

The Concept of Protection for Children Victims of Bullying Based on the Indonesian Criminal Justice System and the Rules of International Law

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Abstract

Various national and international legal instruments have emphasized how the state should make efforts to protect children, including in cases of bullying. However, the existing regulations do not clearly define how the victims and perpetrators should be treated. This study aims to analyze and compare the concept of legal protection in cases of bullying in national and international laws. The method used in this research is a normative legal study. This method is used to analyze and compare several concepts of legal protection in cases of bullying in both national and international regulations. This study uses a comparative law study approach and a statute approach. The location of this research is not carried out through field research but through literature review and document study. Supporting data in this study were also

obtained from various data on the internet and printed sources. The results of the study indicate that the state is obliged to fulfill, protect, and respect the rights of the child, is obliged and responsible in formulating and implementing policies in the field of implementing child protection, having the obligation and responsibility to provide support for facilities, infrastructure, and the availability of human resources in the implementation of child protection. guarantee the protection, maintenance, and welfare of the child by taking into account the rights and obligations of parents, guardians, or other persons who are legally responsible for the child, as well as supervising the implementation of child protection.

Keywords

Bullying, Legal Protection, Victim Protection, Child Protection

I. Introduction

Technological progress creates conditions where social interaction between humans becomes unlimited by space and time. This condition has various impacts in community life. The impact that arises can be in the form of negative impacts or positive impacts, depending on how the community responds to it. One of the impacts caused is the occurrence of bullying / bullying is an act that is rife in society. Bullying that often occurs in this society cannot be underestimated, because the impact caused is also dangerous and can harm others.

Children as the next generation of the ideals of the Indonesian nation and also as *agent of change* have the right to live, grow and develop, participate and have the right to protection from acts of violence and discrimination as well as civil rights and freedoms. As stated in Article 1 of Law Number 23 of 2002 concerning Child Protection, namely:

All activities to guarantee and protect children and their rights in order to live, grow, develop, and participate, optimally in accordance with human dignity and dignity, and receive protection from violence and discrimination.

The condition of the surrounding environment will have an influence on the process of development and growth of children's character in the future. A person's personality is formed early, if the child is accustomed to rough treatment or violent actions from those around him, then the process of forming his personality will also be disrupted.

Many are found in the community acts of violence that are direct (physical) or indirect (psychic). This condition is found from elementary to tertiary education, while the culprit is also not limited by age, ranging from seniors, peers, teachers / lecturers, parents and the environment.

Verbal bullying is an act of *bullying* carried out by physically mocking someone, degrading one's dignity to insulting one's family. This is often done in a state of joking or joking but we also unknowingly have hurt someone's feelings or psychic. Physical Bullying is an act of violence against weaker people so as to cause pain or disability, while *cyber bullying* that is rife in cyberspace is

by commenting on someone's posts on social media. *Cyberbullying* does not need to know closely or have a relationship with the victim, but only limited to friends on social media, they can *cyberbully* anywhere and anytime. (Damayanti et al., 2020)

The Organisation of Economic Co-operation and Development (OECD) in the Programme for International Students Assessment (PISA) research in 2018 showed that students who claimed to have experienced *bullying* in Indonesia were 41.1%. The number of students who are *bullied* is far above the average of OECD member countries which is only 22.7%.

