

Legal Protection of Children as Perpetrators & Victims of Bullying (Analysis of *Restorative Justice* Application for Minors in North Sumatra Police)

Abdul Halim Nasution

Sheikh Abdul Halim Hasan Institute Binjai, E-mail: abdulhalimnasution@ishlahiyah.ac.id

Abstract. *This article is entitled Legal Protection of Children as Perpetrators and Victims of Bullying (Analysis of the Application of Restorative Justice for Minors in the North Sumatra Regional Police). Bullying is a serious problem that has a negative impact on the development of children, both as perpetrators and victims. Legal protection of children in the context of bullying is essential to ensure their rights are protected and to prevent long-term adverse impacts. This research aims to examine the legal protection provided to children as perpetrators and victims of bullying in Indonesia according to the Child Protection Law. The problem formulation of this research: 1. How is the process of criminal bullying of minors in its application in North Sumatra olda? 2. How is the application of the Law on criminal acts of bullying minors according to Law No. 11 of 2012 concerning the Child Criminal Justice System? 3. How is the legal protection of children as perpetrators and victims of bullying effectively implemented? The methodology used is qualitative research involving literature review and analysis of legal documents, including Law No. 35 of 2014 concerning Child Protection, as well as other relevant regulations and policies. In addition, in-depth interviews were conducted with various relevant parties, including law enforcement, educators and child protection experts. The data were thematically analyzed to identify key patterns in the legal protection of children related to bullying. The results showed that the Child Protection Law has provided a strong legal basis to protect children from bullying, both as perpetrators and victims. However, implementation and law enforcement still need to be improved. A holistic approach involving various parties, including families, schools and the government, is needed to create a safe and supportive environment for children. This research recommends increasing legal awareness, training for law enforcers, as well as strengthening the role of educational institutions in preventing and handling bullying.*

Keywords: *Children; Bullying; Perpetrators; Victims.*

1. INTRODUCTION

Children are a gift and a trust from God, and a blessing to their parents. Children are considered the most precious of all treasures.¹ In addition, as the next generation of

¹ Andi Syamsu Alam et al., (2008), *Law of Child Adoption from an Islamic Perspective*, Jakarta: Kencana, ed. 1, p. 1

the Indonesian nation, children have the right and obligation to participate in the development of the Indonesian state and nation. In achieving the aspirations of the nation, a just and prosperous society, children are the subject and object of Indonesia's national development. Children are the development capital that will maintain, sustain and develop the country's development results. ²

As social beings who need interaction with their environment in order to fit in with others, whether at home, at school, or in other educational settings. Therefore, it is very important for children to be able to express themselves freely. In addition, the protection given to a child can also be in the form of protection of the child's psychological or mental condition, especially with regard to the development of his or her psyche. Thus, children are expected to develop and live normally both in terms of physical and mental growth.

The application of morals is essential for the growth and development of children, and the role of parents, society and the state is crucial. Undoubtedly, the application of these morals is in accordance with the norms of religion and society. From the religious values taught and applied to children, it is expected that they will grow up to be good and pious children, obedient to God's commands, speak well, and behave well in accordance with the teachings or guidance of each religion and belief they profess. After normative values are applied to children, it is expected that they will grow and develop in accordance with the norms that apply in society, obeying the rules that apply.

Children will enter a transition period when they are between 9 and 12 years old, which of course has a big impact on changes in their behavior, where the transition from childhood to adolescence, psychological and physical changes without parental guidance towards a religious, moral approach will result in children going in the wrong direction when they are unable to filter what they see from things that are not good, indirectly educating them without us realizing it.

There are various types of child delinquency, one of which is harassment. In Bahasa Indonesia, harassment is defined as an act that intimidates or disturbs another person.³ *Bullying*, also known as *bullying*, is an unpleasant act committed by a person or group of people against another person. These unpleasant actions often take the form of inflicting pain on others, either verbally, such as making fun of someone's appearance, testing their ability to learn, or adapt, or physically, such as hitting, pushing to kill, and so on. Today, physical abuse also includes physical violence. Victims who are injured or mentally traumatized are usually victims of physical bullying, which is a form of bullying that is done to show one's territory, whether it is done physically, verbally, or through social media. In the midst of this technological onslaught, physical and verbal abuse also occurs, both in person and through social media.

The process of child development certainly affects the formation of the child's character and qualifications in the future. If in the process of growth and development, children often get harsh treatment or even get bad violence, the formation of their

² Arif Gosita, (1985), *Child Protection Issues*, Jakarta: Akademika Pressindo, p.123

³ Siahay, Susan Kezia Valerrie, et al. (2021), Law Enforcement against Bullying in Schools, *Journal of Lex Crime* 10, No.3. P. 242.

personality will be disrupted⁴ , past trauma and will make the child's personality not good in the future.

Expressing hate speech, threats, demeaning, and sexual harassment are ways that we often see. The influence of school, family and social environment are some of the factors that can cause *bullying* in children at school. Nowadays, *bullying* among children in schools is more than just a mischief done for fun with no intention to hurt, even to the point of involving violence to show power over people who are considered weaker, causing casualties. Therefore, *bullying is* now a crime rather than just child mischief. According to Martin R. Hasskel and Lewis Yablonski, when the behavior exhibited is either negligent or intentional, violating criminal laws that are punishable, one's character is considered to have committed a crime.

