

Mechanism for Resolving The Crime Of Bullying Performed By Students at Schools In Indonesia

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ABSTRACT

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Bullying in education is a despicable and illegal act. Bullying can hurt the victim both physically and mentally. Perpetrators and victims of bullying in schools are generally still minors, so that the settlement of these cases must pay attention to the rights of children which have been regulated in Law Number 35 of 2014 Jo. Law Number 17 of 2016 concerning Child Protection. In-Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, the mechanism for resolving cases involving children uses a restorative justice approach through a diversionary case settlement mechanism. The diversion mechanism is carried out outside the court (non-litigation) by carrying out mediation between the perpetrator and the victim and attended by both families of the perpetrators and victims, law enforcers, and the community. Diversion must be pursued by law enforcement at every stage of the judiciary, both at the stage of the investigation, prosecution and examination of cases in court. However, if the diversion mechanism fails or the perpetrator of bullying does not meet the requirements for the diversion mechanism, the crime of bullying will be resolved through litigation through juvenile justice.

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Introduction

Acts of bullying have become a tradition at schools and colleges in Indonesia, especially among new students. School orientation is always interfered with thuggery under the reasons of enforcing discipline, forming character and bringing closer relationships between senior students and junior students.¹ However, what is formed is just the opposite, the relationship between senior and junior students is very distant and not harmonious. Violence, enmity, hatred and revenge become a tradition and a legacy in every subsequent generation.

Based on data from The Indonesian Child Protection Commission (KPAI), from 2011 to 2014, the number of bullying cases was 369 cases.² However, in 2015, cases of bullying rose to 478 cases.³ In 2016, the number of bullying cases was reduced to 328 cases.⁴ However, according to the Indonesian Child Protection Commission (KPAI) within a period of 9 years, from 2011 to 2019, there were 2,473

¹ E. Donald, "Corporal Punishment in School," *Journal of Adolescence Health* 23 (2003): 385–93.

² Davit Setyawan, "KPAI: Kasus Bullying Dan Pendidikan Karakter," www.kpai.go.id, 2016, <http://www.kpai.go.id/berita/kpai-kasus-bullying-dan-pendidikan-karakter/>.

³ Dadang Kurniawan, "Jokowi Akan Terbitkan Perpres Soal Bullying Di Sekolah," [www.republika.co.id](http://nasional.republika.co.id), 2016, <http://nasional.republika.co.id/berita/nasional/umum/16/01/21/o19h1f361-jokowi-akan-terbitkan-perpres-soal-bullying-di-sekolah>.

⁴ Dedi Hendrian, "Wajah Perlindungan Anak 2016," www.kpai.go.id, 2017, <http://www.kpai.go.id/utama/wajah-perlindungan-anak-2016-2/>.

cases of bullying reported in education and social media.⁵ The Minister of Education and Culture of the Republic of Indonesia, Anies Baswedan said that 84% of children in Indonesia have experienced violence, but as many as 70% of children in Indonesia have been perpetrators of violence in schools.⁶

The high number of cases of bullying is already at a worrying stage. Schools that should be a fun place have turned into a terrible place (school phobia), which can even endanger the lives of students. The school that was supposed to be a place to find friends and companions turned into a place of hostility. Bullying can change a situation that was initially pleased to be unpleasant and can even become a "nightmare" for students. Bullying can cause harm to the victim's physical and psychological well-being by mocking, making fun of, insulting, threatening, calling names to insult, extort, molesting, slandering, sexual violence, ostracism, bullying, damaging property or property of the victim, threatening and hitting to injure or put someone under pressure.⁷

Criminal acts of bullying in schools who are still minors can be charged with the provisions of Article 80 paragraph 3 of Law Number 17 of 2016 concerning Child Protection, Article 80 of Law Number 11 of 2012 concerning the Child Criminal Justice System, Article 170 paragraph (1) and (2) the Criminal Code, Article 351, and Article 355 of the Criminal Code. However, law enforcement against children as perpetrators of bullying who are still minors is not the same as perpetrators of criminal acts who are adults. Law enforcement against perpetrators of criminal acts of bullying who are still minors is carried out carefully and prioritizes the protection of children's rights as regulated in Law Number 17 of 2016 concerning Child Protection.

