledge, intelligence, and even interests of a child are initially acquired from the family, specifically from the child's parents.³ After family, there is school, where more children will study various learning materials to grow their knowledge and insight. In the end, education for children is expected to shape a child to be able to live, grow, and develop in society. When children sit on a school bench, they are the golden generation of Indonesia, equipped with broad insights that will ultimately be useful in determining the steps of the Indonesian nation in the future.⁴

A child's learning process in school is facilitated by educational staff who are usually called teachers. Teachers are a vital element in the world of education because teachers are the “pearhead” where teachers deal directly with children who are students as subjects and objects of learning⁵. Students

¹ Andik Prasetyo, “Perlindungan Hukum Bagi Anak Pelaku Tindak Pidana,” *Mizan: Jurnal Ilmu Hukum* 9, no. 1 (2020): 51, <https://doi.org/10.32503/mizan.v9i1.1054>.

² Maidin Gultom, “Perlindungan Hukum Terhadap Anak dalam Sistem Peradilan Pidana Anak di Indonesia” (Bandung: PT Refika Aditama, 2014) : 38.

³ Wisnu Saputra, “Pendidikan Anak Dalam Keluarga,” *Tarbawy: Jurnal Pendidikan Islam* 8, no. 1 (2021): 1.

⁴ Ani Sulianti, Yusuf Efendi, dan Halimatus Sa'diyah, “Penerapan Nilai-Nilai Pancasila dalam Lembaga Pendidikan,” *Jurnal Pancasila dan Kewarganegaraan* 5, no. 1 (2020): 56.

⁵ Rabukit Damanik, “Hubungan Kompetensi Guru Dengan Kinerja Guru,” *Jurnal Serunai Administrasi Pendidikan* 8, no. 2 (2019), <https://doi.org/10.37755/jsap.v8i2.170>.

who study at school learn a lot from what a teacher teaches. For example, a mathematics teacher teaches algebra to his students; the output of the learning the teacher provides is that the students can understand and work on Algebra questions.

Philosophically, the regulation of child protection is based on the Pancasila ideology, which is the philosophical foundation lawmakers use to protect children in Indonesia. The second principle of Pancasila, "Just and Civilized Humanity", has become the basis for human rights provisions for children, ensuring their freedom from all forms of violence and discrimination and their right to a healthy and optimal development. Regarding the constitutional foundation of the Republic of Indonesia, children also have a position specifically and specially protected by the constitution, namely the 1945 Constitution of the Republic of Indonesia (UUD 1945). Starting from Article 28 and Articles 28 A-J, it regulates Human Rights. Specifically, Article 28 B paragraph (2) states, "Every child has the right to survival, growth, and development, and is entitled to protection from violence and discrimination". With the existence of Article 28 B paragraph (2), it can be stated that Children must receive protection from violence and discrimination. Every component in society related to Children, such as Parents, Families, and Communities, is responsible for upholding and safeguarding the basic rights of children under the obligations mandated in Article 28 B paragraph (2) of the 1945 Constitution.⁶

Juridically, the definition of teacher is contained in Article 1 point 1 of Law No. 14 of 2005 (UU 14/2005) states that teachers are "professional educators with the main task of educating, teaching, guiding, directing, training, assessing and evaluating students in early childhood education, formal education, basic education and secondary education." Furthermore, Article 4 of Law 14/2005 states that teachers are learning agents whose function is to improve the quality of education. The definition of "Learning Agent" is further explained in the Explanation of Article 4 of Law 14/2005: "the role of the teacher includes, among others, as a facilitator, motivator,

⁶ Mardi Candra, "Aspek Perlindungan Anak Indonesia", 1 ed. (Jakarta: Prenadamedia Group, 2018):2.

booster, learning engineer, and provider of learning inspiration for students".

Looking at the definition and role of teachers in the previous paragraph, it can be said that teachers have a fundamental role in the process of children's education at school. The teacher can become a counselor or facilitator in the child's learning process. The role of a teacher can ensure that the children's learning process goes well, which supports the points of children's rights regulated in Law No. 35 of 2014 on Amendments to Law No. 23 of 2002 on "Child Protection" (UU 35/2014). Article 9, paragraph (1) of Law 35/2014 states that children "have the right to receive education and teaching in the context of their personal development and level of intelligence following their interests and talents". Furthermore, in Article 9 paragraph (2) in conjunction with Article 54 paragraphs (1) and (2) Law 35/2014, it is expressly and clearly regulated that children in educational units (schools) must receive protection from all forms of physical, psychological, and sexual violence carried out by Educators, Education Personnel, or Other Parties in the Education Unit. Teachers or other teaching staff in the education unit must carry out this protection.

The responsibility of teachers and educational institutions to protect children, as regulated by this law, is to protect children from the threat of crime that could occur at school. The perpetrators of crimes at school are not only teachers or other educational staff, but fellow students can also be perpetrators of crimes at school. Quoting from data published by the Indonesian Child Protection Commission (KPAI) "SIMFONI PPA (Online Information System for the Protection of Women and Children)" recorded 1,665 cases of physical/psychological violence against children in 2022, the forms of violence against children reported were also very diverse, namely bullying or bullying which is verbal violence, beatings, abuse, beatings, and sexual violence.⁷

⁷ Humas KPAI, "Tiada Toleransi Bagi Kekerasan Terhadap Anak | Komisi Perlindungan Anak Indonesia (KPAI)," n.d.

Sociologically, children are the group that will sustain national life continuously and are a natural part of this process.⁸ As vulnerable people, children must be protected from all forms of violence. Civil rights and freedoms for children must also be upheld, just like those of adults. Therefore, teachers, who are ideally more mature figures, and schools, which should be able to protect children from violence, must be aware that threats or potential violence against children are omnipresent. Teachers, schools, society, and the government must synergize and collaborate to ensure the protection of children's rights and that schools can provide quality education.⁹

Looking more specifically at several cases of bullying at school in 2022-2023, several cases of bullying resulted in the death of the victim. In March 2022, a grade 3 student at SDIT Diniyyah Al-Azhar Jambi died because of physical violence and bullying carried out by her seniors at school. Then, in June 2023, a grade 1 elementary school student in Medan City died due to depression and excessive fear. Previously, the 1st grade elementary school student admitted to his parents that he was beaten by five of his seniors at school.

