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## **Analysis of Juridical Aspects of Child Victimology against Law**

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### **Abstract**

This study aims to determine the legal aspects of children dealing with the law. Trending topics in the case of minors who get treated bullying, bullying is an act of violence against someone. Of course it is not suitable in everyday life. In the growth and development of children looking for identity is not good if it is then faced with legal problems. The purpose of this study, besides wanting to know the legal aspects of bullying action, is also expected to be a consideration of law enforcement officials in handling cases of children to pay attention to children's rights. The method used in this study is a normative legal research method using primary, secondary and tertiary legal materials and also using a conceptual approach to analyze child protection laws. The study of legal material is carried out in depth on bullying cases related to the approach of legal norms, legal concepts, legal theories, which are relevant to the current problem. From the results and conclusions of this study, the act of bullying not only disturbs the child's psychic, but also the act of bullying damages the legal joints in social life.

**Keywords:** children confronted with law, bullying, Indonesian child protection commission

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### **1. Introduction**

The important thing in the rule of law is the appreciation and commitment to uphold human rights and the guarantee of all citizens along with equality before the law and upholding the rule of law. Not everyone knows the law, but the fact is that legal problems can affect everyone (Tampubolon, Boris, 2016). The emergence of various forms of new victims as a result of criminal acts still often occur in the school environment and in the environment around us. Victims are not only individuals, but also form a corporation. Indeed, we cannot deny that our law is not comprehensive enough and is familiar to the general public. Entering the era of disruption or often called 4.0 at this time, community interaction is only enough through social media that opens the widest possible space in making friends and interacting with anyone in the world. Of course this has become a distinctive progress for technological knowledge. The use of social media networks is also regulated in Information and Electronic Law Number 11 of 2008 concerning Electronic Information. However, this is still considered insufficient to be a solution in minimizing crime in the space cyber social media, such as fraud in buying and selling online, body shaming, information hoax and so on. Apart from that, recently social media users seemed to be busy discussing the bullying experienced by Audrey middle school students in Pontianak who received treatment bullying from a number of 12 high school students. The act of bullying itself triggered legal experts to find out the cause of the violence that Audrey suffered. In the Criminal Code the Article 351 paragraph (1) reads: "Persecution is threatened with imprisonment for a maximum of two years and eight months or a fine of at most four thousand five hundred rupiahs". The motive was based on the offense of the offender by Audrey's comments on the column chat on social media (Fadhli, Haris, 2019) [8] Audrey. (Fadhli, Haris, 2019) [8] Audrey Before the violence happened to Audrey, the perpetrator picked up Audrey at her

house on the grounds that she invited Audrey to chat. The conversation began through social media space. Because it was considered a comment Audrey offended the perpetrators, in the end Audrey had to accept the release of acts of violence or bullying from a number of 12 high school students, all of whom were under the age of 17 More ironically, Audrey must be traumatized and must undergo medical treatment. At least 3,018,567 people signed the petition for onlinechange.org related to cases that hit middle school students in Pontianak on behalf of Audrey who was suspected of experiencing bullying from a number of high school students. The petition is targeted to reach 4.5 million people. Tagar #JusticeforAudrey tagar is the number one trending topic in Indonesia. (Makki, Safir, 2019) [9]. From the description of the above case that crime if viewed from the perspective of victimism, the elements not only include the notion of elements of crime in juridical, sociological and criminological, but more broadly which includes victims and all aspects. Efforts should be made in protecting children's rights, children's comfort in developing children and minimizing the level of children facing the law, not only the duty of law enforcement officers, but the role of parents, school institutions, communities, and other facilities that support the environment to be comfortable and conducive, it is very necessary to shape the character and behavior of children as the next generation of national ideals. So that the child in the flower grows no longer experiencing violence and intimidation from others.

### **2. Materials and methods**

As for reviewing this study, the method used is a normative legal research method using primary, secondary, and tertiary legal materials and also uses a conceptual approach to analyze child protection laws. The study of legal material is carried out in depth against cases of bullying associated with legal norms, legal

concepts, legal theory, which are relevant to current problems. This research was conducted to find a problem solving for legal issues that arise. The results that will be achieved are giving prescriptions about what should be the issues that arise.

Results and Discussion

**3. Results & Discussion**

**3.1 Scope of Victim**

Victimology is the study of the essence of who the victim is which enables concepts to be preventive and repressive. Victimology provides a better understanding of victims due to human actions that can cause mental, physical, social and financial suffering. Bunyamin Mendelsohn, a Romanian lawyer who is often referred to as the "Father of Victimology" is also concerned with the relations between victims and perpetrators.

