

Criminal Liability for People of Physical Abuse by Children

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Abstract

This research is motivated by the increasing problem of physical bullying. Where efforts to resolve through diversion do not have a deterrent effect on perpetrators of physical bullying. The purpose of this research is to know and analyze legal protection is provided to victims of physical bullying by children and criminal liability for perpetrators of physical abuse by children. The research method used in this research is normative juridical with a statutory approach and a conceptual approach. The results of this research are that legal protection must be given to children who are victims of criminal acts, one of which is physical bullying. In providing legal protection, we must

pay attention to the principle of non-discrimination, the principle of what is best for children, the principle of child survival and development, as well as the principle of respecting children's views. Apart from that, child victims of physical abuse can also ask the perpetrator for restitution. The author believes that imprisonment is a sanction that can have a deterrent effect on perpetrators of bullying. This is because the child has fulfilled the elements of criminal responsibility. Diversion is appropriate for minor crimes committed by children and crimes against objects.

Keywords

Criminal Liability, Physical Abuse, Children

Introduction

Children are a valuable asset that this nation has as supporters of national development in our country. Children must be cared for and considered qualitatively and future-oriented. Children are an inseparable part of human survival and the survival of the nation and state. Because children play a very important role, children's rights are strictly regulated in Article 28B paragraph 2 of the 1945 Constitution of the Republic of Indonesia which reads: "The state guarantees that every child has the right to live, grow and develop and is entitled to protection from violence and discrimination".¹

Bullying behavior is bullying which often triggers bad actions that involve criminal acts. Bullying is physical, verbal and psychological violence that is felt over a long period of time which is carried out by a person or many people against someone who cannot survive the situation, there is a desire to scare, injure or make the person unable to survive until they die. Ridicule, ridicule, teasing are considered normal, but in reality, what happens slowly can destroy a child. These negative actions are a form of bullying. Behavior that has been occurring for a

¹ Shaffa Metha, "Pertanggung Jawaban Pidana Atas Tindakan Perundungan Fisik Oleh Pelaku Anak Di Bawah Umur," *Das Sollen: Jurnal Kajian Kontemporer Hukum Dan Masyarakat* 1, no. 2 (2023): 3.

long time and threatens children at school, home and in the environment.²

One of the protections provided is that children are free from bullying. This research focuses on physical bullying by children, which, similar to the nature of abuse, will cause children to experience physical pain or injuries. By definition, bullying is categorized as an unlawful act and can be held responsible whether the perpetrator is an adult or a child.

Based on data from the Federation of Indonesian Teachers' Unions, there were 16 cases of bullying that occurred in the school environment in the period January to August 2023. The cases of bullying in the school environment are as follows:³

1. Bullying in elementary schools and junior high schools accounts for 25% of the total cases.
2. Bullying in Senior High Schools and Vocational High Schools, which both get a percentage of 18.75%.
3. Bullying in Madrasah Tsanawiyah and Islamic boarding schools each with a percentage of 6.25%.

The perpetrators of bullying are not only adults, but also children who are the focus of this research. The author lists cases of bullying that have recently occurred, where the perpetrator was a child.

TEMPO.CO, Jakarta - Footage of bullying and abuse carried out by junior high school students in Cimanggu District, Cilacap Regency, Central Java, has gone viral on social media. The 4 minute 14 second video shows the abuse carried out by a student. What's the trigger?

At the beginning of the video, several junior high school students wearing the same uniform are seen gathering. However, the abuse and bullying was carried out by a student who wore a black hat against another student. The perpetrator appeared to have abused the victim repeatedly. The victim was hit, kicked until he fell and even fell. His

² I Made Rai Dwi Surya Atmaja, Anak Agung Sagung Laksmi Dewi, and Ni Made sukaryati Karma, "Tindak Pidana Bullying Yang Dilakukan Anak Di Bawah Umur Melalui Keadilan Restorative Justice," *Jurnal Interpretasi Hukum* 1, no. 2 (n.d.): 69.

