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Criminal Sanctions for Juvenile Bullying Offenders Resulting in Fatalities: An Analysis under Indonesia's Juvenile Criminal Justice System Law No. 11 of 2012

Eer Herawati, Muhammad Chotib, Abu Nawas

Universitas Dharma Indonesia (UNDHI)

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Abstract:

The phenomenon of bullying among adolescents in Indonesia has shown an increasingly alarming trend, particularly when such behavior escalates into acts of violence resulting in loss of life. This condition raises complex legal issues, especially regarding the criminal liability of children as perpetrators. On the one hand, children in conflict with the law must be afforded legal protection and rehabilitation; on the other hand, the severe consequences of their actions demand law enforcement that ensures justice for victims. This study aims to analyze the regulation and application of criminal sanctions against child perpetrators of bullying resulting in death within the perspective of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, as well as to examine its conformity with the principles of restorative justice. This research employs a

normative juridical method using statutory, conceptual, and case approaches. The legal materials consist of primary legal sources in the form of legislation, secondary legal sources such as legal literature and scholarly opinions, and tertiary materials as supporting references. Data collection is conducted through library research, while the analysis is carried out qualitatively using legal interpretation and legal reasoning methods. The results of the study indicate that under Law Number 11 of 2012, child perpetrators of bullying can still be held criminally liable, particularly in cases resulting in death. However, the imposition of criminal sanctions must take into account the best interests of the child and prioritize restorative justice principles. In serious criminal offenses resulting in death, diversion mechanisms cannot be optimally applied due to the limitations related to the severity of criminal sanctions. Therefore, formal criminal proceedings remain necessary while still integrating child protection principles in their implementation. In conclusion, the imposition of criminal sanctions against child perpetrators of bullying resulting in death is necessary for the enforcement of the law; however, it must be carried out proportionally without disregarding restorative justice principles. A balance is required between protecting the child offender and ensuring justice for the victim to achieve fair and humane legal objectives.

Keywords: *Bullying, Child Offender, Criminal Liability, Restorative Justice, Juvenile Criminal Justice System*

A. INTRODUCTION

The phenomenon of bullying among teenagers is one of the social problems that is increasingly worrying in Indonesia. This behavior is not only limited to verbal and psychological violence, but has also evolved into physical violence that, in some cases, has led to the loss of the victim's life. This condition shows that bullying can no longer be seen as just an ordinary juvenile delinquency, but has met the qualifications as a criminal act.¹

In recent years, cases of bullying with fatal consequences have begun to emerge and receive public attention. One example is the incident that occurred in the South Tangerang area in 2025, where a junior high school student died after allegedly experiencing violence by his peers in the school environment. The victim had undergone intensive treatment before finally dying from the injuries suffered. This incident is clear evidence that the practice of bullying among adolescents can develop into serious acts of violence that are life-threatening.²

¹ See Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (Statute Book of the Republic of Indonesia Number 153 of 2012); compare with O'Moore, M. & Minton, S.J. (2004). *Dealing with Bullying in Schools: A Training Manual for Teachers, Parents and Other Professionals*. London: Paul Chapman Publishing.

² Similar cases have been reported by various media outlets; See e.g. Kompas.com (2025). "Junior High School Student Killed After Allegedly Being Bullied by a Friend in South Tangerang." Available on <https://www.kompas.com> (accessed March 15, 2025).

The case does not stand alone, but rather reflects a broader phenomenon in Indonesia, where bullying between students often occurs and, in certain situations, develops into fatal violence. In fact, conflicts that start from ridicule or psychological distress often escalate into physical violence or fights that lead to death. This shows that there is an escalation of bullying behavior from a minor act to a serious crime.

In law enforcement practice, cases of bullying committed by children pose their own dilemmas. On the one hand, the perpetrator is a child who must legally receive protection and guidance. On the other hand, the consequences can be very serious, even resulting in the death of the victim, so it demands strict legal accountability. This dilemma raises fundamental questions about the extent to which children of abusers can be held criminally responsible, especially in cases that cause fatalities.

Normatively, the regulation of the juvenile criminal justice system in Indonesia is regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.³ This law prioritizes a *restorative justice* approach and diversion mechanisms as an effort to prevent children from entering the formal criminal justice process. The main principle adhered to is the best interest of the child, emphasizing coaching rather than punishment.

³ Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (Statute Book of the Republic of Indonesia No. 153 of 2012, Supplement to Statute Book No. 5332).

However, the application of the principle of restorative justice cannot be separated from certain limitations. In the case of bullying that results in fatalities, legal issues arise about whether the restorative approach is still relevant to be applied, or whether criminal sanctions are needed as a form of accountability for the actions committed. This is important because in the juvenile criminal justice system, not all criminal acts can be resolved through diversion mechanisms, especially those that have a high level of seriousness and fatal impacts.⁴

These problems show that there is tension between two legal interests, namely the protection of children as perpetrators and the fulfillment of a sense of justice for victims. On the one hand, the law must guarantee that children do not lose their future due to disproportionate criminal proceedings. On the other hand, the law must also provide certainty and justice for victims and their families, especially in cases that have fatal consequences.

The Law on the Juvenile Criminal Justice System (SPPA Law) brings a new paradigm in law enforcement against children, namely through the diversion mechanism (transfer of the settlement of children's cases from the criminal justice process to the process outside the criminal court) and the application of restorative justice.⁵ The goal is to spare children

⁴ Article 7 paragraph (2) of Law Number 11 of 2012 states that diversion does not apply to criminal acts that are threatened with imprisonment of more than 7 years. See also Marlina. (2019). *Juvenile Criminal Justice in Indonesia: Development of the Concept of Diversion and Restorative Justice*. Bandung: Refika Aditama, pp. 112-115.

⁵ Explanation of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (Statute Book of the Republic of Indonesia No. 153 of

from criminal proceedings that could ruin their future, without ignoring the victim's right to a fair restoration. However, implementation in the field still faces serious obstacles. Many schools do not understand their role and mechanisms in the juvenile criminal justice system, law enforcement officials have not fully applied the principles of restorative justice consistently, and the community still often demands strict sanctions in the form of punishment for perpetrators of bullying without considering aspects of child development and protection.

An ideal school is one that is able to create a fun environment for students, so that they can realize the desired educational vision and mission. The concept of an ideal school involves the existence of qualified and competent educators in their fields, who have four main competencies: pedagogical, professional, social, and personality. In addition, the support of complete facilities and infrastructure for learning activities is also an important factor in achieving optimal educational goals. However, the school environment is not only a suitable place to develop children's potential, but it can also be a source of stressors that interfere with their development. Children at vulnerable ages tend to be more influenced by peers than parents, making parental control more difficult. This age range is known as age grouping, where children focus more on the need to be accepted by peers as members of the group.

2012); see also Pranoto, A. (2020). "Diversion and Restorative Justice in the Juvenile Criminal Justice System." *Journal of Law and Justice*, 9(2), 245-267. DOI: <https://doi.org/10.25216/jhp.9.2.2020.245-267>.

Position, acceptance, and recognition from peers have an important role in shaping a child's characteristics.⁶

One of the stressor factors that can interfere with children's development is the existence of bullying behavior in the school environment. According to Ken Rigby, bullying can be described as a desire to hurt embodied in concrete actions that cause suffering to a person. These actions are usually carried out directly by a stronger individual or group, irresponsible, often repeated, and performed with a certain sense of pleasure or satisfaction.⁷

Signs that a child is a victim of bullying include difficulty in socializing, fear of going to school, difficulty pursuing lessons, difficulty concentrating on learning, as well as negative impacts on mental and physical health, both in the short and long term. Over a long period of time, children who are victims of bullying may exhibit symptoms or behaviors that reflect fear due to trauma, loss of confidence, or shame. This lack of confidence can result in children experiencing a decrease in self-esteem which ultimately affects their ability to face problems or challenges in life.⁸

Incidents of bullying are most likely to occur between equal parties, but they often also occur between parties who do not have equal power or authority. One of the parties finds

⁶ Santrock, J.W. (2011). *Life-Span Development*. 13th ed. New York: McGraw-Hill, pp. 402-405.

