



APPLICATION OF RESTITUTION RIGHTS FOR CHILD VICTIMS OF BULLYING AS THE RESPONSIBILITY OF PERPETRATORS IN CIVIL ASPECTS

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ABSTRACT

This study aims to determine the application of restitution rights for child victims of bullying as the responsibility of perpetrators in civil aspects. Currently, there are many cases of bullying that affect children as victims. This not only results in physical injury but also psychological harm, with some cases even leading to permanent disability or death. Law Number 35 of 2014, which amends Law Number 23 of 2002 concerning Child Protection, serves as a legal instrument to ensure the protection of all rights inherent in a child. In the process of law enforcement, perpetrators are sometimes subject to criminal sanctions. However, problems arise when the perpetrator refuses to pay restitution as a civil right of the bullying victim. Supreme Court Regulation (Perma) Number 1 of 2022, which pertains to Procedures for Settling Applications and Granting Restitution and Compensation to Victims of Criminal Acts, does not provide a mechanism for coercing perpetrators to pay restitution. This study employs a qualitative research approach, which produces descriptive data on the issues related to the application of restitution rights for child victims of bullying as the responsibility of perpetrators in civil aspects under Law No. 35/2014. The normative legal research approach was conducted to explore the forced right to restitution for bullying victims against bullies, as stipulated by Law No. 35/2014. In practice, in addition to criminal responsibility, bullies can also be held accountable for their actions in civil aspects by granting restitution rights to their victims. The regulation of restitution rights in Law No. 35/2014 and Perma No. 1/2022 serves as evidence that the state acts as an agent in fulfilling legal protection for victims of bullying, both preventively and repressively. However, there is still a need for a legal instrument in the law enforcement process, which could serve as a basis for imposing substitute penalties on perpetrators who refuse to pay restitution to their victims. This would not only have a deterrent effect on bullies but also ensure justice for their victims.

Keywords: Restitution Rights, Child Victims, Civil Responsibility, Legal Protection, Bullying Cases

INTRODUCTION

In bullying that occurs in schools, an important factor that is often overlooked is the lack of empathy for others. This lack of empathy, particularly within the school environment, leads to a situation where bullying behaviors are normalized, creating an uncomfortable and frightening atmosphere for children who are neither perpetrators nor victims. Many witnesses of bullying choose to ignore what they see and do not report it to the authorities, and some even find amusement in the situation. According to the theory of victimology, it is crucial to recognize the rights of the victims, especially since bullying is still not widely acknowledged as a serious problem and is considered normal behavior amongst children.¹

That's unfortunate, considering the scary impact of bullying. Psychologically, victims can experience depression, emotional discomfort, become anxious and restless, and even inflict harm upon themselves or contemplate suicide under certain circumstances. The social impact is equally alarming. Victims tend to avoid crowds, lose self-confidence, and exhibit aggressive and emotional behavior towards friends and family. Some even become antisocial later on. Ultimately, the most concerning aspect for all children is that bullying can negatively impact their growth and development in the future.

Article 1, point 2 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection (hereinafter referred to as Law No. 35/2014), states that child protection encompasses all activities aimed at ensuring and safeguarding the rights of children. This is done to ensure that they can live, grow, develop, and participate optimally in society, while upholding their inherent human dignity. Child protection also includes safeguarding children from violence and discrimination.

¹ Flowers, Goddess, "Analysis of Cyberbullying in Multiple Perspectives of Victimology Theory." *Journal of Vyavahar Duta*, Vol.14, No.2, 2019, pp. 48-63



In this context, "violence" is defined in Article 1, number 15a of the same law. It covers any action that is directed against children and results in physical, psychological, sexual, and/or neglectful harm or suffering. This definition encompasses behavior such as making threats to commit unlawful acts, using coercion, or depriving children of their liberty.