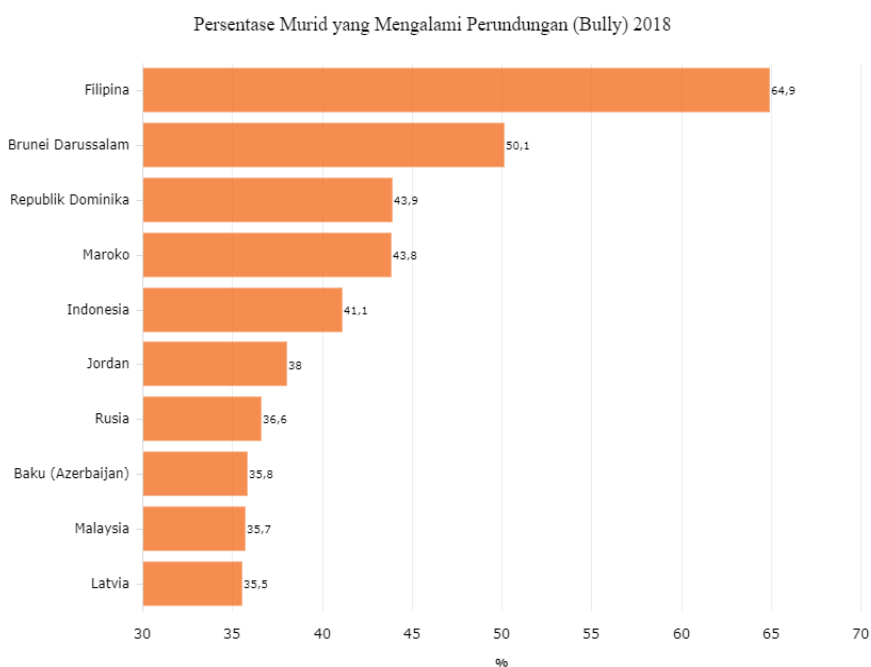


Figure 1. Graph of Bullying Cases in Different Countries
 Source: databoks.katadata.co.id

In addition, Indonesia is in the fifth highest position out of 78 countries as the country with the most students experiencing

bullying. In addition to experiencing bullying, students in Indonesia said as many as 15% experienced bullying, 19% were ostracized, 22% were humiliated and had their belongings stolen. Furthermore, as many as 14% of students in Indonesia admitted to being threatened, 18% were encouraged by friends, and 20% had students whose bad news was spread. (Jayani, 2019). KPAI recorded that in a period of 9 years, from 2011 to 2019, there were 37,381 complaints of violence against children. For bullying both in education and social media, the number reached 2,473 reports and the trend continues to increase. (KPAI, 2020).

In 2018, one of the Indonesian artists named Ussy Sulistiawaty reported an act of physical humiliation against his child, but instead of suing with *cyberbullying* offenses contained in Law Number 19 of 2016, the plaintiff chose to report the perpetrators with defamation offenses regulated in Article 27 paragraph 3 of Law Number 11 of 2008 concerning Electronic Information (ITE Law). Though defamation and cyberbullying are different offenses. If defamation attacks honor and reputation, *cyberbullying* is not always insulting, but can also take the form of threats or intimidation. Given that *the existing* bullying and cyberbullying *articles* in Indonesia do not include physical and verbal bullying. The definition made seems hasty so it seems indecisive. As a result of this too narrow definition, many cases of *cyberbullying* are misguided using defamation offenses.

In the same year, one of the high school students in Semarang died due to a case of *bullying* committed by upperclassmen to their underclassmen. As a result, two perpetrators were returned to their parents and transferred to another school to break the chain in this *bullying* case. This case

has caused casualties and harmed others, especially the victim's parents and friends left behind.

Responding to legal protection of children, Indonesia has actually ratified the Convention on the Rights of the Child through Presidential Decree No. 36 of 1990 which aims to ensure the protection of children. Other laws and regulations are the Child Protection Law, Law No. 39 of 1999 concerning Human Rights and the SPPA Law. In addition to the state, all societies must also synergize in terms of instilling commendable attitudes by upholding mutual respect and respect between human beings.

Problem Statement

Bullying is intentional harm to someone who feels helpless. One of the hallmarks of bullying is the imbalance of power that the perpetrator and victim of bullying have. In addition, the occurrence occurs repeatedly and even becomes a certain pattern, and based on the background as described above, the problems in this study are as follows:

1. What is the concept of protection of victims *of bullying* in the criminal justice system both nationally and internationally?
2. What is the national law in protecting victims *of bullying* in Indonesia?

