

Implementation of Restorative Justice in Handling Cases of Bullying in Schools

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Abstract

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Juvenile delinquency is an act of breaking the rules in society by teenagers. Students mainly do this phenomenon themselves. One form of delinquency committed by students, especially at school, is bullying behavior. This study aims to see and understand bullying behavior that can be punished. Then also want to see how important it is for a teenager in this case, especially for students who commit bullying crimes, which are resolved through a restorative justice approach. The research method is in the form of normative juridical through a literature study approach by collecting secondary data. After the data is collected, then the data is processed and analyzed so that conclusions can be drawn from the questions posed in the problem formulation. The results showed that bullying behavior carried out in schools was generally carried out by children who had received a good education and tended to be carried out based on having received the same treatment from their seniors. In handling students dealing with bullying cases, it can be done through diversion efforts through restorative justice with out-of-court settlements involving three stakeholders in resolving issues, namely victims, perpetrators, and the community. In conclusion, the principle of restorative justice adopted in schools is a peaceful settlement by calling all interested parties in bullying cases.

Keywords: Restorative Justice, Student, Crime, Bullying, School.

A. INTRODUCTION

Education is one of the determinants of one's success. A person's success in education is seen by changes in behavior and mindset for the better (Rahardjo, 2009). Education in Indonesia is quite good but has not yet achieved maximum results. Ilham (2019) stated that the development of national education had not attained the expected results. The facts show that Indonesia has not been able to escape from moral problems, in the form of a decline in community commitment in various layers to the ethics of community life and as a nation and state. Other phenomena are impolite behavior, human rights abuse, violent behavior, and abuse of power (Adi, 2017).

According to Law No. 20 of 2003, Chapter VI, Article 13 Paragraph 1, the education pathway comprises of formal, non-formal, and informal education, all of which can complement and enrich one another. Formal education is a three-tiered educational path that includes primary, secondary, and university education. Non-formal education is an educational path outside of formal schooling that can be planned and tiered. Informal education is the path of environmental and family education (Bafadhol, 2017).

However, sometimes, seniority will be born with the grouping of education levels, especially a certain educational level. This is considered a medium to show that the highest strata are the most powerful and influential groups (Widyawati, 2014). As a result, many inappropriate actions occur, such as violence, bullying, and even sexual harassment. Of course, this is a bad incident for Indonesian education (Saraswati & Hadiyono, 2020). Incidents like this have not only happened once or twice, but many times and not only at the higher education level, but have spread to lower levels (Rahmawati, 2016). From a criminal law standpoint, the ingredients of these actions can be found in the Criminal Code (KUHP).

Children are young people who are the nation's successors and who will realize the nation's ideals in the future; therefore, it takes children with good qualities to achieve a prosperous future (Ferdiawan et al., 2020). Children play a strategic role and have distinctive traits; therefore, they require direction and protection to guarantee healthy physical, mental, and social development (Suryamizon, 2017). The process of children's growth and development influences the construction of their character and

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qualifications in the future. If children are frequently subjected to harsh treatment or even acts of violence during their growth and development, their personality formation will be interrupted (Hutahean, 2013).

The number of violence cases against children that have occurred lately is increasingly sad and concerning (Santoso, 2014). Violence against children is carried out aggressively, and suppressively, either in physical actions or verbal attacks also occur in the school environment. This is commonly known as bullying or bullying (Mayasari et al., 2019). Bullying is a phenomenon that is familiar in Indonesia as well as abroad. The parties involved are usually school-age children. At this time, bullying is still rife in the elementary school to the upper levels; even bullying still occurs in universities, although in relatively small numbers (Olweus, 1994).

Some of the perpetrators and victims come from educated people, so it can be ascertained that the perpetrators of bullying receive sufficient education to know that bullying has fatal consequences for its victims (Dake et al., 2003). Of course, this is a big question mark for all groups; child and adult perpetrators who are given informal education through their parents, as well as formal education, should be able to rethink whether the act of doing bullying can be justified and think about what impact it will have on victims of bullying (Berger, 2007).