³ Nabilah Muhamad, "Kasus Perundungan Sekolah Paling Banyak Terjadi Di SD Dan SMP Hingga Agustus 2023," Databoks, 2023, <https://databoks.katadata.co.id/datapublish/2023/08/07/kasus-perundungan-sekolah-paling-banyak-terjadi-di-sd-dan-smp-hingga-agustus-2023>.

friends who wanted to separate were threatened by the perpetrator not to interfere by using Sundanese. From this incident, the police have arrested two perpetrators with the initials MK (15) and WS (14) for questioning. Cilacap City Police Chief Police Commissioner Fannky Ani Sugiharto confirmed that the video of two junior high school students bullying one of their colleagues had gone viral on social media. "However, we arrested the two alleged perpetrators before the video of the bullying went viral in the media," he explained accompanied by the Head of Criminal Investigation Unit, Police Commissioner Guntar Arif Setiyoko, Wednesday, September 27 2023. This action was taken, he continued, after his party received information from the Head of Negarajati Village and The match is related to bullying at one of the junior high schools in Cimanggu District which occurred on Tuesday, September 26 2023. Regarding the cause of the bullying, Kasatreskrim Polresta Cilacap Kompol Guntar Arif Setiyoko said that it was triggered by a statement from the victim with the initial.⁴

The large number of cases of bullying that occur, both perpetrators and victims being children, raises the question of whether the role of law in Indonesia has been implemented properly or not. The thing that is being debated at the moment is that the perpetrators of physical bullying do not receive proper punishment in accordance with the provisions of the law because the perpetrator is a person or group of children, so it is processed in a diversion which ends in a familial way. The absence of punishment appropriate to the act committed makes bullying increasingly common among children.

The perpetrator of physical bullying is equated with the criminal act of abuse as regulated in Article 351 of the Criminal Code which reads:

- a. Persecution is punishable by a maximum imprisonment of two years and eight months or a maximum fine of four thousand five hundred rupiah.

⁴ Dimas Kuswanto, "Perundungan Siswa Di Cilacap: Kronologi Kejadian, Tak Umbar Identitas Korban Dan Pelaku, Ancaman Hukuman Berlapis," tempo.co, 2023, <https://nasional.tempo.co/read/1777853/perundungan-siswa-di-cilacap-kronologi-kejadian-tak-umbar-identitas-korban-dan-pelaku-ancaman-hukuman-berlapis>.

- b. If the act results in serious injury, the guilty person is threatened with imprisonment for a maximum of five years.
- c. If it results in death, he is threatened with imprisonment for a maximum of seven years.
- d. Persecution is equated with deliberately damaging health.
- e. Attempting to commit this crime is not punishable.

Child abuse is also regulated in Article 76C of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection which states that "Everyone is prohibited from placing, allowing, carrying out, ordering to carry out, or participating in committing violence against children". The meaning of every person here also means that anyone, be it an adult or a child, who commits violence against a child will be subject to sanctions as stated in Article 80, namely:

- (1) Any person who violates the provisions as intended in Article 76C, shall be punished with imprisonment for a maximum of 3 (three) years and 6 (six) months and/or a fine of a maximum of IDR 72,000,000 (seventy-two million rupiah).
- (2) In the event that the child as intended in paragraph (1) is seriously injured, the perpetrator shall be punished with imprisonment for a maximum of 5 (five) years and/or a fine of a maximum of IDR 100,000,000 (one hundred million rupiah).
- (3) In the event that the child as intended in paragraph (2) dies, the perpetrator shall be punished with imprisonment for a maximum of 15 (fifteen) years and/or a fine of a maximum of IDR 3,000,000,000 (three billion rupiah).
- (4) The penalty is increased by one third of the provisions as referred to in paragraph (1), paragraph (2) and paragraph (3) if the parents carry out the abuse.

Based on the provisions in Article 351 of the Criminal Code, it can be seen that the criminal threat given to perpetrators of criminal acts of abuse is a maximum of 7 (seven) years. Where Article 351 paragraph (1) and paragraph (2) of the Criminal Code and Article 80

paragraph (1) and paragraph (2) of Law Number 35 of 2014 fulfill the requirements for diversion as stated in Article 7 of Law Number 11 of 2012 concerning Systems Juvenile Criminal Justice (UU SPPA), namely:

- (1) At the level of investigation, prosecution and examination of children's cases in district courts, diversion must be attempted.
- (2) Diversion as intended in paragraph (1) is carried out in the event of a criminal act committed:
 - a. threatened with imprisonment for less than 7 (seven) years; And
 - b. is not a repetition of a criminal act.