To overcome these *bullying* cases, the Indonesian Child Protection Commission (KPAI) has conducted socialization and training on the Convention on the Rights of the Child (KHA) which must be carried out by local governments for schools and teachers. The Convention on the Rights of the Child (KHA) training aims that teachers can pay more attention to children's rights, can respect children's rights more, can better protect children from various violence in the school environment, must continue to strive to build Child Friendly Schools (SRA) so that a safe and comfortable environment can be created for students in all schools in Indonesia.⁵

As an educational institution, schools should not produce students who are ready to become thugs and butchers, but instead should be a safe and comfortable place for children to grow and develop. According to Law No. 23 of 2002, as amended by Law No. 35 of 2014 on Child Protection, children are a gift and a trust from God Almighty, and in them inherent dignity and human dignity.

The influence of advances in science, technology, culture and development in general has an impact on all aspects of human life (society) including children. In addition to the emergence of positive influences, of course there are also negative influences from the current development. Deviant behavior in children is one of the cases that many people highlight and worry about. One of the frequent deviant behaviors committed by children today is bullying⁶ .

Meanwhile, the types of *bullying* that are often experienced by victims are physical *bullying* (55.5%), verbal *bullying* (29.3%), and psychological *bullying* (15.2%). For the level of education, elementary school students are the most victims of bullying (26%), followed by junior high school students (25%), and high school students (18.75%)⁷ .

The Indonesian Child Protection Commission (KPAI) recorded a decrease in the number of child cases in Indonesia in 2023. This year, the number of child-related cases reached 4,683 complaints handled in 2023, Based on data collected by the

⁴ Anita and Meidy Triasavira, (2021), *Legal Protection Of Victims And Criminal Acts Of Bullying In The School Environment*, no. 1.

⁵ <https://nasional.sindonews.com/read/1324346/15/catatan-kpai-bidang-pendidikan-kasus-bullying-paling-banyak-1532346331>. Downloaded on January 13, 2024, 21.09 WIB

⁶ Etty Wahyuningsih, "*Criminal Law Enforcement Against Children Official Offenses In The Police Of Purworejo Resort Jurisdiction*" (2021): 6.

⁷ <https://www.dpr.go.id/berita/detail/id/46802/t/Pemerintah%20Harus%20Petakan%20Faktor%20Penyebab%20Bullying%20Anak>, Downloaded on January 13, 2024, at 22.15 WIB

Indonesian Child Protection Commission (KPAI), there are 2 clusters, Fulfillment of Children's Rights (PHA) 68.7% or 1,237 cases and Special Protection of Children (PKA) 31.3% or 563 cases, Child Victims of Sexual Crimes are still the highest cases with 252 cases or 14%.⁸

Minister of Education and Culture Regulation No. 82 of 2015 on Preventing and Overcoming Violence in Education Units was created to address the issue of *bullying* children. This regulation aims to provide protection to victims of violent bullying in the school environment.

Furthermore, Law No. 35 of 2014 on the Amendment of Law No. 23 of 2002 on Child Protection, or Law 35 of 2014, as stated in Article 59A Jo. In addition, the government has taken the following steps to establish Special Protection for Children, according to Article 59 Paragraph (1):

- a. Prompt treatment that includes physical, mental and social treatment and rehabilitation as well as prevention of disease and other health problems;
- b. Psychosocial approaches during treatment and after recovery;
- c. Unable to provide social assistance to children from poor families;
- d. safeguard and assist in every judicial process.

Article 69 of Law No.: 35 of 2014 on the Amendment to Law No. 23 of 2002 on Child Protection provides special protection for children who are victims of physical or mental violence. In addition, Article 59 paragraph (2) letter I states that: dissemination and dissemination of laws and regulations that protect child victims of violence;

Based on the above provisions, it is clear that the state pays close attention to the growth and development of children. This is especially true for children who are victims of crime, who certainly require special attention and protection from their parents, family, community, state and country. The international community has even called on all countries and governments to adopt laws and regulations that recognize the special position and needs of children and provide additional safe protection for them.

The problem is that both the perpetrator and the victim of *bullying* are minors which resulted in the victim committing suicide and dying, how is the legal handling of the perpetrator who is still a minor? While the concept of *restorative justice* in juvenile crime is a process where all parties involved sit together to solve problems and think about how to overcome the victims and perpetrators while still prioritizing the best interests of the child for both parties.

A child in conflict with the law is a child who is involved in legal problems or as a perpetrator of a criminal offense, while the child is not yet considered capable of taking responsibility for his actions due to his immature and growing age. Children in this case are those who are not married or have not reached 18 years of age.

⁸<http://www.kpai.go.id/news/kpai-ada-3849-complaint-kasus-anak-pada-tahun-2023> Downloaded on January 13, 2024, 22.18 WIB

Factors causing children to deal with the law are grouped into 2 (two) factors, namely internal factors and external factors. Internal factors of children in conflict with the law include family economic limitations, family disharmony (*Broken Home*), no attention from parents, either because parents are busy working or working abroad as TKI, weak faith and piety in children and parents. Meanwhile, external factors are the advancement of globalization and technological advances without being balanced with mental readiness by children, the child's social environment with bad friends, the absence of institutions or forums for counseling where children pour their hearts out, the lack of children's play facilities resulting in children not being able to channel their creativity and then direct their activities to violate the law Article 1 paragraph (2) and paragraph (3) of Law No. 11 of 2012 concerning the Child Criminal Justice System. Then there is also an understanding of children in conflict with the law, namely children in conflict with the law, children who are victims of criminal acts and children who are witnesses to criminal acts. Children in conflict with the law, hereinafter referred to as children, are children who are 12 (twelve) years old, but not yet 18 (eighteen) years old who are suspected of committing a criminal offense.

