

# CHAPTER I

## INTRODUCTION

### 1.1 Background

Recently, the action of bullying, which can happen to anyone, at any time, and / or any place, such as at school, on the road, in the circle of the family, friendship, and at work, especially that happened to children in schools have become a spotlight and part of conversations and discussions.<sup>1</sup> According to the National Centre Against Bullying (NCAB), Bullying occur when an individual or group with a stronger power or dominance, continuously and repeatedly hurt and endangered other people that have a weaker power than them, which then resulting the victims unable to fight them back.<sup>2</sup> The phenomenon of bullying, which could be found happening in schools, is increasingly happening in various parts of the world.<sup>3</sup> Quoted from the explanation about bullying on *Bullying.co.uk*, the term “bullying” could be defined as repeated behavior which is intended to hurt someone either emotionally or physically, and is often aimed at certain people because of their race, religion, gender or sexual orientation or any other aspect such as

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<sup>1</sup> A. Mahardini, “Bullying (Perundungan): Penyebab, Jenis, Dampak”, <<https://health.kompas.com/read/2020/02/14/103300668/bullying-perundungan---penyebab-jenis-dampak?page=all>>, accessed in March 3, 2021

<sup>2</sup> F. Saad, “Kenapa Bullying Bahaya dan Seharusnya Tidak Perlu Kamu Lakukan”, <<https://www.zenius.net/blog/22801/dampak-bullying-yang-membahayakan-bagi-korban>>, accessed in March 3, 2021

<sup>3</sup> Michelle Salim, Adriana S. Ginanjar, “Hubungan Antara Empati Dengan Perilaku Bullying dan Defending Terhadap Siswa Dengan ASD (Studi Pada Siswa Reguler Di SMPN Inklusif Di Jakarta), Program Studi Sarjana Reguler Fakultas Psikologi, Universitas Indonesia, pg. 1

appearance or disability.<sup>4</sup> Bullying does not only happen in the school environment, but could also happen in the workplace, either physically or verbally, in which could take form on actions such as giving excessive workload, spreading false rumors, or criticizing for no apparent reason.<sup>5</sup> In the research of J.D. Unnever and D.G. Cornell in 2004, it is then found and mentioned that bullying is commonly found happen to children during their 6<sup>th</sup> to 8<sup>th</sup> grade.<sup>6</sup> However, bullying could also be found among adults. Bullying could be found in the form of physical or verbal (through words) actions, which could be done directly by a person through speaking as part of a social interaction and through electronic media, or also called Cyberbullying.<sup>7</sup>

Bullying is one of the big problems that are still unable to be completely resolved in the education environment, due to the fact that the act of bullying mostly happened without the knowledge of the authorities at the school, also resulting to the difficulties to track these actions and the possibilities for the act to happen all over again for years, in which could result to a traumatic effect to the victims.<sup>8</sup> Irma Devita, in her article, implicitly added that acts of bullying cannot be considered as trivial actions

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<sup>4</sup> “What is Bullying?”, <<https://www.bullying.co.uk/general-advice/what-is-bullying/>>, accessed in March 3, 2021

<sup>5</sup> T. Annisa, “Ini Tanda-tanda Bullying di Tempat Kerja dan Cara Mengatasinya”, <<https://www.sehatq.com/artikel/tanda-tanda-bullying-di-tempat-kerja-dan-cara-mengatasinya>>, accessed in March 3, 2021

<sup>6</sup> Matraisa Bara Asie Tumon, “*Studi Deskriptif Perilaku Bullying pada Remaja*”, Calyptra: Jurnal Ilmiah Mahasiswa Universitas Surabaya, Vol. 3, Number 1, 2014, pg. 8

<sup>7</sup> Yuli Permata Sari, Welhendri Azwar, “*Fenomena Bullying Siswa: Studi Tentang Motif Perilaku Bullying Siswa Di SMP Negeri 01 Painan, Sumatera Barat*”, Ijtimaiyya: Jurnal Pengembangan Masyarakat Islam, Vol. 10, Number 2 November 2017, pg. 346