According to Tattum, as cited by Novan Ardy Wiyani in the book "Save Our Children from School Bullying", bullying is defined as "the willful, conscious desire to hurt another and put him/her under stress". Meanwhile, Roland defines bullying as "a long-standing violence, physical or psychological, perpetrated by an individual or group directed against an individual who cannot defend himself or herself."¹⁰ It can be concluded from the definitions provided by the experts above that bullying is "an act carried out by an individual or a group of individuals who are stronger, where the act is conducted through words or actions that are continuously (intensely), repeatedly directed at an individual or a group of individuals

⁸ Mera Putri Dewi, Neviyarni S, and Irdamurni Irdamurni, "Perkembangan Bahasa, Emosi, Dan Sosial Anak Usia Sekolah Dasar [Language, Emotional, and Social Development in Primary School-Aged Children]," *Jurnal Ilmiah Pendidikan Dasar* 7, no. 1 (2020): 1.

⁹ Wahyudi, Lhatifah Berliani, and Amelia, "Perlindungan Hukum Terhadap Anak Korban Tindakan Kekerasan Di Sekolah," *Jurnal Hukum Das Sollen* 9, no. 2 (2023), <https://doi.org/10.32520/das-sollen.v9i2.2982>.

¹⁰ Novan Ardy Wiyani, *Save Our Children From School Bullying*, ed. Rina Tyas Sari (Yogyakarta: Ar-Ruzz Media, 2012).

who are weaker, thereby ultimately resulting in pressure on the weaker party.”¹¹

The impact of bullying can be very fatal, even leading to death. Dr. Irma Lidia, a doctor from Jovee, states that “repeated bullying can lead to a decrease in self-esteem and depression, increasing the risk of suicide in children. Other problems, such as mental health disorders or substance abuse, can even have lasting effects into adulthood.”¹² Verbal bullying can lead to a lack of self-confidence, depression, anxiety, withdrawal from society, and even suicide.¹³

The rise in bullying cases that occur in schools as educational institutions certainly raises big questions regarding ensuring the safety of students studying at school. Moreover, the teacher's role when bullying occurs, even though the locus of delicti or location where the crime occurs is at school, should be a safe and comfortable place for students to learn.

The authors feel the need to write this because the resolution of bullying cases in schools is very, very unclear, especially regarding teachers who are supposed to be there to protect students from all forms of crime in schools, but are not functioning properly. There are cases of bullying that have resulted in the loss of lives, yet there is no legal resolution, and no accountability has been found from the teachers or the school. In addition, the author highlights several cases that have occurred in Indonesia, including:

- a. Case of Alleged Bullying of Victim's Child, MR, Banyuwangi, February 2023. On February 27, 2023, at 3:00 PM WIB, the Victim's Mother found the Victim's Child (MR), a fourth-grade student of SDN 4 Sumberagung, Pesanggaran District, Banyuwangi Regency, who had died by suicide by hanging. The police, upon conducting a crime scene investigation, received testimonies from the Victim's Mother, indicating

¹¹ ST. Muthiah Azizah Makmur et al., “Upaya Pencegahan Perundungan Pada Anak,” *Pengabdian Kepada Masyarakat* 2, no. 1 (2024): 109–16.

¹² Affan Yusra Ledita Ezy Maulany, Rasimin, “Dampak Perundungan (*Bullying*) Verbal Terhadap Empati Korban Pada Siswa SMPN 7 Muaro Jambi,” *Ilmiah Dikdaya*, 12, no. 1 (2022), hal. 197.

¹³ Ghyna Amanda, “Stop Bullying : A-Z Problem Bullying dan Solusinya”, 1st ed. (Sleman: Cemerlang Publishing, 2021).

that the Victim's Child frequently complained about being teased or bullied by classmates at school.¹⁴ During the news investigation, the latest information obtained by the author is that the police will thoroughly examine this case. The police will request statements from the victim's family, namely the mother and sibling, as well as statements from the school officials and the victim's friends.¹⁵ The latest news findings by the Author indicate that the police have visited the school where MR is alleged to have experienced bullying. The school, through one of the teachers, stated that "the teachers were not aware of any bullying; his friends treated him well, just like any typical schoolchild, joking appropriately with his peers, and behaving normally. In fact, at school, the victim never reported to the teacher if he was being bullied."¹⁶ There has been no further news regarding this case, no perpetrators have been punished, nor has the school taken responsibility. The Banyuwangi Education Office has even denied the occurrence of bullying at the school of the victim (MR).¹⁷

- b. The alleged bullying involving a vocational high school student with the initials NF in West Bandung in May 2024.¹⁸ The victim, identified as NF, passed away after approximately one month of experiencing mental distress, leading to mental health issues. The victim's mother stated that NF had allegedly been bullied since the first year of vocational school (approximately at the age of 16). The bullying in question included insults, verbal abuse, and being coerced by the perpetrator (initial A) to

¹⁴ Amir Baihaqi, "Kronologi Siswa SD Di Banyuwangi Gantung Diri Gegara Dibully Tak Punya Ayah," 2023.

¹⁵ Eko Purwanto and Narendra Bakrie, "Siswa SD Banyuwangi Tewas Gantung Diri, Polisi Dalam Unsur Pidana," 2023.

¹⁶ Imam Wahyudiyanta, "Cerita Sedih Siswa SD Di Banyuwangi Gantung Diri Gegara Di-Bully," DetikJatim, 2023.

¹⁷ Rizki Alfian Restiawan and Andi Hartik, "Dispendik Banyuwangi Bantah Siswa SD Yang Tewas Bunuh Diri Sering Dirundung Teman Sekolah," Kompas.com, 2023.