Because children are the next generation of the nation that must be protected by the state, the number of cases of minors facing the law today is certainly very worrying. It is very important to overcome the increasing number of cases committed by minors in various ways. According to Romli Atmasasmita and Wagiaty Soetodjo, the problem of child delinquency can be categorized into two categories: intrinsic and extrinsic. These categories consist of the following:⁹

1. Intrinsic to juvenile delinquency are:
 - a. intelligence factor
 - b. actor age
 - c. gender factor
 - d. factors of the child's position in the family
2. What includes extrinsic in juvenile delinquency is :
 - a. household factors
 - b. education and school factors
 - c. children's social factors
 - d. mass media factors

It can be seen from the factors mentioned above that there are many possibilities for a child to commit delinquency or crime that has an impact on the legal and judicial process known as "children in conflict with the law". The handling and protection of children in conflict with the law has a wide range of problems, not just moral problems. The judicial process that the child must go through to take responsibility for their actions has an impact on the development of the child. This is because the process is long, starting from investigation, prosecution, court, and fostering in juvenile correctional institutions, so there are often injustices and irregularities.¹⁰ And in the application of *Restorative Justice* for juvenile offenders is a rehabilitation approach to victims, looking for the best way including the future of the child as the perpetrator of the crime.

Research that relates to this research is Virda Rukmana's research *Legal Protection Against Victims and Perpetrators of Bullying Minors*, some people often experience

⁹ Romli Atmasasmita, et al, (2006), *Juvenile Criminal Law*, Bandung: PT Refika Aditama, p. 17

¹⁰ *Ibid.* p.17

bullying, especially minors. The process of child development and growth is very important because children are the successors of the nation who will realize the ideals of the nation. If a child often receives harsh treatment or even acts of violence during their growth process, the process of forming their personality will be disrupted. Article 28B paragraph (2) of the 1945 Law stipulates the protection of children from violence, which basically states that children have the right to survival, growth, and protection from discrimination and violence. Handling and preventive and repressive measures are needed because bullying often causes depression and even kills.

Furthermore, the research of Luh Putu Ayu, et al, Implementation of *Restorative Justice* in the Settlement of the Crime of Bullying in Minors Normative law is the approach used in this research. The data used is secondary data, and they are collected through literature study. Data analysis is carried out with a qualitative method that is descriptive in nature. The results showed that the targets of bullying criminal acts are regulated by the Criminal Code Law, Law No. 11 of 2012 concerning the Child Criminal Justice System, and Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection. Efforts to resolve bullying crimes with restorative justice can be done through mediation of harassers, conferences, and circles of harassers.

Research by Dewi Ervina et al, Implementation of *Restorative Justice* in Child *Bullying* Cases (Case Study of the Medan City Police, North Sumatra). Protecting children from legal bullying is not only about the rights and interests of victims that must be protected. Bullying can be committed and occurs by anyone. To perfect the process for the benefit of the country and the welfare of the child, the *restorative justice* approach should involve the community and the police. There is a good alternative to protect the rights of a child. This type of research is normative empirical research that uses library research methods. This research utilizes books, articles, and legislation that requires all citizens of the Republic of Indonesia to follow the legal system of this country. According to the results of the research, many children are the perpetrators of *bullying*.

Research by Gusti Ngurah Rai Mahaputra, Implementation of *Restorative Justice* in the Settlement of *Bullying* Crimes Committed by Children: Nowadays, there are many cases of bullying committed by children that lead to criminal offenses. In dealing with criminal acts of child abuse, the rights of victims and perpetrators must be protected. Since the perpetrator is also a child, it is important to pay attention to the rights of the perpetrator so that children in conflict have the same rights. This is done by prioritizing a rhetorative justice approach, also known as restorative justice. The Law on the Juvenile Justice System provides for this restorative justice approach, which ensures that the best interests of the child, both as perpetrator and victim, are prioritized when resolving cases. As a result, it needs to be scrutinized.

Research by Putri Rohmatul Hidayah, et al, Criminal Liability by Perpetrators Against *Bullying* Victims: In Indonesia, cases of criminal acts of *bullying* are increasing over time. Bullying has been a hot topic in society for a long time. Handling bullying cases is considered insufficient. *Bullying* is committed by many minors. There is a debate in resolving cases of criminal harassment. Sanctions often do not deter the perpetrators, and may even make the perpetrators more violent in attacking their victims. One of the efforts that can be made to solve this problem is restorative justice. To protect, respect, and provide the best justice for victims of harassment, case settlement through *restorative justice* is carried out. Normative juridical is used in this research,

using conceptual and statutory approaches. This research aims to find out the more effective way to resolve cases of harassment by using a family approach as a way for perpetrators of harassment to take responsibility for their victims.

For this reason, the researcher raised the title of this research on Legal Protection of Children as Perpetrators and Victims of *Bullying* According to Law No. 11 of 2012 concerning the Juvenile Justice System.

