

Criminal Responsibility of Children Who Are Bullying That Result in Serious Injury

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Abstract

Criminal liability for children who perpetrate bullying resulting in serious injury is an increasingly prominent issue with the rise in cases of violence between children. The focus of this research is on Indonesian legal regulations, the application of criminal sanctions, and the age limit for criminal liability under the Juvenile Criminal Justice System Law. This research uses a normative juridical method by examining laws and regulations, literature, and related cases. The findings in this discussion indicate that bullying resulting in serious injury can be classified as a crime with criminal consequences or actions, but its implementation must still consider the principle of the child's best interests. Diversion can only be implemented if the crime is not categorized as serious, so in cases of serious injury, diversion opportunities are limited. This research emphasizes the importance of a proportional and recovery-oriented approach for both perpetrators and victims to ensure the achievement of the goals of child development and protection in the criminal justice process.

Keywords: Accountability, Bullying, Children, Serious Injury

Abstrak

Tanggung jawab pidana bagi anak-anak yang melakukan perundungan yang mengakibatkan cedera serius merupakan isu yang semakin menonjol seiring dengan meningkatnya kasus kekerasan antar anak. Fokus penelitian ini adalah pada peraturan hukum Indonesia, penerapan sanksi pidana, dan batasan usia untuk tanggung jawab pidana berdasarkan Undang-Undang Sistem Peradilan Pidana Anak. Penelitian ini menggunakan metode yuridis normatif dengan meneliti hukum dan peraturan, literatur, dan kasus-kasus terkait. Temuan dalam pembahasan ini menunjukkan bahwa perundungan yang mengakibatkan cedera serius dapat diklasifikasikan sebagai kejahatan dengan konsekuensi atau tindakan pidana, tetapi pelaksanaannya tetap harus mempertimbangkan prinsip kepentingan terbaik anak. Pengalihan hanya dapat dilakukan jika kejahatan tersebut tidak dikategorikan sebagai serius, sehingga dalam kasus cedera serius, peluang pengalihan terbatas. Penelitian ini menekankan pentingnya pendekatan proporsional dan berorientasi pemulihan bagi pelaku dan korban untuk memastikan tercapainya tujuan perkembangan dan perlindungan anak dalam proses peradilan pidana.

Kata Kunci: Akuntabilitas, Anak, Cedera Serius, Perundungan



Introduction

The phenomenon of bullying involving children as perpetrators has become a legal issue that demands serious attention. Bullying, originally understood as simply annoying or teasing, has now evolved into acts of physical and psychological violence that have a serious impact on victims. When bullying results in serious injuries, the issue is no longer merely a matter of social ethics but has entered the realm of criminal liability. The law has provided a specific framework for children in conflict with the law through Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA). The SPPA Law emphasizes the principles of restorative justice and diversion as the primary approaches in resolving juvenile cases. However, implementing these principles becomes challenging when the crime committed is considered serious, such as bullying that causes serious injuries to the victim.

Serious injuries resulting from bullying raise legal issues because they involve the balance between protecting the child as perpetrator and the victim's right to justice. On the one hand, the child as perpetrator must be treated specifically in accordance with the principle of the child's best interests. On the other hand, the victim and their family have the legal right to receive redress and legal certainty for the crimes they have experienced (Prasetyo: 2020). Bullying is becoming increasingly apparent as society demands stricter law enforcement, particularly in cases of bullying that go viral and generate public outcry. In some cases, social pressure often prompts law enforcement officials to impose maximum criminal sanctions. However, overly repressive law enforcement against children also runs the risk of violating child protection principles. This is evident in the case of school bullying that occurred at an elementary school in the Gresik area. The victim, a second-grade elementary school student, was reportedly subjected to violence and bullying by a senior student, according to both electronic and social media. The bullying, perpetrated by the senior student, occurred on August 7, 2023. The perpetrator demanded pocket money and refused to give it. After refusing to give it, he assaulted the victim by stabbing her in the eye with a meatball skewer, causing eye injuries and blindness. Furthermore, technological and social media developments have expanded the scope of bullying into cyberbullying, which can result in serious physical and psychological harm. This creates new challenges in establishing evidence, investigating, and enforcing criminal liability for child perpetrators. This expansion of methods requires law enforcement officials to be more vigilant in applying existing legal instruments.

