



Criminal liability by child perpetrator bullying

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Abstract

Objective Did it study This is To know if acts of bullying committed by a child can request accountability in a way criminal And what is the judicial process ? for a child perpetrator of bullying. Study This is a study Normative. Results study show that Bullying is something action violence committed against a child in verbal or non-verbal ways as well as or No direct children have the right To get protection in the unit of Education based on Constitution Number 35 of 2014 concerning change to Constitution Number 23 of 2002 Article 9. Following Article 80 of the Law Number 23 of 2002. The violence that occurred in period orientation school can categorized as as something criminal because violates the law that has been arranged about mechanism period orientation school. As for party schools, teachers as well his staff can wear penalty form reprimand, dismissal temporary or fixed, up to closing school or decline accreditation school. 2. Cases of bullying committed by a child below age can submitted up front court based on Constitution Number 11 of 2012 concerning System Justice Criminal Child And convicted with condition must be 12 years old And Not yet 21 years old as well as Not yet married. For children who aren't yet 12 years old, the investigator can decide To return to parents/guardians or can include him in educational programs, coaching, and mentoring at the agency government or LPKS at the handling agency field well-being social, both at the level center nor area, no later than 6 (six) months. For a child naughty, if sentenced penalty criminal penalty is less than ½ of the maximum threat to adult crime as well as If the threatened criminal is cumulative from prison And fine, the criminal fine can replaced with training work. System Justice criminal child prioritizes restorative approach, if party victim and perpetrator have reached something agreement then the legal process is ongoing can be stopped And the solution they can take based on non-penal route

Keywords: Criminal liability, children, bullying

Introduction

In handling cases of bullying or what can be called bullying, there is a polemic regarding the imposition of sanctions against perpetrators of bullying. For example, the handling of bullying cases by the school, where sometimes victims feel that sanctions against the perpetrators of bullying are not appropriate or do not have a deterrent effect on the perpetrators. It increases the intensity of bullying attacks for victims. (Jannah, 2018) ^[6] Therefore, sometimes victims of bullying prefer to remain silent and let the bullies carry out their actions.

One of the bullying cases that attracted public attention was the bullying case that occurred in 2015, where the case occurred to a student named Fifi Kusri. He experienced verbal bullying by his friends, in the form of teasing about the victim's father's job. Over time, the student experienced psychological pressure until he chose to end his life by hanging himself in the bathroom of his house (<http://news.liputan6.com> accessed 11 November 2023).

From several cases that have occurred, it can be concluded how dangerous the impact of bullying can be on its victims. Teasing that is considered normal in children's interactions in general, can result in fatal mistakes for the souls of other children. In cases of bullying, which party can be blamed or which party can be responsible? (Jannah, 2018) ^[6] Some cases of mild bullying that do not result in loss of life may be considered mild by the school or the perpetrator, but not by the victim who experiences the impact of the bullying. Bullying, which is initially just a joke, can potentially

become a psychological attack or even worse, a physical attack.

Then what is the responsibility of the perpetrators for the losses experienced by the victims? This is where there are things that are not easy for society to decide. Usually, bullying that only has a mild impact on the victim can be resolved by the school through negotiations between the victim's family and the perpetrator's family. But this sometimes does not have a deterrent effect on the perpetrator. Then what about bullying which has had a very detrimental impact on the victim? The question arises whether bullying can be categorized as an unlawful act and can be held accountable. (Ulu, 2021) ^[8] This question does not stop there, because perpetrators who are minors have certain rights in imposing sentences on children, bearing in mind that it is not permissible to threaten the child's future.

Based on the description above and driven by the desire to deepen understanding regarding the handling of bullying cases in Indonesian criminal law, the author is interested in conducting research with the title Criminal Liability by Children Perpetrating Bullies.