The existence of Article 7 of the SPPA Law means that bullying committed by children must be diverted both at the level of investigation, prosecution and case examination in court because it prioritizes restorative justice. So that quite a few cases of bullying perpetrated by children end peacefully. However, this is unfair to the victim because as a result of the bullying that befell him, the victim suffered injuries, psychological disorders or even death. So that appropriate forms are needed for children who are bullied to be held accountable for their actions, so that the legal goal of justice can be felt equally by both the victim and the perpetrator. Sanctions given to children who commit criminal acts are aimed at not only having a deterrent effect, but these sanctions are intended to improve the child's behavior.

Based on the description of the problem, in order to reduce the number of bullying, the author is interested in conducting research related to **Criminal Liability for Perpetrators of Physical Bullying by Children**.

Method

The type of research used is normative juridical. The normative juridical research methodology is library legal research carried out by examining library materials or secondary data alone.⁵ The approach method used is a statutory and conceptual approach. The statutory

⁵ Bambang Sunggono, *Metodelogi Penelitian Hukum* (Jakarta: Raja Grafindo Persada, 2003).

approach is an approach that examines all statutory regulations ⁶ and regulations relating to the research to be studied. The conceptual approach is an approach that departs from the views and doctrines that have developed in legal science, thereby giving rise to legal understanding and legal principles that are relevant to the problems faced. ⁷

The legal materials used are primary legal materials, namely statutory regulations and secondary, namely legal materials from literature studies. Literature study is the study of written information from various sources that is widely published and is needed in normative legal research, then the results are processed by reviewing and compiling them systematically. ⁸ The legal material analysis technique used in this research is descriptive qualitative, namely research that seeks to describe and interpret existing conditions or relationships, emerging opinions, ongoing processes and the consequences that occur and developing trends. ⁹

Results, Discussion and Analysis

1. Forms of Legal Protection Provided to Victims of Physical Abuse by Children

Bullying is a situation where there is abuse of power carried out by a person or group. Bullying has the desire to hurt both physically and psychologically, from these actions causing someone to suffer. Bullying is carried out directly and repeatedly with pleasure. ¹⁰ In its development, bullying consists of several types, including: verbal bullying, psychological bullying, electronic bullying and physical bullying. ¹¹

⁶ Bahder Johan Nasution, *Metode Penelitian Ilmu Hukum* (Bandung: Mandar Maju, 2008).

⁷ Johnny Ibrahim, *Teori & Metodologi Penelitian Hukum Normatif* (Malang: Bayumedia Publishing, 2007).

⁸ Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: UI Press, 2007).

⁹ Sunarto, *Metode Penelitian Deskriptif* (Surabaya: Usaha Nasional, 1990).

¹⁰ Atmaja, Dewi, and Karma, "Tindak Pidana Bullying Yang Dilakukan Anak Di Bawah Umur Melalui Keadilan Restorative Justice."

¹¹ Zakiyah Ela Zain, "Faktor Yang Mempengaruhi Remaja Dalam Melakukan Bullying," *Jurnal Fakultas Hukum Universitas Udayana* 4, no. 2 (2017): 5–7.

This research focuses on examining physical bullying where the perpetrators are minors. Children who are victims of physical abuse need legal protection. Remembering that children are an inseparable part of human survival and the sustainability of a nation and state. In order to be able to take responsibility for the sustainability of the nation and state, every child needs to have the widest possible opportunity to grow and develop optimally, both physically, mentally and socially. For this reason, it is necessary to make legal protection efforts to realize the welfare of children by providing guarantees for the fulfillment of their rights without discriminatory treatment.¹²

The Indonesian state, as a state of law, is essentially based on the theory of State Sovereignty (Soeverignty) which states that law is the highest authority in this country. In this perspective, all elements of the state, including citizens, are required to submit and obey the law without exception.¹³ The principle of the rule of law is the guarantee of certainty, order and legal protection based on truth and justice. Legal protection is an action or effort to protect the entire community from the behavior of someone who has no ethics, in creating order and tranquility that will provide comfort as humans live their lives. Legal protection is protection that must be obtained by all humans to obtain their rights based on law. Based on the provisions in Article 20 of Law Number 35 of 2014, the state, government, regional government, community, family and parents or guardians are obliged and responsible for implementing child protection.