In resolving the crime of bullying in schools, law enforcers must always pay attention to the condition of children who are different from adults. The nature of children as individuals who are still unstable, the future of children as national assets, and the position of children in society who still need protection can be used as reasons to look for an alternative settlement mechanism to prevent children from a formal justice system that can provide negative stigmatization of children as prisoners in the eyes of society. Therefore, the mechanism for resolving criminal acts of bullying in schools is different from the mechanism for resolving cases in general. This article will describe in depth the mechanism for resolving criminal acts of bullying in schools committed by a student who is still a minor.

Method

This research is legalistic, doctrinal or normative. According to Rowe, normative research aims to discover, explain, study, analyze and systematically present certain facts, principles, concepts, theories, laws to find new knowledge and ideas to be suggested for a change or renewal.⁸ In this study, all documents, references, facts, theories, doctrines and laws related to the concept of the mechanism for resolving the crime of bullying in schools will be studied.⁹

Several approaches can be used in legalistic or normative research, including the concept approach, the historical approach, the statute approach, the case analysis approach and the comparative approach.¹⁰ However, this study only uses a conceptual approach and a statute approach because the purpose of this study is to find and analyze the concept of a mechanism for resolving criminal acts of bullying that occur in schools in Indonesia. This study also used content analysis and critical analysis method.

⁵ Komisi Perlindungan Anak Indonesia (KPAI), "Laporan Tahunan" (Jakarta, 2024).

⁶ Davit Setyawan, "KPAI: Presiden Jokowi Siapkan Perpres Terkait Bullying Terhadap Anak," www.kpai.go.id, 2016, <http://www.kpai.go.id/berita/kpai-presiden-jokowi-siapkan-perpres-terkait-bullying-terhadap-anak/>.

⁷ Fathilah Akmal, "Buli Dan Gangsterisme Di Sekolah," in *Cross-Cultural Education for Sustainable Regional Development* (Bandung: International Conference on Education and Regional Development 2016 (ICERD 2016), 2016), 235.

⁸ Tunggul Ansari Setia Negara, "Normative Legal Research in Indonesia: Its Originis and Approaches," *Audito Comparative Law Journal (ACLJ)* 4, no. 1 (2023): 1–9, <https://doi.org/http://dx.doi.org/10.22219/aclj.v4i1.24855>.

⁹ Afif Noor, "Socio-Legal Research: Integration of Normative and Empirical Juridical Research in Legal Research," *Jurnal Ilmiah Dunia Hukum* 7, no. 2 (2023): 94 – 112, <https://doi.org/http://dx.doi.org/10.35973/jidh.v7i2.3154>.

¹⁰ Theresia Anita Christiani, "Normative and Empirical Research Methods: Their Usefulness and Relevance in the Study of Law as an Object," *Procedia-Social and Behavioral Sciences* 219 (2016): 201–7, <https://doi.org/http://dx.doi.org/10.1016/j.sbspro.2016.05.006>.

Results and Discussion

1. The Crime of Bullying at School

Bullying in the world of education has become a serious problem globally. Bullying does not only occur in developing countries but also occurs in developed countries. Research on bullying among students has started seriously and systematically in western countries since the 1970s.¹¹ Plus as a pioneer of research on bullying continues to encourage researchers to research bullying among students in Scandinavia, Australia and in other western countries. The results of this study indicate that acts of bullying among students in various countries continue to increase every year.¹²

The act of bullying at school is not a new phenomenon.¹³ The term bullying or bully comes from English which means to bully or oppress. However, the terms bullying and bullying are not appropriate to be used as synonyms for bullying because they do not cover the full meaning of the term bullying. The most appropriate term for the term bullying in Indonesian is “bullying”, which comes from the word “risk” which means to disturb or disturb continuously with various mockery.¹⁴ However, the Minister of Education and Culture, Anies Baswedan, tends to use the word “bullying” or “runding” for the equivalent of the term bullying. The word bullying or bullying can represent the term bullying which means disturbing the victim or harassing continuously such as intimidating, humiliating, bullying, beating, bullying or bullying other people who are weaker so that the victim is injured or depressed.¹⁵ However, the two terms, namely ‘bullying’ or ‘bully’ are not well known, even print media, electronic media and various scientific articles still use the term bullying or bully in mentioning violence in education. Therefore, in this article the author will use the term bullying to describe bullying in education.

