

Legal Protection of Children from Physical and Non-Physical Violence (Bullying) Based on Article 54 of Law Number 35 Of 2014 Concerning Child Protection (Case Study in Sma Negeri 1 Labuha Village)

Muhammad Amin Hanafi¹ and Hardina²

^{1,2}Universitas Khairun Ternate. Address : Raya Gambesi Street)

Abstract— This research was conducted with the aim of knowing how the legal protection of children according to Law no. 35 of 2014 concerning Child Protection and how the government's efforts to solve the problem of violence that occur in the school environment.

Children are the next generation of the Indonesian nation, have rights and obligations to participate in building the state and nation of Indonesia. Children are the subject and object of Indonesia's national development in achieving the aspirations of the nation, a just and prosperous society. Children are development capital, which will maintain and maintain and develop the results of nation building.

"Bullying is a hostile act that is carried out consciously and intentionally with the aim of hurting, such as intimidating through threats of aggression and causing terror. This includes actions that are planned or spontaneous, real or barely visible, in front of someone or behind someone, easy to identify or hidden behind friendship, committed by a child or group of children.

Keywords— Child Protection, School Environment, Bullying.

PRELIMINARY

A. Background of The Problem

Children are the next generation of the Indonesian nation, have rights and obligations to participate in building the state and nation of Indonesia. Children are the subject and object of Indonesia's national development in achieving the aspirations of the nation, a just and prosperous society. Children are development capital, which will maintain and maintain and develop the results of nation building.

According to M. Nasir Djamil, as a Pancasilaist country, and upholds the values of Nationality and Humanity, Indonesia has many regulations that explicitly provide efforts to protect children. In the 1945 Constitution, Article 34 paragraph (1) states that "The Poor and Abandoned Children are cared for by the State", then also the specific protection of children's rights as part of Human Rights is included in Article 28 B paragraph (2) that "every child has the right to for survival, growth and development as well as obtaining protection from violence and discrimination.

Law enforcement as a process is essentially an application of discretion that involves making decisions that are not strictly regulated by the rule of law, but has an element of personal judgment, that in essence discretion is between law and morals (ethics in the narrow sense).

In language, bullying is inspired by the word bull (English) which means "bull" who likes to gore. While the perpetrators of bullying are usually called bullies. Meanwhile, according to the term bullying is a situation where the abuse of power / power is carried out by a person / group. The strong party here does not only mean strong in physical size, but can also be strong mentally. In this case the victim of bullying is unable to defend or defend himself because he is physically and or mentally weak. What we need and very important to pay attention to is not just the actions taken, but the impacts of these actions on the victim. For example, a student pushes his friend's chair roughly. If those who are encouraged feel intimidated, especially if the action is done repeatedly, then bullying behavior has occurred. If the students who are encouraged do not feel afraid or intimidated, then the action cannot be said to be bullying.

The definition of bullying itself, according to the National Commission for Child Protection, is long-term physical and psychological violence perpetrated by a person or group against someone who is unable to defend themselves. It can also be said that bullying is an act that is done by someone intentionally to make others afraid or threatened, causing the victim to feel afraid, threatened, or at least unhappy. According to Ken Rigby bullying is a desire to hurt another person. This action is carried out directly by a stronger person or group, is irresponsible, is usually repeated, and is carried out with pleasure.

Bullying is categorized as antisocial behavior or misconduct behavior by abusing its power to weak victims, individually or in groups, and usually occurs repeatedly. Bullying is said to be a form of delinquency (child delinquency), because this behavior violates societal norms and can be punished by legal institutions. Based on the above definition, it can be concluded that bullying is a deviant behavior carried out intentionally by someone who is stronger against a weak person with the aim of threatening, frightening, or making the victim unhappy.

Forms of Bullying, bullying is a deliberate behavior to hurt or injure the victim both physically and spiritually. Forms of bullying can be grouped into three categories, namely:

- a. Bullying Physical, including actions: slapping, slapping, stepping on the foot, tripping, spitting, barking, throwing things, punishing by running around the field and punishing by push up
- b. Verbal bullying, detected because it was caught by the sense of hearing, such as cursing, insulting, labelling, shouting, embarrassing in public, accusing, shouting, spreading gossip, slandering and refusing.