The obligations and responsibilities of the state and government regarding the implementation of child protection, regulated in Article 21 to Article 25 of Law Number 35 of 2014 include obligations and responsibilities, as follows:

- a. Respect and guarantee the human rights of every child without distinction of ethnicity, religion, race, class, gender, ethnicity, culture and language, child status, child birth order and physical and/or mental condition. (Article 21)

¹² Metha, "Pertanggung Jawaban Pidana Atas Tindakan Perundungan Fisik Oleh Pelaku Anak Di Bawah Umur."

¹³ Dary Iqbal Putra Perdana and Wahyu Prawesthi, "Sanksi Hukum Terhadap Pelaku Obstruction of Justice Dalam Perkara Tindak Pidana Korupsi," *Jurnal Ilmiah Wahana Pendidikan* 9, no. 24 (2023): 246.

- b. Providing support and infrastructure in the implementation of child protection. (Article 22)
- c. Ensure the protection, care and welfare of children by paying attention to the rights and obligations of parents, guardians or other people who are legally responsible for children and supervising the implementation of child protection. (Article 23)
- d. Guarantee that children exercise their rights to express opinions in accordance with the child's age and intelligence level. (Article 24)
- e. Community obligations and responsibilities for child protection are carried out through community role activities in implementing child protection. (Article 25)

Article 59 paragraph (1) of Law Number 35 of 2014 regulates that the government, regional governments and other state institutions are obliged and responsible for providing special protection to children. Article 59 paragraph (2) explains that special protection for children is given to:

- 1) Children in emergency situations;
- 2) Children in conflict with the law;
- 3) Children from minority and isolated groups;
- 4) Children who are economically and/or sexually exploited;
- 5) Children who are victims of abuse of narcotics, alcohol, psychotropic substances and other addictive substances;
- 6) Children who are victims of pornography;
- 7) Children with HIV/AIDS;
- 8) Children who are victims of kidnapping, sales and/or trafficking;
- 9) Children who are victims of physical and/or psychological violence;
- 10) Children who are victims of terrorism networks;
- 11) Children with disabilities;
- 12) Children who are victims of abuse and neglect;
- 13) Children with deviant social behavior; And
- 14) Children who are victims of stigmatization and labeling related to the condition of their parents.

In connection with research conducted, children who are victims of physical bullying are categorized as receiving special protection as stated in Article 59 paragraph (2) letter i of Law Number 35 of 2014. So that the form of special protection given to children is as stipulated in Article 59A of Law Number 35 of 2014, that is:

- a) Rapid treatment, including physical, psychological and social treatment and/or rehabilitation, as well as prevention of disease and other health disorders;
- b) Psychosocial assistance during treatment and recovery;
- c) Providing social assistance for children from poor families;
- And
- d) Providing protection and assistance in every judicial process.

Based on the provisions of Article 71D paragraph (1), every child who is a victim as stated in Article 59 paragraph (2) letters b, letter, d, letter f, letter h, letter i and letter j has the right to apply to the court for the right to restitution which is the responsibility of answer the perpetrator of the crime. This is included in victims of physical bullying as stated in letter i, so that one form of legal protection for victims of physical bullying is that they can apply for restitution.

Restitution is regulated in Government Regulation Number 43 of 2017 concerning the Implementation of Restitution for Children who are Victims of Criminal Acts as Article 21 paragraph (1) states that the perpetrator of a criminal act, after making a copy of the court decision and the minutes of the implementation of the court decision, is obliged to carry out the court decision by providing restitution to the victim. no later than 30 days after receiving a copy of the court decision and minutes of implementation of the court decision.¹⁴

Legal protection for children is also regulated implicitly in Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims. This legal instrument is proof that Indonesian law pays attention to the existence of children. In providing legal protection to children, the principles must be taken into account, namely: the principle of non-

¹⁴ Sugeng Wibowo Saputro, "Upaya Paksa Bagi Pelaku Yang Tidak Melaksanakan Restitusi Terhadap Anak Korban Tindak Pidana," *Badamai Law Journal* 5, no. 1 (2020): 56.

discrimination; principles of what is best for children; the principle of the right to life, survival and development of children; and the principle of respecting children's views.¹⁵

Based on these principles, one of which is the principle of non-discrimination, that child protection should not be differentiated, all have the same rights. However, in cases of physical abuse by children as threatened by Article 80 paragraphs (1) and (2) of Law Number 35 of 2014, the resolution process of which requires diversion to be attempted is an injustice to the victim. Because the impact resulting from the actions carried out by the child is not commensurate with the sanctions given to him, if resolved through diversion. The current phenomenon of physical bullying by children is increasing due to the lack of deterrent effect from the sanctions given.