2. RESEARCH METHODS

Normative legal research, or doctrinal research, is focused on laws and cases. These two methods are used to gather as much information as possible on the subject under study to be analyzed to solve the problem. This research is perspectival in nature, which means that it answers a predetermined problem. Also, the nature of this research is problematic, which means it requires problem solving. In addition to describing the problem, you must also offer a solution to alleviate the problem.

3. RESULT AND DISCUSSION

3.1. Investigation Process of *Bullying* Crimes Committed by Minors at the North Sumatra Regional Police

In carrying out its duties, the Indonesian National Police is known as a state institution that exercises state power in the field of investigation. In Law No. 2 of 2002, the R.I. Police as a government institution is a state instrument whose role is to maintain security, enforce law and order, and provide protection, protection and services to the public in the context of maintaining domestic security.

In order to provide protection for children in conflict with the law either as victims, perpetrators or witnesses, the Government of Indonesia issued Law No. 11 of 2012 on the Juvenile Criminal Justice System. Law No. 11 of 2012, which was passed on July 30, 2012, has embraced the restorative justice paradigm. There are provisions on the process of resolving juvenile offenses through diversion which can be a form of restorative justice.

Broadly speaking, child protection can be divided into two aspects, namely: 1. Juridical child protection, which includes protection in: a. The field of public law b. The field of civil law 2. *Non-judicial* protection, including a. Social field b. Health field c. Education field¹¹

Therefore, the main objective of legal protection for children is to ensure that children are protected from the use of these devices. In other words, legal protection for children is an effort to ensure that children's rights and obligations can be fulfilled legally. However, Bismar Siregar stated that the legal elements of child protection are more centered on the rights regulated by the law and not obligations, considering that legally (juridically) children are not yet burdened with obligations.¹² Law is one of the instruments that can be used to achieve these protection goals. Specifically, juridical

¹¹ Endang Setya Rini, (2006), *Legal Protection of Children in Polygamous Families Viewed from Law No. 1 Of 1974 in Wonosobo Regency*, Thesis, Semarang, Diponegoro University, p. 74.

¹² Irma Setyowati Sumitro, (1990), *Legal Aspects of Child Protection*, Semarang: Bumi Aksara, p. 15.

child protection as mentioned above concerns all legal rules that have a direct impact on the life of a child in the sense of all legal rules governing children's lives.¹³

In order to promote "reform of the juvenile criminal justice system", which aims to provide legal protection for children, various illustrations of children's hardship can be used as a reason to promote such reform. This reform aims to prevent problem children from being regarded as "guilty children" and "should be sentenced as adults" who have committed crimes. Juvenile criminal justice was created to help children get better because children should be psychologically understood as souls whose emotional and psychological conditions are not yet stable or solid in facing and handling various influences coming from their environment. The child's weak and unstable condition makes him/her easily frustrated, which can lead to deviant behavior and result in future failure...¹⁴

Factually, there are specific arrangements for the protection of children in conflict with the law. Such as Law No. 3 of 1997 concerning Juvenile Courts, later amended to Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. Also, such as Law No. 23 of 2002 concerning Child Protection. The government has also ratified the Convention on the Rights of the Child (KHA), by issuing Presidential Decree Number 36 on August 25, 1990. In addition, the government also signed the *Beijing Rules* agreement. However, in reality, the provisions in these regulations are not the best solution for resolving cases of children in conflict with the law. All of these contain the principles of child protection, namely treatment free from discrimination, the survival and growth of the child, the best interests of the child, respect for the child's opinion, and protection against deprivation of liberty. The concept of *restorative justice* is a process of resolving violations of the law in which the perpetrator and victim are invited to talk to resolve the problem. After that, the mediator gives the offender the opportunity to explain or tell the chronology of the actions he or she committed. The offender expects the victim to listen and accept, understand the offender's condition, and explain how he will take responsibility for what he said. Furthermore, the victim is asked to provide a response to what the perpetrator has said. In addition, there are community representatives who are needed to ensure that the perpetrator does what he says.

Basically, the Indonesian government made regulations to guarantee the rights of children and the protection of children in conflict with Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. The law contains the spirit of resolving cases with a *restorative justice* approach in the diversion process, where their younger counterparts are the successors to the spirit of the country's struggle, have a strategic role, and have unique qualities and traits that ensure that the state and nation will remain alive in the future. The objectives of *restorative justice* are as follows:

1. Restore the situation as if nothing had happened;
2. Prevent detention;
3. Prevent being labeled or stigmatized as a criminal;
4. Preventing the recurrence of criminal acts;
5. Creating peace between the victim and the child;

¹³ *Ibid*, p.14.

¹⁴ Rini, (1974), *Legal Protection of Children in Polygamous Families Viewed from Law No. 1 of 1974*, Wonosobo Regency, p. 150. 150.

6. Resolving juvenile cases outside the judicial process;
7. Preventing children from gaining independence;
8. Invite the community to participate;
9. Instill a sense of responsibility to the child as the perpetrator for his actions; and restore the original situation.

According to Yustiawati, in the interview there are several factors that can be taken into consideration in the application of *restorative justice* in the implementation of the diversion process in criminal offenses, especially theft committed by children:

1. Previously committed offenses;
2. The child's attitude towards the act;
3. Reaction of parents and/or family to the act;

The application of *restorative justice* in the diversion process can bring benefits, among others:

1. Help the child as the perpetrator learn from mistakes;
2. Encourage children to learn to make responsible decisions, and provide opportunities to learn the consequences of their actions;
3. Efforts should be made to provide restitution to victims;
4. Restoring the situation to its original state, as it was before the criminal offense occurred. In the Juvenile Justice System Law, the forum is Diversion, a peace agreement between the child as the perpetrator and the victim.