Not flattering the victim but giving an explanation of the position / role of the victim and the relationship between the perpetrator and the victim and paying attention to the rights of the victim. Victimology provides confidence that each individual has rights and obligations. In addition victimology pays attention to victimization by transnational corporations with political, social, economic effects. Victimology itself provides a rationale for overcoming the problem of assistance, compensation for rehabilitation for victims, restitution and reconciliation. Talking about victims of crime in the beginning is certainly a victim of individuals or individuals. This view is not wrong, because for crimes that are common in society, this is indeed the case. (Waluyo, Bambang, cetakan kelima 2017) [5].

**3.2 The aspect of Victimization**

Victimization has several aspects. The first aspect, the interactions that occur between the victim and the perpetrator at the time of the crime, are often called the effects of the offense and are also primary victimization. The second aspect is the reaction of victims to crime, including a shift in the personal perception and dignity of the victim. The third aspect is the other interactions that occur between the victim and other parties during the legal process. For example, interactions with law enforcers can have a negative impact and give birth to secondary victimization. (Lukwira, Andreas Lucky, Cetakan Pertama 2017) [2].

**3.3 Understanding Bullying**

Astuti (2008) states that bullying is part of the act of aggression carried out repeatedly by a person or child weaker psychologically and physically. Hawkins, Pepler, and Craig (2001) stated that bullying behavior can be increased due to the presence of other people who witnessed and were in the location when the event occurred. The presence of other people during a bullying event is known as bystander. The presence of bystander in bullying events is a reinforcement and support for the perpetrators. Strengthening of bullying behavior also comes from social status among peers because it can increase the popularity of the perpetrators. Fonagy et al. (Zainuddin, Khumas, Halimah, 2015) [7] Based on the category Riauskina, Djuwita, and Soesetio (2007) classify bullying into 5 categories:

- a. Direct physical contact (hitting, pushing, pinching, scratching, also includes squeeze and damage the goods owned by others.

- b. Direct verbal contact (threatening, humiliating, intrusive, giving the call name(name calling)sarcasm. Humbling (put-down) denouncing / mocking, intimidating, spreading gossip.
- c. Direct non-verbal behavior (looking sarcastically, sticking out tongues, showing degrading facial expressions, mocking or threatening, usually accompanied by bullying physical or verbal.
- d. Nonverbal behavior is not direct (silencing someone, manipulating friendships so that they become cracked, deliberately isolating or ignore, send an anonymous letter).
- e. Sexual harassment (sometimes categorized as a physical or verbal aggression behavior (Trisnani, Rischa Pramudia, Wardani, Silvia Yula, 2016) [6]

From the above categories it is very clear that bullying not only leaves like bruises, abrasions on parts of the body but also the psychological impact of the child being timid, lonely, and easily emotional. As said by Von Hentig quoted from Ninik Widiyanti and Julius Waskita, it turns out that it is the victims who often stimulate someone to commit a crime and make people become criminals. (Ninik Widiyanti and Julius Waskita: 1987; 133) (Purwani, Sagung Putri ME, 2008) [3] Commemorating National Children's Day in 2018, the Indonesian Child Protection Commission (KPAI) exposes the results of case monitoring during 2018. Based on KPAI data from various sources, starting from direct complaints, investigations and monitoring of field cases, the trend of child violations in education has experienced ups and downs. Retno continued explaining that education cases as of May 30, 2018 amounted to 161 cases.

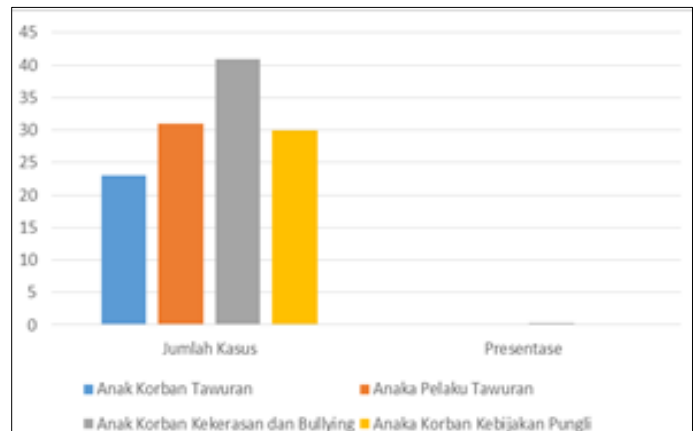


Fig 1: bullying case

**3.4. Legal Aspects**

Article 1 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection states that Child Protection is:

Article 59 paragraph (1) reads:

"The Government, Regional Government and other State Institutions are obliged and responsible for providing Special Protection to children.