2. Criminal Responsibility for Perpetrators of Physical Abuse by Children

The concept of restorative justice through diversion in resolving criminal acts committed by children as an effort to overcome crime in a non-penal manner is carried out with the aim of achieving balance or restoring the situation of repressive criminal law which is felt to not resolve problems in the criminal justice system. Based on the limitations of these penal facilities, it shows that there is a weakness or inability of criminal law from the point of view of the nature of the function or operation of criminal law (sanctions) itself.¹⁶

According to the author, the application of non-penal crime prevention is less effective in dealing with physical bullying because the sanctions provided by the act provide a deterrent effect. This is indicated by the increasing number of cases of physical bullying. Physical bullying is a criminal act, so the perpetrator who carries out this act should be punished for his actions. If a child commits physical abuse, he can also be subject to sanctions as stated in Article 351 of the

¹⁵ Evita Monica Chrysan, Yiska Marva Rohi, and Dini Saputri Apituley Fredyandani, "Penerapan Sanksi Tindakan Anak Yang Melakukan Bullying Dalam Perspektif Sistem Peradilan Pidana Anak," *Jurnal Hukum Magnum Opus* 3, no. 2 (2020): 168–71.

¹⁶ Sumangat Salomo Sidauruk, July Esther, and Herlina Manullang, "Kebijakan Hukum Pidana Sebagai Upaya Meminimalisir Tindak Pidana Bullying Di Media Elektronik," *Nommensen Journal of Legal Opinion (NJLO)* 2, no. 2 (2021): 236–37.

Criminal Code regarding abuse. Persecution is an act that intentionally causes pain and/or injury to another person, not with the aim of saving bodily health.¹⁷

A child who is known to be underage, and has a mental condition that is not the same as an adult, in this case is capable of carrying out physical abuse which is included in the criminal act of abuse, which can cause physical and psychological injuries. But for what the child has done, he must be responsible for it. Criminal liability is a person's responsibility for a criminal act he or she commits. This responsibility occurs because someone has committed a criminal act. Criminal liability is essentially a mechanism built by criminal law to react to criminal acts committed by someone.¹⁸

There are significant differences between the criminal responsibilities of children and adults as stated in the system. Actions that constitute a juvenile crime are any actions that constitute violations or crimes that are regulated in criminal law legislation, namely the Criminal Code or those that are specifically regulated outside the Criminal Code. Meanwhile, if we look at it in terms of punishment, it is regulated in Article 71 paragraph (1) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, that if a child commits a violation of legal regulations or norms, he can be held accountable by giving a basic punishment which is the role of the Development Institution. Child to give a warning. The imposition of conditional sentences takes the form of providing guidance to children who commit criminal acts so that they have characteristics that do not violate legal norms, as well as the implementation of providing services to the community and supervision by the competent authorities.¹⁹

Criminal liability that can be asked of children is regulated in Article 45, Article 46, Article 47 of the Criminal Code, namely:

- a. Article 45 of the Criminal Code

¹⁷ Leden Marpaung, *Tindak Pidana Terhadap Nyawa Dan Tubuh (Pemberantasan Dan Prevensinya)* (Jakarta: Sinar Grafika, 2002).

¹⁸ Miftachul Mujadi and Sri Astutik, "Sanksi Hukum Bagi Hakim Yang Melanggar Kode Etik Profesi," *Jurnal Justitia: Jurnal Ilmu Hukum Dan Humaniora* 6, no. 2 (2023): 505.

¹⁹ Ni Made Galuh Dwi Safitri and Gde Made Swardhana, "Pertanggungjawaban Pidana Anak Yang Melakukan Tindakan Cyber Bullying Di Media Sosial," *Jurnal Kertha Negara* 10, no. 5 (2022): 542–47.