Bullying actions that perpetrators can carry out are very diverse, ranging from verbal bullying and physical bullying to the development of technology, namely cyberbullying (Ningrum, 2018). Verbal bullying is an act of bullying carried out by physically mocking someone, degrading someone's dignity, or insulting someone's family. This is often done without us realizing it in a state of joking or joking, but we also do not realize that we have hurt someone's feelings or psychology (Anggraini, 2020). Physical bullying is an act of violence against weaker people by causing pain or disability. In contrast, cyberbullying is rife in cyberspace, namely by commenting on someone's posts on social media. Cyberbullying does not need to be intimately acquainted with or have a relationship with the victim, but only with friends on social media; they can do cyberbullying anywhere and anytime (Beran & Qi, 2007).

Bullying is a significant impediment to a child's exploration of himself. Bullying does not provide a sense of security and comfort, makes victims feel afraid and intimidated, has low self-esteem and worthlessness, is difficult to concentrate on learning, does not move to socialize with the environment (hard to adapt), and is reluctant to go to school, has an insecure personality, and is difficult to communicate. Because it is difficult to think clearly, academic achievement may suffer (Rigby, 2003). Bullying victims may also lose self-confidence as a result of a hostile atmosphere (Jovonen & Graham, 2014).

Albayrak et al. (2016) stated that victims of bullying can experience behavioral effects in the long term and short term. In the short term, they will feel depressed, lose the desire to go to school, and eventually avoid school itself, while in the long term, there is a tendency to think of themselves as low in the long term. As a result, victims of bullying find it challenging to adjust to a bad environment, even tend to have negative emotions, get angry, and be uncomfortable with the surrounding environment. There is no ability to deal with bullying. Many acts of bullying occur, such as verbal, sexual, and even physical violence, because, at this time, adolescents experience the peak of their emotionality, which is highly emotional development; adolescents do not only pursue physical satisfaction but increase psychological pressure (feeling accepted and appreciated) (Sullivan et al., 2003).

According to the study findings, most victims are hesitant to discuss their experiences with those who have the potential to modify their way of thinking and break the pattern, particularly the school and parents. Victims frequently keep their bullying a secret for fear of the perpetrator intensifying their tormenting (Ramadhani & Retnowati, 2013). As a result, victims are more likely to receive the "concept" of bullying from their seniors. According to Riauskina et al. (2015), the victim perceives the perpetrator to be bullying because of tradition, taking revenge because he was treated the same (according to male victims), wanting to show power, angry because the victim does not behave as expected to get satisfaction (according to female victims), and envious (according to female victims). The victim also positions himself to be a victim of bullying because of his outward look, lack of suitable

behavior, and unpleasant and conventional behavior (Darmayanti et al., 2019).

Then what is the responsibility of the perpetrators for the losses suffered by the victims? This is where there are things that are not easy for the community to decide. Usually, bullying that only has a mild impact on the victim can be overcome³⁹ by the school negotiations between the victim's family and the perpetrator's family. But this sometimes does not cause a deterrent effect for the perpetrators. Then what about bullying, which has had a very detrimental impact on the victim. The question arises whether bullying can be categorized as an act against the law and can be held accountable. This question does not stop there because the perpetrator, a minor, has certain rights in sentencing the child, considering that the sentencing is not allowed to threaten the child's future.

Bullying cases in Indonesia need to be studied about how the protection provided by law to perpetrators and victims of bullying crimes. Because it is necessary to prevent and overcome efforts so that victims feel their rights are fulfilled and perpetrators do not repeat the crime of³⁶ bullying because sanctions are sufficient to provide a deterrent effect. Based on the above background, the discussion in this article focuses on the forms of school bullying that occur in schools and the Restorative Justice approach to resolving school bullying cases.