Based on this law, it is revealed that individuals who commit violence against children can face criminal and civil consequences. Article 80 (1) in conjunction with Article 76 c of Law No.35/2014 holds perpetrators of violence against children liable for a maximum prison sentence of 3 years 6 months and/or a maximum fine of Rp 72 million. Furthermore, if a child victim of violence sustains serious injuries, Article 80 paragraph (2) allows them to claim compensation of up to Rp 100 million. This means that child victims of violence are entitled to receive both material and immaterial compensation from the perpetrator. This responsibility is also known as the Right to Restitution and is addressed in Article 71D paragraph (1) in conjunction with Article 59 paragraph (2) of Law No.35/2014.

Article 28B, paragraph (2) of the Constitution of the Republic of Indonesia Year 1945 guarantees the protection of children, stating that every child has the right to survival, growth, and development, as well as the right to protection from violence and discrimination. By the end of 2022, KPAI received 502 complaints of child victims suffering from physical and psychological violence.² 81 of them were child victims of bullying in the school environment, whereas there were 18 cases of bullying in cyberspace. In contrast, the data from 2021 reported 53 cases of children being bullied in school and 168 cases of cyberbullying. On one hand, there has been a decrease in cyberbullying cases, but on the other hand, there has been a significant increase in the number of bullying incidents in the school environment.³ In January-

² <https://nasional.kompas.com/read/2023/01/21/14561121/kpai-terima-502-pengaduan-terkait-kekerasan-anak-sepanjang-2022> Retrieved 5 July 2023

³ <https://bankdata.kpai.go.id/tabulasi-data/data-kasus-perlindungan-anak-2021> Retrieved 5 July 2023

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June 2023, there will be 97 complaints, primarily by victims of bullying in schools.⁴ The number is not believed to include victims who do not dare to report to the authorities. The reason is almost uniform because there is a threat by the perpetrator if he reports, or they feel humiliated.

Based on the available data, it can be seen that every child has received legal protection that is guaranteed by the state through existing legal instruments. However, limited access to information regarding the fulfillment of these legal protection rights, as well as a lack of courage to report incidents, has resulted in repeated cases of bullying against children. Additionally, when cases do reach the judicial process, perpetrators are often only sentenced to criminal sanctions. Fulfilling a sense of justice for victims involves more than just punishment; it also includes the cost of restoring their physical and psychological well-being, which falls under the civil aspect. What is even more concerning is that justice in bullying cases is typically resolved within the realm of ethics and morals.

Based on the explanation above, this study was conducted to examine how restitution rights for child victims of bullying can be implemented as a responsibility of the perpetrators in civil matters. The presence of the right to restitution in Law No. 35/2014 serves as evidence that the state is actively providing preventive and repressive legal protection for every child victim of bullying.

RESEARCH METHODS

This research is a normative legal study. The sources for legal materials in this study include primary legal materials and secondary legal materials.⁵ The technique used to collect these legal materials involves conducting library research, which entails reviewing written information from various sources such as books, legal journals, laws, and court decisions. This type of research falls under the

⁴ <https://www.kompas.id/baca/opini/2023/09/29/perundangan-dan-bunuh-diri-anak> Retrieved Thursday, February 15, 2024 at 15:30 WIB

⁵ Peter Mahmud Marzuki, *Legal Research*, Kencana Prenada Media Group, 2021, Jakarta, p.181

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category of qualitative research, which is a research procedure that generates descriptive data on issues pertaining to the enforcement of restitution rights for child victims of bullying and the liability of the perpetrators in civil matters in accordance with Law No. 35/2014. In this type of qualitative research, the process of data analysis involves data verification. The findings from the literature review were compared with the findings from the other two stages of research, and the analysis was then focused on identifying any gaps between the existing data. The research approach employed is a normative legal research approach (or legal research). The normative legal research approach was used to identify the mandatory rights for victims of bullying to receive restitution from the bullies, as outlined in Law No. 35/2014. The research itself is a descriptive analysis, which involves producing descriptive data analysis using methods that aim to describe the current condition and situation based on legal theory and applicable laws and regulations.⁶