In general, the researcher classified bullying into three categories, namely physical, verbal, and antisocial bullying. Physical and verbal bullying are referred to an act of harassing or disturbing the victim which is carried out directly such as insulting, calling with certain names, hitting or injuring. However, bullying acts in the anti-social category as bullying that is done indirectly to the victim, such as expelling a student from a group of friends at school or all students being forced to stay away from the victim from various activities and associations.¹⁶

Demaray and Malecki in their article explain that bullying behavior is a negative act that is done by someone stronger or more powerful to someone weaker or less powerful repeatedly.¹⁷ Olweus said that bullies are usually more aggressive, have a stronger, stockier body, are bigger than victims and usually bullies are more male students than female students.¹⁸ However, the current development, bullies no longer look at gender grouping. In fact, bullying is also carried out by female students, even their actions are very sadistic and their actions are often uploaded on social media.

Current developments show that acts of bullying can be carried out in various ways and the media repeatedly against victims, both individually and in groups. Bullying is carried out directly and very aggressively to hurt the victim, causing discomfort, making the victim depressed, injuring and even

¹¹ Qi Wang, “Exploring the Nature and Impact of School Bullying: The Effects of Individual and Environmental Factors,” *SHS Web of Conferences* 171 (2023): 1–4, <https://doi.org/https://doi.org/10.1051/shsconf/202317101012>.

¹² Moch Nurcholis Majid and Opam Pahmi Sopandi, “The Impact Of Bullying On Children In The School Environment Communication Psychology Perspective,” *Jurnal Komunikasi Islam Dan Kebumasan (JKPI)* 7, no. 2 (2023): 115–25, <https://doi.org/https://doi.org/10.19109/jkpi.v7i2.20734>.

¹³ Jiaqi Wang, “The Impacts and Interventions of School Bullying,” *SHS Web of Conferences* 157 (2023): 1–5, <https://doi.org/https://doi.org/10.1051/shsconf/202315704023>.

¹⁴ Mona Gamal Abd Elnaser Ahmed, “The Impact of School Bullying on Students’ Self-Esteem in Preparatory School,” *American Journal of Nursing Research* 6, no. 6 (2018): 679–88, <https://doi.org/10.12691/ajnr-6-6-39>.

¹⁵ Muthia Aryuni, “Why Does Bullying Happen In Schools? Investigating Teachers Attitudes And Perceptions About Bullying And Intervention,” in *Proceedings of the 2nd International Interdisciplinary Conference on Environmental Sciences and Sustainable Developments Education and Green Economy (ICESSD-EGE 2022)* (Indonesia, 2023), 57–63, https://doi.org/https://doi.org/10.2991/978-2-38476-172-2_10.

¹⁶ B. L. Mitchell, *Bullying Prevention and Intervention at School: Integrating Theory and Research into Best Practices* (Switzerland: Springer Nature Switzerland AG, 2018).

¹⁷ Riana Nurhayati, “Coping Strategies for Bullying: A Phenomenology of Student Perceptions,” *Foundasia* 15, no. 1 (2024): 18–25, <https://doi.org/https://doi.org/10.21831/foundasia>.

¹⁸ Nikolaos Drakatos, “School Bullying and the Role of Social Media,” *TechHub Journal* 3 (2003): 27–51.

causing death to the victim.¹⁹ However, in the era of the digital era and highly developed information technology, bullying is not only done conventionally but can also be done in cyberspace such as through Facebook, Twitter, BBM, Whatsapp, Instagram and other social media to hurt or humiliate the victim. According to Tatum, the bullying behavior is aimed at hurting the victim and making the victim feel depressed.²⁰

French focused his research on bullying on differences in social status. The greater the gap in social status among students, the greater the bullying behavior in education. The social status of students is seen as far as the role of students in social interaction or social interaction among students at school. Meneur French, social status in student association at school can be categorized as social interactions, (1) popular, (2) average, (3) controversy, (4) rejected, and (5) ignored. French stated that bullying in terms of social status aims to isolate the victim from her friends at school who are considered not on the same level as the bully.²¹

Many acts of bullying occur in Indonesia at the time of admission of students or new students to schools or colleges. Student orientation activities are always a momentum for bullying. In the past, school orientation activities for new students were called hazing. However, many victims were found caused by the actions of seniors against their juniors, so hazing was prohibited and replaced by the terms School Orientation Period (MOS) and Campus Introduction Orientation (OSPEK). Over time, MOS and OSPEK are also often colored with acts of violence and there are still many victims, so the orientation of new students has changed again to New Student Orientation Period (MOPDB). However, whatever the term is used, the substance is the same, namely introducing new students to the system, activities and atmosphere of the school or campus as an educational institution that becomes a medium for students to study to achieve the success they aspire to.