B. ²²ETHOD

Legal research is conducted to discover the rule of law, legal principles, and legal doctrines that will be used to address the legal difficulties that are encountered. The researcher employs a method of normative legal research in the process of authoring this work. The research is library research that was undertaken through the study of document studies, gathering secondary data such as pieces of law and legal theories and opinions²⁰ from academics (Soekanto, 2007). Research on legal principles, legal systematics, vertical and horizontal synchronization levels, legal comparisons, and legal history are all included in the normative body of legal scholarship, often known as the literature (Efendi & Ibrahim, 2018). This study examines the legislation and analyzes the legal rules that apply in society related to using the Restorative Justice approach in resolving and minimizing School Bullying cases and get an overview of the community.

C. RESULT AND DISCUSSION

1. Prevention of Bullying Behavior in Schools

Bullying behavior that is rife among students needs to get serious attention from various parties because the problem of bullying is a common problem. After all, it takes the mutual concern to overcome the problem of bullying, such as parents, schools, law enforcement officials, the government, and the community contributing to tackling the issue of bullying. And prevent bullying (Arofa et al., 2018). Bullying is a complex problem, and the problem of bullying is not an easy one. So, to solve these problems, it must start from the root of the problem, namely by looking for factors that cause bullying among students. Because solving bullying cases without solving the source of the problem will not be effective. It will not last long if successful, so bullying behavior will inevitably appear again (Sulfemi & Yasita, 2020). External factors that affect children as bullies are the family environment, school environment, and the child's social environment.

a. Family environment

The family environment has a significant influence on children's behavior. Children as bullies are usually born from troubled families. Such as a broken home family, parenting parents who punish children excessively and are authoritarian, the dynamic environment that exists between parents and children is rigid in the absence of harmony, courteous attention, and affection in the family so that children try to seek attention outside the family environment by taking negative actions such as violence including bullying efforts (Zakiyah et al., 2017).

b. School environment

School as an environment that relatively dominates children's time significantly influences children's mindsets and actions. Some of the factors that cause children to bully at school are the lack of control and the permissive nature of the school environment so that violent behavior or bullying is only considered part of children's play (Magfirah & Rachmawati, 2010). One of the reasons bullying is increasingly happening in schools is because victims are afraid to say or tell their experiences of violence to those who have authority in schools, such as teachers or school principals. The bullying factor is increasingly

widespread because the perpetrators have a perception that their bullying behavior is normal because:

- 1) Bullying behavior is considered a tradition usually done by seniors to juniors or peers.
- 2) The perpetrator considers bullying an act of revenge because he feels like a victim of the bullying tradition.
- 3) The perpetrator wants to show that he has the power, so he does bullying for his satisfaction.
- 4) The existence of social jealousy from the perpetrators of bullying; for example, the victim is a child who the teacher or an intelligent child likes.

The victims perceive themselves as victims of bullying because:

- 1) The victim has a striking appearance that invites negative behavior from his peers.
- 2) Victims have low self-confidence and are usually aloof, so they have the potential to be bullied by their peers.
- 3) Victims are considered to have behaved impolitely and do not respect their peers.

So, it can be described in general that bullying behavior that still occurs in the school environment can be caused either because of the potential from within the child who is the perpetrator of bullying and factors by the victim who positions himself as a victim.

c. Children's social environment

The interaction process carried out by children is not only in the family environment or in the school environment, but it is necessary to realize that children have a community outside the environment, namely the child's social environment (Apsari & Prihartanti, 2013). Factors that cause children to do bullying are:

- 1) Children usually spend time and hang out with children who like to bully both in the family environment and at school so that this habit can be transmitted to their friends.
- 2) Children used to join friends who used to commit violence or other criminal acts.
- 3) Children usually hang out with aggressive children from families with high social status in their environment, so children behave negatively to get

recognition or appreciation from their peers.

- 4) Children usually join children actively using television, movies, social media, or video games.