In the case of criminal prosecution of a minor for committing an act before the age of 16 (sixteen) years, the Judge may determine:

Order that the guilty person be returned to his parents, guardian or custodian, without any penalty or order that the guilty person be handed over to the government without any penalty, if the act constitutes a crime or one of the violations under Articles 489, 490, 492, 496, 497, 503, 505, 514, 517, 526, 531, 532, 536 and 540 and 2 (two) years have not passed since being found guilty of committing a crime or one of the violations mentioned above, and the decision has become permanent, or imposed a sentence on the guilty person.

b. Article 46 of the Criminal Code:

(1) If the judge orders that the guilty person be handed over to the government, then he or she will be put in a state education center so that he/she receives education from the government or in the future by other means, or handed over to a certain person residing in Indonesia or to a legal entity, foundation or a charitable institution domiciled in Indonesia to provide education, or in the future, at the expense of the government, in other ways, in both cases above, no later than until the guilty person reaches the age of eighteen years.

(2) The rules for implementing paragraph (1) of this article are determined by law.

c. Article 47 of the Criminal Code:

(1) If the judge imposes a sentence, the maximum principal penalty for the crime is reduced by 1/3 (one third).

(2) If the act constitutes a crime punishable by the death penalty or life imprisonment, a maximum prison sentence of 15 (fifteen) years is imposed.

(3) Additional penalties in Article 10 point b, numbers 1 and 3, cannot be applied.

So that criminal liability for children who commit physical bullying can be subject to Article 351 of the Criminal Code while still

paying attention to the provisions in Article 45, Article 46, Article 47 of the Criminal Code. However, because in this case it is a criminal act committed by a child, the principle of *lex specialis derogate legi generalis* is applied, namely general laws override general laws. In its implementation, law enforcement officials, starting from Investigators, Public Prosecutors and Judges, should use Article 80 paragraph (1) and paragraph (2). Law Number 35 of 2014 still pays attention to the criminal principles in the SPPA Law, but in practice there are still judge decisions that impose criminal penalties on children who commit abuse using Article 351 of the Criminal Code.

Talking about criminal responsibility, it cannot be separated from criminal acts. Because criminal acts only have meaning when there is criminal responsibility. The basis for a criminal act is the principle of legality, while the basis for a criminal offense is the principle of error. This means that the author or perpetrator of a criminal act can only be punished if he is guilty of committing the criminal act. When someone makes a mistake is a matter that concerns the issue of criminal liability. A person is guilty if when he commits a criminal act from a social perspective he can be criticized because of his actions.²⁰

The principle of "No Crime Without Guilt" which has other words "keine strafe ohne sculd", "geen straf zonder schuld" and "nulla poena sine culpa." Based on this principle, it is explained that the element that underlies criminal liability is that there must be a person as a legal subject who has an error as the basis for accountability in order to be punished. The error in question is the mental state of the perpetrator and the inner relationship between the perpetrator and his actions. If someone has committed an act, then that person can be considered responsible for his or her actions. Meanwhile, from his actions there are 2 (two) elements that must be fulfilled by a person as a legal subject who commits a criminal act.

Based on the SPPA Law, a child who commits a criminal act has a different responsibility from an adult, namely that his detention must be adjusted to the child's interests and the sentence imposed on the child is 1/2 of the maximum sentence imposed on an adult. In addition, children who commit criminal acts cannot be sentenced to death or life

²⁰ Jefferson B. Pangemanan, "Pertanggungjawaban Pidana Anak Dalam Sistem Peradilan Pidana Indonesia," *Lex et Societatis* 3, no. 1 (2015): 104–5.

imprisonment. Regarding the resolution of the problem, the parties who take action regarding juvenile crimes are the same as resolving adult crimes, which begins with the Investigator, Public Prosecutor and Judge who are tasked with adjudicating the actions they have committed.

The author in this case has another opinion, the SPPA Law is a special regulation for resolving criminal acts committed by children and must be obeyed. Where in Article 7 of the SPPA Law, at the level of investigation, prosecution and examination of cases in court, efforts must be made to divert criminal acts with a penalty of less than 7 (seven) years and not repeat criminal acts. Physical bullying which is a criminal act as stipulated in Article 80 paragraph (1) and paragraph (2) of Law Number 35 of 2014 fulfills the requirements for diversion because the penalty is a maximum of 3 (three) years 6 (six) months and 5 (five) years. However, in practice, the process of resolving child crimes through diversion cannot reduce the number of physical bullying because children think that if they bully, they will not be punished.