¹⁸ CNN Indonesia, "Siswi SMK Di Bandung Barat Meninggal Dunia, Diduga 3 Tahun Dibully," CNN Indonesia, 2024.

complete school assignments. On June 11, 2024, the school and the Department of Education provided information regarding the alleged bullying that led to NF's death. NF was reported to be depressed as a result of years of bullying, which adversely affected both the victim's physical and mental health. The head of the vocational school where the victim studied stated, "Reports from the class guardian indicate that NF and A appeared to be doing well, with no reports from students or parents regarding bullying." The school principal also stated that regarding the allegations of verbal bullying, this matter is still being investigated by the school because it needs to be verified whether it was bullying or merely children's jokes. It was revealed that the school had previously facilitated a meeting between NF's family and A's family since NF had been experiencing psychological disturbances (at the beginning of May 2024). The outcome of that meeting was that the issue would not be prolonged, and both families agreed to reconcile. However, the situation escalated after NF passed away; NF's family returned to the school to demand accountability, and the school conducted mediation on June 10, 2024, but no reconciliation has yet been achieved.¹⁹

The big question about this phenomenon is who is responsible. Can schools or teachers be held legally responsible for student bullying that occurs in the school environment? The author digs deeper into previous research on this matter and finds that there is no legal research that discusses this topic more specifically.

The author found several studies from the last five years regarding teachers and bullying among students in schools, including:

¹⁹ "SMK & Disdik Buka Suara Soal Siswi Wafat Usai Dibully 3 Tahun Di KBB," CNN Indonesia, 2024.

- a. The research article titled "The Role Of Teachers In Preventing Bullying In Schools," written by Siti Choiriyah in 2024.²⁰ The result of this research is a statement that it is significant to create positive changes in school culture and student well-being. However, teachers face challenges in preventing bullying, such as insufficient training and time limitations, which must be addressed by providing better training and adequate resources, including the necessity for collaboration between schools and parents in the context of bullying prevention. This research does not indicate how teachers can be subjected to criminal sanctions if they "allow" bullying among their students at school. Indeed, previous research has determined that it is significant for schools to have an anti-bullying culture. Teachers in schools must collaborate to prevent bullying. The author's simple question is, what if teachers intentionally allow bullying to occur? Or use the excuse of "lack of time and opportunity" to prevent bullying? Therefore, to demonstrate the novelty of the writing from the research team, the research team will discuss how teachers can be subjected to criminal sanctions if the teacher in question allows bullying to occur among their students at school.
- b. A Research article titled "Protecting Children Victims of Bullying At School (A Study of Criminal Law Reform)" by Bachtiar Hilmi et al. in 2022.²¹ The final result of this research is that legal protection for child victims of bullying in schools can be implemented using a procedural rights model that focuses on the active participation of victims in the criminal justice process during case examination, and by employing a services model that emphasizes compensation for bullying, both physically and psychologically. This previous research is highly focused

²⁰ Siti Choiriyah et al., "Peran Guru Dalam Pencegahan Bullying Di Sekolah," *Journal Educatione : Jurnal Manajemen Pendidikan* 1, no. 2 (2024): 112–26, <https://doi.org/10.31090/paudmotoric.v2i1.739>.

²¹ Bachtiar Hilmi, Rena Yulia, and M. Noor Fajar Al Arif, "Melindungi Anak Korban Bullying Di Sekolah (Suatu Kajian Pembaharuan Hukum Pidana)," *Jurnal Hukum Mimbar Justitia* 8, no. 2 (2022): 432, <https://doi.org/10.35194/jhmj.v8i2.2716>.

on the recovery process for victims; however, it does not specify who is obligated to carry out the recovery and who is responsible for the occurrences of bullying among children in schools. The uniqueness of this study, written by our research team, is that we wish to emphasize that teachers must also be held accountable for what happens to children in schools. In the research written by the team of authors, it is emphasized that teachers have a responsibility to address bullying among their students. Teachers are indeed obligated to protect students from bullying; if bullying is allowed, it is reasonable for criminal liability to be imposed on the teacher.

- c. Research article titled "Teachers' Self-efficacy in Preventing and Intervening in School Bullying: A Systematic Review" by Saskia M. Fischer et al, in 2021.²² The research results show that a teacher's self-efficacy level significantly influences the prevention and intervention of bullying among their students. Teachers with a high level of self-confidence can play an essential role in preventing and handling bullying in schools. The authors agree with this research that teachers need greater self-confidence to address school bullying. However, this does not serve as a justification or excuse for teachers to allow bullying among their students due to a lack of self-confidence. The research team will continue to consider the self-efficacy factor in teachers, which is a crucial aspect in preventing bullying. This critical factor also supports the argument that teachers, who are expected to be superior to their students, must be able to protect their students from bullying. If that superior figure allows bullying, such negligence merits legal accountability.
- d. The research article titled "Legal Review of Bullying Cases in Schools from the Perspective of Criminal Law," written by Bobby R. Sitinjak in

²² Saskia M. Fischer, Nancy John, and Ludwig Bilz, "Teachers' Self-Efficacy in Preventing and Intervening in School Bullying: A Systematic Review," *International Journal of Bullying Prevention* 3, no. 3 (2021): 196–212, <https://doi.org/10.1007/s42380-020-00079-y>.

2024²³. The result of this research is that the role of criminal law is significant in addressing bullying in schools, as evidenced by Law No. 35 of 2014 on Child Protection, which has provided a legal framework so that children can be protected from all forms of violence, including bullying. Furthermore, adequate rehabilitation programs for victims and education regarding the dangers of bullying need to be implemented. From the perspective of criminal law, particularly as stipulated in Law No. 35 of 2014 on Child Protection, it is indeed regulated in Article 76 C of Law 35/2014 that everyone is prohibited from "allowing" violence against children. However, this phrase is often overlooked when bullying occurs in schools, where the focus is frequently on the child perpetrator, rather than the teacher who has the obligation to protect and educate the students. Therefore, for the novelty of the research, the research team wishes to discuss the penalization of teachers who allow bullying of students in schools. The perspective adopted by the research team in this writing is not on the child perpetrator, but instead on the figure of the teacher who should be responsible for protecting students in school from violence, including bullying.