⁷ Rigby, K. (2002). *New Perspectives on Bullying*. London: Jessica Kingsley Publishers, pp. 15-20.

⁸ Olweus, D. (1993). *Bullying at School: What We Know and What We Can Do*. Oxford: Blackwell Publishers, pp. 32-35.

himself in a situation where they are unable or helpless to protect themselves. Victims of bullying are usually positioned as targets, and bullying often occurs in relationships between seniors and juniors. Here are examples of actions that fall under the category of bullying: physical bullying (such as hitting, kicking, pinching, and so on that cause pain to the body), verbal bullying (insults), relational bullying (which can cause the victim to feel excluded), cyberbullying, and sexual bullying.

The act of bullying itself can be subject to criminal sanctions even though the perpetrator is still classified as a child. In Indonesia, the legal arrangements for this action are regulated in Law Number 35 of 2014 concerning Child Protection.⁹ If the perpetrator of the bullying is still a child, not only the child protection law is used, but also Law Number 11 of 2012 concerning the Child Criminal Justice System.

Based on Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, Indonesia is a state of law. As a consequence, the state has an obligation to regulate all aspects of the life of the nation and the state through law. In order to realize effective law enforcement in Indonesia, a legal system is needed that can regulate people's behavior and function as a tool of social control. Although law enforcement in Indonesia is still not fully optimal because it is influenced by the social and cultural conditions of the

⁹ Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection (Statute Book of the Republic of Indonesia Number 297 of 2014, Supplement to Statute Book of the Republic of Indonesia Number 5606).

community, its development continues to show a better direction.

Lack of law enforcement against individuals may lead to criminal acts or other violations of the law. This ineffectiveness of law enforcement is also seen in the phenomenon of bullying that often occurs, both in the school environment and in children's playgrounds. In this case, both the perpetrator and the victim are generally children. Schools, which are supposed to be a safe place to learn, socialize, and seek information, can actually become a scary place for some children due to the acts of bullying that occur in them.

The phenomenon of bullying that occurs in the school environment shows that there are weaknesses in the legal protection system for children, both as victims and perpetrators. Bullying not only has a psychological impact, but it can also interfere with a child's social and educational development. Therefore, it is very important for the state, through law enforcement officials and educational institutions, to ensure that the protection of children is carried out to the maximum, as mandated in Law Number 11 of 2012 concerning the Child Criminal Justice System.

The law exists as a form of protection for children who are confronted by the law, by prioritizing the principle of restorative justice. This means that the legal approach to children is not only oriented towards punishment, but also on restoring social conditions between victims and perpetrators. In the context of bullying in schools, this is very relevant because the majority of cases involve fellow children and

occur in an educational environment that should be conducive to children's growth and development.¹⁰

Children as part of the subject of law in Indonesia have an obligation to comply with applicable legal norms. Within such frameworks, children need special attention given that they have different characteristics and needs than adults. Legal protection of children is not only about their rights, but also about the state's obligation to provide a safe and conducive space to grow and develop comprehensively, both physically, mentally, and socially.¹¹

The role of children as the next generation of the nation makes the urgency of legal protection even more important. In the midst of the rapid development of science, technology, culture, and other social changes, children are increasingly vulnerable to negative influences. One of the impacts that is now a serious concern is the increase in deviant behavior among adolescents, such as bullying. Bullying committed by children against other children not only has an impact on the psychological condition of the victim, but is also a form of violation of the law that must be dealt with seriously.¹²

¹⁰ Kristanto, A. (2021). "The Application of Restorative Justice in the Crime of Child Abuse." *Journal of Legal Sciences*, 12(1), 88-102. DOI: <https://doi.org/10.30652/jih.v12i1.7890>.

¹¹ Hadjon, P.M. (1987). *Legal Protection for the People in Indonesia*. Surabaya: Bina Ilmu, pp. 25-30.

¹² Smith, P.K. & Brain, P. (2000). "Bullying in Schools: Lessons from Two Decades of Research." *Aggressive Behavior*, 26(1), 1-9. DOI: [https://doi.org/10.1002/\(SICI\)1098-2337\(2000\)26:1<1::AID-AB1>3.0.CO;2-2](https://doi.org/10.1002/(SICI)1098-2337(2000)26:1<1::AID-AB1>3.0.CO;2-2).

Based on this description, a normative juridical study is needed to analyze in depth the application of criminal sanctions against children of perpetrators of bullying that result in fatalities in the perspective of Law Number 11 of 2012. This study is important to assess whether existing legal arrangements have provided a balance between child protection and justice enforcement, as well as to find the right law enforcement concept in dealing with cases of severe bullying among adolescents.

RESULTS AND DISCUSSION

B. Overview of Bullying Crimes That Result in Fatalities in Indonesia

The phenomenon of bullying or bullying in Indonesia has developed quite alarmingly in recent years. Bullying behavior, which was previously considered an ordinary juvenile delinquency, has now evolved into a serious form of violence and in some cases resulted in fatalities.¹³ Bullying does not only occur in verbal form, but also includes physical, psychological, social, and cyber bullying violence that has a major impact on the victim.¹⁴

In the school environment, bullying generally occurs because of the power imbalance between the perpetrator and

¹³ Indonesian Child Protection Commission (KPAI), Annual Report on Complaints of Violence against Children for 2023-2025 (Jakarta: KPAI, 2025), pp. 15-17.

¹⁴ Dan Olweus, *Bullying at School: What We Know and What We Can Do* (Oxford: Blackwell Publishers, 1993), pp. 9-11; see also Ken Rigby, *New Perspectives on Bullying* (London: Jessica Kingsley Publishers, 2002), pp. 25-27.

the victim. Perpetrators usually feel that they have more power, both physically, socially, and in groups, so they intimidate victims who are considered weaker. In practice, bullying is often repeated and lasts for a certain period of time, causing the victim to experience mental stress, trauma, and even serious physical injuries.¹⁵

The development of technology and social media has also expanded the form of bullying among teenagers. Not a few cases of bullying that started from ridicule on social media then developed into acts of physical violence in the school environment and outside of school.¹⁶ This condition shows that bullying can no longer be seen as a simple problem, but has become a legal and social problem that needs serious handling.

In some cases in Indonesia, bullying has even developed into a criminal act that results in the loss of the victim's life. Victims generally experience repeated physical violence, erosion, mental pressure, and social exclusion that lead to fatal conditions. The incident caused great concern from the public because it involved children as perpetrators and victims.¹⁷

¹⁵ Olweus, *Bullying at School*, pp. 32-35; Rigby, *New Perspectives*, pp. 50-53.

¹⁶ Sameer Hinduja and Justin W. Patchin, *Bullying Beyond the Schoolyard: Preventing and Responding to Cyberbullying*, 2nd ed. (Thousand Oaks, CA: Corwin Press, 2015), pp. 10-15.

¹⁷ KPAI, *Annual Report 2025*, pp. 20-22; See also the reporting of fatal bullying cases in various national media.