The concept of bullying in Indonesia is almost the same as the concept of bullying in western countries. In fact, many articles that write about the issue or development of bullying acts are quoted or taken from several experts and various references from western countries. The book entitled "Prevention of violence against children in the educational environment" states that bullying is aggressive and suppressive behavior from someone more dominant towards weaker people where one or more students continuously take actions that cause other students to suffer.²² Violence against weaker students can take the form of, first, physically, hitting, kicking, taking other people's property. Second, verbally mocking the names of other students, insulting, saying offensive words. Third, indirectly spreading false stories, ostracizing, targeting certain students with hurtful humor, sending short messages or malicious letters. Making fun of names is the most common thing because of students' physical characteristics, ethnicity, ethnicity, skin color, and so on.²³

In the legal aspect, bullying is an act of violence both physically and psychologically. Article 1 number 15a of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System stipulates that violence is "any action against a child that results in physical, psychological, sexual misery or suffering, and/or neglect, including threats to commit acts, coercion, or unlawful deprivation of liberty." Based on the definition of violence in the Child Protection Act, it can be concluded that bullying or bullying includes acts or acts in the form of violence against children which can be categorized as criminal acts.

¹⁹ Dan A. Olweus, "Bullying at School: Basic Facts and Effects of a School Based Intervention Program," *Journal of Child Psychology and Psychiatry* 35, no. 7 (1994): 1171–90, <https://doi.org/10.1111/j.1469-7610.1994.tb01229.x>.

²⁰ Wisnu Sri Hertinjung, "The Shadow of Bullying in Indonesia Education System," <https://www.ums.ac.id>, 2024, <https://www.ums.ac.id/en/news/outlook/the-shadow-of-bullying-in-indonesia-education-system>.

²¹ Dina Mariana Siregar, "Correlation of Bullying Behaviour Experienced with the Mental Health of High School Students in Tomohon City," *Psycho Holistic* 5, no. 3 (2023): 80–85, <https://doi.org/https://doi.org/10.35747/ph.v5i2.761>.

²² Francisco Alonso Esquivel, Indira Lizeth de La Garza López, and Arturo Durán Benavides, "Emotional Impact of Bullying and Cyber Bullying: Perceptions and Effects on Students," *Revista Caribeña De Ciencias Sociale* 12, no. 1 (2023): 367–383, <https://doi.org/https://doi.org/10.55905/rcssv12n1-022>.

²³ Anies Baswedan, "Don't Use Bullying, Just Bullshit," www.jpnn.com, 2016, <http://www.jpnn.com/news/menteri-anies-jangan-gunakan-bullying-perundungan-aja-ya>.

2. Mechanisms for Resolving Acts of Bullying at Schools

Generally, all conflicts or disputes are resolved through the courts (litigation) according to the type and characteristics of the dispute between the parties.²⁴ However, the litigation settlement has many weaknesses. Litigation dispute resolution takes a very long time and the other warring parties must spend a lot of energy, thought and money to take care of their case in court.²⁵ Other than that, The dispute resolution process through the courts results in an adversarial decision that has not been able to embrace common interests, because it produces a win lose solution decision, with the winners and losers, on the other hand will feel satisfied but on the other hand feel dissatisfied, so that can create a new problem between the disputing parties.²⁶

There are many criticisms and negative views of the court system, several countries in the world have introduced alternative methods in resolving disputes that occur in society.²⁷ Developed countries such as the United States, United Kingdom, Australia and Canada have used alternative dispute resolution methods (Alternative Dispute Resolution) to resolve disputes between the parties, such as deliberation, mediation, arbitration, consultation, negotiation, conciliation, reconciliation and so on.²⁸ The court system is considered unable to resolve disputes quickly and cheaply so that the existence of alternative dispute resolution is expected to help the conflicting parties to obtain justice.