It is therefore possible to draw the conclusion that bullying behavior is not only an impulse that comes from within the child who is the perpetrator, but it can also be formed from the child's external environment. This is because the child's environment has a significant influence on the character and behavior of children, such as the environment of the child's family, the environment of the child's school, and the environment of the child's social life.

Bullying is a process of group dynamics, and within that process, there is a separation of responsibilities that can take place in educational settings (Astuti 2008). Bully, bully assistant, reinforcer, defender, and outsider are some of the roles available.

- 1) Those kids who are considered leaders, who take the initiative, and who are actively participating in bullying behavior are referred to as bullies.
- 2) The bully assistant participates in bullying behavior as well, but he is dependent on or follows the bully's commands.
- 3) Rinfocers are individuals who were present when the bullying occurred, watched, laughed at the victim, provoked the bully, asked other pupils to observe, and so on.
- 4) Defenders are persons who attempt to defend and assist victims, and they frequently become victims themselves.
- 5) Outsiders are those who are aware of what is going on yet do nothing, as though they don't care.

Furthermore, Riauskina, Djuwita, and Soesetio (2005) classify bullying into 5 categories, namely:

- 1) Direct physical contact (hitting, pushing, pinching, scratching, and extorting and damaging other people's belongings).
- 2) Verbal contact (threatening, humiliating, demeaning, harassing, name-calling), sarcasm, put-down, criticizing, intimidating, mocking, spreading gossip.
- 3) Direct non-verbal behavior (looks cynically, sticks out tongue, displays

demeaning, ⁴ mocking, or threatening facial expressions, usually accompanied by physical or verbal bullying).

- 4) Indirect non-verbal behavior (silencing someone, manipulating friendships so that they become cracked, intentionally ostracizing or ignoring, sending anonymous letters).
- 5) Sexual harassment (sometimes categorized as physical or verbal aggressive behavior).

2. Legal Protection for Victims of Bullying at School

Crime prevention initiatives can be broadly split into two categories: penal (criminal law) and non-penal (not or outside the criminal law). Efforts to overcome through the criminal path are more repressive in character (oppression, eradication, or suppression) after the crime has occurred, whereas efforts to overcome through the non-penal route are more preventative in nature (prevention or control) before the crime happens (Bakhtiar, 2017) ²⁶

Satjipto Raharjo (2014) defines legal protection as the defense of human rights that have been violated by others. This safeguard allows the community to exercise all of its legal rights. Legal protection, according to Philipus M. Hadjon (1987), is the protection of dignity and worth, as well as the acknowledgement of human rights owned by legal subjects and based on legal rules that are free of arbitrariness. Legal protection, according to CST Kansil (1992), is a variety of legal efforts that law enforcement personnel must make to ensure a sense of security, both emotionally and physically, from any party's interference and various dangers.

According to Lili Rasjidi and I.B Wyasa Putra (1993), prevention efforts against children as perpetrators are related to legal protection, implying that the law can function not only to create certainty but also to ensure protection and balance, which are not only adaptive and flexible but also predictive and anticipatory. The non-punitive strategy is the best way to prevent youngsters from committing criminal crimes. Children represent the nation's future generation, and they receive special attention from the state and the international community. Once the importance of children is recognized, all countries consider the best alternative type of solution for children.

Child protection in Indonesia may ³³ be traced back to what was prescribed by the opening of the 4th (fourth) paragraph of the 1945 Constitution; from the formulation, it is recognized that child protection is also one of the state's purposes.

The law on child protection in Indonesia, particularly in the context of providing security for the human rights of children who are victims of violence in Indonesia in the future, ⁶ must carry out law reform in order to deliver justice, certainty, and benefit to children in Indonesia in particular, so that it can protect and guarantee children's rights. Children's rights who have been victims of violence (Hambali, 2019). Legal protection for children who are victims of violence is a form of human dignity protection. Government assurances for fulfilling the rights of children who have been victims of violence have entered human civilization ¹⁵ area.