Provisions regarding the criminal liability of children also relate to the age limit that determines whether a child can be held criminally responsible. The Child Protection and Child Protection Law stipulates a minimum age of 12 years for children to be prosecuted. However, in practice, differences in age, mental maturity, and social background often influence judges' assessments in determining the form of liability (Sari, 2020). Criminal acts committed by children, including bullying that results in serious harm, require an analysis of the form of fault (*schuld*) that can be imposed on the child. Assessing the element of intent or negligence is crucial, as bullying is often carried out under peer pressure, low self-control, or a lack of understanding of the legal consequences of their actions (Hartono: 2019).

The law enforcement process against child perpetrators of bullying must also consider criminological aspects. Family environment, social circles, school conditions, and the influence of mass media are factors that can trigger bullying. This approach is necessary so that criminal



accountability does not end solely with punishment but also with efforts to improve the child's behavior so that the act is not repeated in the future. From the victim's perspective, the serious injuries experienced as a result of bullying have long-term consequences, both physical and psychological. Victims can experience trauma, a reduced sense of security, and even the loss of certain physical abilities. In this regard, criminal accountability must be an effective tool for recovery for victims and a preventative measure for the wider community.

From a social science perspective, crime is defined as a social phenomenon born of structural injustice or a manifestation of the diversity of human behavior, which is a reaction to the socioeconomic class conditions of an individual or group. Regardless of origin, people in economically disadvantaged situations and facing pressing needs, coupled with a lack of faith, tend to think short-term. It could be said that they will justify any means to meet their needs (Rahmayanti: 2023). In criminal law, criminalization is a component of criminal policy. Criminal policy is the state's efforts to combat crime, essentially an integral part of community protection efforts aimed at achieving social well-being (Ismaidar, et.al: 2017).

Based on these various issues, a study of the criminal liability of children who perpetrate bullying that results in serious injury is crucial. This study focuses not only on legal aspects but also on sociological and criminological aspects to provide a comprehensive understanding of how the law should be enforced without neglecting the protection of children and the rights of victims. Based on the background of the problem described above, the following issues will be discussed in this research:

1. What are the positive legal regulations regarding criminal liability in cases of bullying perpetrated by children?
2. How are criminal sanctions applied to children who perpetrate bullying that results in serious injury?

Methods Research

This study employs normative legal research, which focuses on the analysis of positive legal norms governing the criminal liability of children who perpetrate bullying resulting in serious injury. Normative legal research was chosen because the focus of the study is to explore the principles, doctrines, rules, and legal principles contained in statutes, court decisions, and legal literature (Soekanto: 2019). Using a normative approach, this study examines the consistency between the provisions of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and the application of criminal liability to children in cases of bullying resulting in serious injury. Furthermore, this study examines how the concepts of fault, elements of a crime, and the age limit for criminal liability are applied to acts committed by children. Data collection in this study was conducted through literature review. Data were obtained from primary, secondary, and tertiary legal materials. Primary legal materials consist of laws and regulations such as the Criminal Code (KUHP), the Juvenile Justice and Child Protection Law (UU SPPA), and court decisions relevant to cases of bullying resulting in serious injury. Secondary legal materials include books, scientific journals, academic articles, and research findings discussing the criminal liability of children and acts of bullying. Meanwhile, tertiary legal materials include legal dictionaries and legal encyclopedias (Johnny: 2018).



Results and Discussion

Positive Legal Provisions Regarding Criminal Liability in Bullying Cases Perpetrated by Children

Provisions regarding the criminal liability of children in bullying cases resulting in serious injury are essentially within the Juvenile Criminal Justice System, as stipulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA). The SPPA Law positions children as special legal subjects with different protections than adults, but still allows children to be held criminally responsible if their actions meet the elements of a crime. This provision demonstrates that the state sets limits on the conditions under which children can be prosecuted in cases of bullying that result in serious consequences.