<sup>8</sup> D. Irma, “Bullying dan Ancaman Hukumnya”, <<https://irmadevita.com/2020/bullying-dan-ancaman-hukumnya/>>, accessed in July 24, 2020

and would just be resolved through motivational words for the victim; the act of bullying requires a special treatment to handle and coupled with firmness in applying the rules.<sup>9</sup> Although bullying that occur in schools is often found carried out by schoolmates, teachers, and / or academic staff, but in most cases that are found are cases of bullying by friends, either done by an individual or a group.<sup>10</sup> Different opinions between individuals or groups are factors that cause bullying to occur. Physical, psychological, social conditions (economic, religious, cultural, and gender) are some of the factors that might also trigger bullying.<sup>11</sup>

Bullying, which is increasingly occurring and not being handled quickly, has led some people to view bullying as an action that is common in society, causing more and more people to bully others and resulting to more victims of bullying to appear.<sup>12</sup> In 2007, Coloroso, and McCulloch & Barbara classified bullying, which include acts of intimidation, harassing or obstructing others, and more other acts, into several types, which includes physical bullying, verbal intimidation, social intimidation and cyberbullying.<sup>13</sup>

Physical bullying includes acts of physical violence such as kicking, hitting, tripping other people, pushing, or damaging other people's property or

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<sup>9</sup> *Ibid.*

<sup>10</sup> Kusuma Kartika, Hima Darmayanti, Farida Kurniawati, “*Fenomena Bullying di Sekolah: Apa dan Bagaimana?*”, *Pedagogia Jurnal Ilmu Pendidikan*, May 12, 2019, pg. 56

<sup>11</sup> *Ibid.*

<sup>12</sup> A. Nitish, “Pentingnya Mencegah Bullying”, <<https://www.klikdokter.com/info-sehat/read/3617974/pentingnya-mencegah-bullying>>, accessed in March 4, 2021

<sup>13</sup> Masdin, “*Fenomena Bullying Dalam Pendidikan*”, *Jurnal Al-Ta'dib*, Vol. 6, Number 2 December 2013, pg. 78

other things that are done so as to make victims feel short-term damage or long-term damage that can be in the form of injuries or blisters on body parts, feeling of deep fear such as trauma, and others.<sup>14</sup> Verbal bullying is a form of bullying done by someone through the words he says to others. According to the information from the National Centre Against Bullying website page, verbal intimidation includes name calling, insults, ridicule, intimidation, homophobic or racist remarks, as well as verbal harassment.<sup>15</sup>

Social bullying is a hidden intimidation, which is designed to damage a person's social reputation and / or cause humiliation and resulting to the difficulties of recognizing the bully due to it being carried out behind the person being intimidated, including lying and spreading rumors or gossip, negative facial or physical movements, appearing threatening or insulting, playing evil jokes to embarrass others, encouraging others to socially exclude someone, and damaging one's social reputation or social acceptance.<sup>16</sup> Cyberbullying is an intimidation by one person to another through cyberspace. Cyberbullying can take the form of open or confidential intimidation using digital technology, which includes hardware such as computers and smartphones, and software such as social media, instant messages, texts, websites and other online platforms, and therefore includes emails or posts, images, or videos that are abusive or painful, intentionally

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<sup>14</sup> R. Nenti, "Pengertian Bullying dan Jenis-jenisnya yang Harus Diwaspadai", <<https://www.sehatq.com/artikel/pengertian-bullying-dan-jenis-jenisnya-yang-harus-diwaspadai>>, accessed in March 4, 2021

<sup>15</sup> "Types of Bullying", <<https://www.ncab.org.au/bullying-advice/bullying-for-parents/types-of-bullying/>>, accessed in March 4, 2021

<sup>16</sup> Masdin, Loc. Cit.

exclude others online, bad rumors or rumors on social media, and imitate others online or use their logins.<sup>17</sup>

Bullying could be referred to as a systematic violence, which is used to intimidate and maintain dominance, resulting to common element among the victims of bullying that would be experiencing terror that will keep coming to their minds and affect their psychology due to the act of the bullies that were overpowering them and causing them to not having a chance to stand up for themselves.<sup>18</sup> Based on the common perspective of people in Indonesia, bullying is most common in the society of children. Everyone's views on bullying also differ. Some people view bullying as a serious thing due to the damage it can cause to the mental side of someone, especially if it happens to children who do not have a strong mentality to deal with bullying that occurs to them in their social surroundings. On the other hand, in the opinion of some other people, bullying is something that is common among children and is part of the material to joke and foster friendships in their social environment.