Research Objectives

This study has several objectives related to the analysis of the concept of legal protection for victims *of bullying* in Indonesia with a comparison of several national and international legal rules, namely as follows:

1. Describe and analyze various concepts of protection of victims of *bullying* in the criminal justice system both nationally and internationally
2. Describe and analyze various national laws in the protection of victims of *bullying* in Indonesia

The Urgency of Research

The high number of bullying cases in Indonesia is a challenge and problem for Indonesia. In addition, the protection of victims in various legal rules still needs to be studied more deeply, especially in cases of *bullying* involving children as perpetrators and victims, therefore the urgency and importance of this study are as follows:

1. This research is able to provide different paradigms and perspectives in understanding the concept of child protection for victims of *bullying* in national and international legal rules.
2. This research is able to provide concrete and real data on the concept of child protection for victims of *bullying* in national and international legal rules.
3. This research will be able to answer various problems in the implementation of child protection for victims of *bullying* in national and international legal rules
4. This research will be very capable of being used for academics, practitioners, and governments in assessing the protection of child victims of *bullying* in national and international law.

II. Method

Research Approach and Methodology

The approach in this legal research uses a conceptual approach, where in this study looks at various concepts of child protection victims of *bullying* both in national and international legal instruments. *Conceptual approach* is used to see various views and doctrines that live and apply in society in child protection mechanisms.

Normative legal research does not necessarily connote juridical norm research. In general, juridical norm research is understood only as legal research that limits to the norms contained in laws and regulations. While normative legal research is broader. According to Johnny Ibrahim, normative legal research is a scientific research procedure to find truth based on scientific logic from its normative side. The normative side here is not limited to laws and regulations. As Peter Mahmud said, legal research is normative research but not just positivist law. Norms are not only defined as positive laws, namely rules made by politicians who have a higher position as proposed by John Austin or rules made by rulers as proposed by Hans Kelsen. Based on this opinion, legal research seeks to find the truth of coherence, namely whether the rule of law is in accordance with legal norms and whether the legal norms containing obligations and sanctions are in accordance with legal principles, whether a person's actions are in accordance with legal norms or legal principles (Marzuki, 2005; Ibrahim, 2013; Sidharta, 1999).

Location and Subject of Research

This research takes place in three stages for 6 (six) months, this research is a normative legal research with a *comparative law approach*, so it will focus on research locations in several locations as follows:

1. Library of Faculty of Law, Semarang State University, Building K 2, 2nd Floor, UNNES Sekaran Campus, Gunungpati Semarang, Central Java 50229.
2. Laboratory and Study Center at the Faculty of Law, Semarang State University.
3. National Legal Documentation and Information Network (JIDHN)

Data Sources and Types

This research is normative legal research, so this study only uses secondary and tertiary data, as follows:

1. Secondary Data Sources, in the form of documents, texts, texts and rulings related to the concept of child protection victims of *bullying*.
2. Tertiary Data Source, in the form of theories and results of previous research related to this research.

The type of data in this study is qualitative data, which in this study will clearly describe the concept of legal protection for children as victims of *bullying*.

In addition, the data on national and international laws and regulations that will also be studied in the framework of analysis of child punishment are as follows:

1. Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights

2. Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection
3. Law of the Republic of Indonesia Number 2012 concerning the Juvenile Justice System
4. Law of the Republic of Indonesia Number 3 of 1997 concerning Juvenile Court
5. Geneva Declaration of the Rights of the Child 1924
6. UN General Assembly Declaration on the Rights of the Child 1959
7. International Covenant on Civil and Rights of the Child 1966
8. International Covenant on Economic, Social & Cultural Rights 1966
9. UN Convention on the Rights of the Child 1989
10. As well as various other related legal rules

III. The Concept of Protection of Victims of Bullying in the Criminal Justice System Both National and International

Bullying is an act done intentionally to hurt physically, verbally, psychologically by a person against a person or group of people against a person or group of people who feel helpless. Children who are victims of bullying should receive legal protection. Child protection as all activities to guarantee and protect children and their rights in order to live, grow, develop and participate optimally in accordance with human dignity and dignity, and get protection from violence and discrimination. The government, parents, guardians, communities and schools have an obligation to

provide character education and instill ethics in children to prevent bullying.