RESULTS OF RESEARCH AND DISCUSSION

Article 1, point 1 of Law No. 35/2014 states that: "A child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb." Referring to the subsequent article, child protection encompasses all activities aimed at ensuring and safeguarding the rights of children. The objective is to enable them to live, grow, develop, and participate optimally, while upholding their human dignity and receiving protection from violence and discrimination.⁷ That is, child protection as a whole is the obligation of all elements of society because what is meant by "all activities" to guarantee and protect children definitely requires synergy from many community members.

⁶ Amiruddin, 2012, Introduction to Legal Research Methods, PT Raja Grafindo Persada, Jakarta, p.25

⁷ Article 1 number 2 of Law No.35/2014



Children, as victims, are parties who suffer and experience losses due to criminal acts. However, in the law enforcement process currently occurring in Indonesia, the involvement of victims in prosecuting perpetrators is still limited to providing testimony as victim witnesses. Consequently, this situation often leads to disagreement between victims and the criminal charges submitted by the Public Prosecutor, particularly concerning the verdict decided by the Judge. In the context of victim protection, it is crucial to consider the essence of loss.⁸ Victims of criminal acts have the right to seek compensation for their losses, with one form of compensation being restitution.

In Bahasa, restitution is indemnity or repayment.⁹ In legal terms, it refers to the restoration of the victim's condition or compensation for the losses suffered by them, both physically and mentally. In practice, restitution aims to bring the victim back to their original state before the crime occurred, although it is understood that it cannot fully restore them to their original condition. Supreme Court Regulation (Perma) Number 1 of 2022, which deals with the procedures for completing applications and granting restitution and compensation to victims of criminal acts, provides further clarification on the concept of restitution. According to Article 1 point 1 of Perma, restitution is the compensation given to victims or their families by criminal offenders or third parties.

Protection of children who are victims of bullying in legal instruments in Indonesia is a civil legal protection that grants the right to children who are victims of violence (bullying) to claim material/immaterial compensation from the perpetrators of violence. This is regulated in Article 71D, paragraph (1), and Article 59, paragraph (2), letter i of Law No. 35/2014. Children who face the law, are economically and/or sexually exploited, victims of pornography, victims of kidnapping, sale, and/or trafficking, as well as victims of sexual crimes, including

⁸ Muladi, 2002, *Human Rights, Politics and the Criminal Justice System*, Semarang: Diponegoro University Publishing Board, p. 177

⁹ <https://kbbi.web.id/restitusi>



children who are victims of physical and/or psychological violence (bullying), have the right to apply for restitution rights in court and hold the perpetrator responsible. This also demonstrates the State's commitment to providing special protection for these children.

Requests for restitution rights are generally filed through civil lawsuits to claim compensation from the abusers for the losses suffered. The purpose of providing the right to restitution is not only to help restore the victim's condition prior to becoming a victim of a criminal act, particularly in terms of their physical and psychological recovery, but also to encourage the perpetrator of the crime to be held accountable for their actions. The State aims to bring justice to the victims.

One of the reasons for the issuance of Perma No.1/2022 is because until now there have been no technical regulations for completing applications for restitution rights even though they have been regulated in several laws and regulations.¹⁰ In this Perma, the request for restitution rights provides victims with an opportunity to seek compensation for the losses they have suffered. Applications can be submitted either during the trial process or after the court decision has become legally binding. In the case of a child victim, the application may be filed by their parents, family, guardian, heirs, attorneys, or LPSK, as specified by the relevant laws and regulations.