Bullying cases that resulted in fatalities pose a dilemma in law enforcement. On the one hand, children as perpetrators must still receive legal protection as stipulated in Law Number 11 of 2012 concerning the Child Criminal Justice System. But on the other hand, the consequences caused in the form of loss of the victim's life demand criminal responsibility as a form of law enforcement and protection of the victim's rights.¹⁸

In the context of criminal law, bullying that causes death can be categorized as a serious criminal offense because it meets the elements of violence that results in the loss of a person's life. Therefore, the state has an obligation to ensure that the law enforcement process is carried out fairly while still paying attention to the principles of child protection and the best interests of children.¹⁹

In addition to individual factors, the occurrence of bullying is also influenced by factors of the social environment, family, education, and weak supervision of children's behavior. The lack of understanding of the legal impact of bullying causes many children to not realize that the actions taken can lead to criminal proceedings. Therefore, an active role is needed from families, schools, communities, and

¹⁸ See Article 2 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which regulates the principles of protection and the best interests of children; compare with the state's obligation to provide justice for victims as stipulated in Article 28D paragraph (1) of the 1945 Constitution.

¹⁹ See Article 351 paragraph (3) of the Criminal Code; further explanation in R. Soesilo, *Criminal Code (KUHP) and its Commentaries* (Bogor: Politeia, 1995), pp. 245-247.

law enforcement officials in preventing and handling bullying cases among adolescents.²⁰

1. Analysis of Bullying Cases That Resulted in Fatalities in Indonesia

a. The Case of Muhammad Hisyam in South Tangerang

The bullying case that resulted in fatalities occurred against Muhammad Hisyam, a grade VII student of SMP Negeri 19 South Tangerang in 2025. Based on the information circulating, the victim was allegedly physically assaulted by his schoolmates. The incident began when the perpetrator hit the victim's head with an iron stool, causing the victim's health condition to deteriorate. The victim had undergone intensive treatment at Fatmawati Hospital for approximately one week before finally died. This case was then handled by the South Tangerang Police Criminal Investigation Unit as a form of law enforcement against acts of violence involving minors.²¹

Legally, this act can be categorized as a criminal act of persecution that results in death as stipulated in Article 351 paragraph (3) of the Criminal Code (KUHP). Even though the perpetrator is still a child, his actions can still be held

²⁰ Novan Ardi Wiyani, *Save Our Children from School Bullying* (Yogyakarta: Ar-Ruzz Media, 2012), pp. 75-80; Fitria Chakrawati, *Bullying Who Is Afraid?* (Solo: Tiga Serangkai, 2015), pp. 30-35.

²¹ "Chronology of Junior High School Students in South Tangerang Killed After Being Bullied by Friends, Beaten with an Iron Bench," Kompas.com, February 12, 2025 (accessed March 1, 2026).

criminally responsible based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.²²

From the perspective of the SPPA Law, this case shows a clash between the principle of child protection and the demand for justice for the victim. The consequences caused in the form of loss of victims' lives make the diversion approach difficult to implement because it is included in the category of serious crimes with criminal threats of more than seven years.²³ In addition, this case shows that bullying in the school environment can no longer be considered an ordinary juvenile delinquency, but has developed into a serious criminal offense that requires strict and proportionate legal handling.

b. Bullying Case at Central Lombok Islamic Boarding School

Another case occurred in Central Lombok, West Nusa Tenggara, involving a 13-year-old student in the Islamic boarding school environment. The incident began with mutual ridicule between the victim and the perpetrator which then developed into physical violence. The perpetrator allegedly kicked the victim until his head hit the wall and caused the victim to die. This incident shows that acts of verbal bullying

²² Article 351 paragraph (3) of the Criminal Code; see also Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, especially Articles 18-20 concerning criminal sanctions for children.

²³ Article 7 paragraph (2) of Law Number 11 of 2012: "The provisions as referred to in paragraph (1) do not apply to criminal acts that are threatened with imprisonment of more than 7 (seven) years."

that are not dealt with immediately can develop into fatal acts of physical violence.²⁴

From a criminal law perspective, the act fulfills the element of violence that causes death. Even though it is carried out by children, the state still has an obligation to carry out legal proceedings as a form of protection for the rights of victims.²⁵ This case also shows the importance of supervision from educational institutions, including Islamic boarding schools, in preventing violence between children. The educational environment should be a safe place for children's development, not a place where violence and intimidation occur.

c. Case of Angga Bagus Perwira in Grobogan Regency

A bullying case that resulted in fatalities also occurred against Angga Bagus Perwira, a grade VII student of SMP Negeri 1 Geyer, Grobogan Regency, Central Java. The victim was allegedly bullied by his classmates before finally died. This case shows that bullying in the school environment is still a serious problem that has not been handled optimally. Low supervision and lack of understanding of the legal impact of bullying cause acts of violence between students to continue to be repeated.²⁶

²⁴ "Bullying at Central Lombok Islamic Boarding School, 13-Year-Old Student Died," DetikNews, March 7, 2025 (accessed March 1, 2026).

²⁵ See Constitutional Court Decision No. 21/PUU-XII/2014 which affirms the state's obligation to protect the rights of victims of violence.

²⁶ "Junior High School Student in Grobogan Killed Allegedly Bullied by Classmates," Tribunnews.com, April 10, 2025 (accessed March 1, 2026); compare it with KPAI data regarding bullying complaints in schools.

From the perspective of the SPPA Law, if it is proven that there is a criminal element in the case, then the perpetrator's child can still be held criminally responsible by paying attention to the principle of the best interest for the child.²⁷ However, the fatal consequences in the form of the death of the victim cause the application of restorative justice to be very limited. In such conditions, the criminal justice process is still needed to provide legal certainty and a sense of justice for the victim's family.

2. Legal Analysis of Bullying Cases That Result in Fatalities

Based on some of these cases, it can be seen that bullying carried out by children can develop into a serious crime that results in the loss of the victim's life. In the context of criminal law, these acts can no longer be categorized as ordinary juvenile delinquency, but have met the elements of criminal acts of persecution and violence that cause death.²⁸

Law Number 11 of 2012 basically prioritizes a restorative justice and diversion approach in the settlement of children's cases. However, in serious criminal acts that result in fatalities, the application of diversion becomes difficult to carry out due to the limitation of criminal threats as stipulated in Article 7 paragraph (2) of the SPPA Law.²⁹ This shows that the principle of child protection in the SPPA Law does not mean removing criminal liability for children. Children as

²⁷ Article 1 number 2 and Article 2 of Law Number 11 of 2012.

²⁸ See legal analysis in Barda Nawawi Arief, *Bunga Rampai Políticas Hukum Judana* (Semarang: Pustaka Magister, 2011), pp. 95-100.

²⁹ Article 7 paragraph (2) of the SPPA Law jo. explanation of Article 7.

perpetrators can still be processed legally as long as it is done by paying attention to children's rights and the principles of coaching.

According to the author, these cases show the need for a balance between protecting the perpetrator's child and fulfilling a sense of justice for the victim. The state is not only obliged to protect children as perpetrators, but also obliged to provide legal protection for children as victims of violence.³⁰

Data shows an increasing trend in bullying cases in Indonesia. The Indonesian Child Protection Commission (KPAI) noted that the number of complaints of violence against children, including bullying, has experienced a significant spike. In 2023, there were 285 cases, increasing to 573 cases in 2024, and reaching 614 cases of violence in schools by 2025 (including bullying). In total, KPAI received 1,508 complaints of violence against children by 2025, with digital and physical bullying dominating. This trend is expected to continue in 2026.³¹

3. Legal Study on Protection for Bullying Victims

Legal protection of victims of bullying is essentially part of the protection of human rights guaranteed by the state. In Article 28G paragraph (1) of the 1945 Constitution of the

³⁰ Maidin Gultom, *Legal Protection of Children in the Juvenile Criminal Justice System in Indonesia* (Bandung: PT Refika Aditama, 2014), pp. 120-125.

³¹ KPAI, *Annual Report on Complaints of Violence Against Children for 2023-2025* (Jakarta: KPAI, 2025), pp. 10-15; see also "KPAI Records Surge in Digital and Physical Bullying Cases Throughout 2025," *Republika.co.id*, December 20, 2025 (accessed March 1, 2026).