The author is of the opinion that for physical bullying carried out by children, the form of responsibility is in the form of imprisonment while still paying attention to the rights of the child. There are two types of sanctions that can be imposed on children who are in conflict with the law, namely:

1. Criminal Sanctions Article 71 paragraph (1) and paragraph (2) of the SPPA Law:
 - a. Basic punishment, consisting of:
 - 1) Warning penalty;
 - 2) Criminal with the following conditions:
 - a. Coaching outside the institution;
 - b. Community service; or
 - c. Supervision.
 - 1) Job training;
 - 2) Development within the institution; And
 - 3) Prison.
 - 1) Additional punishment, consisting of:
 Confiscation of profits obtained from criminal acts; or
 - a) Fulfillment of customary obligations.
 - b. Sanctions for Action in Article 82 of the SPPA Law:

- 1) Return to parent/guardian;
- 2) Submission to someone;
- 3) Treatment in a mental hospital;
- 4) Treatment at LPKS.

The prison sentence given to children who are physically bullied is a sanction that can have a deterrent effect on children. This is based on the fact that children already have the ability to be responsible for their actions. Based on the elements of criminal responsibility, the child has fulfilled them, namely:

- a. Able to be responsible

Based on Article 1 point 3, children in conflict with the law are children who are 12 (twelve) years old, but not yet 18 (eighteen) years old who are suspected of committing a criminal act. This means that in this case the child is able to take responsibility for his actions.

The Beijing Rules emphasize that in a legal system that recognizes the concept of age for criminal responsibility for children, the starting age is not set at a level that is too low, considering the reality of emotional, mental and intellectual maturity. As a comparison, you can see the age limit rules for criminal responsibility that can be asked of children in other countries, namely: (Prema, Ruba'i, & Aprilianda, 2019)

- 1) England, the lowest age limit for responsibility is 8 (eight) years.
- 2) Australia, the lowest age limit for responsibility is 8 (eight) years.
- 3) Sweden, the lowest age limit for responsibility is 15 (fifteen) years
- 4) Japan, the lowest age limit for responsibility is 20 (twenty) years.
- 5) Colombia, the lowest age limit for responsibility is 18 (eighteen) years.
- 6) Korea, the lowest age limit of responsibility is 14 (fourteen) years old.

Differences in the age limit for children who can be held criminally responsible are caused by history and culture in a country. Responsibility for children can be assessed from the

child's moral and psychological maturity. The most important thing is that the age limit for criminal responsibility for children is not set too low, let alone not set at all, because this results in the idea of responsibility becoming meaningless. (Prema et al., 2019)

b. There is an element of intent

A child who carries out physical bullying is intentional, because the child knows from the start the intent and purpose of doing this.

c. Absence of excuses

This element is not fulfilled, because the perpetrator of the crime is still a minor. However, this can be done while still paying attention to children's rights, including: (Nashriana, 76 C.E.)

- 1) The maximum penalty imposed is $\frac{1}{2}$ of the criminal threat imposed by an adult. Every juvenile delinquent from the moment he is arrested or detained has the right to obtain legal assistance from one or more legal advisors during the time and at every level of examination.
- 2) Every delinquent child who is arrested or detained has the right to have direct contact with legal counsel under supervision without being overheard by authorized officials.
- 3) While the child is detained, the child's physical, spiritual and social needs are still met.
- 4) Child suspects have the right to be immediately examined by investigators and can then be referred to the Public Prosecutor.
- 5) Child suspects have the right to have their cases immediately submitted to court by the Public Prosecutor.
- 6) Child suspects have the right to be immediately tried by a court.
- 7) To prepare a defense, child suspects have the right to informed clearly in a language that he understands about what is suspected of him when the examination begins.
- 8) During examinations at the investigation and court level, child suspects or defendants have the right to provide information freely to investigators or judges.
- 9) During examinations at the investigation and court level, child suspects or defendants have the right to receive the assistance

of an interpreter at all times, if they do not understand Indonesian.