The two different situations in applying for restitution rights also result in the process of paying restitution to victims by perpetrators being different. Payment of restitution is carried out by the criminal offender or a third party no later than 30 days after the criminal offender or third party receives a copy of the court decision that has permanent legal force. If the request for compensation is submitted after the decision of the main case has permanent force, the LPSK or the court will arrange the payment of restitution in accordance with applicable legal provisions. In the case

¹⁰ Letter b Consideration of Supreme Court Regulation Number 1 of 2022 concerning Procedures for Resolving Applications and Granting Restitution and Compensation to Victims of Criminal Acts ("Perma 1/2022")

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of a criminal victim who dies, compensation will be given to the victim's family, who are the victim's heirs.

Indonesia, as a country, is already in a state of emergency regarding bullying. Some time ago, there were even children who were victims of bullying and ended their lives. A student in Pesanggaran sub-district, Banyuwangi, East Java, was found dead by hanging himself in his home. Police said the motive for suicide was that the victim was depressed due to bullying.¹¹ During January-September 2023, based on records from the Indonesian Child Protection Commission (KPAI), there were 10 child suicides, an increase of 10 percent compared to the same period last year. More concerningly, 60% are victims of bullying.¹²

There are also victims of bullying who experience permanent disabilities. Such as what happened to a 12-year-old child who resulted in leg amputation in Bekasi, West Java in April 2023.¹³ Or the bullying experienced by MAN 1 Bandar Lampung students on September 20, 2022. As a result, his head experienced charcoal freezing, tilted nose bones until the soft bones of the ears were broken and doctors were sentenced to permanent disability.¹⁴ Even on February 2, 2024, there was bullying of one of the International High School students in Jakarta as indicated by Article 76c of Law No. 35/2014 with a penalty of five to six years in prison for causing physical and psychological injuries.¹⁵ What concerns the bully is also fellow students at school.

¹¹ <https://www.cnnindonesia.com/nasional/20230302144237-20-919906/siswa-sd-banyuwangi-bunuh-diri-diduga-sering-diolak-karena-anak-yatim>. Retrieved Thursday, February 15, 2024 Time: 15:14 WIB

¹² <https://www.kompas.id/baca/opini/2023/09/29/perundungan-dan-bunuh-diri-anak> Retrieved Thursday, February 15, 2024 at 15:30 WIB

¹³ <https://www.beritasatu.com/megapolitan/1075137/bullying-anak-di-bekasi-berujung-amputasi-polisi-naikkan-status-ke-penyidikan> Retrieved Tuesday 27 February 2024

¹⁴ <https://radarlampung.disway.id/read/657379/kasus-perundungan-yang-akibatkan-siswa-cacat-permanen-begini-penjelasan-pihak-sekolah> Retrieved Tuesday 27 February 2024

¹⁵ <https://radarjogja.jawapos.com/nusantara/654199501/kronologi-kasus-pembullyingan-di-binus-school-serpong-yang-diduga-melibatkan-anak-vincent-rompies> Retrieved Tuesday 27 February 2024



Victims of bullying who suffer permanent disabilities incur significant expenses for their healing and recovery. It is not uncommon for the recovery process to be lengthy and costly. Unfortunately, this condition is frequently overlooked by both the perpetrator's family and law enforcement. Consequently, in order to not only penalize the offenders, but also provide necessary support, victims should be entitled to receive restitution.

Article 1365 of the Civil Code stipulates that any act that violates the law and causes harm to another person incurs an obligation on the part of the responsible party to provide compensation for the resulting loss. Consequently, individuals who are victimized due to the actions of others have the right to seek compensation. Perma No.1/2022, enacted by the state, serves to ensure that victims of bullying can exercise their civil rights and access legal remedies in cases of bullying.

In general, when it comes to instances of bullying, victims also have the option to file civil lawsuits in order to claim compensation from the perpetrators on the basis that they have committed unlawful acts. However, it is important to note that filing a claim for restitution against the bully should be done after obtaining a criminal verdict that holds the bully accountable, which has gained permanent legal force. This precautionary measure allows for the facilitation of proof required for claiming compensation.