The SPPA Law sets the minimum age for criminal liability at 12 years. Children under this age cannot be prosecuted, even if they engage in bullying that results in serious injury. This provision affirms the principle that criminal liability requires the capacity for responsibility (*toerekening svatbaarheid*) (Lestari: 2021), which children under a certain age do not yet fully possess. Thus, positive legal provisions distinguish between unlawful acts and a child's ability to understand the consequences of their actions. Serious injuries resulting from bullying can be classified as a criminal offense as stipulated in Article 351 paragraph (2) of the Criminal Code concerning serious abuse. When a child is the perpetrator, the element of fault remains crucial in determining accountability. This means that even if the perpetrator is still a child, intent or negligence must still be proven by law enforcement.

The Child Protection and Child Protection Law emphasizes that every child's case must be resolved through diversion as long as the crime committed carries a sentence of less than seven years and is not a repeat offense. In cases of bullying that result in serious injuries, the penalty usually exceeds this limit, making diversion difficult to implement. This situation makes cases of serious bullying by children special in the judicial system, allowing them to continue to be prosecuted (Priyanto: 2020). Applying criminal liability in cases of bullying by children requires an analysis of the perpetrator's motives and social environment. Many studies indicate that bullying is perpetrated due to peer pressure, low self-control, or the normalization of violence in the school environment (Setiawan: 2019). This impacts judges' considerations when determining the form of punishment or action. Thus, positive legal regulations provide space for sociological considerations without eliminating the element of responsibility.

In addition to normative aspects, judicial practice shows that judges often use discretion to balance child protection with the rights of victims. Judges can impose correctional penalties, such as placement in a special institution or mandatory counseling programs. This reflects the principle that the primary goal of sentencing children is not merely retribution, but also behavioral change and prevention of recurrence of the crime. Provisions regarding juvenile criminal liability also incorporate the concept of *ultimum remedium* sentencing. Children are only sentenced when other measures are ineffective or when the crime has had a serious impact on the victim, including serious injury. Therefore, in cases of bullying with serious consequences, positive law still provides for criminal prosecution as a form of protection for the victim and society.

In cases of bullying that result in serious injury, positive legal regulations encourage accountability not only from the perpetrator but also from institutions such as schools. Schools



have an obligation to supervise and prevent violence between students. Although not criminal in nature, this administrative and ethical responsibility is part of efforts to prevent bullying and provide space for its resolution (Fatimah: 2022). Court decisions regarding child bullying cases demonstrate variation in legal implementation. In some cases, judges prioritize restorative justice, involving the families of the perpetrator and victim in the recovery process. However, in cases involving serious injuries or significant trauma, judges are more inclined to impose criminal penalties or strict measures based on the Child Protection and Child Protection Law. This demonstrates that positive law is flexible yet firm in dealing with serious crimes.

Restorative justice is a resolution process carried out outside the criminal justice system, involving the victim, the perpetrator, the victim's family, the perpetrator, the community, and other parties with a stake in the crime to reach an agreement and resolution. Restorative justice is a fair resolution involving the perpetrator, the victim, their family, and other non-criminal parties, working together to resolve the crime and its consequences, prioritizing restoration rather than retribution (Rahul. Et,al: 2022). Based on these overall regulations, criminal liability in cases of child bullying is regulated in a balanced manner by Indonesian positive law. The state strives to protect children's futures without neglecting victims' rights to justice and reparation. With the existing legal framework, the greatest challenge lies not in the regulations, but in consistent implementation by schools, law enforcement officials, and the judicial system.

Application of Criminal Sanctions Against Child Bullies Who Cause Serious Injury

The draft Criminal Code (RUU KUHP) represents a material reform of criminal law. This reform is an effort to realize legal ideals. Therefore, it can be said that the RUU KUHP is a manifestation of the Indonesian character. The orientation of legal reform is not merely to improve the law, but to replace it with a better one. Therefore, the RUU KUHP not only makes changes deemed necessary to break away from the legal paradigm of colonial heritage. Legal reform can serve as a basis for determining the direction of national character formation. The form of legal reform represents a real condition moving towards an ideal state. Therefore, the RUU KUHP is a method for carrying out planned social and cultural transformation in society. The principle of restorative justice accommodated in the Draft Criminal Code can be seen in the provisions of several articles, including Article 2, Article 12, Article 54 and Article 55 (Gilang: 2024, 7370).