Based on Article 20 of Law Number 35 of 2014 concerning Amendments to Law Number 23 ⁴⁴ 2020 concerning Child Protection, the obligations and responsibilities of Child Protection providers are among a. country b. Government c. Local Government d. Society, e. Family f. Parents or guardians of these components must work together to provide child protection, especially for children exposed to acts of bullying. Corning explains that synergy is everywhere around us, including within us, and is unavoidable.

The emphasis in the case of bullying is on articles that are directly ¹⁸ related to violence, specifically Article 76C of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 Concerning Child Protection. This article contains restrictions, and if they are broken, there are ⁹ repercussions, as stated in Article 80 of Law Number 35 of 2014 amending Law Number 23 of 2002 concerning Child Protection. According to Article 80 paragraph (1) and (2), ¹¹ punishment for violating Article 76C is imprisonment for a maximum of 3 (three) years and 6 (six) months and a maximum fine of Rp. 72,000,000.00 (seventy-two million rupiahs), and the perpetrator is sentenced to a maximum imprisonment of 5 (five) years and a maximum fine of Rp. 100,000,000.00. (one hundred million rupiahs). ³²

Diversion efforts can be made in dealing with children who violate the law in bullying cases, as regulated in Article 1 number

23 of Law Number 11 of 2012 concerning the Juvenile Justice System, namely measures to transfer the resolution of children's cases from the criminal justice process to processes outside of criminal justice. The concept of diversion is founded on restorative justice. The main focus of the restorative approach for children as victims is on rehabilitation and recompense for losses. In the mediation process, 29 victims and perpetrators must be attended by their parents or guardians, community counselors (PK), and professional social workers. However, the diversion process cannot be used to all children who commit crimes or all types of crimes done by children, therefore investigators conducting diversion must evaluate the type of offense and the age of the kid (Farida & Rochmani, 2020).

In these conditions, the law provides legal certainty for children who are victims of bullying. The existence of legal provisions can protect both parties, both perpetrators and victims, to obtain appropriate justice, which can be interpreted as that victims are protected and bring legal certainty. On the other hand, the perpetrator gets appropriate sanctions for his actions but is guaranteed human rights while serving a sentence stipulated.

3. Restorative justice in handling cases of bullying in schools

Article 80 paragraph 37 (1) and (2) threaten the perpetrator with a prison sentence of less than seven years; consequently, diversion for the child's welfare is required. 13 The Juvenile Justice System Act defines diversion as the transfer of the resolution of children's cases from the criminal justice system to a process outside of the criminal justice system. 11 Diversion efforts are efforts to create restorative justice, which is the settlement of criminal cases involving perpetrators, victims, families of perpetrators/victims, and other related parties to jointly seek a fair solution by emphasizing restoration to its original state rather than retribution. When the victim's demands are granted by the offender, as mentioned in, the diversion benefits both the perpetrator and the victim (Rasdi & Arifin 2016).

The restorative justice paradigm can serve as a reference and be considered by judges in cases involving children. Because, in theory, restorative justice recognizes three (three) parties in determining the resolution of children's cases: (1) victims; (2) perpetrators;

and (3) the community. The principle of restorative justice in cases of bullying in schools seeks a peaceful settlement, namely by calling students involved in bullying cases parents and school 28 representatives. Sanctions given to students are in the form of coaching sanctions against students, namely in the form of sanctions for cleaning the prayer room and school environment. The sanctions do not interfere with teaching and learning activities, and students are still allowed to participate in the teaching and learning process. The guidance provided by the school has a positive impact on students; namely, students are aware of their own mistakes (Fronius et al., 2016).

Any kind of restorative justice involving referral to community services or other services will require the approval of the child or their parent(s), with the decision to refer the case dependent on the examination of the application by the competent authority. Become a reference in the following manner:

- a. Children should not be compelled to admit to committing specific acts. Restorative justice programs are only utilized against children who acknowledge committing an offense. But coercion cannot exist.
- b. Incarceration is incompatible with restorative justice. Because the mechanisms and structures of restorative justice prohibit any form of incarceration.
- c. The potential of resubmission to the court exists (cases must be able to be transferred back to the formal justice system if there is no solution that can be taken).
- d. The right to a trial or judicial review exists. The youngster must be able to continue to assert his entitlement to the preparation of the judicial review.
- e. There can be no prejudice.