Research methods

Study your term otherwise known as research. Research comes from English, namely research which comes from the word re (return) search (search), thus research which has the term research can be interpreted as searching again where this research activity is based on the curiosity of someone who is then called a researcher in carrying out his research activities. (Juliardi *et al.*, 2023) ^[7]

Results and Discussion

A. Criminal Liability for Bullying Acts Committed by Children.

Accountability criminal is some form of responsibility for what was done by somebody to determine somebody Who will be released or convicted because something follows criminal offenses that have been done. Something following a criminal can be accountable if has fulfilled the elements of following a criminal who has he did, with exists accountability criminal can overcome problems that arise consequence from following a criminal, Also expected can return stability and security, as well can give effect deterrent for perpetrators following a criminal (Balla H., Criminal Procedure Law in Indonesia (An Introduction), 2023)^[4,3]

Accountability follows criminal No experience diversion not quite enough answer towards other people because based on principle justice in giving punishment must carried out by someone concerned or responsible. So from That is, accountability is carried out by somebody Already listed in various literature.

Man in his actions are always based on something intentions, reasons, and motives self those who are on Finally will ask something accountability. An accountability criminal according to pious is something deed crime committed by somebody with accompanying factor error so seen something deed criminal That has going on, so elements accountability the crime has fulfilled. (Hidayah & Hapsari, 2023)^[5]

Bullying behavior as Wrong One form action aggression, is a problem worldwide, including in Indonesia. Bullying behavior is prone to happen to teenage sons And princesses in various places starting from environment education or school, place work, home, environment, place play, and others. The prevalence of bullying behavior is increasing increase and has given rise to an impact on the victim or perpetrator of bullying.

Speak regarding bullying that occurs in the environment education, no There is regulation legislation that discusses in a way clear about bullying comprehensive. One the only rules that can become a reference ie Constitution Number 23 of 2002 jo Constitution Number 35 of 2014 concerning Change On Constitution Number 23 of 2002 Concerning Protection of Child. In article 54 jo article 9 paragraph (1a) is written that: (Balla H., 2023)^[3,4]

"Child inside and in the environment unit education must get protection from follow violence physical, psychological, crime sexual, and crime others are done by educator, energy education, fellow participant educate, and/or the other party." Article 9 paragraph (1a): "every child entitled to get protection in the unit Education from crime sexual And violence committed by education, educators, personnel fellow participant educate, and/ r party others".

Bullying carried out by children can be threatened with Article 80 paragraph (1) of the Child Protection Law, namely with the threat of imprisonment for a maximum of 3 years and 6 months and/or a fine of a maximum of IDR. 72,000,000 then the maximum prison sentence for children is reduced by one-third of the basic criminal sentence as stated in Article 47 of the Criminal Code.

Based on Article 69 of Law No. 11 of 2012 explains that if the criminal act of bullying is committed by a child, the child cannot be subject to criminal sanctions because the child is not yet 14 years old and is only subject to action. In general, when bullying occurs against children, the judicial

process that is often chosen is diversion or punishment outside of court. Diversion based on Article 1 point 7 of the SPPA Law is the transfer of settlement of children's cases from the criminal justice process to a court process outside criminal court. However, if the diversion efforts carried out are unsuccessful, the case will be handed over to the public prosecutor and will be resolved through the courts. Before the enactment of Law no. 11 of 2012 concerning the Juvenile Criminal Justice System (hereinafter referred to as the SPPA Law), a child aged 8 years to 18 years and has not yet been married, if he has done something bad, can be brought to court and if the child has been married, the child cannot be filed in juvenile court but not in adult court. A child who is 8 years old is considered to be able to take responsibility for his actions by considering both sociological and psychological considerations (Balla H. &, 2021)^[1].

Based on articles the can be said that a child can categorized as a perpetrator following criminals if do violence in all forms to other people. As for violence in question is violence physical, psychological, crime sexual, and crime other? Child bullies of course can wear chapter This is bullying through violence as mentioned earlier.

Protection for children in the environment Education is not quite enough to answer from teachers, staff educators, government, and society, with Law 35 of 2014 Article 54 paragraph 2, namely " protection as intended on paragraph (1) is carried out by educator, energy education, apparatus government, and/or society". Although Already mentioned in convention right children who have been ratified by Indonesia and implemented in Decision President Republic of Indonesia Number 36 of 1990 and in legislation or law positive others, cases of violence to children and bullying remain to happen well inside the scope of education or outside scope education. (Jannah, 2018)^[6]

B. Judicial Process for Children Who Perpetrate Bullying.

1. Children in the Juvenile Justice Process

The existence of the criminal justice system cannot be separated from discussions of crime prevention efforts. Crime prevention efforts can be carried out using penal or non-penal means. Combating crime using penal means is an effort to combat crime using criminal law. The use of criminal law facilities to overcome crime, in its operational (implementation) work through the criminal justice system (Criminal Justice System) (Iman, 2018).

