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Legal Protection for Child Victims of Bullying from the Perspective of Child Protection Law

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Abstract

Legal protection for children has not been effective and there are still children who are victims of bullying. Bullying is an action that hurts the victim both physically and psychologically. The occurrence of bullying is a form of violation of children's rights which is regulated in the Child Protection Law, so perpetrators must be dealt with firmly by imposing criminal sanctions which are also regulated in the Child Protection Law. The purpose of this writing is to find out legal protection for children who are victims of bullying, especially repressive legal protection. It uses a normative juridical method that prioritizes primary legal material of the Child Protection Law. The final result is that the regulation of criminal sanctions in the Child Protection Law is cumulative and there are regulations for minimum and maximum criminal threats, so that judges in giving decisions on criminal sanctions can be minimal. This lack of firmness in setting sanctions does not provide a deterrent effect for perpetrators and other people who continue to carry out bullying actions against children.

Keywords: Child; Bullying; Legal Protection.

Introduction

Article 28B paragraph (2) of the 1945 Constitution guarantees every child's right to live, develop and be protected from violence and discrimination. For that reason, the legal protection given to children is supposed to save them from violence and discrimination. Legal protection for children is given because they remain in a vulnerable condition and highly dependent on their parents and close relatives to promote their growth and development.

Children as subjects of law also have the basic rights that must be fulfilled to live their lives. Children's rights are regulated in Article 52 paragraph (2) of Law Number 39 of 1999 concerning Human Rights (subsequently referred to as Law

of Human Rights). Human rights determine the rights of the children, and for their interest children's rights are legally recognized and protected even before they are born. Therefore, a mother's unborn baby during her pregnancy is a human with a right to live. According to Waluyadi, legal protection for children is an effort to protect their freedom and rights as well as the interests in promoting child welfare.¹ Further specificity of legal protection for children lies in Law Number 23 of 2002 on Child Protection (subsequently referred to as Child Protection Law) which has been amended by the enactment of Law Number 35 of 2014. The latter stated that child protection is necessary to ensure children wellbeing and to guarantee the fulfillment of children's rights without any discriminative treatment.

Article 3 of the Child Protection Law guarantees children's rights to live, develop, participate optimally, and be protected from violence and discrimination, with the aim of achieving quality child welfare. In terms of provisions, the laws and regulations that provide legal protection for children can be said to be complete. Therefore, it is an irony that many children still exposed to violence, especially peer violence in and around their social circle in the form of bullying.

Bullying is an intentional behavior by one powerful person or group to physically, verbally and psychologically hurt another perceivably powerless person or group.² Children who are victims of bullying, according to Arif Gosita as cited in Siswanto Sunaryo, can suffer both physically and mentally as a consequence of what the other person has done to them for his or her self-serving interest that runs contrary to the interest and the rights of the victim. By victim we mean any individual person or a group of persons, from either public or private institutions.³ According to Muhammad, there are three forms of bullying: (1) Physical bullying that includes hitting, kicking, tripping, pinching and pushing; (2) Verbal bullying that includes name calling, verbal abuse, insults; and

¹ Waluyadi, *Hukum Perlindungan Anak* (Maju Mandar 2009).[1].

² Astuti Nur Fadillah, 'Perlindungan Hukum Terhadap Anak Yang Menjadi Korban Aksi Perundungan' (2020) 5 Jurnal Belo.[88].

³ Siswanto Sunarso, *Viktiminologi Dalam Sistem Peradilan Pidana* (Sinar Grafika 2015).[31].