Republic of Indonesia, it is emphasized that everyone has the right to obtain a sense of security and protection for themselves, family, honor, dignity, and property under their control. In addition, every individual also has the right to be free from fear in exercising his or her rights. This provision is the constitutional basis in providing protection for children who are victims of bullying.³²

The protection of child victims of bullying is specifically regulated in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. In Article 1 number 15a, it is explained that violence is any act against a child that causes physical, psychological, sexual, or neglectful suffering, including threats, coercion, and unlawful deprivation of independence. Based on these provisions, bullying can be categorized as a form of violence against children because it causes suffering both physically and psychologically.³³

Although Law Number 31 of 2014 concerning the Protection of Witnesses and Victims does not specifically mention bullying as a separate criminal act, bullying can be qualified into several forms of criminal acts, such as insult, persecution, and physical and psychological violence.

³² Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia; see also Jimly Asshiddiqie, *Introduction to Constitutional Law* (Jakarta: Rajawali Pers, 2010), pp. 85-90.

³³ Article 1 number 15a of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection (Statute Book of the Republic of Indonesia of 2014 Number 297).

Therefore, victims of bullying still have the right to receive legal protection like victims of criminal acts in general.³⁴

In handling bullying cases involving children, Law Number 11 of 2012 concerning the Child Criminal Justice System also provides room for settlement through diversion. Based on Article 1 number 7 of the SPPA Law, diversion is the transfer of the settlement of children's cases from the criminal justice process to a process outside the criminal justice by prioritizing a restorative justice approach.³⁵

Legal protection for children essentially aims to create conditions that allow children to obtain and exercise their rights optimally. In Article 20 of the Child Protection Law, it is emphasized that the implementation of child protection is a shared responsibility between the state, government, local governments, communities, families, parents, and guardians. Thus, efforts to prevent and handle bullying are not only the responsibility of law enforcement officials, but also require the involvement of all elements of society.³⁶

Indonesia's commitment to protecting children's rights is also seen through the ratification of the Convention on the Rights of the Child through the Presidential Decree of the Republic of Indonesia Number 36 of 1990. With the adoption of the convention, the Indonesian government is obliged to ensure the fulfillment of children's rights, including providing

³⁴ Law No. 31 of 2014 concerning the Protection of Witnesses and Victims (Statute Book of the Republic of Indonesia No. 293 of 2014); see also the General Explanation of the law which covers various forms of violence.

³⁵ Article 1 number 7 of Law Number 11 of 2012.

³⁶ Article 20 of Law Number 35 of 2014 concerning Child Protection.

legal protection for children who are victims of violence and bullying.³⁷

The protection arrangements for children victims of bullying are also affirmed in Article 54 jo. Article 9 paragraph (1a) of the Child Protection Law states that children in educational units are required to receive protection from physical, psychological, sexual crimes, and other acts of violence committed by educators, education staff, fellow students, or other parties. The provision shows that schools have a legal obligation to create an educational environment that is safe and free from bullying.³⁸

In addition to providing protection for victims, the Child Protection Law also regulates special protection for children who are in conflict with the law as stated in Article 64. These protections include humane treatment according to the child's age, provision of legal aid, parental assistance, access to education and health, and avoidance of treatment that degrades the dignity of children. This provision shows that the Indonesian legal system still upholds the principle of the best interests of children, both as victims and perpetrators of criminal acts.³⁹

³⁷ Decree of the President of the Republic of Indonesia No. 36 of 1990 concerning the Ratification of the Convention on the Rights of the Child (Statute Book of the Republic of Indonesia No. 39 of 1990); see also Convention on the Rights of the Child, Articles 19 and 37.

³⁸ Article 54 jo. Article 9 paragraph (1a) of Law Number 35 of 2014; further explanation in Muhammad Joni, *Legal Aspects of Child Protection in the Perspective of the Convention on the Rights of the Child* (Bandung: Citra Aditya Bakti, 2000), pp. 150-155.

³⁹ Article 64 of Law Number 35 of 2014.

Meanwhile, the protection of children who commit bullying is regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which replaces Law Number 3 of 1997 concerning the Children's Court. The establishment of the SPPA Law aims to provide more comprehensive legal protection for children who are in conflict with the law by prioritizing the approach of coaching and restorative justice.⁴⁰

In the case of bullying, the provision that is often used is Article 76C of the Child Protection Law which prohibits everyone from committing violence against children. If these provisions are violated, the perpetrator may be subject to criminal sanctions as stipulated in Article 80 of the Child Protection Law. The criminal sanctions vary depending on the consequences caused, ranging from imprisonment and fines for ordinary violence, to heavier penalties if they result in serious injury or death.⁴¹

However, in cases involving children as perpetrators, the SPPA Law still prioritizes diversion efforts as stipulated in Article 7. Diversion must be sought at the stage of investigation, prosecution, and examination in court on the condition that the criminal act committed is threatened with imprisonment of less than seven years and is not a repetition

⁴⁰ General Explanation of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System

⁴¹ Article 76C in conjunction with Article 80 of Law Number 35 of 2014. Criminal sanctions in Article 80 paragraph (1) for ordinary violence: imprisonment of 3 years and 6 months and/or a fine of IDR 72 million; paragraph (2) for serious injury: 5 years imprisonment; Paragraph (3) for death: 15 years imprisonment.

of a criminal act. This provision shows that the juvenile criminal justice system prioritizes a settlement that is coaching rather than punishment alone.⁴²

C. Regulation and Criminal Responsibility of Child Perpetrators of Bullying Based on Law Number 11 of 2012

1. Regulation of Bullying in the Perspective of Indonesian Criminal Law

In the Indonesian criminal law system, the term bullying is not explicitly mentioned in the Criminal Code (KUHP). However, bullying can be classified into several forms of criminal acts, especially if it contains elements of physical violence, threats, persecution, or actions that result in injury and death.⁴³

Bullying in the form of physical violence can be categorized as a criminal act of persecution as regulated in Article 351 of the Criminal Code. If these actions are carried out together, it can be subject to Article 170 of the Criminal Code regarding demolition. Meanwhile, if the act of bullying

⁴² Article 7 of Law Number 11 of 2012; see also Setya Wahyudi, *The Implementation of the Diversion Idea in the Reform of the Juvenile Criminal Justice System in Indonesia* (Yogyakarta: Genta Publishing, 2011), pp. 67-70.

⁴³ See Articles 351, 170, and 335 of the Criminal Code; compare with Barda Nawawi Arief, *Bunga Rampai Políticas Hukum Judana* (Semarang: Pustaka Magister, 2011), pp. 120-125.

results in the death of the victim, then the perpetrator can be held criminally responsible for the consequences caused.⁴⁴

In addition to being regulated in the Criminal Code, the protection of children victims of bullying is also regulated in Law Number 35 of 2014 concerning Child Protection. The law affirms that every child has the right to be protected from physical and psychological violence in the educational environment and other social environments.⁴⁵

In the case of bullying committed by children, the legal provisions used are not only the Criminal Code and the Child Protection Law, but also Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA Law). This law specifically regulates the mechanism for handling children who are in conflict with the law by prioritizing a restorative justice approach.⁴⁶

2. Criminal Liability of Child Perpetrators of Bullying

Children who commit criminal acts can basically still be held criminally accountable as long as they meet the elements of criminal responsibility. In criminal law, criminal

⁴⁴ R. Soesilo, *Criminal Code (KUHP) and Its Commentaries* (Bogor: Politeia, 1995), pp. 245-247.

⁴⁵ Article 76C of Law Number 35 of 2014 concerning Child Protection; see also the General Explanation of the law.