Restorative justice strives to improve the state of society by including all of its components. From the standpoint of restorative 43 justice, according to Howard Zehr (2015), a crime is a violation of human and interpersonal relationships. Involving victims, perpetrators, and the community in the search for solutions to restore peace and reassurance is required to fulfill the duty imposed by criminal 12 activity. Based on this, the notion of dealing with children in conflict with the law can be implemented by prioritizing child welfare and

legal action. Therefore, the restorative model of punishment, also known as restorative justice, is today more suitable for dealing with young offenders. Restorative justice is a procedure in which all parties engaged in a crime work together to choose how to deal with future consequences. Restorative justice is founded on the notion of two processes, which is an examination and comparison of the welfare approach and the justice approach, which is extremely respectful of the suspect's legal rights and concerned with the victim's best interests. Restorative justice aims to reduce the number of children arrested, jailed, and sentenced to prison, eradicate stigma in children, and rehabilitate children so that they can contribute to society in the future. Restorative justice is a fully integrated and community-driven justice system. The procedure is demonstrated to prevent the repetition of criminal conduct. This makes justice replete with considerations for addressing crime and avoiding stigma. The diversion program can be a form of restorative justice if:

- 1) Teach youngsters to accept responsibility for their actions.
- 2) Allow youngsters to make amends for their faults by doing good for the victim.
- 3) Give the victim opportunities to engage in the process.
- 4) Provide opportunities for children to keep relationships with their families.
- 5) Create possibilities for reconciliation and healing in communities damaged by criminal acts.

In cases of bullying, the entry of cases into criminal justice should be avoided. Because when a child is subjected to imprisonment or confinement, most of them leave a profound trauma effect on the child's development. In the case of children, a sentence in prison is the last option. It must be decided very carefully with careful consideration by taking into account the child's interests that there is no other adequate alternative to rehabilitate children who are perpetrators of criminal law violations.

As a result, the best way to address the School Bullying issue is to build the notion of restorative justice, which is an alternative to juvenile justice in Indonesia and promotes a welfare and justice approach. Restorative justice seeks to reduce the number of children arrested, detained, and sentenced to prison. The

stamp or tagging of children as perpetrators of criminal activities is removed, and youngsters are reintegrated into society as normal human beings. Children are supposed to mature into better individuals and to contribute to their communities. Of course, strong cooperation amongst stakeholders is required, particularly from the school where the child is educated.

D. CONCLUSION

Violent behavior against children, whether verbal or nonverbal, or in a direct or indirect manner, is what is meant by bullying. According to Law Number 35 of 2014, which amends Law Number 23 of 2002 Article 9, children have the right to protection in the education unit. This is in accordance with Law No. 23 of 2002, paragraph 80. Criminal sanctions can be set aside if a diversion agreement cannot be reached to address the problem of bullying while also providing protection for those who perpetrate it. This protection can be achieved by prioritizing diversification to address the issue of bullying and avoiding criminal sanctions if the diversion agreement cannot be reached. The perpetrators, especially child perpetrators, are tried by considering the principles contained therein in Law Number 11 of 2012 concerning the Juvenile Justice System. In dealing with children's cases, judges might use the transition of the formal legal procedure to a non-formal legal settlement road with a restorative justice model as a reference and consideration. Because, in general, restorative justice recognizes three (three) stakeholders in resolving children's issues: (1) victims, (2) abusers, and (3) the community. The principle of restorative justice adopted by the school seeks a peaceful settlement, namely by calling students involved in bullying cases, parents, and school representatives. Seek an amicable settlement by calling students engaged in bullying cases, parents, and school representatives.

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