(3) Psychological bullying that include intimidation, social exclusion, intentional ignoring and discrimination.⁴

A bullying case in Cilacap regency, for example, involved four female students of a Junior High School. They bullied the victim, who was their own schoolmate, by physical abuse such as pulling the victim's hair and ignoring the victim's cries. The perpetrators were not detained on the grounds that they were underage and the police simply proposed mediation, even when further investigation revealed that they have bullied more than one victim.⁵ Another example occurred in Bogor regency, where a 10-year-old child became a victim of bullying. In the video that went viral, the perpetrator named Ajat Sudrajat deliberately bent his body down so that he left almost no space for the victim to sit while riding a motorbike. Not only that, the perpetrator also deliberately lifted the victim and threw him into a puddle of water twice in a row. The perpetrator did this with the excuse of simply for having some fun and, unfortunately, the case ended with the perpetrator begging for pardon without any legal process.⁶

Bullying should not be taken lightly because it could have negative impacts on the children who are bullied. According to Astuti Nur Fadillah, quoting Pinky Saptandary's opinion, social withdrawal is among the impacts of bullying. It is likely that reduced motivation, mental problem, nightmare, and extreme fear could lead to death.⁷ Regrettably, from the above cases, the bullying perpetrators do not get sanctioned so there is no deterrent effect for them and there are concerns that they will repeat their behavior against the same victim or different individuals.

⁴ Muhammad, 'Aspek Perlindungan Anak Dalam Tindak Kekerasan (Bullying) Terhadap Siswa Korban Kekerasan Di Sekolah (Studi Kasus Di SMK Kabupaten Banyumas)' (2009) 9 Jurnal Dinamika Hukum.[231].

⁵ Fadlan Mukhtar Zain, 'Kasus Bullying Di Cilacap, 4 Anak Pelaku Perundungan Ditangkap, Korban Tak Hanya 1', (2021) <<https://www.tribunnews.com/regional/2021/01/07/kasus-bullying-di-cilacap-4-anak-pelaku-perundungan-ditangkap-korban-tak-hanya-1>> accessed 9 November 2023.

⁶ Afdhalul Ikhsan, 'Duduk Perkara Kasus Bullying Bocah Dilempar Ke Kali Oleh Pemuda Di Bogor', (*kompas*, 2021) <<https://regional.kompas.com/read/2021/04/23/145253478/duduk-perkara-kasus-bullying-bocah-dilempar-ke-kali-oleh-pemuda-di-bogor?page=all>> accessed 8 September 2023.

⁷ Fadillah (n 2).

Before discussing legal protection for children who are victims of bullying, it can be said that there have actually been several writings about the legal protection of children for victims of bullying, including an article by Maria Cicilia Tri Palupi entitled Legal Protection for Bullying Victims from a Victimology Perspective. In this article, the provisions of Law Number 31 of 2014 concerning Witness and Victim Protection are used. Palupi identifies the rights of victims, considering that bullying is considered a normal act in childhood, which of course means the rights of victims of bullying have not been fully realized even though it has negative impacts. Law Number 31 of 2014 concerning Witness and Victim Protection has not been effective because the Witness and Victim Protection Agency is only located at the center, not in the regions, so protection for victims and witnesses depends on the relevant agencies and the police.⁸

Also dealing with similar issue is a paper by Evita Mocia Chrysan and her colleagues entitled *Penerapan Sanksi Tindakan Anak Yang Melakukan Bullying Dalam Perspektif Sistem Peradilan Pidana Anak* (Imposing Sanction on Children for Bullying from the Perspective of Juvenile Justice System). The paper states that a child who perpetrates bullying that causes traumatic impact on the victim may be subject to sanctions imposed under Law Number 11 of 2012 on Juvenile Justice System, especially Article 82 paragraph (1) letter (e) concerning the obligation to attend formal education and/or training held by the government or private agencies. These sanctions are imposed not only to generate a deterrent effect, but also to improve the behavior of children who are our future generation.⁹ What makes this article different from the two articles mentioned above is that it focuses on analyzing the provisions of the Child Protection Law in providing legal protection for children who are victims of bullying.

This study is a normative juridical research that prioritizes literature in answering the problem formulation by examining applicable laws and regulations

⁸ Maria Cicilia Tri Palupi, 'Perlindungan Hukum Terhadap Korban Bullying Dalam Perspektif Viktimologi' (2020) 1 Merdeka Law Journal.[91].