Criminal law facilities through the Criminal Justice system, including the Juvenile Criminal Court, which can also be referred to as the Juvenile Court, have the duty and authority to examine, decide, and settle children's cases as determined in the applicable laws and regulations.

Article 1 point 1 of the Juvenile Criminal Justice System Law (SPPA), states: "The Juvenile Criminal Justice System is the entire process of resolving cases of children in conflict with the law, starting from the investigation stage to the guidance stage after serving the sentence."

To bring a child before a court, there is an age limit for whether or not the child is suitable to be brought before a court. It can be explicitly seen in Law No. 3 of 1997 Article 1 point 1 which is in line with the formulation of Article 4 paragraph (1). Article 1 point 1, namely: A child is a person who, in the case of a delinquent child, has reached the age of 8 (eight) years but has not yet reached 18 (eighteen) years

and has never been married. Article 4 paragraph (1), namely: The age limit for delinquent children who can be submitted to a juvenile court is at least 8 (eight) years but has not reached 18 (eighteen) years and has never been married.

These two articles show that children who can be prosecuted or taken to juvenile court are only children aged between 8 years and 18 years and have never been married. Children who, even though they have not yet reached 18 years of age but are married, cannot be submitted contrary to a juvenile court, but to an adult court based on the Criminal Code and the Criminal Procedure Code (Gultom, 2008).

2. Children's Rights in the Judicial Process

Even though the child is in the position of being a suspect or defendant, this does not mean that the delinquent child does not have his rights. These children's rights are regulated in the Juvenile Court Law in Article 45 paragraph (4), and Article 51 paragraphs (1) and (3). Apart from that, their rights are also regulated in Chapter IV Article 50 to Article 68 of the Criminal Procedure Code (KUHAP), except Article 64. 11 Regarding what constitutes the rights of child suspects/defendants, they can be detailed in the following this: (Balla H., Criminal Procedure Law in Indonesia (An Introduction), 2023)^[3, 4].

- a. Every juvenile delinquent from the moment he is arrested or detained has the right to obtain legal assistance from one or more legal advisors during the time and at every level of examination.
- b. Every delinquent child who is arrested or detained has the right to communicate directly with legal counsel under supervision without being overheard by authorized officials.
- c. While the child is detained, the child's physical, spiritual, and social needs are still met.
- d. Child suspects have the right to be immediately examined by investigators and can then be referred to the public prosecutor.
- e. Child suspects have the right to have their cases immediately brought to court by the public prosecutor.
- f. Child suspects have the right to be immediately tried by a court.
- g. To prepare a defense, a child suspect has the right to be informed clearly in a language he understands about what is suspected of him when the examination begins.
- h. During examinations at the investigation and court level, child suspects or defendants have the right to provide information freely to investigators or judges.
- i. During examinations at the investigation and court level, child suspects or defendants have the right to receive the assistance of an interpreter at all times if they do not understand Indonesian.
- j. If the suspect or defendant is a mute and/or deaf child, he has the right to receive the assistance of an interpreter, a person who knows how to get along with him.
- k. To obtain legal advice, child suspects or defendants have the right to choose their legal counsel.
- l. A child suspect or defendant who is subject to detention has the right to contact his legal advisor by the provisions of the Criminal Procedure Code.
- m. Foreign national child suspects or defendants who are subject to detention have the right to contact and speak with representatives of their country in facing the case process;