Article 59A reads;

"Special protection for children as referred to in Article 59 paragraph (1) is carried out through:

- a. Rapid handling, including treatment, and / or rehabilitation physically, psychologically and socially, as well as prevention of diseases and other health problems.
- b. Psychosocial assistance during treatment until recovery.
- c. Providing social assistance for children from poor families, and
- d. Provision of protection and assistance in every judicial process. (Law of the Republic of Indonesia Number 35 of 2014 concerning Amendment to Law Number 23 of 2002 concerning Child Protection).

It can also be seen in the Presidential Decree of the Republic of Indonesia Number 36 of 1990 concerning Ratification of the Convention on the Right of the Child. (Presidential Decree of the Republic of Indonesia Number 36 of 1990 concerning Ratification of the Convention on the Right of Child) which means that Indonesia is one of 192 Countries which have ratified the Convention on the Rights of the Child (Convention on the Right of Children) in 1990. By ratifying the convention, Indonesia has an obligation to fulfill the rights of children who commit crimes so that they conflict with the law in the juvenile justice process (Sinaga, Sontan Merauke, 2010)<sup>[4]</sup>.

### 3.5. Legal Handling

Indonesia Has a special regulation that regulates child crimes, namely Law Number 11 of 2012 concerning the Juvenile Justice System (SPPA). The SPPA Act is further revealed to be the Supreme Court Regulation Number 14 of 2014 which contains guidelines for implementing SPPA by law enforcement. In general, there is a handling of child crime using the Diversion effort with the Restorative Justice approach. Diversi is a transfer of child legal proceedings from a criminal justice process to a process outside of criminal justice. The process involves the Child and the parents / guardians the victims and / or their parents / guardians, Community Counseling, Professional Social Workers and other related parties. The goal is to get victims to justice and to establish a sense of responsibility to the perpetrator without neglecting the rights of the child. Restorative Justice is an attempt to modify the existing criminal justice system, so that all the desired objectives of the law are reached. Criminal sentences are given not to avenge but achieve goodness for all. In the context of child crime, the principle held is: "All is done for the good of the child".

### SPPA law considers the audrey case

- a. Article 3 paragraph (3) states that the Juvenile Justice System requires Diversion efforts. The criminal justice process can proceed if diversion does not produce an agreement (article 13).
- b. According to article 7, diversion can be carried out in criminal cases of children with a threat of imprisonment under 7 years and not recurrent criminal offenses.
- c. In the explanatory section of Law 11/2012, it is stated that legal responsibility for children over 12 years of age can be requested. In addition, article 32 states that detention can only be carried out on children over the age of 14 with a criminal penalty of more than 7 years. So that for children aged over 12 years the Judge can choose the diversion path

or by imposing a sentence. As for the verdict, the principle must be for the good of the child

- d. Article 79 mentions criminal restrictions on freedom imposed against the old children ½ (one half) of maximum of which imprisonment carries right against adults.
- e. If the judge decides for diversion, then there must be supervision on the continuation of the diversion and guidance steps for child offenders.
- f. Assistance to victims is absolutely necessary. Mentoring not only involves parents / guardians but also psychologists to manage the trauma of violence experienced by victims.

### 3.6. Community Participation Community

Participation is very much needed in providing support for child victims, namely:

- a. Protecting victims by not spreading images of violence that only cause trauma.
- b. Communities need to be more sensitive to abuse cases in the community. There have been many cases of juvenile abuse that have occurred, but have been taught by the environment.
- c. The community must be directly involved in protecting children's rights.

### 4. Conclusion

That the number of cases of children facing the law (ABH) in criminal acts of violence or that currently often called bullying is inappropriate behavior to emulate. Moreover, underage children in the growing population must be fully guaranteed protection from the state, parents, community, school institutions moreover the Indonesian Child Protection Commission (KPAI) should be more massive in disseminating the prevention of Children Against the Law (ABH) and guarantee the rights of the child in the flower to grow.

From the definition of victims of bullying, there are several common threads and similarities:

1. Victims are caused by a crime.
2. Suffering physically, psychologically, emotionally and economically.
3. The victim's family, whether the spouse, child, parents and relatives are also part of the victim

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