TYPES OF LAWS AND REGULATIONS	CRITERIA AND REQUIREMENTS FOR COMPLETION THROUGH DIVERSION	
	Criteria	Requirements
Law No. 11 of 2012 (SPPA LAW) Article 1 point 3 Article 7 paragraph (2) Article 9 paragraph (3)	Perpetrators of criminal offenses 12-18 years old	Threatened with criminal imprisonment of less than 7 years. Not a repetition of the act Criminal. Must be get approval from the victim and perpetrator, except offense criminal offense in the form of offense, criminal offense light, losses victim no more than wages provincial minimum.

The requirements for Diversion are contained in Article 7 paragraph (2) of Law No. 11 of 2012, as follows:

1. Threatened with imprisonment under 7 (seven) years; and
2. Not a repetition of a criminal offense.

With this provision, of course, it slightly diverts the duties and authority of the Prosecutor contained in Law of the Republic of Indonesia Number 11 of 2021 concerning Amendments to Law No. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, Part One in Chapter III Duties and Authority has been amended to read "Between Article 30 and Article 31, 3 (three) articles are inserted, namely Article 30A, Article 30B, and Article 30C".

Article 30 paragraph (1) In the criminal field, the prosecutor's office has duties and powers:

- a. Conduct prosecution;

- b. Carry out judicial decisions and court decisions that have obtained permanent legal force;
- c. Supervise the implementation of conditional criminal decisions, supervision criminal decisions, and conditional release decisions;
- d. Investigate certain criminal offenses based on the law;
- e. Completing certain case files and for this purpose can conduct additional examinations before being submitted to the court, which in its implementation is coordinated with the investigator.

With the duties and authority given by the prosecutor's office in the judicial process, especially juvenile criminal justice, it is hoped that the case can be resolved peacefully and provide lessons for children who are in conflict with the law. Therefore, it is very important to handle children's cases with a *restorative justice* approach in the diversion process. Article 7 paragraph 2 of Law No. 11 of 2012 on Juvenile Justice System stipulates that criminal punishment under 7 (seven) years does not constitute repetition of criminal offense.

"The definition of facilitator here is to guide and organize the ongoing diversion process and ensure that law enforcement can still be carried out without neglecting the protection of juvenile offenders. Then later both parties will be found, then socialized / bridged so that the victim / perpetrator finds a peace agreement. When a *restorative justice* agreement is reached, an application for a diversion determination is submitted to the local district court."

After receiving the transfer of responsibility for the child, the Police issue an Order to Appoint a Child Investigator to resolve the child's case. Basically, the Child Investigator who has been appointed for the settlement of children's cases conducts identification in the form of *screening / assessment* to explore information or data needed to provide assistance, and find out the conditions and needs of victims. Research on the correctness of the child's identity and evidence in the child's case and record it in the Minutes of Receiving and Researching Children. The results of evidence research are recorded in the Minutes of Receipt and Research of Evidence, then in the Evidence Label. Within a period of 7 x 24 (seven times twenty four) hours from the date of receipt of responsibility for the child and evidence. Furthermore, the Juvenile Investigator makes Diversion efforts by calling or offering case settlement through Diversion to the child and / or parents / guardians of the victim, if they agree, the Juvenile Investigator determines the date of the start of the Diversion deliberation and will be recorded in the Diversion Effort Minutes. However, if the parents/guardians of the victim refuse, the Public Prosecutor will record it in the Minutes of Diversion Efforts and the community report by writing the reasons for the rejection of the Diversion effort, then the case will be submitted to the Prosecutor's Office with the submission of ordinary examination cases in accordance with statutory provisions.

Furthermore, the Child Investigator will send a summons to the parties, no later than 3 (three) days before the day of the Diversion, by making a receipt as proof of a valid summons. Diversion is held in the RKA (Special Room for Children). If in the diversion deliberation the parents/guardians are unable to attend, it will still be continued accompanied by community leaders/children's school teachers as a substitute for parents.

The Diversion deliberation was opened and led by the Person in Charge of the Child Investigator as a facilitator starting with the introduction of the parties, then the facilitator conveyed the purpose and objectives of the Diversion. The role as facilitator, the rules of procedure to be agreed upon by the parties and an explanation of the time, place and summary of the alleged criminal offense charged to the child. If there is an agreement between the parties, it is then signed with the knowledge of the facilitator. If it is unsuccessful, the case will be submitted to the Public Prosecutor's Office. The settlement of cases through Diversion deliberations is an ideal case settlement in resolving criminal cases that are still in the category of children, this is because this settlement involves child victims so that the interests of child victims will be protected. The process of resolving this diversion deliberation, children and their families will be heard, opinions or wishes that are expected both from the child perpetrator to ensure the losses suffered by the child victim.

3.2 Police Constraints and Solutions in the Investigation Process of *Bullying* Crimes Committed by Minors

Restorative justice or deliberation-based justice is a process of Diversion, where all parties involved in a criminal case will jointly overcome the problem and create an obligation to make the situation return to its original state by involving victims, children, and the community to find a solution so that it can be repaired, reconciliation. Diversion is a process of resolving cases through deliberation involving children and their parents/guardians, victims and their parents/guardians, community advisors and professional social workers based on a restorative justice approach, which is carried out by children aged 12 (twelve) to 18 (eighteen) years, committing criminal offenses with a threat of under 7 (seven) years and not repeating a crime. With the application of *restorative justice* in the diversion process, it can bring benefits to restore the situation to its original state, as it was before the criminal offense occurred. In conducting a *restorative justice* approach to resolve juvenile criminal cases in the court, the court is authorized to conduct diversion.