- e. The research article titled "The Role of Child Protection Laws in Addressing Bullying in Schools," written by Dinda Kaina Anggraini et al. in 2024²⁴ This research discusses the articles on child protection from violence as regulated in Articles 54, 76A, 76C, 76D, and 76G of Law No. 35 of 2014. The writing team believes that the above research is more or less the same as what is written in point D. The writing team still maintains that special attention needs to be paid to imposing specific penalties on teachers who are proven to allow bullying of their students.

²³ Bobby Raynhot Sitinjak, "Tinjauan Yuridis Terhadap Kasus Bullying Di Sekolah Dalam Perspektif," *Jurnal Hukum Legalita* 6, no. 1 (2024), <https://doi.org/https://doi.org/10.47637/legalita.v6i1.1250>.

²⁴ Dinda Kania Anggraini and Muchammad Rozaq FH, "Peran Undang-Undang Perlindungan Anak Dalam Mengatasi Bullying Di Sekolah," *Hukum Inovatif: Jurnal Ilmu Hukum Sosial Dan Humaniora* 1, no. 4 (2024): 17–26, <https://doi.org/https://doi.org/10.62383/humif.v1i4.559>.

Based on the background of the problem above, the authors state that it is necessary to write a research article titled “Criminalization of Teachers Due to the Case of Bullying Committed by Students.”

Method

Based on the background of the problem above, the authors determine the problem formulation as follows: “Can teachers as learning agents in schools be subject to legal responsibility due to cases of bullying that occur in the school environment where the teacher works?”. The methodology used in this research is Normative - Dogmatic Juridical research. Normative Juridical Research is a process of finding legal rules, principles, and doctrines to answer the legal issues faced.²⁵

The problem approach in this research uses the statute approach and the conceptual approach. The statute approach is “an approach that examines all laws and regulations that are related to the legal issue being handled.”²⁶ On the other hand, the conceptual approach to problems is based on the opinions of scholars as a supporting basis. Source of legal materials: The legal materials used in this research are as follows:

Primary legal materials include:

- a. Universal Declaration of Human Rights (UDHR)
- b. The 1945 Constitution of the Republic of Indonesia
- c. The 1989 Convention on the “Rights of the Child,” which was ratified in Presidential Decree 36 of 1990
- d. Law No. 23 of 2002 on “Child Protection”
- e. Law No. 20 of 2003 on the “National Education System”
- f. Law No. 14 of 2005 on “Teachers and Lecturers”

²⁵ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2010).

²⁶ Amiruddin and Zainal Asikin, *Pengantar Metode Penelitian Hukum*, 13th ed. (Depok: PT RajaGrafindo Persada, 2016).

- g. Law No. 35 of 2014 on Amendments to Law No. 23 of 2002 on “Child Protection”

Secondary legal materials include various reference books and opinions of experts in the field of Child Protection Law.

Legal materials are obtained through a literature study. According to Purwaka, a literature study is “the collection of secondary data in the library, engaging in activities of gathering reading materials such as books, journals, papers, research reports, magazines, and newspapers.”²⁷ The secondary data obtained by the author includes primary legal materials (legislation) and secondary legal materials as outlined above. The data analysis method used is deductive syllogism, which involves analyzing secondary data, including legislation, literature, and expert opinions, and then moving towards specificity by analyzing existing cases.²⁸ An analysis is conducted to provide a specific answer regarding the criminal liability of teachers who allow bullying among their students. To obtain a valid answer, authentic interpretation and systematic interpretation are employed. Authentic interpretation refers to a definitive interpretation of the meaning of a word as defined in the legislation itself. Meanwhile, systematic interpretation is the interpretation that involves examining or considering the arrangement of interrelated Articles within the law.

²⁷ Tommy Hendra Purwaka, *Metodologi Penelitian Hukum* (Jakarta: Penerbit Universitas Atma Jaya, 2010), h.105.

²⁸ I Wayan Kandia, “Perundangan Dalam Perspektif Hukum Indonesia,” *IJOLARES: Indonesian Journal of Law Research* 2, no. 1 (2024): 20–24, <https://doi.org/10.60153/ijolares.v2i1.43>.

Result and Discussion

A. Basic Rights of Children and Obligations of Teachers In Educational Units

Children are the nation's future and the nation's next generation; this is a general expression everyone agrees with. Children are inheritance, which means that children are figures who parents prepare to become better people than their parents.²⁹ Parents prepare children through education. A child's initial education starts with the family. Education in the family provides initial motivation or stimulation for children to recognize or identify everything, preparing them to enter society.³⁰

Education for children is one of the basic human rights. Children's Basic Rights were first contained in Article 25, point 2 of the Universal Declaration of Human Rights (UDHR), which states, "Mothers and children have the right to receive special care and assistance. All children, whether born within or outside marriage, must receive the same social protection." Furthermore, Article 26 of the UDHR states that education is everyone's right. In general, education must be free (Article 26, number 1 UDHR), and in number 2 it is stated that education must be aimed at the broadest personal development. Education must be carried out with mutual understanding, tolerance, and friendship between all nations, racial groups, and religions. Through these two articles of the UDHR, it can be understood that education is the basic right of every person, which means it is the same as the basic right of every child.

More specifically, the UN issued the Convention on the Rights of the Child (CRC) in 1989. In this KHA, 42 articles basically regulate basic rights, including:

²⁹ Julianto Simanjuntak, "Mendidik Anak Utuh Menuai Keturunan Tangguh", ed. Roswitha Ndraha (Jakarta: Pelikan Indonesia - LK3, 2010).

³⁰ Wisnu Saputra, "Pendidikan Anak Dalam Keluarga," *Tarbawy: Jurnal Pendidikan Islam* 8, no. 1 (August 2021): 1–6, <https://doi.org/10.32923/tarbawy.v8i1.1609>.