Mental/Psychological Bullying, is the most dangerous type of Bullying because it doesn't catch the eye. This practice occurs secretly and outside the monitoring of the victim. Examples are: looking cynically, looking full of threats, humiliating in public, silence, isolating, humiliating, terrorizing via SMS messages, looking down on people, glaring, and sneering.

Meanwhile, according to Baumann the types of bullying are as follows:

- a. Overt Bullying or overt bullying which includes physical and verbal bullying, for example by pushing down, pushing violently, threatening and mocking with the intention of hurting.
- b. Indirect Bullying or indirect intimidation which includes relational aggression, where the perpetrator intends to destroy the relationship the victim has with others, including attempts to isolate, spread gossip and ask for praise for certain actions within the competence of friendship.
- c. Cyberbullying or cyber bullying. Cyberbullying involves using e-mail, telephone or text messages, personal websites, or social media to destroy someone's reputation.

As the Indonesian state of law has regulated Bullying in Article 54 of Law Number 35 year 2014 concerning Child Protection:

1. Children in and within the education unit are required to receive protection from acts of physical, psychological, sexual violence, and other crimes committed by educators, educational staff, fellow students, and/or other parties.
2. The protection as referred to in paragraph (1) is carried out by educators, education staff, government officials, and/or the public.

Sebagaimana dalam Pasal 54 Undang-Undang Nomor 35 Tahun 2014 Regarding Child Protection, educators and education staff are tasked with protecting children who are bullied. However, in reality, bullying cases still occur in schools that are carried out by students in schools. As Coloroso argues, bullying is a conscious, intentional, and vicious activity intended to injure, instill fear through threats of further aggression, and create terror. Whether this bullying was premeditated or sudden, real or hidden, in front of you or behind your back, easily identified or hidden behind an apparent friendship, perpetrated by a child or a group of children.

Until now, there are still many cases of bullying in schools that are carried out by students against their friends at school. With bullying cases still occurring, many victims who are bullied do not get protection as described in Article 54 of Law Number 35 of 2014 concerning Child Protection, besides that their rights are also explained in Article 59 paragraph (1) carried out through efforts:

- a. Prompt treatment, including physical, psychological, and social treatment and/or rehabilitation, as well as prevention of disease and other health problems.
- b. Psychosocial assistance from treatment to recovery;
- c. Providing social assistance for children who come from underprivileged families.
- d. Providing protection and assistance in every judicial process.

Namun kenyataannya masih banyak ditemukan masalah-masalah dalam penegakan hukum terhadap perlindungan anak dari Bullying diantaranya :

1. Still not fast enough in treatment or rehabilitation physically, psychologically, and socially as well as prevention of diseases and other health problems.
2. The absence of psychosocial support.
3. Lack of social assistance for children who come from poor families.
4. There is no provision of protection and assistance.

Therefore, to find out more, researchers are interested in researching about ***“Legal Protection of Children from Physical and Non-Physical Violence (Bullying) Based on Article 54 of Law Number 35 year 2014 concerning Child Protection (Case Study at SMA Negeri 1 Labuha Village)”***

B. Formulation of The Problem

1. What are the Laws on the Protection of Children from Physical and Non-Physical Violence (Bullying) based on Article 54 of Law Number 35 year 2014 concerning Child Protection (Case Study at SMA Negeri 1 Labuha Village)?
2. What are the factors for not running Article 54 of Law Number 35 year 2014 concerning Child Protection (Case Study at SMA Negeri 1 Labuha Village)?

C. Metode Penelitian

1. Jenis dan Sifat Penelitian

The type of research in this research is empirical juridical which in other words is a type of sociological legal research and can also be referred to as field research, namely examining applicable legal provisions and what happens in reality in society. Or in other words, that is a research conducted on the actual situation or real conditions that occur in the community with the intention of knowing and finding the facts and data needed, after the required data is collected then leads to problem identification which ultimately leads to problem solving. . This is used to get directly from respondents through interviews to be used as information data as material in writing this research.

This research is descriptive, namely the analysis to describe the data obtained in the field then analyze it and get the conclusions to be studied. Trying to systematically and carefully provide actual facts with the nature of a particular population, aiming to solve the actual problems faced now, and collect data or information to be compiled, explained, and analyzed.