⁹ Evita Monica Chrysan, 'Penerapan Sanksi Tindakan Anak Yang Melakukan Bullying Dalam Perspektif Sistem Peradilan Pidana Anak' (2020) 3 Jurnal Hukum Magnum Opus.[162].

and legal principles relating to legal issues regarding bullying. The approaches in this research include using a statutory regulatory approach and a conceptual approach. The statutory approach is carried out by examining the applicable laws and regulations, namely the Child Protection Law. A conceptual approach is carried out using the thoughts and opinions of legal experts regarding the concept of legal protection for children who are victims of bullying.

This research uses primary and secondary legal materials. Primary legal materials include the Child Protection Law which has undergone two amendments. Meanwhile, secondary legal materials consist of books and journals that discuss the protection of children who are victims of bullying. The analytical method used is deductive, namely an explanation from general to specific to answer the problems formulated in this paper.

Bullying is Part of Violence

Children develop themselves by creating social interaction with the people around them, both at home and at school.¹⁰ This is done to explore their own identity, interests, and talents to become high-performing children. The process of social interaction leads children to compete with their peer groups. Friendship and competition are inseparable, and the latter could possibly incite violence when the interest of one peer group conflicts with the other.¹¹

According to M.H. Tirtaamidjaja, as cited in Rahmi Safrina and Iman Jauhari, violence act is any behavior involving fairly great bodily strength.¹² Violence against children includes painful physical or emotional treatment, sexual abuse, neglect and exploitation that impact the health, survival, development and dignity of children. This occurs in the context of relationships of responsibility, trust, or power.¹³

¹⁰ Paul Atagamen Aidonojie and Ong Argo Victoria, 'The Societal and Legal Missing Link in Protecting A Girl Child Against Abuse Before And Amidst The Covid-19 Pandemic in Nigeria' (2022) 38 *Jurnal Hukum Unissula*. [67].

¹¹ Ahmad Tafsir, *Ilmu Pendidikan Dalam Prespektif Islam* (Rosda Karya 2001). [173].

¹² Rahmi Safrina and Iman Jauhari, 'Perlindungan Hukum Terhadap Anak Korban Kekerasan Dalam Rumah Tangga' (2010) 3 *Jurnal Mercatoria*. [37].

¹³ Wardatul Muchlisoh, 'Perlindungan Hukum Bagi Anak Sebagai Korban Kekerasan Fisik Yang Berdampak Psikis Terhadap Keberlangsungan Pendidikan Formal Anak' (2020) 4 *Jurnal Legal Spirit*. [4].

Violence behavior is harmful to and scary for children. Rahmi Safrina and Iman Jauhari divided the violence behavior into four categories:¹⁴

1. Emotional abuse. Emotional abuse occurs when parents knew their child's desire for attention but choose to ignore it. This will be remembered by the child if it occurs consistently;
2. Verbal abuse. Verbal abuse involves some sort of yelling and cursing in a verbal interaction with children;
3. Physical abuse. This occurs when someone physically hurts child's body that cause physical injury or leave marks on his or her body; and
4. Sexual abuse. This type of violence occurs when an adult physically forces a child to have sexual intercourse.

Bullying is part of violence because it covers physical and physiological violence categories. Physical violence in bullying includes slapping, kicking, beating or punching, strangling, pushing, biting, banging, threatening with sharp objects and so on.¹⁵ It also covers physiological violence because it brings impact on the victim; an impact that felt only by the latter and doesn't seem obvious to other people. This type of violence will incite feelings of being insecure and uncomfortable, decreasing self-esteem and the dignity of the victim.¹⁶ Psychological violence can be a combination of emotional abuse and verbal abuse as their impact leaves no marks on the victim's body but is unquestionably harmful to the victim's mental health.

Types and Risk Factors of Bullying

Bullying is carried out by the perpetrator by attacking the victim repeatedly because of an imbalance of power between the perpetrator and the victim. Victims of bullying are often those who come from different race or religious affiliation, sexual orientation, new student, youngest student, or the smallest child in school. However, the smartest and most talented children can also become the target of bullying because of their superior characteristics.¹⁷

¹⁴ Safrina (n 12).

¹⁵ Sari Damayanti, *et.al.*, 'Perlindungan Hukum Terhadap Anak Korban Bullying Di Lingkungan Sekolah' (2020) 9 Jurnal Rechtsens.[163].