⁴⁶ General Explanation of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

liability is related to a person's ability to account for his actions based on the mistakes made.⁴⁷

Law Number 11 of 2012 stipulates that children who can be held criminally liable are children who are 12 (twelve) years old but not yet 18 (eighteen) years old.⁴⁸ Thus, if a child commits bullying that results in casualties, the child can still be processed legally in accordance with the juvenile criminal justice mechanism.

However, the penal system for children is different from that of adults. In the SPPA Law, the punishment of children focuses more on fostering and protecting the future of children. Therefore, imprisonment is used as the last resort (*ultimum remedium*).⁴⁹

Criminal forms against children are regulated in Article 71 of the SPPA Law, which includes:⁵⁰

1. criminal warnings;
2. criminal with conditions;
3. job training;
4. construction in the board;
5. Prison sentences.

⁴⁷ Moeljatno, *Principles of Criminal Law* (Jakarta: Rineka Cipta, 2008), pp. 60-65; see also Chairul Huda, *From No Crime Without Fault to No Criminal Liability Without Fault* (Jakarta: Kencana, 2006), pp. 30-35.

⁴⁸ Article 1 number 3 and Article 20 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

⁴⁹ Explanation of Article 71 paragraph (2) of Law Number 11 of 2012; see also A. Widiada Gunakarya, *Procedural Law of Juvenile Justice* (Jakarta: Grasindo, 2015), pp. 112-115.

⁵⁰ Article 71 of Law Number 11 of 2012.

In addition to criminal charges, judges can also impose actions against children in the form of:⁵¹

1. return to the parents;
2. surrender to someone;
3. treatment in a psychiatric hospital;
4. obligation to participate in education or training.

In the case of bullying resulting in death, the application of criminal sanctions against the child should consider:

the age of the child;

- psychological conditions;
- family background;
- the degree of error;
- as well as the impact on the victims.⁵²

Thus, criminal liability for children is not solely oriented towards retaliation, but also aims to provide guidance and rehabilitation for the perpetrator's child.

⁵¹ Article 82 of Law Number 11 of 2012.

⁵² See Article 2 letter h (principle of proportionality) and Article 71 paragraph (3) of the SPPA Law; compare with Setya Wahyudi, *The Implementation of the Idea of Diversion in the Reform of the Juvenile Criminal Justice System in Indonesia* (Yogyakarta: Genta Publishing, 2011), pp. 88-90.

D. Analysis of the Application of Criminal Sanctions to Children of Perpetrators of Bullying Resulting in Fatalities

1. Application of Criminal Sanctions in Practice

In law enforcement practice in Indonesia, bullying cases that result in fatalities are generally still processed through criminal justice mechanisms because they are considered serious crimes. This is due to the consequences caused by no longer just minor injuries or psychological trauma, but have taken a person's life. Even though the perpetrator is still a child, law enforcement officials still have an obligation to enforce the law in order to provide a sense of justice for the victim and his family.⁵³

In such conditions, the restorative justice approach is often difficult to fully implement due to the limitations in the SPPA Law related to criminal threats. Article 7 paragraph (2) of the SPPA Law states that diversion can only be carried out for criminal acts that are threatened with imprisonment of less than 7 (seven) years and is not a repetition of a criminal act. In the case of bullying that results in death, criminal threats generally exceed these provisions so that diversion cannot be applied optimally.⁵⁴ Therefore, the criminal justice process is

⁵³ See Article 351 paragraph (3) of the Criminal Code regarding persecution resulting in death; compare it with the state's obligation to protect the rights of victims as stipulated in Article 28D paragraph (1) of the 1945 Constitution.

⁵⁴ Article 7 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. See also Setya Wahyudi, *The Implementation of the Diversion Idea in the Reform of the Juvenile Criminal Justice System in Indonesia* (Yogyakarta: Genta Publishing, 2011), pp. 85-90.

still carried out, but its implementation must pay attention to the principles of child protection. The perpetrator's children must still receive legal assistance, coaching, psychological protection, and other rights as stipulated in the SPPA Law.⁵⁵

2. Analysis Based on Criminal Theory

The application of criminal sanctions against children of bullies that result in fatalities can be analyzed using three main criminal theories.

a. Absolute Theory

The absolute theory views crime as a form of retribution for the actions committed by the perpetrator. In the context of bullying that causes death, punishment is considered necessary because the perpetrator has caused great suffering and loss to the victim and his family. This theory emphasizes that a crime is imposed solely because a person has committed a crime (*Quia peccatum is*).⁵⁶

b. Relative Theory

Relative theory emphasizes that criminalization aims to provide a deterrent effect and prevent the occurrence of similar crimes. In the case of bullying, the application of

⁵⁵ See Article 2 (principle of protection) and Article 3 (rights of children during judicial proceedings) of the SPPA Law; see also Maidin Gultom, Legal Protection of Children in the Juvenile Criminal Justice System in Indonesia (Bandung: PT Refika Aditama, 2014), pp. 130-135.

⁵⁶ Syarif Saddam Rivanie et al., "The Development of Theories of Criminal Purposes," *Halu Oleo Law Review* 6, no. 2 (September 2022): 179; see also Immanuel Kant, *The Metaphysics of Morals*, ed. Mary Gregor (Cambridge: Cambridge University Press, 1996), pp. 140-142.

punishment is expected to provide a warning to other children not to commit violence against others. The main goal of this theory is special prevention (*Special Deterrence*) for perpetrators and general prevention (*General Deterrence*) for the community.⁵⁷

c. Combined Theory

Indonesia's criminal law system is more likely to use a combined theory, which combines elements of retaliation, prevention, and rehabilitation. In the context of juvenile criminal justice, the purpose of punishment is not only to punish the perpetrator but also to improve the behavior of children so that they can return to being part of society. This is reflected in Article 51 of Law Number 1 of 2023 concerning the new Criminal Code which states that criminalization aims to prevent the commission of criminal acts, socialize convicts with coaching, resolve conflicts, and foster a sense of remorse in convicts.⁵⁸

Thus, the criminal application of child bullying that results in fatalities must be carried out proportionately while still paying attention to the aspects of coaching and the best interests of children.

3. Judicial Process for Child Perpetrators of Bullying

⁵⁷ Muladi and Barda Nawawi Arief, *Criminal Theories and Policies* (Bandung: Alumni, 1992), p. 11; Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (Oxford: Clarendon Press, 1789).

⁵⁸ Article 51 of Law Number 1 of 2023 concerning the Criminal Code (Statute Book of the Republic of Indonesia of 2023 Number 1); see also Andi Hamzah, *Criminal and Criminal System in Indonesia* (Jakarta: Pradnya Paramita, 1993), p. 26.

a. Children in the Juvenile Justice Process

The juvenile criminal justice system is an important part of efforts to combat crimes committed through penal means. This system involves several law enforcement agencies, such as the police, prosecutor's office, courts, and correctional institutions that work in an integrated manner in handling crimes committed by children. The Juvenile Criminal Justice System was formed as a form of legal protection for children who commit criminal acts so that the judicial process continues to pay attention to children's rights and the principle of the best interests of children.⁵⁹

According to Article 1 number 1 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, what is meant by the Juvenile Criminal Justice System is the entire process of resolving children's cases that are in conflict with the law starting from the investigation stage to the guidance stage after the child has served a crime. This provision shows that the juvenile criminal justice system is not only oriented towards punishment, but also focuses on the process of coaching, protecting, and reintegrating children.⁶⁰

In the case of bullying committed by children, the juvenile criminal justice process aims to provide legal accountability for the acts committed, but still pay attention to the condition and future of the child as a perpetrator. Therefore, the juvenile justice process must be carried out

⁵⁹ Article 1 number 1 of Law Number 11 of 2012; see also Abintoro Prakoso, *Reform of the Juvenile Criminal Justice System* (Yogyakarta: Genta Publishing, 2013), pp. 119-120.