The obstacles in resolving *bullying* cases committed by children with a *Restorative justice* approach include:

1. Personnel and infrastructure factors

In terms of personnel, it is more directed to the human resources available at Polda North Sumatera, where there is still a minimum number of personnel who have a lack of knowledge of understanding related to the settlement of existing children's cases. Meanwhile, the facilities and infrastructure at Polda North Sumatera are still limited where in the future the challenges of resolving children's cases, especially in terms of *bullying*, will lead to the threat of *cyberbullying*.

2. Legal and community factors

Where in terms of the existing law related to the settlement of children's cases, especially related to *bullying*, it is still limited, so that investigators have difficulty in determining alternative legal paying, while in terms of the existing society there is not evenly distributed public knowledge of *restorative justice resolution* through diversion,

that according to the community the best punishment is punishment. These obstacles are the main obstacles in children's cases that cannot be resolved through Diversion. Of course, with these obstacles, the Semarang City District Attorney's Office also offers solutions so that a case that is considered to fall into the category of *restorative justice* through diversion can run smoothly.

3.3 Solutions in resolving *bullying* cases committed by children with a *Restorative justice* approach at the North Sumatra Regional Police.

1. Regarding the lack of personnel and existing infrastructure, the police have proposed additional personnel and supporting equipment for investigations, and also provided training to investigator resources, especially child investigators, while regarding problems that focus on *cyberbullying*, technological assistance is needed to resolve cases related to *cyberbullying*. Regarding obstacles from the legal aspect, the police carry out according to the applicable law but still prioritize and apply a *win win solution* (middle way) from the perpetrators and victims. As for the community factor, the Police always socialize and educate the public about the dangers of *bullying* through members who are assigned to be Police at the local village level. Regulation of the Chief of Police of the Republic of Indonesia Number 8 of 2021 concerning Handling Crimes Based on Restorative Justice. Normatively, efforts to protect child victims of bullying have been regulated by various complex provisions. Criminalization of perpetrators of bullying also has a clear legal basis, although its implementation depends on various other related regulations, such as the principle of diversion which limits the scope for criminal law if the perpetrator is a minor according to the Juvenile Justice System Law.¹⁵

2. Diversion Policy of Juvenile Criminal Law A child is any person who is under the guardianship of parents or guardians and is not yet considered an adult and is not yet capable of acting according to the law. In the case of criminal offenses, where the age of criminal erasure usually allows for the elimination of elements of guilt, especially related to the ability to take responsibility. Nonetheless, it cannot be denied that children can commit serious criminal offenses and cannot be excused simply because of their age. Therefore, Law No.11 of 2012 on Juvenile Justice System regulates the punishment of children specifically, with additional provisions on child protection, as well as Law No.35 of 2014 on the Amendment to Law No.23 of 2002 on Juvenile Justice¹⁶. In F's case, the criminal law cannot directly refer to Article 351 Paragraph (1) of the Criminal Code regarding maltreatment that causes the death of the victim because the material act committed by the perpetrator does not cause death directly, but provides protection by humiliating a person's dignity and worth and spreading it throughout society. Thus, the judge's consideration can influence the criminal provisions, by considering the material impact of the victim's death, in accordance with the provisions of Articles 310 and 311 of the Criminal Code. However, the threat of imprisonment for a maximum of 9 months still applies. submission of cases for ordinary examination procedures in accordance with statutory provisions. Furthermore, the Child Investigator will send a summons to the parties, no later than 3 (three) days before the day of the Diversion implementation, by making a receipt as proof of a valid summons. Diversion is held in the RKA (Special Room for Children) at the police station or at an agreed place. If in the diversion deliberation the parents/guardians are unable

¹⁵ *Ibid, Juvenile Justice...p.56-58*

¹⁶ M. Nasir Djamil, (2013). *Children are not to be punished*. Jakarta: Sinar Grafika, p.132-133

to attend, it will still be continued accompanied by community leaders/children's school teachers as a substitute for parents.

The Diversion deliberation was opened and led by the Person in Charge of the Child Investigator as a facilitator starting with the introduction of the parties, then the facilitator conveyed the purpose and objectives of the Diversion. The role as facilitator, the rules of procedure to be agreed upon by the parties and an explanation of the time, place and summary of the alleged criminal offense charged to the child. If there is an agreement between the parties, it is then signed with the knowledge of the facilitator. The facilitator will submit the diversion agreement to the Head of North Sumatra Regional Police. If unsuccessful, the case will be forwarded to the Public Prosecutor's Office.

The settlement of cases through Diversion deliberations is an ideal case settlement in resolving criminal cases that are still in the category of children, this is because this settlement involves child victims so that the interests of child victims will be protected. The process of resolving this diversion deliberation, the child and his family will be heard, opinions or wishes that are expected both from the child perpetrator to ensure the losses suffered by the child victim.