¹⁶ *ibid.*

¹⁷ *ibid.*[156].

Types of bullying can be described as follows:¹⁸

1. Emotional bullying occurs when the perpetrator tries to harm the mental state of the victim. This type of bullying cannot be taken lightly because it can make the victim depressed. Examples of emotional bullying include:
 - a. Gossiping. The bully spreads unconfirmed or fake stories about the victim. This, in turn, makes the victim ostracized by his or her friends;
 - b. Provoking. The bully provokes the victim into an outburst. Consequently, the victim may feel so intense anger that he or she will do something harmful in retaliation.
2. Verbal Bullying. This type of bullying is common among school children. Even the bully may innocently utter harsh and condescending words that undermine the victim's self-esteem and, even worse, make the victim depressed. The following are examples of verbal bullying:
 - a. Insulting or taunting. The bully excessively utters degrading and belittling words with the intention of hurting the victim's feelings or humiliating him or her in front of others;
 - b. Name Calling. The perpetrator put humiliating and embarrassing labels on the victim to the point of undermining his or her self-esteem;
 - c. Intimidating. The bully intimidates the victim with the intention of controlling or dominating him or her;
 - d. Swearing. The bully utters vile and inappropriate words to express anger or irritation toward the victim.
3. Physical Bullying. This type of bullying is commonly manifested in physical harming and inflicting fear upon the victim to force the latter to obey the perpetrator's wishes. This may involve beating, kicking, clawing, or biting the victim to the point of causing physical injury. This is the most dangerous type of bullying because it is not only inflicting physical harm, but also eroding the victim's self-confidence and psychological state.

Bullying makes the victims feel insecure and uneasy, afraid, intimidated, inferior and worthless. Victims also find it hard to stay focused while studying, lacking in motivation to socialize with their environment, reluctant to go to school,

¹⁸ *ibid.*[157-158].

have decreased self-confidence and difficulties in communicating and thinking so that their academic performance declines.¹⁹ If no actions are taken against those who have been bullying, the number of their victims will increase more and more.

Factors that lead to bullying include:²⁰

1. Family. Bullies often come from families characterized by poor parenting, such as parents who punish their children excessively and argue frequently in front of their children so that they will learn and imitate their parents' behavior and this, in turn, will affect how they treat their friends;
2. School. The school often pays the least attention to bullying behaviors and even underestimates them. As a consequence, the bullies will continue intimidating their victims because the school took no firm actions to prevent bullying and to protect the victims;
3. Peer Group. Usually children do bullying in an effort to prove that they are eligible to a certain peer group, even though they themselves feel uncomfortable with the bullying behavior they are doing.
4. Social circle condition. Among the conditions that characterize child social circles is destitution. Bullies who come from a destitute social circle will do anything to meet their subsistence needs by such means as extorting money.
5. Films and television shows. Bullies usually imitate the gesture and language expressed in violent scenes found in films and television shows.

Children's Rights Violated Due to Bullying

Children and adults are equally entitled to human rights in living their lives. The fulfillment and implementation of their rights represent the efforts of asset protection: not only assets for families but also for the nation. In addition, it is very important to fulfill children's rights so that they can grow and develop well.

At an international level, the United Nations adopted the Convention on the Rights of the Child in 1989. Indonesia as a member of United Nations Organization ratified the Convention on the Rights of the Child through Presidential Decree Number 36 of 1990. The Convention on the Rights of the Child is the legal instrument for the promotion and protection of children's rights. The Convention on the Rights of the Child put emphasis on protecting the rights of all children, and the involvement of government, community, and private sector to promote and protect the rights of the children.

¹⁹ Muhammad (n 4).[233].

²⁰ Damayanti (n 15).[157].