In resolving the crime of bullying in schools involving a minor, the Indonesian government also prioritizes out-of-court (non-litigation) mechanisms by using a restorative justice approach through a diversion mechanism against children who commit crimes. Mechanisms outside the court usually use the mechanism of deliberation or mediation using a family approach to save the future of the perpetrators who are still studying in school. However, if the diversion mechanism fails or the perpetrator of the crime of bullying does not meet the requirements for the diversion mechanism, the crime of bullying will be resolved by using a judgment mechanism through a judicial process (litigation).

The restorative justice approach is the settlement of criminal cases by involving the perpetrators, victims, families of perpetrators/victims, and other related parties to jointly seek a fair solution by emphasizing the restoration to its original state, both for the perpetrator and the victim, but not imposing punishment as retaliation through a formal mechanism in court. According to Eva Acjani Zulfa, in the perspective of restorative justice, justice is defined as a process of finding solutions to problems that occur in a criminal case where the involvement of victims, communities and perpetrators is important in efforts to repair, reconcile and guarantee the continuity of these repair efforts.²⁹

The concept of settlement of criminal acts by using the approach of restorative justice has been implemented in Indonesia, especially in cases involving minors. The restorative justice approach refers to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which states that restorative justice is the settlement of criminal cases by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a satisfactory solution, i.e. obtaining justice by emphasizing restoration to its original state, and not retaliation.

The restorative justice approach as regulated by Law Number 11 of 2012 concerning the Juvenile Criminal Justice System can be implemented through a diversionary case settlement mechanism that prioritizes the best interest of the child and prioritizes the protection of children's rights. The diversion

²⁴ D. L. Espelage, "Research on School Bullying and Victimization: What Have We Learned and Where Do We Go from Here?," *School Psychology Review* 32, no. 3 (2003): 365–83.

²⁵ N. M Salleh and K Zainal, "Bullying among Secondary School Students in Malaysia: A Case Study," *International Education Studies* 7, no. 13 (2014): 184–191, <https://doi.org/https://doi.org/10.5539/ies.v7n13p184>.

²⁶ Charles Kapile et al., "Bullying and Its Implications on Middle School Students and Teachers in Indonesia," *Al-Ishlah: Jurnal Pendidikan* 15, no. 1 (2023): 813–22, <https://doi.org/10.35445/alishlah.v15i1.2205>.

²⁷ J. J Sauer, "Mediating Child Custody Disputes for High Conflict Couples: Structuring Mediation to Accommodate the Needs & (and) Desires of Litigious Parents," *Pepp. Disp. Resol. LJ* 7, no. 3 (2007): 501, http://heinonlinebackup.com/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/pepds7§ion=24.

²⁸ Heru Setiawan, Marlia Sastro, and Zulfan, "Penerapan Keadilan Restorasi (Restorative Justice) Terhadap Penyelesaian Tindak Pidana Penganiayaan Di Polresta Banda Aceh," *Cendekia: Jurnal Hukum, Sosial Dan Humaniora* 2, no. 3 (2024): 636–49, <https://doi.org/https://doi.org/10.5281/zenodo.12700016>.

²⁹ Sumiadi, Zul Akli, and Harley Agustian As-Samawi, "Concept of Deradicalization against Criminal Acts of Terrorism in the Perspective of Islamic Criminal Law," *International Journal of Law, Social Science, and Humanities* 2, no. 2 (2025): 275–85, <https://doi.org/https://doi.org/10.70193/ijlsh.v2i2.252>.

mechanism is the transfer of the settlement of children's cases from the criminal justice process to a process outside of criminal justice (non-litigation). In Article 6 of Law no. 11 of 2012 concerning the Juvenile Criminal Justice System states that the objectives of implementing the Diversion mechanism in resolving criminal acts committed by minors are:³⁰

- a. Achieve peace between victims and children;
- b. Resolve child cases outside the judicial process;
- c. Prevent children from deprivation of liberty;
- d. Encourage people to participate; and
- e. Grow a sense of responsibility in children.