- 1) The right to be protected from all forms of discrimination (Art. 2 CRC)
- 2) Right to life (Art. 6 CRC)
- 3) The right to guarantee survival and healthy growth from the government (Art. 6 KHA)
- 4) Right to citizenship (Art. 7 CRC)
- 5) The right to know one's parents and to be cared for by parents (Article 7 of the CRC)
- 6) Right to identity (Art. 8 KHA)
- 7) The right to live with parents, if you have to be separated, then you still have the right to be in contact with your parents (Art. 9 KHA)
- 8) The right to be protected from all forms of crime, such as abuse, violence, neglect, kidnapping, pornography, prostitution, and human trafficking (Articles 11, 19, 34, and 35 of the CRC)
- 9) The right to express opinions, have their opinions heard and considered (Art. 13 KHA)
- 10) The right to freedom of thought, belief, and religion (Article 14 of the CRC)
- 11) The right to meet and socialize (Art. 15 KHA)
- 12) Right to Privacy (Art. 16 CRC)
- 13) Right to public information (Art. 17 KHA)
- 14) Right to education (including children with disabilities have the right to education) (Ps 23, 28, and 29 CRC)
- 15) The right to the best health and nutrition (Art. 24 CRC)
- 16) The right to rest, play, and participate in various arts and cultural activities (Ps. 31)
- 17) Things to protect from economic exploitation (Ps 32 KHA)
- 18) The right to be protected from dangerous drugs (Art. 33 CRC)

As regulated in the CRC, the Basic Rights of Children adhere to universal principles.³¹ Thus, the Convention on the Rights of the Child can be accepted by all nations in the world, including Indonesia, as one of the countries that also recognizes human rights in its Constitution, including the basic rights of children.

Article 28 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia (UUD 1945) states that "Every child has the right to survival, growth and development and the right to protection from violence and discrimination". The text of Article 28 B paragraph (2) summarizes all the basic rights of children as stated in the CRC, which the Indonesian constitution has adopted. More specifically, regarding the recognition of education, Articles 28 C, 28 E, and 31 of the 1945 Constitution also state that everyone has the right to education.

More specifically regarding Children's Rights, the Indonesian Government promulgated Law no. 23 of 2002 (UU 23/2002) on Child Protection which was amended in Law no. 35 of 2014 (UU 35/2014) and Law No. 17 of 2016 (UU 17/2016), in this writing these three child protection laws are referred to together as the Child Protection Law. The formulation regarding Child Protection, according to Pra Yuwana, should adhere to several things, namely:

- a. All forms of conscious effort carried out by every person, as well as government and private institutions, to ensure security, control, and fulfillment of children's physical, mental, and social well-being, following their interests and human rights.
- b. All forms of joint efforts carried out consciously by individuals, families, communities, government agencies, and the private sector to safeguard, provide, and fulfill children's spiritual and physical

³¹ Kumala Tesalonika Bahter, "Peranan Unicef Dalam Aspek Hukum Internasional Terhadap Perlindungan Atas Hak-Hak Anak," *Lex Et Societas* VIII, no. 2 (2020): 70–78, <https://doi.org/https://doi.org/10.35796/les.v8i2.28492>.

welfare needs, according to their interests, so that they can develop themselves as optimally as possible.³²

Children with the basic right to education must still receive protection in an educational unit. The right to protection in educational units is contained in Article 9 paragraph (1a) in conjunction with Article 54 paragraph (1) of Law 35/2014, where it is clear that children in educational units have the right to protection from sexual crimes and violence, including physical, psychological, and other crimes, carried out by Educators, Education Personnel, Fellow Students, and/or other parties.

The education unit itself is defined in the Elucidation of Article 54, paragraph (1) of Law 35/2014 as a place or area where the education process occurs. Discussing the Education Unit, bearing in mind the principle of *lex speciali derogat legi generali*, the author believes that there is a need for a study of Law no. 20 of 2003 on the National Education System (hereinafter in this writing referred to as the SPN Law). Article 1 point 10 of the SPN Law states that an Education Unit is a group of educational services that provides education in formal, non-formal, and informal channels at every level and type of education.

One form of formal educational unit management is what we generally call a school. School is generally known as where the teaching and learning process occurs. Apart from the place, the school, which contains Educators and Students, has a teaching and learning system, which is why the school is an educational institution. Syamsu Yusuf believes that “Schools are formal educational institutions that systematically carry out guidance, teaching, and training programs to help students develop their potential morally, spiritually, socially, and

³² Ratri Novita Erdianti, *Hukum Perlindungan Anak Di Indonesia*, 1st ed. (Malang: Penerbit Universitas Muhammadiyah Malang, 2020).

emotionally.”³³ Schools are expected to be safe, comfortable, and pleasant learning environments, serving as second homes where students can develop their interests and talents with a sense of joy and tranquility. Due to the protection from violence within the school environment, schools are expected to be a safe, comfortable, and pleasant learning environment.³⁴

Teachers who are educators in educational units, namely schools, of course have a basic obligation to educate children who are students at school. Ki Hajar Dewantara once expressed the teacher's philosophy in Indonesian education, namely “*Ing ngarso sung tulodo, ing madya mangun karso, tutwuri handayani*”, which means that:

1. Teachers as the front guard of Indonesian education must be role models or examples for their students, providing examples to students of everything taught and done by teachers.
2. Teachers, as the driving force among their students, must provide inspiration and motivation so that students can progress and develop in the teaching and learning process.
3. Teachers are motivators for students, and teachers must always encourage their students from behind to prepare them to face everything that happens in life.

Regarding positive law regarding teachers in Indonesia, the government has promulgated Law No. 14 of 2005 on Teachers and Lecturers (hereinafter abbreviated to Law 14/2005). According to Article 1, No. 1 of Law 14/2005, teachers are “professional educators with the main task of educating, teaching, guiding, directing, training,

³³ Syamsu Yusuf, *Psikologi Perkembangan Anak Dan Remaja* (Bandung: PT. Remaja Rosdakarya, 2001).