The Indonesian Criminal Law System is entering a new phase in its development. One form of reform within Indonesian criminal law is the regulation of criminal law from the perspective and achievement of justice, focusing on improving and restoring conditions after an incident and the criminal justice process. This is known as restorative justice, which differs from retributive justice (which emphasizes justice in retaliation) and retributive justice (which emphasizes justice in compensation) (Nugraha: 2024).

The application of criminal sanctions to child perpetrators of bullying that causes serious injury must be placed within the legal framework stipulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA). The SPPA Law emphasizes that criminalization of children can only be implemented as a last resort after restorative approaches and other measures have failed to resolve the case. However, when bullying causes serious injury, criminal proceedings are often unavoidable due to the serious impact on the victim. In cases of



bullying that result in serious injury, the elements of serious abuse as stipulated in Article 351 paragraph (2) of the Criminal Code can be applied. Child perpetrators can still be subject to criminal sanctions if the elements of guilt are legally and convincingly proven, albeit with special treatment. This demonstrates that positive law recognizes a child's capacity to be criminally responsible when their actions result in serious consequences for others.

The form of criminal sanctions for children is regulated differently than for adults. The Child Protection and Child Protection Law stipulates that the maximum prison sentence for children is limited to half the maximum sentence for adults for the same crime. If a child commits serious abuse, the judge cannot impose a prison sentence of the same length as an adult. This limitation is a form of protection and implementation of the principle of the best interests of the child (Priyanto: 2021).

In addition to imprisonment, the Child Protection and Child Protection Law stipulates disciplinary sanctions as alternatives to criminal punishment. These measures include out-of-institutional counseling, community service, institutional counseling, and rehabilitation. In practice, judges consider the child's background, family environment, and the possibility of behavioral improvement before determining whether disciplinary action is more appropriate than criminal punishment. This approach is important because bullying is often perpetrated due to peer influence or lack of supervision (Adhani: 2020).

The extent of the loss or serious injury suffered by the victim significantly influences the judge's decision regarding the type and severity of the criminal sanction. When the victim suffers significant physical injury, disability, or severe psychological trauma, the judge tends to impose a more stringent sentence or action to provide a deterrent effect and ensure justice for the victim. This regulation reflects a positive legal commitment to prioritizing victim protection without neglecting the rights of child perpetrators. In some cases, judges impose correctional punishment as the primary sanction. This form of punishment prioritizes the child's education and personality development. Reform can be provided in a special child-centered institution, where the child receives formal education, psychological guidance, and counseling to prevent reoffending. This type of punishment is considered more aligned with the objectives of child punishment.

When a child is the perpetrator of a crime, a victim of a crime, or a witness to a crime, the legal process applies the provisions of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. One of the principles of the Juvenile Criminal Justice System (SPPA) Law regulates diversion efforts. Therefore, diversion efforts are mandatory at the investigation, prosecution, and examination levels of juvenile cases in district courts. Diversion is carried out when the crime committed carries a prison sentence of less than seven years and is not a repeat offense. This is evident from various cases that have occurred, where the sentence is less than seven years. If the child or perpetrator is a first-time offender, diversion efforts are mandatory. This is as stipulated in Article 7 of the SPPA Law. The diversion process is carried out through deliberation involving the child and their parents/guardians, the victim and their parents/guardians, community counselors, and social workers based on a restorative justice approach.

If necessary, diversion deliberations can involve social welfare workers and/or the community. Any diversion agreement must obtain the consent of the victim and/or the child



victim's family, as well as the consent of the child and their family. If the diversion process fails and does not result in an agreement, the juvenile criminal justice process will continue.