Based on the 2014 report of the United Nations Children's Fund (UNICEF), it was affirmed that 8 (eight) out of 10 (ten) children in Indonesia experience bullying. In Indonesia, bullying ranks fourth among the many types of violence against children. The first order of cases of violence against children is occupied by cases of children facing the law, the second related to the family and the third concerns cyber pornography. The types of bullying that often occur are physical, verbal, cyber and relational bullying.

Chapter II Article 2 of Law Number 23 of 2002 concerning Child Protection states that the implementation of child protection is based on Pancasila and based on the Constitution of the Republic of Indonesia Year 1945 as well as the basic principles of the Convention on the Rights of the Child which includes:

- a. Non discrimination;
- b. The best interests of the child;
- c. The right to life, survival, and development; and
- d. Respect for children.

The purpose of child protection is to ensure the fulfillment of children's rights in order to live, grow, develop, and participate optimally in accordance with human dignity and dignity, and receive protection from violence and discrimination, in order to realize Indonesian children who are qualified, have noble character, and prosperity based on Article 3 of Law Number 23 of 2002 concerning Child Protection. Furthermore, in Law Number 23 of 2002 jo. Law Number 35 of 2014 concerning Child Protection stated:

Responding to legal protection of children, Indonesia has actually ratified the Convention on the Rights of the Child through Presidential Decree No. 36 of 1990 which aims to ensure the protection of children. Other laws and regulations are the Child Protection Law, Law No. 39 of 1999 concerning Human Rights and the SPPA Law. In addition to the state, all societies must also synergize in terms of instilling commendable attitudes by upholding mutual respect and respect between human beings.

In addition, the data on international laws and regulations that will also be studied in the framework of analysis of child punishment are as follows:

- 1 Geneva Declaration of the Rights of the Child 1924
- 2 UN General Assembly Declaration on the Rights of the Child 1959
- 3 International Covenant on Civil and Rights of the Child 1966
- 4 International Covenant on Economic, Social & Cultural Rights 1966
- 5 UN Convention on the Rights of the Child 1989
- 6 As well as various other related legal rules

IV. National Law on the Protection of Victims of Bullying in Indonesia

The issue of legal protection for children is one side of the approach to protecting children in Indonesia. As explained in Law Number 35 of 2014 jo. Law Number 23 of 2002 concerning Child Protection Article 20 which states the state, government, community, family, and parents are obliged and responsible for

the implementation of child protection. Article 1 paragraph 2 of Law Number 23 of 2002 concerning Child Protection explains that child protection is all activities to guarantee and protect children and their rights in order to live, grow, develop, and participate, optimally in accordance with human dignity and dignity, and receive protection from violence and discrimination.

Article 1 point 1 of the Child Protection Law states that a child is someone who is not yet 18 years old, including children in the womb. Legal protection of children is an effort to create conditions in which children can carry out their rights and obligations. Regarding the protection of children victims of bullying, the Child Protection Law, namely Article 54 jo Article 9 paragraph (1a) states that: *"Children in and within the education unit must receive protection from physical, psychological, sexual crimes, and other crimes committed by educators, education staff, fellow students, and/or other parties"* Based on this article, it can be said that children must receive protection from physical violence, psychological sexual crimes, and other crimes. Thus, children as victims of bullying must receive legal protection. Related to perpetrators of violence can be categorized as perpetrators of criminal acts if they commit violence in all forms to others. The violence in question is physical, psychic, sexual crimes, and other crimes. Given that bullying is an act of violence against children, according to the Child Protection Law, bullying is a criminal offense. The handling of children who face the law in bullying cases can also be done through diversion efforts, as stipulated in Article 1 point 7 of the SPPA Law that diversion is an effort to transfer the resolution of children's cases from the criminal justice process to processes outside criminal justice. The concept of diversion is based on restorative law. Children as victims, the main