³⁴ M. Islahul Imami Tsani et al., “Penerapan Program Sekolah Ramah Anak Sebagai Upaya Perlindungan Anak Dari Kekerasan Di SMAN 9 Mataram,” *Jurnal Ilmiah Profesi Pendidikan* 8, no. 2 (2023): 1035–42, <https://doi.org/10.29303/jipp.v8i2.1408>.

assessing and evaluating students in early childhood education through formal education, basic education and secondary education". Teachers have rights and obligations regulated by the Teacher and Lecturer Law. Articles 14 – 19 of Law 14/2005 regulate teachers' rights. The obligations of teachers regulated in Article 20 of the Teacher and Lecturer Law include the following:

- a. "Planning learning, implementing a quality learning process, and assessing and evaluating learning outcomes;
- b. Continuously improve and develop academic qualifications and competencies in line with science, technology, and art;
- c. Act objectively and not discriminate based on considerations of gender, religion, ethnicity, race, and specific physical conditions, or family background and socio-economic status of students in learning;
- d. Uphold statutory regulations, laws, and teachers' codes of ethics, as well as religious and ethical values; and
- e. Maintain and foster national unity and integrity."

Teachers' obligations are regulated by positive law, where teachers must carry out education guided by the obligations required by law. Teachers play a strategic role, especially in shaping the nation's character through developing the personality and values of children who are the nation's next generation.³⁵

The author wants to focus on the provisions where teachers must uphold statutory regulations. Concerning child protection, teachers must still pay attention to children's rights, especially those contained in positive Indonesian child protection law, namely the Child Protection Law (UU 23/2002 in conjunction with UU 35/2014).

³⁵ Zherly Nadia Wandu and Nurhafizah, "Peran, Hak, Dan Kewajiban Seorang Guru," *Golden Age : Jurnal Pendidikan Anak Usia Dini* 2, no. 2 (June 2019): 33–41.

Child protection in educational units is, of course, also the responsibility of the teacher, who is the central figure with the role of "Educator," where a school can't exist without the figure of a teacher as an educator.

Children are obliged to receive protection in an educational unit, this child's right is stated in Article 9 paragraph (1a) of Law 35/2014, namely: "Every child has the right to receive protection in an educational unit from sexual crimes and violence committed by educators, educational staff, fellow students, , and/or other parties". A similar regulation is contained in Article 54, paragraph (1) of Law 35/2014, namely: "Children in and within the educational unit environment are obliged to receive protection from acts of physical, psychological violence, sexual crimes and other crimes committed by educators, educational staff, fellow students, and/or other parties". Through this arrangement, it is clear that the state has mandated everyone to protect children from violence. Every child must be protected, whether abandoned children, children with disabilities, adopted children, or foster children; all must be protected as human rights for all Indonesian people.³⁶ Teachers have a primary obligation to protect their students from all forms of violence. Children have the right to education and protection from violence. Teachers are the leading agents in educational units who have direct connectivity with students and are indeed considered obliged to protect students from all forms of violence.

B. Juridical Review Regarding Bullying of Child Victims

In the previous section, the rights of children, especially in the education unit, were clearly explained, and the obligations of teachers, where teachers, in addition to having to carry out their roles in the form of teaching, or providing substantial guidance on learning materials, ethics, morals, and social and emotional development to children. Their students, teachers, must also continue to guarantee the basic rights of students, who are, in fact,

³⁶ Khaerul Umam Noer, "Mencegah Tindak Kekerasan Pada Anak Di Lembaga Pendidikan," *Sawwa: Jurnal Studi Gender* 14, no. 1 (April 2019): 47, <https://doi.org/10.21580/sa.v14i1.2998>.

children. Children have various rights, as mentioned in the previous section. Specifically, in educational units, children must be protected from all violence.

According to Ani Purwanti, violence is defined as an indication of abuse of power, imbalance of power, and domination of other parties.³⁷ This abuse of power is manifested in various forms, for example, taking other people's rights by force, bullying weaker people, and exhibiting arrogance towards weaker parties. An imbalance of power occurs when two parties are equally powerful, where one party feels superior to the other party, then the other party wants to fight to be superior to the superior party, in the end, it creates "Chaos", which is manifested in various forms of violence such as war. In essence, violence is made because there are parties who feel stronger and use that strength to oppress the weak.

Referring to Indonesian child protection legal regulations, the definition of violence against children is defined in Article 1, point 15a of Law 35/2014 "Violence is any act against a child that results in physical, psychological, sexual, and/or neglect, misery or suffering. to carry out unlawful acts, coercion or deprivation of liberty." Through this definition, the elements of violence against children can be classified as:

- a. Actions against Children: Actions are behaviors that a person does. In this case, the action is carried out against a child. Children are the targets of these actions.
- b. Resulting in misery or suffering: The action results in misery or suffering. Etymologically, suffering is taken from the origin of the word "Derita," which the Big Indonesian Dictionary defines as "something troublesome, such as misery."³⁸
- c. The suffering is physical, psychological, sexual, and/or neglect, including threats, etc., that are unlawful. In essence, violence against children is any form of action that causes misery in any form for the child.

³⁷ Ani Purwanti, *Kekerasan Berbasis Gender*, 1st ed. (Yogyakarta: Bildung, 2020).

³⁸ Kamus Besar Bahasa Indonesia, "Kamus Besar Bahasa Indonesia : Derita," <https://kbbi.kemdikbud.go.id/entri/derita>, n.d.

