

ENFORCEMENT OF BARGAINING LAWS VEBALLY AGAINST CHILD OFFENDERS

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ABSTRACT

This research examines the legal enforcement of verbal bullying against child perpetrators which occurs in several places in Indonesia, such as what happened in Bandung City, Baiturrahman Plus Middle School students, eight private high school (SMA) students in Karanganyar Regency, Central Java, one Public elementary school student in Wirosari sub-district, Grobogan Regency with the initials RS. In relation to criminal acts of verbal bullying that occur and are repeated throughout Indonesia, the author wishes to conduct research and study in more depth about law enforcement against children who commit acts of bullying so that there is legal certainty that is expected, especially for victims of bullying and there is a deterrent effect on the perpetrators. criminal act of bullying. From this study, the author hopes that it will help and be able to provide certainty and answers to enforcers (police), prosecutors, lawyers and judges in handling and prosecuting perpetrators of criminal acts of bullying. The factors that really influence this are of course the differences in perceptions of law enforcers, legal regulations as well as the public's low understanding of law regarding law enforcement itself.

INTRODUCTION

The Preamble to the 1945 Constitution in paragraph IV states that the Government of the Republic of Indonesia protects the entire Indonesian nation, promotes general welfare, and makes the life of the nation intelligent. The meaning of paragraph IV of the Preamble to the 1945 Constitution is that every person has the right to develop himself by fulfilling his basic needs, has the right to receive education and benefit from science and technology, art and culture, in order to improve the quality of his life and for the welfare of humanity. Indonesia is a legal state as regulated in the 1945 Constitution, especially Article 1 paragraph (3). The consequence of a legal state is that all aspects of life in the state are regulated based on the rule of law.

In an effort to realize the enforcement of legal supremacy in Indonesia, a legal product is needed, in this case a law that functions as a regulator of all community actions as well as a tool of coercion against the community. Children as a legal subject in this country are also subject to and obedient to applicable legal rules. Children need special protection and care, including legal protection, that is different from that of adults. Children need special protection and care, including legal protection, that is different from that of adults. This is based on the physical and mental reasons of immature and mature children. Every child will one day bear these responsibilities, so he needs to get the widest possible opportunities to grow and develop optimally both physically and mentally.

orals need to be protected to realize the welfare of children by providing guarantees for the fulfillment of their rights. ³ Legal protection for children is closely related to the importance of children regarding their future. Children will be well and mature in physical and mental growth, arriving in the future as the next generation of the previous ones. The influence of progress in the fields of science, technology, culture and development in general certainly has an impact on polarization in all aspects of society, including children. There are many deviations that are not

properly committed by children, often as time goes by children in their life patterns commit or lead to criminal acts such as verbal bullying.

There are many definitions of bullying itself and this act of bullying occurs everywhere throughout Indonesia and does not know the place, time and regardless of age limits, this act occurs in the home environment, school, workplace, in the community, and in virtual communities, is actually quite complex when viewed in the legal justice system in Indonesia. The juvenile criminal justice system is different from the criminal justice system for adults in various aspects. Acts of verbal bullying of course fall into the realm of criminal law, in juvenile criminal justice, including all activities for examining and terminating cases centered on the "interests of the child".

With the large number of cases that exist and where the perpetrator is only given a light sentence, this seems to be considered a light case and in the eyes of society this act of bullying is trivialized. In the digital world, bullying is very common which is even recorded in the community. The perpetrators vary, from children, teenagers, even adults who bully minors who are of course still very weak physically and mentally and it is feared that this will continue to happen in the school environment and in the community.

Actions that clearly fall within the realm of criminal law are even proudly shown to everyone who can access social media. This action was not only verbal but carried out physically, which resulted in the victim being seriously injured requiring intensive care in the hospital and quite a few even dying. This action needs to be given strict sanctions which must be enforced in Indonesia, considering that Indonesia is a country that occupies 5th highest position in terms of cases of verbal, non-verbal and *cyber bullying* in the world, according to the results of the Research Program for International Students Assessment (PISA).