Article 33 paragraph 1 of Human Rights Law affirms that everyone has the right to be free from torture, punishment, or treatments that are cruel, inhuman, and degrading the dignity of humanity. Children who fall prey to bullying are those who are weak and different from their playmates, so they experience discrimination in their lives. Discriminative treatment against children due to bullying is certainly a violation of Article 4 of the Child Protection Law. Article 4 confirms the right of every child to live, develop, participate equally while respecting their human dignity and honor, and is protected from all forms of violence and discrimination. The provisions of Article 4 serve as primary laws that inspire the legal norms of the subsequent articles which are theoretically referred to as secondary laws.²¹ Bullying is unacceptable behavior perpetrated by those in a dominant group to target perceivably weaker victims. Bullying acts violate Article 13 paragraph (1), especially points a, d, and e, which guarantees the rights of every child in the care of parents, legal guardians, or other parties who are responsible for protecting them from discrimination, cruelty, violence, harassment, and injustice.

Bullying can become physical violence if it causes physical injury on the victim. However, it can also become psychological abuse when the child victim experiences trauma or mental disorders. Daisy Widiastuti, as cited in Wardatul Muchlisoh, stated that mental disorder includes intellectual impairment, emotional disturbance, feeling of being ugly, unloved, unwanted, gloomy, and unhappy, unable to enjoy activities, attempting suicide, being more aggressive, less sociable, change in behavior, lacking in self-confidence, repeated self-harm, child's sexual behavior or knowledge that is beyond his or her age.²²

While the Child Protection Law does not specifically regulate bullying, from the description above we can see that bullying is an act of violence that certainly violates children's rights. Bullying that inflicts both physical and psychological harms clearly violates the right of children to express their opinions as regulated in Article 10. Article 11 specifies that every child has the right to rest and leisure,

²¹ Suhasril, *Perlindungan Hukum Terhadap Anak Dan Perempuan* (Rajawali Pers 2016).[5].

²² Muchlisoh (n 13).[5].

socialize with children of the same age, play, recreation and to engage in creative activities appropriate to their interests, talents, and intelligence level for self-development. Children who are victim of bullies from the surrounding environment tend to suffer low self-esteem in their social interaction and this inhibits their creativity to develop optimally at their age—therefore this represents a condition that runs contrary to Article 11.

The basic principles in the Convention on the Rights of the Child as regulated in Article 2 of the Child Protection Law include non-discrimination, the best interests of the child, the right to life, survival and development, and respect for the opinion of the child. In general, the bullying behavior runs contrary to Article 2. Bullying that cause the death of the victim clearly violates the victim's right to life. Bullying that targets children who still in their vulnerable periods and highly dependent on their parents to help them grow and develop, will make them even weaker and discriminated against from their social environment. Bullying puts psychological pressure on children and discourages them from expressing their opinions so that their development is disrupted.

Sanction for Bullies

Bullying is known to be violent behavior that commonly targets children as the victims. An example of bullying case that involves physical violence that leads to serious injury was found in Malang. A student of Junior High School in Malang suffered bruises on his right hand, leg and back due to physical bullying. The bullies, consisting of seven members, said that they did it just for fun. They body-slammed the victim to the paving blocks causing serious injuries requiring amputation of one of his fingers.²³

As the above example suggests, bullying is such intolerable and unacceptable behavior that requires law enforcement officials to take preventive legal measures.

²³ Pravitri Retno Widyastuti (2021), Kronologi Siswa SMPN 16 Malang Jadi Korban Bully hingga Dirawat, Jari Tengahnya Diamputasi, <https://www.tribunnews.com/regional/2020/02/05/kronologi-siswa-smpn-16-malang-jadi-korban-bully-hingga-dirawat-jari-tengahnya-diamputasi?page=4>.

According to Satjipto Raharjo, legal protection is an effort to prevent human rights from being violated and to make sure that the people can enjoy all their rights granted by law.²⁴

There is legal protection through non-penal norms, namely crime prevention strategies that focus on preventing the crimes before they occur. As a preventive measure, Child Protection Law prohibits bullying. It is further described in Article 76A, letter a, stating that anyone is prohibited to treat children in discriminatory manners that inflict either material or immaterial harm on children which ultimately impedes their social functions. Prohibition of bullying children with disability is regulated in Article 76A, letter n, stating that anyone is prohibited to treat children with disability in a discriminatory manner.