3.4 Police Constraints and Solutions in the Investigation Process of *Bullying* Crimes Committed by Minors

Restorative justice or deliberation-based justice is a Diversion process, where all parties involved in a criminal case will jointly overcome the problem and create an obligation to make the situation return to its original state by involving Diversion is the victim, child, and community to find a solution so that it can be repaired, reconciliation.

A case settlement process through deliberation involving children and their parents/guardians, victims and their parents/guardians, community advisors and professional social workers based on a restorative justice approach, where the child is 12 (twelve) to 18 (eighteen) years old, commits a criminal offense with a threat of under 7 (seven) years and is not a repeat offender. With the application of *restorative justice* in the diversion process, it can bring benefits to restore the situation to its original state, as it was before the criminal offense occurred. In conducting a *restorative justice* approach to resolve juvenile criminal cases within the North Sumatra Regional Police, it is accommodated and authorized to conduct Diversion.

1. The obstacles in resolving *bullying* cases committed by children with a *Restorative justice* approach include:

- a. Personnel and infrastructure factors: In terms of personnel, it is more directed to the human resources available at Polda North Sumatera, where there is still a minimum number of personnel who have a lack of knowledge of understanding related to the settlement of existing children's cases. Meanwhile, the facilities and infrastructure at Polda North Sumatera are still limited where in the future the challenges of resolving children's cases, especially in terms of *bullying*, will lead to the threat of *cyberbullying*.
- b. Legal factors and community factors: Where in terms of the existing law related to the settlement of children's cases, especially those related to *bullying*, it is still limited, so that investigators have difficulty in determining alternative legal paying, while in terms of the existing society there is not evenly distributed public knowledge of

restorative justice resolution through diversion, that according to the community the best punishment is punishment.

These obstacles are the main obstacles in juvenile cases that enter the North Sumatra Regional Police which cannot be resolved through the Diversion process. Of course, with these obstacles, the Medan City District Attorney's Office also offers solutions so that a case that is considered to fall into the category of *restorative justice* through diversion can run smoothly.

2. Solutions in resolving *bullying* cases committed by children with a *Restorative justice* approach at the North Sumatra Regional Police.

a. Regarding the lack of personnel and existing infrastructure, the North Sumatra Regional Police has proposed additional personnel and investigation support tools to the North Sumatra Regional Police, and also provided training to investigator resources, especially child investigators, while regarding problems that focus on *cyberbullying*, technological assistance is needed to resolve cases related to *cyberbullying*.

b. Regarding the constraints from the legal aspect, the North Sumatra Police carry out according to the applicable law but still prioritize and apply a *win win solution* (middle way) from the perpetrators and victims. As for the community factor, the North Sumatra Regional Police always socialize and educate the public about the dangers of *bullying*.

through members assigned as Police at the local village level.

Legal Protection of Bullying Victims: Actions or efforts to protect the whole society from the behavior of a person who may harm its legitimate interests are legal protection. to maintain general security and stability during life. Every legal entity, including natural persons (individuals) and legal entities, has rights and obligations that are protected by law. Such protection in criminal law includes protection of the right to life (virtue), body, property, property, dignity, and good name, as well as legal interests in decency and honor. To ensure that these protective elements are fulfilled, criminal law instruments are equipped with sanctions and must be used by all legal subjects.

Bullying is an act of abuse and assault on personal honor, although in many other extremes it can take the form of physical, psychological, mental, and honor abuse. Clearly, in the perspective of positive criminal law, bullying is an act that is prohibited and punishable by crime. The crime of bullying is enshrined as an integral part of the Criminal Code (KUHP) in Chapter XVI on defamation, specifically Article 310 Paragraphs (1) and (2).

In addition to these two regulations, Law No.35 of 2014 on Child Protection regulates the protection of child victims of bullying. In addition, it is worth noting the limitation of diversion, which is the threat of 7 years imprisonment for criminal offenses committed by children over the age of 12. The determination of the age of 12 is sociologically appropriate because at this age a child can be considered stable or considered *baligh* in Islamic law. Meanwhile, the 7-year limit is intended for serious crimes that deserve to be punished.

In the case of F, the criminal law cannot directly refer to Article 351 Paragraph (1) of the Criminal Code regarding maltreatment that causes the death of the victim because the material act committed by the perpetrator does not cause death directly, but provides protection by humiliating the dignity and worth of a person and spreading it

throughout the community. Thus, the judge's consideration can influence the criminal provisions, by considering the material impact of the victim's death, in accordance with the provisions of Articles 310 and 311 of the Criminal Code. However, the threat of imprisonment for a maximum of 9 months still applies.

Thus, diversion is used to protect the offender if three conditions exist:

1. The crime carries a prison sentence of less than 7 years.
2. it is not a repetition of a previous criminal offense.
3. The perpetrator must be processed in Juvenile Court if he or she was under 12 years old at the time of the incident.

The juvenile justice system works based on several important principles to strengthen child protection. These include the principles of protection, fairness, nondiscrimination, the best interests of the child, and respect for the child's opinion. children to live and develop, receive guidance and mentorship, be proportionate, obtain independence and punishment as a last resort, and avoid retaliation Moreover, the Child Protection Law requires labeling and rehabilitation for children in conflict with the law.