⁶⁰ General Explanation of Law Number 11 of 2012.

carefully so as not to cause negative stigma that can affect children's psychological development in the future.⁶¹

To be able to submit to the juvenile court, there is a certain age limit regulated in laws and regulations. In Law Number 3 of 1997 concerning the Children's Court which was previously in force, it is stated that a child is someone who has reached the age of 8 years but has not reached the age of 18 years and has never been married. This provision is also affirmed in Article 4 paragraph (1) which states that the age limit for children who can be submitted to the juvenile court is at least 8 years old but has not reached the age of 18 years and has never been married.⁶²

Based on these provisions, only children who meet a certain age limit can be processed through juvenile justice. If a person is not yet 18 years old but is married, then legally he is no longer processed through a juvenile court, but through a general judicial mechanism as applicable to adults. The determination of the age limit for children in the criminal justice system is based on sociological, psychological, and pedagogical considerations.⁶³

Along with the development of the law, the provisions regarding the age of criminal responsibility for children were then changed through Law Number 11 of 2012. In the SPPA Law, it is determined that children who can be held criminally

⁶¹ Gultom, Legal Protection of Children, pp. 93-95.

⁶² Article 1 point 1 and Article 4 paragraph (1) of Law Number 3 of 1997 concerning the Children's Court.

⁶³ Explanation of Article 4 paragraph (1) of Law Number 3 of 1997.

responsible are children who have been 12 years old but have not yet turned 18.⁶⁴ The changes reflect adjustments to the development of the protection of children's rights as well as international standards regarding the juvenile justice system, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) and UN Resolution No. 45/113.⁶⁵

In practice, the judicial process against children who commit bullying must continue to prioritize the principles of restorative justice and diversion as stipulated in the SPPA Law. This approach aims to avoid children from the negative impacts of the formal justice process, such as social stigma, psychological trauma, and the possibility of children repeating criminal acts due to the influence of the judicial environment and correctional institutions.⁶⁶

However, in cases of bullying that cause serious consequences such as serious injury or death, the criminal justice process is still needed as a form of law enforcement and protection of victims' rights. Therefore, law enforcement officials must be able to balance the interests of child protection as perpetrators and the interests of justice for victims.

⁶⁴ Article 1 number 3 juncto Article 20 of Law Number 11 of 2012.

⁶⁵ See United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), Rule 4; UN resolution 45/113 on the protection of children deprived of their liberty.

⁶⁶ Article 5 and Article 6 of Law Number 11 of 2012; see also Setya Wahyudi, Implementation of the Idea of Diversion, pp. 67-70.

b. Children's Rights in the Judicial Process

Children who have the status of suspects or defendants in a criminal act still have rights that must be protected by the state. The position of a child as a perpetrator of a criminal act does not eliminate his basic rights as a child. Therefore, in the juvenile criminal justice process, the protection of children's rights must be considered to ensure the fulfillment of the principle of the best interests of children.⁶⁷

Regulations regarding children's rights in judicial proceedings are regulated in the Juvenile Court Law, especially Article 45 paragraph (4) and Article 51 paragraph (1) and paragraph (3). In addition, the provisions regarding the rights of suspects and defendants are also regulated in Chapter IV of the Criminal Procedure Code (KUHAP), namely Articles 50 to 68, except for Article 64.⁶⁸ The rights of children in the criminal justice process basically aim to provide legal protection so that children do not experience arbitrary treatment during the legal process.

These rights include the following:

1. Children who are arrested or detained have the right to receive legal assistance from one or more legal advisors from the beginning of the investigation until the entire judicial process is completed.⁶⁹

⁶⁷ Article 3 of Law Number 11 of 2012; see also Gultom, Legal Protection of Children, pp. 100-105.

⁶⁸ See the Criminal Procedure Code (KUHAP), Articles 50-68.

⁶⁹ Article 45 paragraph (4) of Law Number 3 of 1997 jo. Article 54 of the Criminal Code.

2. Children who are in detention have the right to communicate directly with their legal counsel under the supervision of officers without the content of the conversation being listened to by the authorized officials.⁷⁰
3. While in custody, the child's physical, mental, spiritual, and social needs must still be met properly.⁷¹
4. Children as suspects have the right to immediately receive an examination from investigators and then processed to the prosecution stage.⁷²
5. The child also has the right to have his case immediately transferred by the public prosecutor to the court for examination and resolution.⁷³
6. Children have the right to a speedy judicial process so that they do not stay in legal uncertainty for too long.⁷⁴
7. In order to prepare for the defense, the child must be clearly informed of the alleged criminal act that is suspected of him using language that is easy to understand according to his level of understanding.⁷⁵
8. At the investigation and trial stages, children have the right to provide information freely without pressure, threats, or coercion.⁷⁶

⁷⁰ Article 51 paragraphs (1) and (3) of Law Number 3 of 1997; see also Article 57 of the Criminal Code.

⁷¹ Article 51 paragraph (1) of Law Number 3 of 1997.

⁷² Article 50 paragraph (1) of the Criminal Code.

⁷³ Article 50 paragraph (2) of the Criminal Code.

⁷⁴ Article 50 paragraph (3) of the Criminal Code.

⁷⁵ Article 51 letter a of the Criminal Code.

⁷⁶ Article 52 of the Criminal Code.

9. Children who do not understand Indonesian are entitled to the assistance of an interpreter during the examination process.⁷⁷
10. Children who have limitations such as being mute or deaf are entitled to the assistance of a translator or a person who is able to help with the communication process.⁷⁸
11. Children have the right to choose their own legal counsel who will accompany them.⁷⁹
12. Children who are in detention have the right to contact their legal counsel in accordance with the provisions stipulated in the Criminal Code.⁸⁰
13. For children of foreign nationality who undergo legal proceedings in Indonesia, they are given the right to contact their country's representatives.⁸¹
14. Children who are detained have the right to receive health services and can receive a visit from a private doctor for the purpose of their health examination.⁸²
15. The child has the right to contact and receive visits from family and other parties who have a close relationship with him to provide moral support during the legal process.⁸³
16. Children who have the status of suspects or defendants and are undergoing detention have the right to receive a

⁷⁷ Article 53 of the Criminal Code.

⁷⁸ Article 54 of the Criminal Code.

⁷⁹ Article 55 of the Criminal Code.

⁸⁰ Article 57 of the Criminal Code.

⁸¹ Article 60 of the Criminal Code.

⁸² Article 56 of the Criminal Code.

⁸³ Article 58 of the Criminal Code.

notification of their detention from the authorized officials at each stage of the examination. The notice must also be submitted to the family, people living in the same house, or other parties who can assist the child in obtaining legal assistance or suspension of detention.⁸⁴

17. The child has the right directly or through his legal counsel to contact and receive visits from family members or other parties who are not related to the case at hand.⁸⁵
18. Children who are undergoing judicial proceedings also have the right to send letters with legal counsel or family members and must be provided with stationery facilities.⁸⁶
19. Children have the right to receive spiritual guidance by contacting and receiving visits from clergy according to their religion and beliefs.⁸⁷
20. In the context of self-defense, children have the right to submit witnesses and experts who can provide information that is favorable for them.⁸⁸
21. Children are not charged with the obligation to prove their guilt, because proof is the responsibility of law enforcement officials according to the principle of presumption of innocence.⁸⁹
22. Children have the right to appeal against the decision of the court of first instance, except for a free verdict, free

⁸⁴ Article 59 of the Criminal Code.

⁸⁵ Article 58 of the Criminal Code.

⁸⁶ Article 61 of the Criminal Code.

⁸⁷ Article 63 of the Criminal Code.

⁸⁸ Article 65 of the Criminal Code.