Moreover, specifically in Law Number: 35 of 2014 concerning Amendments to Law Number: 23 of 2002 concerning Child Protection, and which regulates specifically to protect victims of criminal acts of bullying is Article 76C "Everyone is prohibited from placing, allowing, ordering, or participate in, committing violence against children."

In connection with this research, the author will focus on law enforcement regarding verbal bullying of child perpetrators regarding the actions they carry out, the state's commitment to guaranteeing protection for children, that "every child has the right to protection from violence and discrimination ". Many laws and regulations related to children have been published but in their implementation there is still a lot of violence that befalls children, including acts of bullying. Before discussing in more depth the author will explain the subject to be discussed, namely children. A child is a man or woman who is not yet an adult or has not yet experienced puberty.

Children need special protection and care including legal protection that is different from adults, this is based on the physical and mental reasons that children are immature and mature, every child will one day carry out these responsibilities so they need to get the widest possible opportunities. In order to grow and develop optimally physically, mentally, socially, and with noble morals, protection needs to be carried out to realize the welfare of children by providing guarantees for the fulfillment of their rights.

A criminal act is behavior (handeling) that is punishable by a crime that is against the law related to wrongdoing, and which is carried out by a person who is capable of taking responsibility. Moeljanto provides a definition of a criminal act, as an act that is prohibited by a legal prohibition accompanied by the threat of sanctions in the form of certain penalties, for anyone who violates the prohibition.

A criminal act must contain the elements contained in a criminal act which include:

1. Human actions (positive or negative, doing or not doing or allowing).
2. Threatened with criminal penalties (staatbaar gesteld).
3. Against the law (onrechmatig).
4. Done in error by people capable of taking responsibility.

Children who are in conflict with the law in terms of law enforcement regarding criminal acts committed, must fulfill their rights. This is as regulated in Law Number: 11 of 2012 concerning the Juvenile Criminal Justice System.

Criminal acts of bullying in the form of verbal abuse often occur in school environments, which in their function are places for seeking knowledge and character building for students, but

instead become places for criminal acts. Bullying is not only carried out by adults, but there are many cases of verbal bullying carried out by children, which occurred in several regions in Indonesia, including, in the city of Bandung, verbal bullying was carried out by a number of students at Baiturrahman Plus Middle School, the victim was a student. at one of the senior high schools (SMA) in Karanganyar Regency, Central Java, eight students verbally bullied one of the students. A public elementary school student in Wirosari District, Grobogan Regency with the initials RS, experienced severe depression after being suspected of being a victim of bullying, Pribadi RS often shuts himself up and is afraid of meeting people to the point that he no longer wants to go to school.

Based on these cases, this is truly worrying, schools which are places for self-development for students have actually become places where criminal acts of bullying occur. Victims of bullying must receive clear protection and there is legal certainty that guarantees trust in the community and victims of bullying, victims of bullying, especially children, have not been able to face situations and problems well and when children are unable to find solutions, it is feared that it will disrupt their lives both physically and mentally. Therefore, victims must be given protection so that they can return to normal as before.

RESEARCH METHODS

1. This is a form of normative research and is also supported by empirical research.
Normative legal research is conceptualized as what is written in statutory or legal regulations which are conceptualized as rules or norms, in this case carried out by researching library materials or secondary data. This research tries to answer the problems raised in this research by looking at statutory regulations, theories, court decisions, legal theory, opinions of scholars and existing international instruments.
2. Research Data Sources, which are used as data sources in this writing are:
 1. Primary data
Data obtained directly from information sources or observations of research objects
 2. Secondary Data
Data consisting of legal materials which include primary legal materials, secondary legal materials, and tertiary legal materials.
3. Data collection technique
It is a technique or method used to collect data to be researched, in order to obtain data that is valid and also in accordance with reality, the research carried out is: library research and field research.
4. Data analysis
This is a systematic process for describing, interpreting and processing data so that valuable conclusions can be drawn.
5. Research sites
The location chosen and determined by the author was the nearest city, in this case the city of Bandung, with the consideration that it was the scene of the crime in the case study of the criminal act of verbal bullying, so that it would make it easier to find the data needed in the research.