The mechanism for resolving cases through Diversion is carried out utilizing deliberation through a mediation mechanism that involves law enforcement officers, victims and families, perpetrators and their families, officers from community institutions, professional social workers and if needed can involve the community. Article 7 paragraph (1) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System stipulates that diversion must be pursued by law enforcers at every stage of the judiciary, whether at the stage of the investigation, prosecution or examination of cases in court.³¹

The stages of settlement of criminal cases involving minors through a diversion mechanism based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System are as follows:

- a. Diversion at the investigation stage

The police are the main gate of the juvenile criminal justice system and are the first party authorized to determine the position of a child who is in trouble with the law. Based on Article 7 of Law no. 11 of 2012 concerning the Juvenile Criminal Justice System states that investigators are obliged to seek diversion within a maximum of 7 (seven) days after the investigation stage of the case begins. The diversion process is carried out by the Investigator no later than 30 (thirty) days after the start of the diversion mechanism against the litigating parties. In Article 29 Paragraphs (1), (2),(3) of Law no. 11 of 2012 concerning the Juvenile Criminal Justice System states that if the diversion process is successful and the parties reach an amicable agreement, the Investigator submits the minutes of the diversion along with the diversion agreement to the Head of the District Court for a determination to be made. However, if the diversion process fails or the parties do not find an agreement, the investigator is obliged to continue the investigation and delegate the case to the service party to carry out the process of preparing the indictment and or prosecution by attaching the diversion report.

- b. Diversion at the prosecution stage

The Public Prosecutor as a Public Prosecutor must carry out diversion, where the Public Prosecutor is obliged to seek diversion no later than 7 (seven) days after receiving the case file from the Investigator and the diversion is carried out no later than 30 (thirty) days. If the diversion process is successful in reaching an agreement, then the Public Prosecutor shall submit the minutes of the diversion along with the diversion agreement to the Head of the District Court for determination. However, if the diversion fails, the Public Prosecutor is obligated to submit an official report on the diversion and delegate the case to the Court by attaching a report on the results of the community research.