⁸⁹ Article 66 of the Criminal Code.

from any lawsuit, or a decision in a speedy examination event that is only related to the application of the law.⁹⁰

23. Children have the right to file claims for compensation and rehabilitation if they suffer losses due to errors in the law enforcement process that they are undergoing.⁹¹

These rights show that the juvenile criminal justice system in Indonesia is not only oriented towards punishment, but also provides protection for the dignity and dignity of children. In the case of bullying carried out by children, the fulfillment of these rights must still be guaranteed by law enforcement officials. The examination process for children must be carried out in a humane manner, avoiding bullying, and prioritizing an educational and coaching approach.⁹²

c. Sanctions in the Juvenile Justice Process

In the juvenile criminal justice system, the provision of sanctions for children who commit criminal acts has been specifically regulated in the Juvenile Court Law and updated through Law Number 11 of 2012. The arrangement aims to ensure that the imposition of sanctions against children is not solely oriented towards retribution, but also pays attention to aspects of coaching and protecting the future of children.⁹³

⁹⁰ Article 67 of the Criminal Code.

⁹¹ Article 95 of the Criminal Code.

⁹² Gultom, *Legal Protection of Children*, pp. 110-115.

⁹³ General Explanation of Law Number 11 of 2012; see also Barda Nawawi Arief, *Bunga Potpourri Políticas Hukum Judana* (Semarang: Pustaka Magister, 2011), pp. 95-100.

In general, sanctions that can be imposed on children consist of two forms, namely criminal sanctions and action sanctions. Criminal sanctions emphasize more on providing a deterrent effect to the perpetrator as a result of the actions that have been committed, while action sanctions focus more on efforts to coach, educate, and improve children's behavior. In the context of juvenile justice, the action approach is considered more appropriate because the child is still in the developmental stage and has a great opportunity to be fostered.⁹⁴

Based on Article 71 of Law Number 11 of 2012, the principal penalty that can be imposed on a child consists of: (1) a warning penalty; (2) criminal with conditions; (3) job training; (4) construction in the board; and (5) imprisonment. 43 Imprisonment is the most severe form of punishment and is used only as a last resort (*Ultimum Remedium*), considering its negative impact on children's mental and social development.⁹⁵

In addition to the main crime, there are also additional penalties that can be imposed on children, namely the confiscation of certain goods and the payment of compensation. The additional crime aims to provide accountability for losses caused by the actions of children, without neglecting the protection of children's rights.⁹⁶

⁹⁴ See Article 71 and Article 82 of Law Number 11 of 2012.

⁹⁵ Article 71 paragraph (1) of Law Number 11 of 2012.

⁹⁶ Explanation of Article 71 paragraph (2) of the SPPA Law; see also Article 2 letter i of the SPPA Law.

Sanctions in the form of actions can be imposed as an alternative to criminal punishment. Based on Article 82 of the SPPA Law, actions that can be imposed on children include: (1) return to parents/guardians; (2) submission to a person; (3) treatment in a psychiatric hospital; and (4) the obligation to participate in education or training.⁹⁷ Sanctions prioritize the best interests of children by providing guidance and education so that children do not repeat criminal acts in the future.

In the case of bullying committed by children, the application of sanctions must consider various aspects, such as the age of the child, the level of error, the consequences caused, and the psychological condition of the child. If bullying causes serious injury or even death, then the criminal justice process can still be carried out, but the handling must still prioritize the principles of child protection and the approach *restorative justice*.⁹⁸

4. Application of Restorative Justice through Diversion in Child Bullying Cases

Diversion is one of the important mechanisms in the Juvenile Criminal Justice System which aims to provide protection for children who are facing the law to avoid the negative impact of the formal justice process. In Article 1 paragraph (7) of Law Number 11 of 2012, diversion is defined as the transfer of the settlement of children's cases from the criminal justice process to the settlement outside the court. Through this mechanism, the resolution of children's cases

⁹⁷ Article 71 paragraph (3) of Law Number 11 of 2012.

⁹⁸ Article 82 of Law Number 11 of 2012.

does not always have to be done through the trial process, but can be pursued through a more humanistic, educational, and recovery-oriented approach.⁹⁹

The application of diversion is very relevant in handling bullying cases committed by children. This is because children as perpetrators are still in the stage of mental and psychological development so they need coaching and assistance, not just punishment. Repressive formal judicial processes often create social stigma,¹⁰⁰ psychological trauma, and can affect a child's future. Therefore, diversion is present as an effort to prevent children from entering further into the formal penal system.¹⁰¹

The concept of diversion in bullying cases is closely related to the restorative justice approach. Restorative justice is an approach to resolving criminal cases that focuses on restoring relationships between perpetrators, victims, and the community. In this approach, the settlement of cases is carried out through deliberation and mutual agreement involving all parties involved. Victims are given the opportunity to convey the losses and suffering they have experienced, while perpetrators are given the opportunity to admit their mistakes, take responsibility, and correct the consequences caused.¹⁰²

⁹⁹ Article 2 letter d and letter h of Law Number 11 of 2012.

¹⁰⁰ Article 1 paragraph (7) of Law Number 11 of 2012; see also Setya Wahyudi, *Implementation of the Idea of Diversion*, pp. 67-70.

¹⁰¹ Wahyudi, *Implementation of Diversion Ideas*, pp. 72-75.

¹⁰² Tony F. Marshall, "Restorative Justice: An Overview," in *Restorative Justice: International Perspectives*, ed. Burt Galaway and Joe Hudson (Monsey, NY: Criminal Justice Press, 1996), pp. 37-38.

In Law Number 35 of 2014 concerning Child Protection, bullying can be categorized as a form of violence against children if the act causes physical, psychological, sexual, or other forms of neglect, as stipulated in Article 1 number 15a. If the act of bullying develops into serious physical or psychological violence, then the perpetrator can be subject to the provisions of Article 76C of the Child Protection Law which prohibits everyone from committing violence against children, with criminal sanctions as stipulated in Article 80.¹⁰³

In practice, the settlement of bullying cases through diversion is carried out by involving the perpetrator's child, victim, parents, school, community counselor, social worker, and law enforcement officials. The main purpose of diversion as stipulated in Article 6 of the SPPA Law is to achieve peace between perpetrators and victims, resolve children's cases outside the judicial process, prevent children from being deprived of independence, instill a sense of responsibility to children, and encourage community participation.

However, the application of diversion has certain limitations. Based on Article 7 paragraph (2) of the SPPA Law, diversion can only be carried out for criminal acts that are threatened with imprisonment under 7 (seven) years and are not a repetition of the criminal act. This provision shows that diversion is more intended for minor crimes that still allow for a peaceful settlement without losing the sense of justice for the

¹⁰³ Article 1 number 15a, Article 76C, and Article 80 of Law Number 35 of 2014 concerning Child Protection.

victim.¹⁰⁴ In the context of bullying between children, diversion can be applied if the action taken is still relatively mild and does not cause serious consequences such as serious injury or death. However, if bullying has resulted in the victim's death, then the application of diversion becomes difficult.¹⁰⁵ Nevertheless, restorative justice values can still be applied in the juvenile justice process, for example through the provision of psychological rehabilitation, social coaching, and the restoration of relationships between the victim's family and the perpetrator. It is important that the law enforcement process is not only oriented towards punishment, but also pays attention to the humanitarian aspects and the future of children.¹⁰⁶

5. *Restorative Justice* as an Effort to Resolve Bullying Cases More Effectively

The concept of restorative justice emerged as a response to the conventional penal system which is considered to be unable to provide an optimal deterrent effect to the perpetrators of criminal acts. A more punishment-oriented penal system often raises new problems, such as the increasing number of correctional inmates, the emergence of criminal acts in prisons, and a lack of attention to victim recovery. Therefore, the *restorative justice* It is present as an alternative to solving criminal cases that emphasizes more on restoring the

¹⁰⁴ Gultom, Legal Protection of Children, pp. 140-145.