Prohibition for a person or people to let child bullying happen has been regulated in Article 76C stating that everyone is prohibited from inflicting, allowing, committing, ordering to do, or participating in committing, violence against children. A person who witnesses bullying is called a bystander. A bystander who only witnessed bullying but did not help the victim nor participated in bullying the victim by choosing to be silent and pretending not to know something is called an outsider. Another type of bystander who witnesses bullying and taking part in bullying is called a reinforcer.²⁵

Imposition of criminal sanction for the perpetrator constitutes the legal protection for the victim if non-penal norms were violated. The imposed criminal sanction is an effort to prevent crimes through penal law that is repressive in nature because it put emphasis on eradication, i.e., eradicating bullying. The imposition of criminal sanction on the bullies is intended to produce some deterrent effect.

Violation of Article 76A of the Child Protection Law can be punished with a maximum imprisonment of five years and/or a fine of up to Rp. 100,000,000.00

²⁴ Pravitri Retno Widyastuti, [*et., al.*], 'Kronologi Siswa SMPN 16 Malang Jadi Korban Bully Hingga Dirawat, Jari Tengahnya Diamputasi' (*tribunnews*, 2021) <<https://www.tribunnews.com/regional/2020/02/05/kronologi-siswa-smpn-16-malang-jadi-korban-bully-hingga-dirawat-jari-tengahnya-diamputasi?page=4>> accessed 9 January 2023.

²⁵ Damayanti (n 15).[156].

based on Article 77. Meanwhile, a violation of Article 76C can be punished with a maximum imprisonment of three years and six months and/or a fine of up to Rp. 72,000,000 .00 according to Article 80 paragraph (1). For bullying with physical violence that causes serious injury as in Article 80 paragraph (2), the perpetrator can be punished with a maximum imprisonment of five years and/or a fine of up to IDR 3,000,000,000.00. Meanwhile, in cases of bullying that result in the death of the victim's child as regulated in Article 80 paragraph (3), the perpetrator can be punished with a maximum imprisonment of 15 years and/or a fine of up to IDR 100,000,000.00.

This criminal sanction is a punishment for perpetrators who have been proven to have committed acts of bullying. Quoting Ali Maksum's opinion in an article written by Andry Harijanto and colleagues that the legal system in force in Indonesia is based on the legal philosophy known as positivism, it means the law is identical to the legislation, which has a written form and is made by an institution with the authority and power to make laws.²⁶ The provisions for criminal sanctions in the Child Protection Law are aimed more at adult perpetrators. In fact, it is possible that the perpetrators of bullying are also children, which means that children who are bullied are said to be children in conflict with the law.

A child's actions that violate the law are called juvenile delinquency. Purniati and colleagues quoted the opinion of Harry E. Allen and Cliiford E. Simmons who stated that juvenile delinquency is child delinquent behavior which, if carried out by adults, is considered a crime or violation of the law.²⁷ Indonesia not only provides protection to children who are victims of bullying, but protection is also provided to children who are perpetrators of bullying. This is similar to Rafika Nur and colleagues who said that sanction of actions aimed at the perpetrators of criminal acts are based on protection, so that the perpetrators of criminal acts will be better and not solely for the purpose of retaliation.²⁸

²⁶ Andry Harijanto, 'The Model of Legal Protection for Children Victims of Domestic Violence Based on Justice' (2022) 2 Journal of Human Rights, Culture and Legal System.[106].

²⁷ Purniati,[*et.al.*], *Analisa Situasi Sistem Peradilan Anak (Juvenile Justice System) di Indonesia* (UNICEF 2003).

²⁸ Rafika Nur, 'The Imposition of Sanctions for Children' (2020) 6 Hasanuddin Law Review.[167].

Children who become perpetrators of bullying in the process place more emphasis on non-penal channels. The non-penal route is taken with the aim of creating conditions conducive to finding out the causes of children committing acts of bullying, so that they can produce a policy for children who commit criminal acts. One of these non-penal pathways is restorative justice, which according to Herlina is a process where all parties involved in a particular criminal act work together to solve problems and how to deal with future consequences or future implications.²⁹

Law no. 11 of 2012 concerning the Juvenile Criminal Justice System regulates a restorative justice mechanism for perpetrators of bullying who are children through a diversion process. Diversion is the transfer of resolution of children's cases from criminal justice to a process outside criminal justice, as explained in Article 1 point 7.