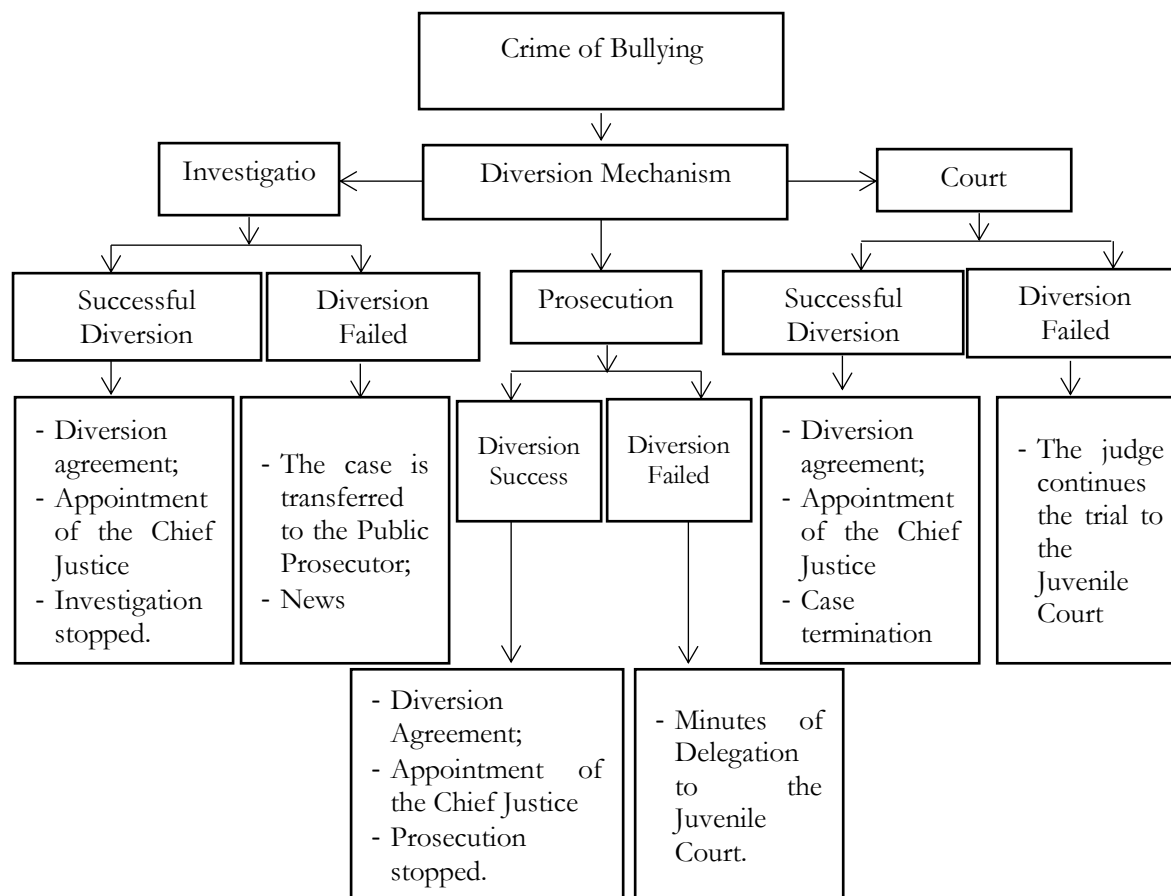
- c. Diversion in Court

The Juvenile Criminal Justice System Law requires judges to seek diversion no later than 7 (seven) days after being appointed by the Head of the District Court as juvenile judges and the diversion process is carried out no later than 30 (thirty) days. The diversion mechanism in court can be implemented in the mediation room of the District Court before the judge examines the subject matter at trial. If the diversion process succeeds in reaching an agreement between the litigating parties, the Judge submits the minutes of the diversion along with the diversion agreement to the Head of the District Court for determination. However, if the diversion is not successful, the case will proceed to the trial stage.

³⁰ Sulaiman Purnama, Tri, "Penetapan Status Tersangka Oleh Hakim Melalui Persidangan Dalam Perspektif Pembaruan Hukum Acara Pidana," 2023, <https://doi.org/10.5281/ZENODO.8116049>.

³¹ Maidin Gultom, *Perlindungan Hukum Terhadap Anak "Dalam Sistem Peradilan Pidana Anak Di Indonesia"* (Bandung: PT Refika Aditama, 2013).

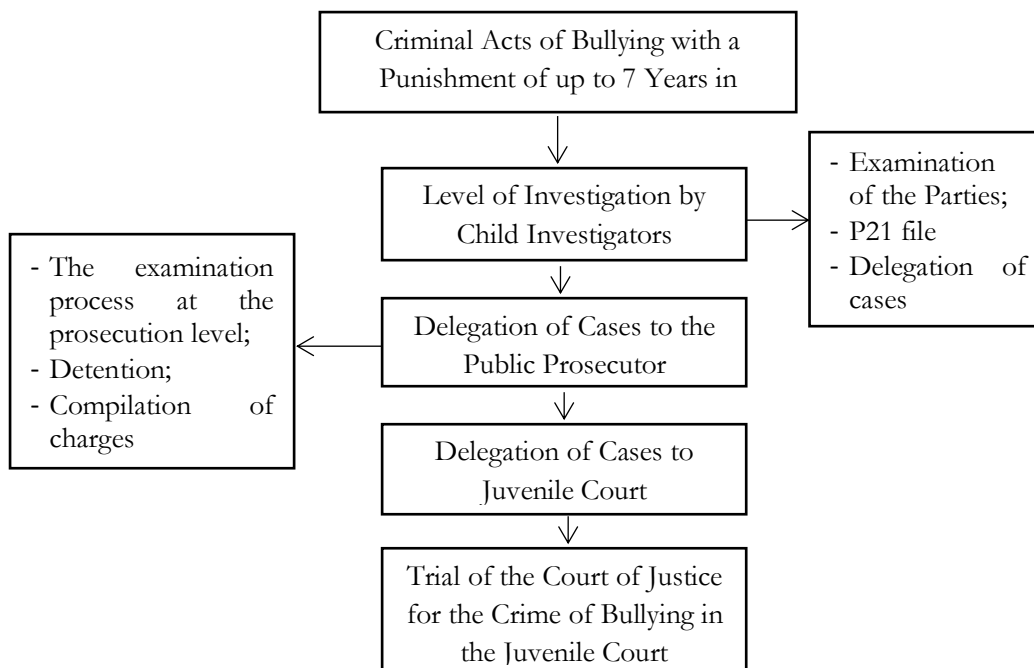
Chart 1.1. Settlement of Bullying Crimes through the Diversion Mechanism