In principle, children must be freed from all forms of violence. This is stated in Articles 11, 19, 34, and 35 of the KHA, namely, the right to be protected from all forms of crime such as abuse, violence, neglect, kidnapping, pornography, prostitution, and human trafficking. Referring to the more specific regulations in Article 4 of Law 23/2002, it is stipulated that “Every child has the right to live, grow, develop and participate appropriately by human dignity, and to receive protection from violence and discrimination”. Article 4 of Law 23/2002 indicates that a child's right is protected by law, that children have the right to live, grow, and develop, and receive protection from violence. Further regulations to confirm Article 4 of Law 23/2002 are regulated in Article 9 paragraph (1a) of Law 35/2014 and Article 54 paragraphs (1) and (2) of Law 35/2014, as explained in the previous sub-chapter, where children must be protected from violence in educational units.

The following discussion is in terms of bullying. Bullying is taken from Rundung, where the Big Indonesian Dictionary defines rundung as “Annoying, Continuously Annoying, Troublesome”. In English, bullying is often referred to as bullying. UNICEF (United Nations Children's Fund) identifies bullying as an oppressive behavior in which there must be violence, both physical and non-physical, which has the following three characteristics:

1. Intention. This intention is possessed by the perpetrators of bullying, who, from deep in their hearts they have intended from the start to carry out bullying (oppression) on the victim.
2. Repetition. The intention in point number one is manifested in the form of deeds or actions that contain violence, both physically and non-physically. This action is not a single action (single action/once completed), but it will have a pattern and be carried out repeatedly.
3. Power. Bullying perpetrators carry out this action because they feel superior to the victim, either physically stronger, economically stronger, or socially stronger. This power is expressed in the form of

bullying actions, which ultimately state that the perpetrator is more potent than the victim.³⁹

More broadly, a bully's use of power to harm a victim can result in the victim experiencing non-physical injuries. Victims can be depressed, experience trauma, and in situations where the victim meets the perpetrator, the victim feels helpless.⁴⁰ Considering that the victims in this research were children attending school, with immature mental and intellectual conditions, of course, bullying can make child victims experience undesirable things. Children can feel afraid at school, where this situation certainly affects the child's learning process.⁴¹

Bullying is behavior that has elements of violence, which has a clear impact on the victim. Bullying in educational units (schools) can take various forms.⁴²:

1. Physical Bullying. Physical bullying is manifested in the form of physical oppression or violence, which results in suffering or physical loss for the child victim. Physical bullying often results in injuries to the victim.
2. Verbal Bullying. Verbal bullying is carried out by making verbal threats, calling people with strange nicknames, cat-calling (calls with sexual overtones), and spreading false news (gossip).
3. Psychological Bullying. This type of bullying is often called mental bullying. Psychological bullying takes several forms, such as silencing the victim, not assuming the victim is there, staying away from the victim, making the victim's friends dislike the victim, and even making the victim feel "isolated alone" socially.

³⁹ UNICEF, "Bullying Apa Itu Dan Bagaimana Menghentikannya," n.d.

⁴⁰ Wiyani, *Save Our Children From School Bullying*.

⁴¹ Adiyono Adiyono, Irvan Irvan, and Rusanti Rusanti, "Peran Guru Dalam Mengatasi Perilaku Bullying," *Al-Madrasah: Jurnal Pendidikan Madrasah Ibtidaiyah* 6, no. 3 (April 2022): 649, <https://doi.org/10.35931/am.v6i3.1050>.

⁴² Viola Amnda et al., "Bentuk Dan Dampak Perilaku Bullying Terhadap Peserta Didik," *Jurnal Kepemimpinan Dan Pengurusan Sekolah* 5, no. 1 (March 2020): 19–32, <https://doi.org/10.34125/kp.v5i1.454>.

It turns out that forms of bullying in this digital era are developing, not only these three forms, but bullying can be carried out using social media. This type of bullying is often referred to as Cyberbullying. Cyberbullying can be carried out through various forms of action, namely⁴³:

1. Insult/Defamation via Social Media
2. Threats via Social Media
3. Blackmail Through Social Media

In essence, all forms of bullying will cause suffering for the victim. In this writing, the victim is a child, and if we look back at the provisions of the Child Protection Law, the principles are clear. Article 4 of Law 35/2014 states that children must be protected from all violence and discrimination. Furthermore, in education units, children are required to receive protection from all forms of violence committed by educators, education personnel, fellow students, or other parties (Article 9 paragraph (1a) and Article 54 paragraphs (1) and (2) Law 35/2014).

An express prohibition regarding violence against children has been regulated in Articles 76 C, 76 D, and 76 E of Law 35/2014, namely:

- a. Article 76 C of Law 35/2014: "Every person is prohibited from committing, allowing, ordering to commit, or participating in committing violence against children"
- b. Article 76 D of Law 35/2014: "Every person is prohibited from committing violence or threatening violence to force a child to have sexual intercourse with him or another person"
- c. Article 76 E of Law 35/2014: "Every person is prohibited from committing violence or threatening violence, forcing, committing

⁴³ Joshua Evandeo Irawan, Andrian Nathaniel, and Steven Jonathan, "Juridical Analysis About Cyberbullying Cases By Child Perpetrators Against Child Victims," *Jurnal Penelitian Hukum De Jure* 22 (2022), <https://doi.org/10.30641/dejure.2022.V22.017-032>.

deception, committing a series of lies, or persuading a child to commit or allow obscene acts to be committed.”

Prohibition – This prohibition is, of course, in line with the principles and objectives of the Child Protection Law, where once again, children must be free from all forms of violence. In Article 76 C, "Everyone" refers to all humans without age restrictions. Law 35/2014 does not define "Every Person", meaning humans of any age, including those still classified as children. This means that children cannot commit violence against each other. This understanding is also in line with the provisions of Article 9 paragraph (1a) and Article 54 paragraphs (1) and (2) of Law 35/2014, where there is the phrase "fellow students," which means fellow children at school.