Article 8 paragraph (1) states that the diversion process involves children, parents/guardians, victims, community counselors and professional social workers for a restorative justice approach. The results of diversion, as regulated in Article 11, include peace with/or without compensation, handover back to parents/guardians, education/training at educational institutions or LKPS for up to three months, and community service.

Not all bullying perpetrators who are still in the category of children can be resolved through the diversion process because if the crime committed by a child is punishable by imprisonment for more than seven years and is a repetition of the same crime, then it cannot go through the diversion process. This is regulated in Article 7 of the Juvenile Criminal Justice System Law. The seven-year criminal threat limit is intended to classify the crime committed by the child as a serious crime such as murder, rape or drug dealing.

The application of criminal sanctions to children who are perpetrators of bullying is part of the principle of *ultimum remedium*, which means punishment as the final step. As M. Arief Kurniawan and colleagues argue, the principle of

²⁹ Ferna Lukmia Sutra, 'Kebijakan Hukum Pidana Dalam Perkara Bullying Pada Anak yang Berimplikasi Pada Tindak Pidana' (2022) 5 *Gorontalo Law Review*. [153].

ultimum remedium, meaning deprivation of liberty for children as a last resort, is part of the application of the principle of the best interests of the child which must be the basis that must be considered by legal officials in handling cases for children in conflict with the law.³⁰

As a consequence of being a nation of laws, Indonesia is obliged to guarantee that its legal system provides justice, legal certainty, and benefit for the children of Indonesia, especially those who fall prey to bullying. The guarantee is manifested in the implementations of rule of law, such as by imposing strict sanction for the bullies, in which the police, prosecutors, and judges can impose maximum, rather than minimum, sanctions. This is intended to provide some deterrent effect not only on the perpetrators, but also on other persons to hinder them from doing the bullying and, at the same time, from the imposition of sanction pursuant to the Child Protection Law.

Imposition of criminal sanction as the penal code implementation must be followed by a psychological counseling program for the victims of bullying to restore their mental health. As children who experience bullying are at an increased risk of developing mental illness, it is highly necessary to treat them to restore their mental health so that they can grow and develop optimally.

Conclusion

Bullying can take the forms of physical, verbal and social behaviors. Whatever the form it takes, bullying is clearly an act that violates the rights of the child. Child victims of bullying have the rights to legal protection. The legal protection can be implemented under penal or non-penal norms. When legal protection implemented under non-penal norms cannot prevent children from falling prey to bullying, it is highly necessary to provide legal protection under penal norms by imposing strict criminal sanctions as regulated in Child Protection Law.

³⁰ M Arief Kurniawan, 'Konsep Asas Ultimum Remedium Dalam Sistem Peradilan Pidana Anak', *Proceeding International Seminar on Islamic Studies 15th-16th March 2023* (Universitas Muhammadiyah Sumatera Utara 2023).

If the perpetrator of the bullying is a child, he must pay attention to the provisions stipulated in the Juvenile Criminal Justice System Act. Children who are perpetrators of bullying in the juvenile delinquency category will be tried in diversion for which sanctions are also regulated. However, this diversion process does not apply to children who commit crimes that carry a sentence of more than seven years. Therefore, perpetrators of bullying, both adults and children, can still be subject to criminal sanctions as an application of the *ultimum remedium* principle.

Sanctions regulated under the Child Protection Law are imposed on cumulative and maximum bases. As law enforcement officers in a constitutional state, the police receive and process reports of bullying, the prosecutors file lawsuits and the judges make legal decisions by imposing maximum criminal sanctions in order to support legal protection for Indonesian children to prevent them from bullying. In addition to criminal sanction imposition, psychological counseling is also important for the child victim of bullying to restore their mental health so that they can return to enjoying their rights without experiencing violence and discrimination in their life and, in the end, they can grow and develop optimally and make their dream come true.

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