Although punishment is the last step, or *ultimum remedium*, in child protection, various programs and systems in Indonesia have shown the government's concern for children's rights and obligations. carried out after exceeding the limits set out in the law. This regulation is very important to maintain stability and fulfill the obligation to protect children, because children are the precious next generation who will build the future. Protection and legal certainty must be carried out in *equilibrium* in accordance with the values of society and positive law.¹⁷

In accordance with the formulation of Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), it is stated that "the State of Indonesia is a State of law". So that the state guarantees legal protection for the nation and its people, which is a legal remedy that can be given to victims of *bullying*. According to the view of one expert, Satjipto Rahardjo, legal protection is an effort to provide protection for the interests of individuals by distributing a power to someone to take action in their interests.¹⁸ In this paper, the protection discussed is repressive legal protection which aims to deal with problems by linking the recognition and protection of human rights.

Similarly to the legal protection of children, the Indonesian government is responsible for ensuring children's rights are fulfilled by providing legal protection, as the Convention on the Rights of the Child has been ratified by Presidential Decree of the Republic of Indonesia Number 36 of 1990 concerning the Ratification of the Convention on the Rights of the Child¹⁹. To provide a degree of security, the rights of minors who are victims of abuse are legally protected.

¹⁷ Zakiyah Ela Zein, et al. (2017). Factors Affecting Adolescents in Committing Bullying. *Padjajaran Faculty Journal*, Vol.4, No.2, p.12

¹⁸ Raharjo, Satjipto. (2003). *The Other Side of the Law in Indonesia*. Jakarta, Kompas, p. 121

¹⁹ Ikeu Tanzihah, et al, (2020), *Child Profile in Indonesia*, Ministry of Women Empowerment Child Protection (KPP-PA), Jakarta, p. 177-178.

Then the government guarantees the protection of human rights controlled by children who are bullied²⁰ Article 1 point 2 of Law No. 23 of 2002 which was refined through Law No. 35 of 2014 concerning Child Protection which is then referred to as the "Child Protection Law" explained that, "child protection is all actions taken to provide guarantees and provide protection to children and their rights so that they can grow and develop, live, and be able to participate to the fullest in accordance with their dignity as human beings, and also get protection from discrimination, physical, psychological and sexual violence or potentially endangering children's health". Number 3 of the Child Protection Law formulates that the provisions of Article 9 paragraph (1a) state that, "Every child has the right to protection in education units from sexual crimes and violence committed by educators, education personnel, fellow students, and / or other parties." So it can be interpreted that in the school environment, as one of the educational units, children have the right to get protection for themselves in the event of crimes or criminal acts that can be committed and caused by teachers, school staff, fellow students, and / or other parties. In addition, Article 1 point 33 of the Child Protection Law formulates that in Article 54 paragraph (1) which states, "Children in and within the education unit must receive protection from physical, psychological violence, sexual crimes, and other crimes committed by educators, education personnel, fellow students, and / or other parties". Then in paragraph (2) which explains, "Protection as referred to in paragraph (1) is carried out by educators, education personnel, government officials, and / or the Community." So that it can be drawn that in the school environment and in the school environment children should and are required to get protection from teachers as educators, workers in the field of education, government officials, and part of the community so that children can be protected from criminal acts and crimes in the form of physical, psychological, sexual, and violence and other crimes. Government Actions in Providing Compensation to Children Who Are Victims of *Bullying* Based on the Aspired Law (*Ius Constituendum*) in Indonesia Child victims as parties who suffer and are harmed by violations of criminal law are generally only included limited to expressing testimony when called as victim witnesses. When the victim is disappointed with the criminal charge and/or verdict that has been declared, because it is allegedly not in accordance with the actions committed by the perpetrator against the victim, it is not uncommon for situations such as those described above to occur.²¹

4. CONCLUSION

Law No. 35 of 2014 on the Amendment of Law No. 23 of 2002 on Child Protection, or Law 35 of 2014, as stated in Article 59A Jo. In addition, the government has taken the following steps to establish Special Protection for Children, according to Article 59 Paragraph (1): a. Rapid treatment that includes physical, mental, and social treatment and rehabilitation as well as prevention of disease and other health disorders; b. Psychosocial approach during treatment and after recovery; c. Unable to provide social assistance to children who come from poor families; maintain and assist in every judicial process. In handling juvenile crimes, it is important to do diversion, the rules

²⁰ Azkia, Zuraidah, and Muhamad Sadi Is. (2018). Legal Protection of the Human Rights of Victims of Violence. *Nurani: Journal of Shari'ah and Community Studies* 18, no. 1. P. 160.

²¹ KPP-PA Public Relations, Press Release: Restitution, Compensation of Losses for Child Victims of Crime, accessed at <https://kemenpppa.go.id/index.php/page/read/30/945/press-releaserestitusi-kompensasi-kerugian-bagi-anak-korban-tindak-pidana>, on July 1, 2024, at 17.28.

for diversion are contained in Article 7 paragraph (2) of Law No. 11 of 2012 which is seven years and repetition of criminal acts. In years, the prosecutor's office has the duties and authority: prosecution, judge's determination and court decisions, supervision of the implementation of conditional criminal decisions, supervision of supervision punishment, and conditional release decisions. Diversion is used to protect the offender if there are three conditions: The crime is punishable by imprisonment under 7 years and is not a repetition of a previous crime, the offender must be processed in Juvenile Court if he/she is under 12 years old at the time of the incident. It takes the wisdom of legal officers who handle juvenile criminal cases, and a change in mindset to be able to see the benefits of saving children, the future, mental and spiritual rehabilitation, not just for law enforcement, so that we can jointly make this change.

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