In the procedure for filing restitution for child abuse cases, the victim is a child, the application is submitted by parents, family, guardians, heirs or attorneys, or LPSK.¹⁶ In Article 4 of Perma No.1/2022, the concept of restitution is explored, with consideration given to the various forms it can take. This includes compensation for the loss of wealth and/or income, as well as compensation, whether material or immaterial, incurred due to direct suffering resulting from the criminal act. The reimbursement of medical and/or psychological treatment costs is also a component of restitution, alongside other losses experienced by the victim as

¹⁶ Article 5 paragraph (3) of Perma 1/2022

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a consequent of the criminal act. These losses may encompass basic transportation costs, attorney fees, and other expenses linked to legal proceedings.

Throughout the course of the trial, it is imperative that the judge notifies the victim or their representative about the application for restitution. Recognizing this process as a fundamental right for the victim, it is worth noting that the public prosecutor may also initiate the restitution process during or after the trial, particularly following a court decision that holds permanent legal force. In such cases, restitution is instigated on criminal charges.

By providing a comprehensive framework for the submission of restitution, Perma No.1/2022 ensures that victims receive compensation in a variety of forms, thereby aiming to restore their wellbeing and address the adverse consequences of the criminal act.

Essentially, a criminal verdict against the perpetrator does not negate the rights of the victim to file a civil lawsuit, with representation by their family, heirs, or guardians. The entitlement to restitution for victims of bullying is not subject to any conditions. Even in cases where the perpetrator is ultimately dismissed or acquitted in the judge's decision, or if the perpetrator has been convicted but the victim has experienced unrecovered losses that were either not initially sought for restitution or were disregarded by the judge, the victim still retains the right to seek restitution in their civil lawsuit.¹⁷

Determining the benchmark for formulating the amount of restitution is a complex task that is influenced by the social status of both the perpetrator and the victim. When the victim possesses a lower social status than the perpetrator, the emphasis is placed on providing compensation in material form. Conversely, when the victim possesses a higher social status, the focus shifts towards restoring the victim's self-esteem.¹⁸

¹⁷ Article 9 of Perma 1/2022

¹⁸ Lies Sulistani, *The Urgency of Increasing the Role of Witness and Victim Protection Institutions*, Ctk. Kesatu, Field of Law, Dissemination, and Public Relations of Witness and Victim Protection Institutions, 2011, Jakarta, pp.191-192

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One case that received judicial recognition of victim restitution rights up to the level of cassation in the Supreme Court was the case involving the persecution perpetrated by Mario Dandy Satrio against Cristalino David Ozora. The verdict, as stated in Decision Case Number 101/K/Pid/2024, pronounced on Wednesday, February 21, 2024, imposed a prison sentence of 12 years and ordered the offender to pay restitution amounting to IDR 25 billion.¹⁹

In reference to the aforementioned statement, it is essential to note that the right to restitution is a legal entitlement that necessitates proactive solicitation in order to ensure its realization. This right, enshrined in the constitution, is bestowed upon the victim and mandates its fulfillment by the perpetrator as a means of assuming accountability for their actions. Paradoxically, it is lamentable to acknowledge that, thus far, no concrete provisions have been established in terms of a technical framework to facilitate the resolution of these restitution claims.²⁰ If a bully refuses to pay restitution, claiming inability or unwillingness to fulfill the obligations determined by the LPSK, a legal vacuum is created. Consequently, victims are unable to exercise their rights to the fullest extent. This situation leads to an unjust outcome for victims, who should be entitled to receive compensation for physical, psychological, and material losses. In cases involving children facing legal consequences, the child victim is the rightful recipient of restitution, taking into account any special conditions that may apply.²¹

The bully's refusal to pay restitution, which typically negates the excuse of inability to pay, not only violates the victim's constitutional rights but also perpetuates a double injustice. This double injustice arises from the physical and