In a website page of UNAIR News that discusses understanding the phenomenon of bullying among Indonesian youths stated that bullying among youths is a global problem and is widely known to have a negative

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<sup>17</sup> P. Nur Hidayah, "Memahami Bullying dan Jenis-Jenis Intimidasi", <<https://tirto.id/memahami-bullying-dan-jenis-jenis-intimidasi-ekdN>>, accessed in July 23, 2020

<sup>18</sup> R. Muchlisin, "Pengertian, Unsur, Jenis, Ciri-ciri dan Skenario Bullying", <[https://www.kajianpustaka.com/2018/01/pengertian-unsur-jenis-ciri-ciri-dan-skenario-bullying.html#:~:text=Menurut%20Olweus%20\(2005\)%2C%20bullying,atau%20sebagai%20sebuah%20penyalahgunaan%20kekuasaan%2F](https://www.kajianpustaka.com/2018/01/pengertian-unsur-jenis-ciri-ciri-dan-skenario-bullying.html#:~:text=Menurut%20Olweus%20(2005)%2C%20bullying,atau%20sebagai%20sebuah%20penyalahgunaan%20kekuasaan%2F)>, accessed in July 26, 2020

impact on victims.<sup>19</sup> On this page, it is also said that Indonesia is one of the countries suspected of still experiencing a high rate of bullying, such as bullying behavior among adolescents, even though the exact data is still unknown. As many as 40% of teenagers have been bullied at school and 32% reported that they have been victims of physical violence. The results of the Indonesian Ministry of Social Affairs survey in 2013 showed that one in two young men (47.45%) and one in three young women (35.05%) were reported to be intimidated. Further data from the 2015 Global School-based Student Health Survey (GSHS) showed that 24.1% of male teenagers and 17.4% of female teenagers had been intimidated.<sup>20</sup>

Some cases that are popular all over the world at this time are a result that occurs due to someone experiencing bullying in the environment ended up in someone decides to commit suicide. One of the examples of this case occur recently. Quoted from CNN Indonesia article, in September 1, 2020, Albertus Berfan Christian, a college student of Medical Faculty in Airlangga University, committed suicide. One of the causes of the act of Albertus was predicted as a result of bullying that was done by his seniors in the Specialist

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<sup>19</sup> E. Ferry, “Memahami Fenomena “Bullying” di Kalangan Remaja Indonesia”, <<http://news.unair.ac.id/2019/09/02/memahami-fenomena-bullying-di-kalangan-remaja-indonesia/#:~:text=Bullying%20di%20kalangan%20remaja%20adalah,berulang%20dan%20melibatkan%20ketidakseimbangan%20kekuatan.>>, accessed in July 25, 2020

<sup>20</sup> *Ibid.*

Doctor Education Program (PPDS) Reconstructive and Aesthetic Plastic Surgery in the Faculty of Medicine of Airlangga University.<sup>21</sup>

In an article from CNN Indonesia, among youths, bullying can be said as an entry point for various mental health disorders such as depression that can cause someone to end up committing suicide. According to Agung Frihanto, a mental health expert at the Indonesian Ministry of Health, many cases of mental health disorders due to bullying are not handled properly.<sup>22</sup> The reason is, teens are often not open about the problems they experience. Likewise with parents and teachers who neglect the conditions of youths. Global data from WHO in 2018 shows that the problem of killing is the most common cause of death in the age group of 15-29 years.<sup>23</sup> The results of a survey from the Global School-Based Student Health Survey in Indonesia in 2015 found that 1 in 20 teenagers had felt suicidal. Suicidal ideation reaches 5.9 percent in adolescent girls and 3.4 percent in adolescent boys. As many as 20.7 percent of adolescents have also experienced bullying.