2. Research sites

This research was conducted at SMA Negeri 1 Labuha Village. The reason for choosing the research location is because there are still many cases of bullying in children who do not get protection as citizens, as well as the unavailability of guidance and counseling services and direct observation, there are still students showing high bullying behavior.

DISCUSSION

School becomes an environment for students or students in the process of social interaction directly with peers or teachers. However, nowadays there are many problems that are carried out by students or students in their school environment. One of the problems that often arises is about bullying.

The definition of bullying is an absorption word from English. Bullying comes from the word bully which means a bully, a person who annoys a weak person. Several terms in Indonesian that are often used by people to describe the phenomenon of bullying include oppression, bullying, hazing, bullying, ostracism, or intimidation.

"Bullying is a hostile act that is carried out consciously and intentionally with the aim of hurting, such as intimidating through threats of aggression and causing terror. This includes actions that are planned or spontaneous, real or barely visible, in front of someone or behind someone, easy to identify or hidden behind friendship, committed by a child or group of children.

Some experts doubt the above understanding that bullying is just a desire to hurt others, they view that "the desire to hurt someone" and "really hurt someone" are two distinctly different things. Therefore, some psychologists add that bullying is something that is done not only by the perpetrator, the desire to hurt others in bullying is always followed by negative actions.

From the various definitions above, it can be concluded that bullying is a repeated attack physically, psychologically, socially, or verbally, which is carried out in a position of power that is situationally defined for their own benefit or satisfaction. Bullying is an early form of aggressive behavior, namely violent behavior.

It can be physically, psychologically, through words, or a combination of the three. It can be done by groups or individuals. Perpetrators take advantage of others they see as vulnerable. The action can be by mocking the name, the victim is bullied or exiled and can harm the victim.

Barbara Coloroso divides the types of bullying into four types, namely:

1. Verbal bullying; This behavior can be in the form of nicknames, reproaches, slander, cruel criticism, insults, statements that have the nuances of sexual solicitation or sexual harassment, terror, intimidating letters, untrue accusations, vile and false gossip, gossip. etc. Of the three types of bullying, verbal bullying is one of the easiest types to do and verbal bullying will be the beginning of other bullying behavior and can be the first step towards further violence.
2. Physical bullying; This type includes beating, kicking, slapping, strangling, biting, scratching, spitting, and damaging and destroying the property of an oppressed child. Although this type of bullying is the most visible and easy to identify, the incidence of physical bullying is not as much as bullying in other forms. Adolescents who regularly engage in physical bullying are often the most problematic adolescents and tend to turn to more criminal acts.

3. Bullying in a relational manner; is a systematic weakening of the victim's self-esteem through neglect, exclusion or avoidance. This behavior can include hidden attitudes such as aggressive glances, eye glances, sighs, sneers, mocking laughter and mocking body language. Bullying in this form tends to be the most difficult bullying behavior to detect from the outside. Relational bullying reaches its peak of strength in early adolescence, because at that time there are physical, mental, emotional and sexual changes in adolescents. This is a time when teens try to know themselves and fit in with their peers.
4. Electronic bullying; is a form of bullying behavior that is carried out by the perpetrators through electronic means such as computers, cellphones, internet, websites, chat rooms, e-mail, SMS and so on. Usually intended to terrorize the victim by using writing, animation, pictures and video recordings or films that are intimidating, hurting or cornering. This type of bullying is usually carried out by groups of teenagers who already have a fairly good understanding of information technology facilities and other electronic media.

In general, boys use more physical bullying and girls use relational/emotional bullying more, but both of them use verbal bullying. This difference is more related to the pattern of socialization that occurs between boys and girls.

Bullying can happen anywhere, in urban, rural, public schools, private schools, during school or outside school time. Bullying occurs because of the interaction of various factors that can come from the perpetrator, the victim, and the environment where the bullying occurs.

In general, children who are victims of bullying have one or more of the following risk factors: 1) are considered "different", for example having certain striking physical characteristics such as being thinner, fatter, taller, or shorter than others, differing in economic status, has an unusual hobby, or is a new student, 2) Is considered weak or unable to defend himself. 3) Have low self-confidence. 4) Less popular than others, doesn't have many friends.

As for bullies, there are several characteristics of children who have a greater tendency to become bullies, namely those who: 1) Care about popularity, have many friends, and enjoy being a leader among their friends. They can come from affluent families, have high self-confidence, and have good achievements in school.