¹⁰⁵ Article 6 of Law Number 11 of 2012.

¹⁰⁶ Article 7 paragraph (2) of Law Number 11 of 2012; see also Explanation of Chapter 7.

relationship between perpetrators, victims, and the community.¹⁰⁷

According to Tony F. Marshall, restorative justice is a process that brings together all parties interested in a criminal act to jointly resolve the impact and consequences of the act for the benefit of the future.¹⁰⁸ Meanwhile, Howard Zehr explained that *restorative justice* It is an effort to resolve cases through rehabilitation of perpetrators and recovery of victims in order to re-create social balance in the community.¹⁰⁹ Another view was put forward by John Braithwaite through the theory of reintegrative shaming, which emphasized that *restorative justice* aims to build a sense of responsibility for the perpetrator for his actions and encourage the perpetrator to be accepted back into the social environment after correcting his mistakes.¹¹⁰

To support the implementation of restorative justice, the government has issued various regulations. Within the police, the implementation of restorative justice is regulated through the Circular Letter of the National Police Chief Number SE/8/VII/2018 concerning the Application of Restorative Justice in the Settlement of Criminal Cases, as well as the Regulation of the National Police Chief Number 6 of 2019 concerning Investigation and Police Regulation Number

¹⁰⁷ Marshall, "Restorative Justice: An Overview," pp. 37-38.

¹⁰⁸ Marshall, "Restorative Justice: An Overview," p. 39.

¹⁰⁹ Howard Zehr, *The Little Book of Restorative Justice* (Intercourse, PA: Good Books, 2002), pp. 10-15.

¹¹⁰ John Braithwaite, *Crime, Shame and Reintegration* (Cambridge: Cambridge University Press, 1989), pp. 55-60.

8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice. In the prosecutor's office, the application of *restorative justice* regulated through Prosecutor's Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice.¹¹¹ The Supreme Court also strengthened the implementation of restorative justice through the Decree of the Director General of the General Judiciary of the Supreme Court Number 1691/DJU/SK/PS.00/12/2020 concerning Guidelines for the Implementation of Restorative Justice.¹¹²

In the case of bullying committed by children, the *restorative justice* is very important because it puts the best interests of the child as the top priority. Several types of criminal cases that can be resolved through restorative justice include misdemeanors, juvenile crimes, women's cases that are in conflict with the law, and certain other criminal acts. In children's cases, every stage of the judicial process must prioritize an approach to *restorative justice* and diversion as stipulated in Law Number 11 of 2012.¹¹³

One example of a bullying case that received public attention occurred in Gresik Regency, when a group of girls bullied their peers due to personal problems. In handling, law enforcement officials not only process cases legally, but also

¹¹¹ Circular Letter of the National Police Chief Number SE/8/VII/2018; Prosecutor's Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice.

¹¹² Decree of the Director General of the General Judiciary of the Supreme Court Number 1691/DJU/SK/PS.00/12/2020.

¹¹³ Article 5 of Law Number 11 of 2012.

involve coaching for perpetrators and psychological assistance for victims. This shows that the restorative justice approach is not only oriented towards punishment, but also towards social and psychological recovery.¹¹⁴

Based on this description, it can be concluded that the criminal act of bullying committed by children is a serious problem that continues to develop and has a big impact, both physically and psychologically, even causing the victim's death. The phenomenon of bullying can no longer be seen as an ordinary juvenile delinquency, but has developed into a criminal act that requires special and comprehensive legal handling.¹¹⁵

In practice, the formal justice process against children often causes negative stigma and has a negative impact on child development. Therefore, Law Number 11 of 2012 presents the concept of diversion and *restorative justice* as a form of child case resolution that prioritizes a developmental, dialogue, and rehabilitation approach, rather than just criminalization. However, the protection of children who are victims of bullying still does not receive optimal attention, so in many cases victims have not received a balanced sense of justice. This can be seen from the still rampant cases of bullying that lead to severe violence to death, as in Decision Number 5/Pid.Sus-Anak/2017/PN Bnj.¹¹⁶

¹¹⁴ Examples of cases in Gresik Regency; See related mass media reports.

¹¹⁵ See KPAI, Annual Report on Complaints of Violence against Children for 2023-2025 (Jakarta: KPAI, 2025), pp. 10-15.

¹¹⁶ Decision Number 5/Pid.Sus-Anak/2017/PN Bnj.; see also Implementation of Restorative Justice in the Settlement of Bullying Crimes

The concept of restorative justice basically provides an alternative to resolving child criminal cases by involving perpetrators, victims, families, and the community to achieve a fair settlement and restore social relations. However, the implementation of *restorative justice* In the case of bullying, it still needs attention and strengthening, especially so that it not only focuses on protecting child offenders, but also providing adequate protection and recovery for victims. Thus, it is necessary to apply the law that is more effective, balanced, and oriented towards the best interests of children without neglecting the rights of victims, so that the goals of justice, child protection, and social recovery can be optimally achieved.¹¹⁷

E. CONCLUSION

Based on the results of the discussion in this study, bullying or bullying is a form of violence committed by a person or group against other children, both verbally, physically, and psychologically, which aims to cause fear, suffering, mental pressure, and degrade the dignity of the victim. Bullying behavior in children is influenced by various factors, including lack of moral education, supervision, and instilling the value of respect for others from an early age.

From a criminal law perspective, children who commit acts of bullying can be held legally accountable if their actions

Committed by Children (Study of Decision No. 5/Pid.Sus-Anak/2017/PN.Bnj), University of North Sumatra, 2018.

¹¹⁷ See Legal Accountability of Children Perpetrators of Bullying Crimes in the Perspective of Child Protection and Restorative Justice through Diversion in Indonesia, Journal of Wijaya Putra University Surabaya, 2025.

have met the elements of violent crimes. The handling still refers to the provisions of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and the Child Protection Law. Nevertheless, the law enforcement process against children must still pay attention to the principles of child protection and the best interests of children.

Legal protection for children who are victims of bullying is an important part of efforts to fulfill children's rights to a sense of security and protection from all forms of violence. This responsibility does not only lie with the state, but also involves families, schools, and communities. Therefore, it is not enough to handle victims through law enforcement alone, but also requires psychological and social recovery so that victims can return to living their normal lives.

In the juvenile criminal justice system in Indonesia, the restorative justice approach is a form of case resolution that focuses more on recovery than retribution. This approach is carried out through deliberation between perpetrators, victims, families, and related parties in order to achieve peace and restore social relations disrupted by criminal acts. In principle, the settlement of bullying cases committed by children can be pursued through the diversion mechanism as a form of restorative justice as stipulated in Article 7 and Article 9 of the Child Criminal Justice System Law. However, diversion can only be carried out for criminal acts whose criminal threat is under seven years and not a repetition of the criminal act.

In the case of bullying that resulted in the victim's death, the application of diversion could not be carried out

because the criminal threat exceeded seven years. As a result, the settlement of the case is still carried out through a formal criminal justice process with the application of criminal sanctions against the perpetrator's child. This condition shows that the application of the principle of restorative justice in bullying cases that cause fatalities has not been fully realized optimally. This is because there are still limitations in the implementation of restorative justice, especially related to the balance between the protection of the perpetrator's child, the recovery of victims, and the demands of a sense of justice for the community.

Nevertheless, the principle of restorative justice can still be realized through coaching, rehabilitation, psychological assistance, and the involvement of families and communities in the process of restoring social relations between perpetrators and victims. Therefore, the handling of criminal acts of bullying committed by children needs to prioritize a balance between law enforcement, protection of children's rights, moral development, and victim recovery in order to create a fairer, educational, and future-oriented settlement without neglecting the rights of victims.

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