RESULTS AND DISCUSSION

Child protection

Children are the most beautiful gift from God and play an important role in a household. They become entertainers, additions to the family, and incentives for maturity. However, there is a serious problem related to violence against children within the family or community. Some forms of violence can take the form of bullying, beatings, theft, abuse and rape. Of course this is a serious issue that threatens children's lives. The Indonesian government has recognized the importance of protecting children and has enacted laws to protect their rights and welfare. Law Number 4 of 1979 concerning Child Welfare is the legal basis for child protection in Indonesia. Five forms of child protection according to positive law in Indonesia.

Child protection includes providing comprehensive guarantees for their rights and efforts to protect them from violence and discrimination. This protection is provided through a positive legal framework or law that regulates the rights and welfare of children. The main goal of child protection is to ensure that children can grow, develop and participate in society in accordance with human dignity and rights. The following are several laws that regulate child protection:

1). Law - Law Number 39 of 1999 concerning Human Rights

According to Law no. 39 of 1999 concerning Human Rights (HAM), every child has the right to receive protection from parents, family, society and the state. Children's rights are human rights and are recognized and protected by law.

Forms of legal protection according to Law No. 39 of 1999 are contained in:

- a .Article 52 (1) states that every child must receive protection from parents, society and the state.
- b .Article 58 (1) states that every child is obliged to obtain legal protection from various forms of violence, sexual harassment and unpleasant acts.
- c .Article 64 states that every child is obliged to receive protection from work that is dangerous to him or herself, which can disrupt their physical health, morals and social life.
- d .Article 65 states that every child has the right to receive protection from sexual abuse, kidnapping, child trafficking, exploitation activities and various forms of abuse of narcotics, psychotropic substances and other addictive substances.
- e .Article 66 states that every child has the right to freedom and humane treatment, has the right to receive effective legal assistance, if he is in conflict with the law, has the right to receive special treatment, if he is involved in a crime and has the right to obtain justice in the juvenile court.

2). Law Number 23 of 2004 concerning the Elimination of Domestic Violence

Article 5 of this Law contains the prohibition of domestic violence, both physical and psychological violence and neglect in the household. Forms of protection for children are:

- a. A form of legal protection against physical violence against children is torture, mistreatment and beatings of children, with or without using certain objects, which results in physical injury or death of the child.
- b . Forms of legal protection against psychological violence against children, such as verbal abuse, showing pornographic images.
- c. A form of legal protection against sexual violence against children is violence in the form of sexual contact, either directly or indirectly.
- e. Forms of legal protection against social child violence include child neglect and child exploitation.

3). Law - Law Number 35 of 2014 concerning Child Protection

The form of child protection based on the Child Protection Law is written in:

- a . Article 13 paragraph 1, that as long as a child is in the care of parents, guardians, or any other party responsible for their care, they have the right to receive protection from violence, abuse, neglect and discrimination and injustice.
- b . Article 15, that every child has the right to receive protection from abuse in political activities, involvement that contains elements of violence and involvement in war.
- c . Article 16 paragraph:
 - a) that children must receive protection from torture, ill-treatment and inhumane punishment.
 - b) Children are also obliged to obtain freedom
 - c) Arrest and detention of children can be carried out as long as it is in accordance with the law.

From this law, it is found that children are a gift from God that must be looked after because they have inherent dignity as human beings that must be upheld. Taking into consideration that children are the hope of the nation who determine the future of the country. Efforts to protect children are very important and start when they are still fetuses until they are 18 years old.

4). Preventive Legal Protection

Preventive legal protection is carried out by the government to protect its citizens. The public is given the freedom to express their opinions so as to prevent legal problems from arising. In the context of legal protection for children, the focus is on prevention before legal problems occur.

Many cases make children victims of violence within the family environment because of their weak position socially and legally. Children are often targets of emotional abuse by parents. Preventive legal protection aims to prevent violence against children within the family.

5). Repressive Legal Protection

Preventive legal protection is provided by law to its citizens. The law described above is an example of repressive legal protection.