Usually they do bullying to increase their status and popularity among their friends. 2) Have been a victim of bullying. They may also have difficulty being accepted in society, difficulty in following lessons at school, easily get carried away by emotions, feel lonely and experience depression. 3) Have low self-confidence, or are easily influenced by their friends. They can become bullies because they follow the behavior of their friends who are bullying, both consciously and unconsciously.

Legal Protection of Children from Physical and Non-Physical Violence (Bullying) Based on Article 54 of Law Number 35 year 2014 concerning Child Protection (Case Study at SMA Negeri 1 Labuha Village), it is very

clear that children in the school environment must be protected from acts of violence. violence perpetrated by teachers, school administrators or their friends in the school concerned, or other educational institutions. The legal sanction for violence in schools is an act of violating the law which can be punished by the Criminal Code (KUHP).

The provisions in the Criminal Code concerning persecution, slander, humiliation, immoral acts, rape, defamation, unpleasant acts, can be used to indict the perpetrators and take them to prison. In addition, Law No. 35 year 2014 concerning Child Protection contains criminal sanctions for perpetrators of violence against children. This criminal provision is contained in Chapter XII from article 77 to article 90. The following are articles that can be used to indict perpetrators of violence in schools:

1. Article 80 (1) Any person who commits atrocities, violence or threats of violence, or abuses children, shall be sentenced to a maximum imprisonment of 3 (three) years and 6 (six) months and/or a maximum fine of Rp. 72,000,000,000.00 (seventy-two million rupiah). (2) In the event that the child as referred to in paragraph (1) is seriously injured, the perpetrator shall be sentenced to a maximum imprisonment of 5 (five) years and/or a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah). (3) In the event that the child as referred to in paragraph (2) dies, the perpetrator shall be sentenced to a maximum imprisonment of 10 (ten) years and/or a maximum fine of 200,000,000.00 (two hundred million rupiah). (4) The punishment shall be increased by one third of the provisions as referred to in paragraph (1), paragraph (2), and paragraph (3) if it is the parents who perpetrate the abuse.
2. Article 81 (1) Any person who intentionally commits violence or threats of violence forces a child to have sexual intercourse with him or with another person, shall be punished with imprisonment for a maximum of 15 (fifteen) years and a minimum of 3 (three) years and a fine of not more than 15 (fifteen) years. Rp. 300,000,000.00 (three hundred million rupiah) and at least Rp. 60,000,000.00 (sixty million rupiah). (2) The criminal provisions as referred to in paragraph (1) shall also apply to any person who intentionally commits deceit, deception, a series of lies, or persuades a child to have intercourse with him or with another person.
3. Article 86 Any person who intentionally uses violence or threats of violence, coerces, uses deceit, a series of lies, or induces a child to commit or allow obscene acts to be carried out, shall be punished with imprisonment for a maximum of 15 (fifteen) years and a minimum of 15 (fifteen) years. 3 (three) years and a maximum fine of Rp. 300,000,000.00 (three hundred million rupiah) and a minimum of Rp. 60,000,000.00 (sixty million rupiah)
4. Article 86 Anyone who knowingly uses deceit, a series of lies, or persuades a child to choose another religion not of his own volition, even though it is known or reasonably suspected that the child has not made sense and is not yet responsible in accordance with the religion he adheres to, will be subject to a criminal sanction. imprisonment for a maximum of 5 (five) years and/or a fine of a maximum of Rp. 100,000,000.00 (one hundred million rupiah). In addition to physical

violence, psychological violence can also be criminalized, according to Article 77 of Law no. 35 of 2014 concerning Child Protection, any person who intentionally discriminates against children which results in the child experiencing material and moral losses so that it hinders his social function, and neglecting the child which causes the child to experience pain or suffering, either physically, mentally, or physically. shall be sentenced to a maximum imprisonment of 5 (five) years and/or a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah).

Factors for not running Article 54 of Law Number 35 of 2014 concerning Child Protection, among others:

1. Law Enforcement Factor

The law enforcement factor is one factor in the failure of Article 54 of Law Number 35 year 2014 concerning Child Protection because there are still many law enforcers who do not carry out their duties as law enforcers in physical and non-physical violence against children.