However, in the case of bullying at SMA 13 Jakarta, 2020, the implementation of diversion is often carried out by the school not following the above procedure (Ahsan, 2020). If there is a crime of violence (bullying) in the school, the school will resolve the case by mediating between the parties involved in the bullying case. The school examined and presented witnesses, victims and perpetrators and their families. The school acts as a mediator and reconciles the parties involved in the bullying case. The mechanism for resolving the crime of bullying is not under the applicable laws and regulations but it is done to maintain the reputation of the school. However,

In addition, not all criminal cases involving minors can use the diversion mechanism. If a child commits a criminal act of bullying such as molestation or beating that does not cause the victim to die, threats, unpleasant acts or other criminal acts that are included in bullying behavior with threats of under 7 (seven) years in prison, diversion efforts can be carried out at every level of inspection. However, Article 3 of the Supreme Court Regulation Number 4 of 2014 concerning Guidelines for Implementing Diversion in the Juvenile Criminal Justice System stipulates that juvenile judges are obliged to seek diversion if a child is accused of committing a crime punishable by imprisonment for under 7 (seven) years and also charged with a criminal offense punishable by imprisonment of 7 (seven) years or more in the form of a subsidiary, alternative, cumulative, or combined (combined) indictment.

Chart 1.2. Settlement of Criminal Acts of Bullying through the Judicial Mechanism



If a child commits a crime of bullying that causes the victim to die or an act of bullying which is threatened with a sentence of more than 7 (seven) years in prison and the child as the perpetrator has reached the age of 12 (twelve) years, the enforcement process the law through juvenile criminal justice and diversion efforts are not carried out at every stage of the examination of child cases. This is because the conditions for diversion efforts are not met, so the case will be tried in juvenile court.

The form of bullying in this case is physical bullying that causes the victim to die, then the regulation used is Article 351 paragraph (3) of the Criminal Code with a threat of 7 (seven) years in prison, namely regarding persecution that causes the victim to die, Article 170 paragraph 2 to 3 of the Criminal Code with a threat of 12 (twelve) years in prison, namely about beatings that cause the victim to die. Article 289 of the Criminal Code with a threat of 9 (nine) years in prison regarding forcing people to commit/allow obscene acts. Article 368 of the Criminal Code is threatened with 9 (nine) years in prison regarding extortion. If the child is a victim of physical bullying that causes the victim to die, then the perpetrator is subject to Article 76 in conjunction with Article 80 paragraph (3) of Law Number 23 of 2002.

Conclusion

The resolution of the crime of bullying in schools must prioritize the best interests of the child and prioritize the protection of children's rights. To achieve this goal, the government uses a restorative justice approach through a diversionary case settlement mechanism. The diversion mechanism is carried out outside the court (non-litigation) by mediating between the perpetrator and the victim and attended by the families of the perpetrators and victims, law enforcers, and the community. Article 7 paragraph (1) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System stipulates that diversion must be pursued by law enforcers at every stage of the trial, both at the stage of investigation, prosecution and case examination in court.

However, if the diversion mechanism fails or the perpetrator of the crime of bullying does not meet the requirements for the diversion mechanism, the crime of bullying will be resolved by using a judgment mechanism through a judicial process (litigation). Based on Law no. 11 of 2012 concerning the Juvenile Justice System and the Supreme Court Regulation Number 4 of 2014 concerning Guidelines for the Implementation of Diversion stipulates that Diversion can only be carried out against children who commit acts of violence (bullying) where the penalty is under 7 years in prison. If the crime of bullying causes the victim to die so that the perpetrator can be threatened with a sentence above 7 (seven) years in prison and the perpetrator is 12 years old,

Diversion is the process of transferring the settlement of children's cases from criminal justice to processes outside the criminal justice process. Diversion is carried out by deliberation or mediation involving law enforcement officers, victims and their families, perpetrators and their families, officers from community institutions, professional social workers and if needed can involve the community. Diversion in the juvenile criminal justice system in Indonesia is attempted to be carried out at every stage of the court both the stage of investigation, prosecution and court examination.

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Author Contributions Statement

B, MH, JS conceptualized the research, designed the methodology, performed data collection and PLS-SEM analysis, and wrote the original draft of the manuscript. MH and JS provided supervision, reviewed the research framework, and contributed to the final editing and proofreading of the article.

AI Usage Statement

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Conflict of Interest

This section is a statement from the author that this article has a conflict of interest or not.

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