- 10) If the suspect or defendant is a mute and/or deaf child, he has the right to receive the assistance of an interpreter, someone who knows how to get along with him.
- 11) To obtain legal advice, a child suspect or defendant has the right to choose his or her own legal advisor.
- 12) Detention can only be carried out on condition that the child is 14 (fourteen) years old and is suspected of committing a criminal offense that carries a prison sentence of 7 (seven) years or more.
- 13) A child suspect or defendant who is subject to detention has the right to contact his legal advisor in accordance with the provisions of the Criminal Procedure Code.
- 14) A foreign national child suspect or defendant who is subject to detention has the right to contact and speak with representatives of his or her country in facing the case process.
- 15) A child suspect or defendant who is subject to detention has the right to contact and receive a visit from his personal doctor for health purposes, whether related to the case process or not.
- 16) Child suspects or defendants have the right to contact and receive visits from parties who have familial or other relationships with the suspect or defendant in order to obtain guarantees for suspension of detention or to seek legal assistance.
- 17) A child suspect or defendant who is subject to detention has the right to be informed about his or her detention by an authorized official at all levels of examination in the judicial process, to his or her family or other people in the same household as the suspect or defendant or other people whose assistance the suspect or defendant needs to obtain legal aid or guarantee for his suspension.
- 18) A child suspect or defendant has the right directly or through his legal advisor to contact and receive visits from his or her relatives in matters that have nothing to do with the suspect's or defendant's case for work purposes or family interests.

- 19) The suspect or juvenile defendant has the right to send letters to his legal advisor, and receive letters from his legal advisor and relatives whenever required by him, for this purpose the suspect or defendant is provided with stationery.
- 20) Child suspects or defendants have the right to contact and receive visits from clergy.
- 21) The suspect or accused child has the right to seek and present witnesses or someone who has special expertise to provide information that is beneficial to the himself.
- 22) Child suspects or defendants are not burdened with the burden of proof.
- 23) Child suspects or defendants have the right to request an appeal against the decision of the court of first instance, except for the decision of acquittal, free from all legal claims involving the issue of inaccurate application of the law and court decisions in expedited proceedings.
- 24) Child suspects or defendants have the right to demand compensation and rehabilitation as regulated in Article 95 of the Criminal Procedure Code.
- 25) Placed in a Juvenile Correctional Institution.
- 26) Children in Juvenile Correctional Institutions still receive education.

It can be concluded that criminal responsibility for children who commit physical abuse applies the principle of *lex specialis derogate legi generalis* so that they are subject to Article 80 paragraph (1) and paragraph (2) of Law Number 35 of 2014 by taking into account the rights of children. So the author is of the opinion that it is appropriate to make improvements to the SPPA Law. Where the implementation of diversion in completing criminal acts committed by children is given clearer boundaries. In this case the author believes that diversion is better carried out in the following cases:

- a. In minor criminal acts committed by children.
- b. Diversion is carried out in criminal acts against objects by children.
- c. For criminal acts against people, use criminal liability as appropriate.

Conclusion

Legal protection must be given to children who are victims of criminal acts, one of which is physical bullying. Victims of physical bullying are included in the category that receives special protection as stated in Article 59 paragraph (2) letter i of Law Number 35 of 2014. Article 59A of Law Number 35 of 2014 regulates special protection, including: Quick treatment; Psychosocial assistance during treatment and recovery; Providing social assistance for children from poor families; and Providing protection and assistance in every judicial process. In providing legal protection, we must pay attention to the principle of non-discrimination, the principle of what is best for children, the principle of child survival and development, as well as the principle of respecting children's views. Diversion efforts in resolving criminal acts committed by children, especially physical bullying, are not effective in reducing the number of bullying in Indonesia and diversion efforts are unfair to victims. So the author believes that imprisonment is a sanction that can have a deterrent effect on perpetrators of bullying. Apart from that, with imprisonment, other children will be afraid to do this. This is because the child has fulfilled the elements of criminal responsibility. Diversion is appropriate for minor crimes committed by children and crimes against objects. Children who carry out physical bullying are subject to Article 80 paragraph (1) and paragraph (2) of Law Number 35 of 2014 because it applies the principle of *lex specialis derogate legi generalis*.

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