focus of the restorative approach lies in the recovery and compensation of losses. In the mediation process, victims and perpetrators must be accompanied by parents or guardians, community counselors and professional social workers. However, the application or implementation of the diversion process cannot be against all children who commit or all types of criminal acts committed by children, so investigators in conducting diversion must consider the category of crime and the age of the child. Related to legal protection of children, in addition to law enforcement efforts, the role of the DPR is needed in conducting more intensive supervision of the implementation of laws and various government policies related to child protection. In the field of supervision and budget, the role of the DPR is needed in seeing the extent of government policy in budget politics for children's welfare, especially towards several government programs in overcoming children's problems and coordination between ministerial institutions related to child protection. Bullying is an act of violence committed against children in physical, verbal and psychological forms, therefore bullying is a criminal act and child victims have the right to legal protection.

The Child Protection Law provides special protection guarantees for children who face the law, both children as victims and children as perpetrators. The handling of children who face the law in cases of bullying is carried out based on the SPPA Law and diversion efforts can be a solution to solving cases of children facing the law. For this reason, law enforcement and protection of children must be implemented more wisely and carefully for the benefit of children in the future. The House of Representatives of the Republic of Indonesia has an important role in conducting more intensive supervision of the implementation of laws and

various government policies related to child protection. Thus, bullying is an act of violence committed against children in physical, verbal and psychological forms, therefore bullying is a criminal act and child victims have the right to legal protection. The Child Protection Law provides special protection guarantees for children who face the law, both children as victims and children as perpetrators. The handling of children who face the law in cases of bullying is carried out based on the SPPA Law and diversion efforts can be a solution to solving cases of children facing the law. For this reason, law enforcement and protection of children must be implemented more wisely and carefully for the benefit of children in the future. The House of Representatives of the Republic of Indonesia has an important role in conducting more intensive supervision of the implementation of laws and various government policies related to child protection.

Acts that fall into bullying or bullying are regulated in law number 35 of 2014 concerning child protection and in the Criminal Code which regulates extortion, threats, disclosure of secrets, humiliation and abuse and if resolved by legal channels regulated in law number 11 of 2012 concerning the juvenile criminal justice system and will be sentenced to half of the sentence applicable to adults.

Factors that hinder the resolution of criminal law for bullying perpetrators consist of law enforcement factors, legal factors, facilities and infrastructure factors, community factors and cultural factors. So there needs to be legislation that clearly states the punishment for children who become perpetrators of bullying or bullying.

V. Conclusion

States are obliged to fulfill, protect and respect the Rights of the Child, are obliged and responsible in formulating and implementing policies in the field of child protection, are obliged and responsible for providing support for facilities, infrastructure and availability of human resources in the implementation of child protection, ensure the protection, maintenance and welfare of children by taking into account the rights and obligations of parents, guardians or other persons legally responsible for the child, as well as supervising the implementation of Child Protection.

The Child Protection Law provides special protection guarantees for children who face the law, both children as victims and children as perpetrators. The handling of children who face the law in cases of bullying is carried out based on the SPPA Law and diversion efforts can be a solution to solving cases of children facing the law. For this reason, law enforcement and protection of children must be implemented more wisely and carefully for the benefit of children in the future. The House of Representatives of the Republic of Indonesia has an important role in conducting more intensive supervision of the implementation of laws and various government policies related to child protection. Thus, bullying is an act of violence committed against children in physical, verbal and psychological forms, therefore bullying is a criminal act and child victims have the right to legal protection.

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