¹⁹ <https://tribrataneews.lampung.polri.go.id/detail-post/kasasi-ditolak-mario-dandy-divonis-12-tahun-penjara-dan-denda-rp25-m#carouselExampleIndicators>
Retrieved Tuesday 27 February 2024

²⁰ Letter b Consideration of [Supreme Court Regulation Number 1 of 2022 concerning Procedures for Resolving Applications and Granting Restitution and Compensation to Victims of Criminal Acts](#) ("Perma 1/2022")

²¹ <https://pn-palopo.go.id/index.php/publikasi/artikel/164-paradigma-baru-hukum-perlindungan-anak-pasca-perubahan-undang-undang-perlindungan-anak>
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psychological impact of bullying on the victim as well as the financial and emotional burden endured by the victim's family. The hindrance to fulfilling the right to restitution extends beyond the perpetrator's refusal; it also encompasses the significant disparity between the restitution amount calculated by the LPSK and its actualization in court. In the year 2020, the LPSK determined a cumulative restitution sum of approximately Rp 7 billion for all cases, yet the court only executed a nominal amount exceeding Rp 100 million.²² As of now, individuals who perpetrate wrongdoing and refuse to provide restitution continue to feel at ease, as there are no enforceable regulations compelling them to fulfill their obligations. This includes the absence of standard rules that could serve as guidelines for law enforcement agents in executing the enforcement of these rights.

In accordance with Article 10, letter b of Law Number 1 of 1946 pertaining to Criminal Law Regulations, bullies who have been convicted by the court but refuse to pay restitution may have certain rights revoked as convicts. This provision is also stated in Article 66, paragraph (1) of Law Number 1 of 2023, regarding the Criminal Code. Disenfranchisement can take the form of denying remission rights and other privileges if the convicted individual fails to provide restitution to the victim. By implementing the deprivation of these rights in cases of bullying, the potential for victims to receive restitution will be increased.

It is important to note that the revocation of specific rights can only be carried out in accordance with legal provisions. Perma No. 1/2022 solely regulates the substitution of imprisonment for restitution and is applicable only to offenders involved in trafficking and terrorism. As there is currently no criminal code in place to address restitution for bullying, it is necessary to establish a legal framework that enables law enforcement agencies, particularly prosecutors and judges, to fulfill their roles by issuing innovative rulings in cases similar to the bullying incident involving Mario Dandy some time ago.

²² <https://www.beritasatu.com/news/896635/lpsk-ungkap-modus-para-pelaku-kejahatan-hindari-restitusi> Retrieved Tuesday 27 February 2024

CONCLUSION

Various cases of bullying in schools, which often involve children as victims, typically reach a resolution at the mediation stage. Furthermore, within a school setting, there is often a tendency to prioritize maintaining the good reputation of the educational institution, resulting in the victims and perpetrators being compelled to reconcile. Resolving these issues through familial means is commonly perceived as the most appropriate approach, particularly when the perpetrators are still classified as children. Consequently, the issue of bullying in schools remains primarily addressed as a moral concern, often disregarding the enforcement of legal measures.

In practice, beyond criminal liability, bullies may also be held accountable for their actions in the civil context, specifically through the implementation of restitution rights for the victims. The existence of regulations regarding restitution rights, such as Law No.35/2014 and Perma No.1/2022, demonstrates that the state acts as an agent in providing legal protection for victims of bullying, both through preventive and punitive measures. Nevertheless, it is paramount to emphasize the importance of a comprehensive and thorough law enforcement process, particularly the necessity for a legal instrument that enables the pursuit of substitute charges against perpetrators who refuse to fulfill their obligation to compensate their victims. Such legal measures would not only serve as a deterrent to potential bullies but also ensure justice for the victims.

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Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection

Supreme Court Regulation Number 1 of 2022 concerning Procedures for Settling Applications and Granting Restitution and Compensation to Victims of Criminal Acts