Criminal Offenses of Child Offenders Related to Verbal Bullying

Bullying behavior often occurs in school environments, children's playgrounds, housing complexes and everyday environments where there are many children. It is not uncommon for bullying to cause injuries and even fatalities. This act of bullying is detrimental to the child as the victim and affects their psychology and growth and development as an adult. The phenomenon of bullying often causes perpetrators to act arbitrarily towards victims, especially small children who are often helpless. This bullying behavior can be caused by several factors so that the perpetrator intervenes to carry out bullying behavior on the victim. Actually, children are not taught to behave in bullying ways. This behavior is also not taught directly to children.

There are various factors that influence a child to develop into a bully. These factors include biology and temperament, the influence of family, friends, and the environment. Verbal bullying Words can be used as a tool to break the spirit of the child who receives them. Children often imitate the words and behavior of adults, bad environmental behavior patterns that often use harsh words or harsh sentences are often imitated and carried out by children with other children. Swear words, likening them to animals, or frequently bullying their parents are some forms of verbal bullying that children receive. Verbal abuse is the most common form of bullying used by both boys and girls. This can happen to adults and peers without being detected. Verbal bullying can include screaming and audible commotion. This is quick and painless for the bully and can be very painful for the target.

If verbal bullying is condoned, it will become normal and the target will become dehumanized. When someone becomes dehumanized, it will be easier for that person to be attacked without getting protection from people around who hear it. Verbal bullying can take the form of name -calling , taunting, belittling, cruel criticism, personal defamation, racist slurs, sexually suggestive (meaning /of a sexual nature) or sexually abusive remark (harsh speech).

Verbal Bullying law enforcement

1.Diversion

Based on Law Number 11 of 2012 concerning the Juvenile Justice System, efforts must be made to divert children. This is regulated in Article 7 of Law Number 11 of 2012 concerning Juvenile Criminal Justice which states that: (1) At the level of investigation, prosecution and examination of children's cases at the District Court, diversion is mandatory. (2) Diversion under paragraph (1) occurs if a criminal act is committed: a. Threatened with imprisonment for less than 7 (seven) years, and b. Does not include repetition of criminal acts. In Article 80 paragraph (1) and paragraph (2) the criminal sanction threatened against the perpetrator is imprisonment for less than 7 (seven) years. Therefore, it is mandatory to strive for diversion for the benefit of children. The diversion referred to in the Juvenile Justice System Law is the transfer of the resolution of children's cases from the criminal justice process to a process outside criminal justice.

This diversion effort is an effort to resolve criminal cases by involving the perpetrator, victim, perpetrator's family, victim's family, and other related parties to jointly resolve the case fairly by emphasizing restoration back to its original state, and not in the form of retaliation, so that diversion This has a positive impact on both the victim and the perpetrator when the victim's demands have been met.

2. Restorative Justice

Restorative Justice is a new foreign terminology known as Restorative Justice. Restorative justice is a way of involving everyone consisting of victims, perpetrators of crimes and the community so as to produce justice for all and create the atmosphere that was before the crime problem occurred. In general, two routes can be used to resolve criminal acts or disputes, namely

Litigation and Non-Litigation. Dispute resolution through court or Litigation is a settlement process in court that requires the involvement of all the people in the dispute to express their opinions to each other in order to maintain their rights when they are before the court (Amriani, 2012). Meanwhile, out-of-court or non-litigation dispute resolution is the resolution of disputes resulting from differences of opinion that have followed a path agreed upon by all parties, which is carried out through mediation and expert assessment.

In resolving criminal acts of bullying with restorative justice using dispute resolution channels outside the court (Non litigation). The process of resolving criminal acts based on restorative justice through mediation of all parties involved to agree to seek a peace agreement. Resolving criminal acts through restorative justice focuses on direct involvement of all parties, including perpetrators, victims and the community in the process of resolving cases. Restorative justice certainly pays attention to the values of peace, harmony, tranquility and kinship, not focusing on imprisoning someone. The principle of restorative justice can be interpreted simply as resolving criminal acts that pay attention to justice for all parties involved.