Sanctions imposed by the Child Protection Law for anyone who commits violence against children are contained in Article 80 of Law 35/2014 with the following provisions:

- (1) "Every person who causes, permits, commits, orders to commit, or participates in committing violence against children is threatened with imprisonment for a maximum of 3 (three) years and 6 (six) months, and/or a maximum fine of IDR 72,000,000.
- (2) If the victim is seriously injured, the threat of imprisonment is 5 (five) years and/or a maximum fine of IDR 100,000,000 (one hundred million rupiah)
- (3) If it causes death, the threat of imprisonment is 15 (fifteen) years and/or a maximum fine of IDR 3,000,000,000 (three billion rupiah)
- (4) The penalty is increased by 1/3 if the perpetrator is the child's parent."

Further regulations regarding people who commit sexual violence against children or child sexual immorality by articles 76 D and 76 E of Law 35/2014 are regulated in articles 81 and 82 of Law 35/2014. This writing only focuses on bullying, which is conventional violence against children; therefore, in the following discussion, Article 76 C of Law 35/2014 will be

discussed a lot, along with the criminal threats contained in Article 80 of Law 35/2014.

C. Imposing Criminal Responsibility on Teachers Who Allow Bullying of Students at School

Children must essentially receive protection from violence, both inside and outside school. The prohibition of violent behavior towards children is contained in Article 76 C of Law 35/2014, with the definition of violence in Article 1, number 15a of Law 35/2014. Elements that should be underlined in violence against children are:

- a. Every action
- b. Addressed to Children
- c. Violence/Suffering arises in any form, including threats, coercion, or unlawful deprivation of liberty.

Digging deeper into Article 76 C of Law 35/2014, there is the phrase "allowing"; in full, everyone is prohibited from allowing violence against children. If we delve deeper into the meaning of the word allowing, the Child Protection Law itself does not regulate the terminology of "allowing". Thus, we cannot find an authentic understanding (based on the law) of the phrase let. This caused the research team to dig up the phrase "let" from the Big Indonesian Dictionary (KBBI), where the meaning of let is:

- a. Not forbidding
- b. Ignore
- c. Not taking good care of it

Matching the meaning of the phrase "allowing" from the KBBI, with the sound of Article 76 C of Law 35/2014, it can be interpreted that the sentence from Article 76 C of Law 35/2014 (specifically with the phrase "allowing") is "Everyone is prohibited from prohibiting/ignoring violence

against children" where the synonym of this sentence means: "Everyone must not forbid or ignore a child who is experiencing violence.

Next, we discuss every person's definition in Article 76 C of Law 35/2014 as not being limited, so anyone, as long as they are a human being (both a child and an adult), must not allow violence against children. Referring to the subject matter of this writing, which is related to teachers who allow violence in the form of bullying to occur to their students, the teacher can be interpreted as anyone who provides violence against children. Teachers are a profession regulated by the Teacher and Lecturer Law. According to Article 20, teachers are required to plan, implement, and evaluate learning in a quality manner; to continuously improve their qualifications and competencies; to act fairly without discrimination; to uphold the law, ethics, and moral values; and to maintain the unity and integrity of the nation. Referring to point "to uphold the law", teachers must also pay attention to the Child Protection Law and all its regulations. The Child Protection Law is a positive legal regulation whose fundamental content is to protect children.

Refers to Article 4 of Law 23/2002, which is regulated in Article 9 paragraph (1a) of Law 35/2014 and Article 54 paragraphs (1) and (2) of Law 35/2014, as explained in the previous chapter, it is clear that children must be protected from violence in the unit. Education, where protection must be clearly and firmly carried out by educators, education staff, government officials, and/or the community. So, in principle, it can be said that educators are obliged to protect their students from violence.

The violence discussed in this writing is violence against children, which refers to bullying. Bullying does not have specific terminology regulated in the Child Protection Law. Let's look at the characteristics of bullying as discussed in Chapter B. It can be said that bullying is an act of violence against children that is carried out continuously/repeatedly, which

causes suffering to the victim (child) in physical, psychological, and sexual forms, depending on the type of bullying and what the perpetrator did.

Teachers who allow bullying to occur among their students are indeed said to be allowing violence against children. Therefore, the teacher who makes these omissions violates Article 9 paragraph (1a) in conjunction with Article 54 paragraphs (1) and (2) of Law 35/2014, and may be subject to criminal sanctions based on Article 76 C in conjunction with Article 80 paragraph (1), (2), (3) according to the consequences suffered by the child, including:

- a. If a teacher allows bullying of a child, the teacher can be sentenced to imprisonment for a maximum of 3 years and 6 months and/or a fine of a maximum of IDR 72,000,000 (seventy-two million rupiah) – Article 80 paragraph (1) Law 35/2014;
- b. If, as a result of this neglect, the child suffers serious injuries, the teacher can be sentenced to imprisonment for a maximum of 5 years and/or a fine of a maximum of IDR 100,000,000 (one hundred million rupiah) - Article 80 paragraph (2) Law 35/2014;
- c. If the child dies due to this neglect, the teacher can be sentenced to imprisonment for a maximum of 15 years and/or a fine of IDR 3,000,000,000 (three billion rupiah) - Article 80 paragraph (3) Law 35/2014.

When the writing team looked for provisions regarding whether a teacher was obliged to protect their students at school instead of allowing them to experience bullying by other students, they did not find this provision. The aggravation provisions only apply to parents who commit violence against children (criminal threat plus 1/3) (Article 80 paragraph (4) Law 35/2014).

Conclusion

The conclusion that can be drawn from the analysis in this writing is that the actions of a teacher who allows bullying to occur among his students, who are children, can subject this teacher to criminal charges for violating Article 76C of Law 35/2014. This teacher fulfils the elements of "allowing violence against children". The criminal threat that can be imposed on individual teachers is contained in Article 80 of Law 35/2014, which must be applied considering the condition of the child (victim).

Through this writing, the writing team suggests that the government should provide regulations for burdensome criminal sanctions if there are individual teachers who are obliged to look after and protect their students from violence against children. This weighting is reasonable because teachers are actors whose duties are to look after, protect, and educate children in the education unit. Just as parents should care for their children at home, and if parents commit violence against their children, they will be punished with weights, so teachers should also be given weights if violence is allowed to occur at school, which in this research is narrowed.

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