2. Facility or Facility Factor.

Without certain facilities or facilities, it is impossible for law enforcement to take place smoothly. These facilities or facilities include, among others, educated and skilled human resources, good organization, adequate equipment, sufficient finances, and so on. If these things are not fulfilled, it is impossible for law enforcement to achieve its goals.

CLOSING

A. Conclusion

Based on the results of research that has been examined on the legal protection of children from physical and non-physical violence (bullying) based on Article 54 of Law Number 35 of 2014 concerning Child Protection (Case Study at SMA Negeri 1 Labuha Village) as follows:

1. Legal Protection of Children from Physical and Non-Physical Violence (Bullying) Based on Article 54 of Law Number 35 of 2014 concerning Child Protection (Case Study at SMA Negeri 1 Labuha Village) is still not running in accordance with the Legislation, as the parties SMA Negeri 1 Labuha Village, South Halmahera Regency is still lacking in carrying out their duties, namely they will not carry out their protection and duties if there is no report and the SMA Negeri 1 Labuha Village is still lacking in socializing the impact of bullying.
2. Factors that do not run Article 54 of Law Number 35 of 2014 concerning Child Protection include: There are many laws and regulations governing child protection, but the government's lack of attention in implementing these laws makes violence against children still rife, especially child violence in the school/educational environment. Lack of government attention in the education system, in this case the government should be more careful and observant in terms of determining the selection of the teaching system, and supervision in the world of special education in schools.

B. Suggestion

1. The government in this case should pay more attention to children in the school environment, for example by providing socialization on violence against children, so that children can include what is meant by violence and can know what things they should not do, the government must also conduct socialization on how to report acts of violence that occur to students, so that students can know what they should do if they experience violence.
2. Even more tightened supervision from the government, in this case the government must carry out controls in schools.

REFERENCES

- [1] Abu Huraerah, 2012. Kekerasan Terhadap Anak, Bandung: Nuansa Cendekia.
- [2] Amiruddin, 2003. Pengantar Metode Penelitian Hukum, Jakarta: PT Rajawali Pers.
- [3] Arif Gosita, 1985. Masalah Perlindungan Anak, Akedemik, Jakarta: Pressindo.
- [4] Barbara Coloroso, 2006. Stop Bullying, Jakarta: Serambi.
- [5] Bambang Waluyo, 2002, Penelitian Hukum dan Praktek, Jakarta: Rineka Cipta.
- [6] Fitria Chakrawati, 2015, Bullying siapa takut?, Solo: Tiga Ananda.
- [7] Fitriana Saifullah, Hubungan Antara Konsep Diri Dengan Bullying Pada Siswa Siswi Smp, 2015, Samarinda: Ejournal psikologi
- [8] Irma Setyowati Soemitro, 1990. Aspek Hukum Perlindungan Anak, Jakarta: Bumi Aksara.
- [9] Maidin Gultom, 2013. Perlindungan Hukum Terhadap Anak Dalam Sistem Peradilan Pidana Anak Indonesia, Bandung: Refika Aditama.
- [10] M. Nasir Djamil, 2013. Anak Bukan Untuk di Hukum, Jakarta: Sinar Grafika.
- [11] Muhammad, Aspek Perlindungan Anak Dalam Tindak Kekerasan (Bullying) Terhadap Korban Kekerasan Di, 2009, Kabupaten Banyumas: Jurnal Dinamika Hukum vol. 9.
- [12] Muchsin, 2004. Rule of Law (Supremasi Hukum), Surakarta: Magister Ilmu Hukum Program Pascasarjana Universitas Sebelas Maret.
- [13] Olweus D, 1993. Bullying At School, Oxford: Blackwell.
- [14] Philipus M. Hadjon, 1987. Perlindungan Hukum Bagi Rakyat Indonesia, Surabaya: Bina Ilmu.
- [15] Satjipto Raharjo, 2000. Ilmu Hukum, Bandung: PT. Citra Aditya Bakti.
- [16] Soerjono Soekanto, Faktor-Faktor Penegakan Hukum, 2016, Jakarta: Pt Rajawali Pers.
- [17] Yayasan Semai Jiwa Amini (SEJIWA), 2017. Bullying Mengatasi Kekerasan Di Sekolah Dan Lingkungan Sekitar Anak, Jakarta: PT Grasindo.
- [18] Undang-Undang Nomor 35 Tahun 2014 Tentang Perlindungan Anak.