- n. A child suspect or defendant who is subject to detention has the right to contact and receive visits from his doctor for health purposes, whether related to the case process or not;
- o. Child suspects or defendants have the right to contact and receive visits from parties who have familial or other relationships with the suspect or defendant to obtain guarantees for suspension of detention or for efforts to obtain legal assistance;
- p. A child suspect or defendant who is subject to detention has the right to be informed about his or her detention by an authorized official at all levels of examination in the judicial process, to his or her family or other people in the same household as the suspect or defendant or other people whose assistance the suspect or defendant needs to obtain legal assistance or guarantees for the suspension.
- q. A child suspect or defendant has the right directly or through his legal advisor to contact and receive visits from his or her relatives in matters that have nothing to do with the suspect's or defendant's case for work purposes or family interests.
- r. A child suspect or defendant has the right to send letters to his legal advisor and receive letters from his legal advisor and relatives whenever required by him, for this purpose the suspect or defendant is provided with stationery.
- s. Child suspects or defendants have the right to contact and receive visits from clergy.
- t. A child suspect or defendant has the right to seek and present witnesses or someone who has special expertise to provide information that is favorable to him.
- u. Child suspects or defendants are not burdened with the burden of proof.
- v. Child suspects or defendants have the right to request an appeal against the decision of the court of first instance, except for acquittal decisions, free from all legal claims involving the issue of inaccurate application of the law and court decisions in expedited proceedings;
- w. Child suspects or defendants have the right to demand compensation and rehabilitation as regulated in Article 95 of the Criminal Procedure Code and hereinafter;

3. Parties in the Juvenile Justice Process

In the process of investigating children's cases, child victims or child witnesses are carried out by child investigators who have experience as investigators and have undergone technical training in the juvenile justice system. However, if there are no investigators who have undergone training regarding the technicalities of juvenile justice, then ordinary investigators can be appointed to handle juvenile cases. In this investigation, investigators are required to ask for opinions from community counselors and, if necessary, can ask for advice from educational experts, psychologists, and other experts.

Investigators are required to attempt diversion within a maximum of 7 days after the investigation begins. If the diversion is successful, the investigator must notify the head of the court in writing and if it fails, the investigator will resume the investigation and hand over the case to the public prosecutor. This is regulated in article 26 article 27 and article 29 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

4. Sanctions in the Juvenile Justice Process

Regarding sanctions that can be given to delinquent children, the Juvenile Court Law has regulated them as stipulated in Chapter III. In general, two sanctions can be imposed on children who have committed delinquencies, namely: criminal sanctions and action sanctions.

Based on their objectives, criminal sanctions, and action sanctions also originate from different basic ideas. Criminal sanctions aim from different basic ideas. Criminal sanctions aim to provide special suffering (*bijzonder leed*) to the offender so that he feels the consequences of his actions. Apart from being aimed at imposing suffering on the perpetrator, criminal sanctions are also a form of expressing condemnation of the perpetrator's actions.

Sanctions for naughty children in the form of criminal sanctions consist of basic penalties and additional penalties. For basic penalties, there are 4 (four) types as stipulated in Article 23 paragraph (2), namely: 1) Imprisonment. 2) Imprisonment. 3) Criminal fine. 4) Criminal supervision. Meanwhile, regarding additional penalties based on Article 23 paragraph (2), there are two, namely: 1) Confiscation of certain items and 2) Payment of compensation. The second type of punishment for naughty children is in the form of action.

Based on Article 24 paragraph (1) of the Juvenile Court Law, there are three types of sanctions, namely: 1) Returning them to parents, guardians, or foster parents. 2) Submit it to the state to take part in coaching education and job training. 3) Submit to the Department of Social Affairs or Community Social Organizations which are active in the field of educational development and job training. The imposition of legal sanctions in the form of these actions can be accompanied by a warning and additional conditions determined by the judge (Article 24 paragraph (2) Law 3/1997). What is meant by a warning is a warning from the judge either directly to the child who is subject to the action or indirectly through their parents, guardians, or foster parents, so that the child does not repeat the actions that resulted in him being sentenced to action. Meanwhile, additional requirements include the obligation to report periodically to the Community Advisor.

5. Punishment System Against Children

After the promulgation of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, children in conflict with the law were categorized as children aged 12 years, this is stated in Article 1 paragraph 3 which reads: "Children in conflict with the law are hereinafter referred to as children. "is a child who is 12 (twelve) years old, but not yet 18 (eighteen) years old who is suspected of committing a criminal act."

Conclusion

Bullying is something action violence committed against children verbally or non-verbally, directly or indirectly. Children have the right to receive protection in education units based on Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 Article 9. Following Article 80 of Law Number 23 of 2002. Cases of bullying committed by minors can be brought before the court based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and can be punished with the condition that they must be 12 years old and not yet 21 years old and not married. However, the juvenile criminal

justice system prioritizes a restorative approach, if the victim and perpetrator have reached an agreement then the ongoing legal process can be stopped and a resolution can taken based on the non-penal route.

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