3. Law Enforcement

Law Number 3 of 1997 concerning Juvenile Courts has been replaced by Law Number 11 of 2012 concerning the Juvenile Justice System because it is no longer in accordance with current developments and the needs of the legal community and has not comprehensively provided protection for children in conflict with the law. Cases of criminal acts of bullying are focused on articles relating to violence, namely Article 76C of Law Number 23 of 2014 concerning Child Protection.

This article has consequences if it is violated, which are stated in Article 80 paragraph (1) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, which reads: (1) Every person who violates the provisions as intended in Article 76C, is punished with imprisonment for a maximum of 3 (three) years and 6 (six) months and/or a fine of a maximum of Rp. 72,000,000.00 (seventy-two million rupiah). (2) In the event that the child as referred to in paragraph (1) is seriously injured, the perpetrator shall be punished with imprisonment for a maximum of 5 (five) years and/or a fine of a maximum of Rp. 100,000,000.00 (one hundred million rupiah). (3) In the event that the child as intended in paragraph (2) dies, the perpetrator shall be punished with imprisonment for a maximum of 15 (fifteen) years and/or a fine of a maximum of Rp. 3,000,000,000.00 (three billion rupiah). (4) The penalty is increased by one third of the provisions as referred to in paragraph (1), paragraph (2), paragraph (3) if the person carrying out the abuse is the parent.

Regarding the sanctions regulated in Article 80 (1) and (2), it states that the punishment for violating Article 76C is a maximum imprisonment of 3 (three) years 6 (six) months and/or a maximum fine of IDR 72,000,000.00 (seventy-two million rupiah) and the perpetrator is sentenced to imprisonment for a maximum of 5 (five) years and/or a fine of a maximum of Rp. 100,000,000.00 (one hundred million rupiah). If the diversion and restorative justice efforts do not find an agreement, then the perpetrator of the crime is a child tried based on the principles contained in Law Number 11 of 2012 concerning the Juvenile Justice System. In enforcing the law, there are three elements that must always be considered, namely legal certainty, legal benefits and justice. Imposing a crime against a child is a final legal remedy that is ultimum remedium, which means that a sentence against a child can only be carried out if there are no other legal remedies that benefit the child. However, judges can impose alternative sanctions in the form of action sanctions against children who commit criminal acts.

Sanctions imposed on children include being returned to their parents or guardians without being subject to criminal sanctions or being handed over to the government or social institutions to be educated as children of the state without being subject to criminal sanctions. Then, Article 46 of the Criminal Code explains that if the judge makes a decision that a child who has committed a crime be handed over to the government, then the child will be put in a state educational home to receive education from the government or handed over to a certain person residing in Indonesia, or to a legal entity, foundation, or a charitable institution domiciled in Indonesia to provide education, or in the future at the expense of the government. This is done no later than the child reaches the age of 18 years. Based on the principles contained in Law Number: 11 of 2012 concerning the

Juvenile Criminal Justice System, if diversion and restorative justice efforts fail and/or because it is confirmed that the criminal act of verbal bullying is being carried out repeatedly, then the child perpetrator who is not criminally bullying must be tried.

CONCLUSIONS

Based on the discussion above, it can be concluded that the legislation has regulated the enforcement of criminal acts of verbal bullying and the emphasis is on article 76C of Law Number: 23 of 2014 concerning Child Protection, namely the prohibition of committing violence against children, on the other hand the perpetrators of the crime. verbal bullying crimes must also be given protection regarding their rights, namely, by providing an alternative solution in accordance with the Law by transferring it to a diversion solution and/or restorative justice, but this is of course still a polemic and still needs to be studied in more depth because it is to achieve the same principles. justice and to achieve legal certainty in accordance with the wishes of the legal community itself, it has been fulfilled, especially for the victims, and whether the settlement is assured and guaranteed to have a deterrent effect on the perpetrators.

SUGGESTION

Law enforcement through diversion and/or restorative justice does not have to be used as an alternative and/ or spearhead of enforcement for children who are perpetrators of criminal acts of verbal bullying. It stops here. Based on the principles of Law Number: 11 of 2012 concerning the Juvenile Criminal Justice System, that if the criminal act is repeated and/or there is no agreement through the resolution of diversion and restorative justice then law enforcement must be enforced and the child who committed the crime must be tried.

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