As in the case of bullying in a school environment that occurred at an elementary school in the Gresik area. The victim was a second-grade elementary school student. Information from electronic and social media indicated that the student experienced violence or bullying by a senior. The bullying by the senior occurred on August 7, 2023. The perpetrator asked for pocket money and refused to give it. Because of this refusal, the perpetrator then assaulted the victim by poking the victim's eye with a meatball skewer, causing eye injury and blindness. In this case, considering the child's age, the perpetrator was under 12 years old. Therefore, based on Article 21 of the Child Protection and Child Protection Law (UU SPPA), investigators, community counselors, and professional social workers decided to return the child to her parents/guardians and enroll her in an education, coaching, and mentoring program at a government agency or LPKS (Social Welfare Institution) in an agency handling social welfare at both the central and regional levels for a maximum of six months.

On the other hand, community service is also often chosen by judges, especially if the perpetrator demonstrates remorse, is cooperative, and has adequate family support. Community service allows children to assume responsibility without the physical restrictions of prison. However, this measure is rarely used in cases of serious bullying due to the intensity of the impact on the victim (Yusuf: 2020). In cases of serious injury, sentencing a child often involves an intensive examination by a community counselor. The results of the community service study are one of the most important considerations for judges in determining sanctions. The report includes an analysis of the child's social circumstances, educational history, environmental influences, and level of awareness of their actions. This report helps judges determine whether criminal or disciplinary action is more appropriate (Ibrahim: 2022).

The protection and legal process for children as perpetrators and victims of crime, as occurred at an elementary school in Gresik, can serve as a lesson and a focus for all educational institutions to prevent bullying from recurring. The use of a restorative justice approach is still possible even in cases involving serious injuries. However, restorative justice can only be implemented if the victim and their family are willing and a fair agreement can be reached. In reality, in cases of serious injuries, victims tend to reject restorative resolutions, seeking legal certainty and a sense of justice through the judicial process. This makes the imposition of criminal sanctions on child perpetrators more dominant than restorative efforts.

The parties' rationale for resolving disputes through deliberation or non-litigation is as a means or alternative to reaching consensus or deliberation, which is considered effective and efficient and produces a win-win solution for all parties. Whereas, litigation or court resolutions involve both winners and losers, resulting in unsatisfactory decisions for the losing party (Abdul Rahman: 2023). The reasons and necessity for implementing alternative dispute resolution include guilt and remorse on the part of the perpetrator, followed by an agreement to reach a settlement between the perpetrator and the victim. Therefore, the reasons for expungement of criminal penalties can generally be divided into two types: justification, which relates to the act, and forgiveness, which relates to the perpetrator's mental state (Muhammad Arif: 2022, 308).

The application of criminal sanctions to children in cases of bullying resulting in serious injury demonstrates that positive law strives to maintain a balance between protecting the child



perpetrator and rehabilitating the victim. Educational principles remain the basis for punishment, but strict enforcement of the law against acts with serious consequences remains in place. With the existing regulations, the greatest challenge is the consistency of authorities in implementing proportionate and future-oriented sanctions without diminishing the victim's sense of justice.

Conclusion

1. Positive legal regulations regarding the criminal liability of children in bullying cases emphasize that children are special legal subjects treated differently from adults. Through Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, the state establishes the age limit for criminal liability, the principle of restorative justice, and diversion mechanisms as the main steps in handling juvenile cases. However, when bullying results in serious injury, the case falls into the category of a serious crime that can still be prosecuted as long as the elements of fault and the resulting consequences can be proven. Thus, positive law provides a balance between protecting children and fulfilling the victim's right to justice.
2. The application of criminal sanctions to child perpetrators of bullying resulting in serious injury is carried out by observing the specific limitations and procedures stipulated in the Child Protection and Child Protection Law. Judges are permitted to impose penalties, but with certain limitations, such as a maximum of half the adult sentence, and prioritizing guidance, counseling, or rehabilitation. In cases of serious injury, penalties tend to be imposed more strictly due to the significant impact on the victim, but still oriented towards education and improving the child's behavior. The application of criminal sanctions in this case demonstrates a legal effort to maintain a balance between the deterrent effect, victim protection, and the future of the child perpetrator, so that the objectives of punishment can be achieved proportionally and humanely.

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