Quoted from CNN, a recent study from the California Healthy Kids Survey in 2019 shows, bullying has short-term and long-term effects for adolescents. Teenagers who are abused by their friends for whatever reason have a worse long-term mental health impact than children who are treated

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<sup>21</sup> CNN Indonesia, “Mahasiswa Unair Meninggal, Kemendikbud Benahi Aturan Bullying”, <<https://www.cnnindonesia.com/nasional/20200901102429-20-541446/mahasiswa-unair-meninggal-kemendikbud-benahi-aturan-bullying>>, accessed in September 23, 2020

<sup>22</sup> CNN Indonesia, “Bullying Jadi Pintu Masuk Ide Bunuh Diri pada Remaja”, <<https://www.cnnindonesia.com/gaya-hidup/20191009115236-255-438016/bullying-jadi-pintu-masuk-ide-bunuh-diri-pada-remaja>>, accessed in July 26, 2020

<sup>23</sup> *Ibid.*

badly by adults. Youths that experience bullying are more likely to experience anxiety, depression, and consider self-injury and suicide later in life. To prevent health problems in youth society, parents and teachers play an important role in educating children to get along without bullying. Teenagers who experience bullying must also get attention so that trauma and anxiety can be cured.<sup>24</sup>

From a legal perspective, bullying has aspects of criminal law and civil law. Most people see bullying more often from the perspective of criminal law. This is because of the perspective of most people too, which views bullying more frequently with children so bullying is more often discussed using Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection (Child Protection Law). Based upon this law, bullying can be categorized as a form of violence. In Article 1 (16) of Child Protection Law, violence includes any act against a child which results in physical, psychological, sexual and / or neglect or suffering, including threats to commit acts, coercion or deprivation of liberty unlawfully. Therefore, based on that explanation, bullying is included in the form of violence against children. On the other hand, the Law on Child Protection also has a civil aspect, namely the granting of the right to child victims of violence (bullying) to demand material / immaterial compensation for perpetrators of violence. This is regulated in Article 71D (1) jo. Article 59 (2i) of the Child Protection Law, which says that every child victim

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<sup>24</sup> *Ibid.*

according to these articles, has the right to submit to court in the form of the right to restitution which is the responsibility of the perpetrator.

There is also a factor of one's age, in which according to the Child Protection Law, people who are considered as a child are those who are not yet 18 years old. However, the fact is, bullying does not only occur to children under the age of 18, but also often occurs to people over the age of 18, which according to the Law on child protection, is already an adult. Since "children" in the Child Protection Law are those who are less than 18 years, it can be concluded that the law is no longer a protection for those aged 18 years and over.

Referring to Article 9 (2) of Law No. 39 of 1999 concerning Human Rights (Human Rights Law), every person has the right to peace, security, peace, happiness, prosperity physically and mentally. Based on this article, we can take out an understanding that every person, regardless of age, race, social status, has the right to feel peace, security, happiness, prosperity physically and mentally. Therefore, based in this explanation, not only a child who is under 18 years old, but also those whose age is 18 above should also have their rights protected.

Based on the explanation above, the author is interested to research more on connection between the act of bullying, as an act that violates human rights and its connection to the civil law of Indonesia, specifically on its connection to Tort Law. Furthermore, the author would like to cover

regarding the availability of any legal protection concerning the rights of youth to adult citizens (citizens who age above the age limit of a child in Child Protection Law), who experience bullying in their society.

## **1.2 Formulation of Issues**

1. What are the legal protections for youths and adults who are victims of bullying, who are no longer categorized as children according to Law No. 23 of 2002 on Child Protection?
2. Due to the fact that bullying is an act that is considered as taking someone else's right, can the act of bullying in society be categorized as a tortious act?

## **1.3 Research Purpose**

1. To educate the readers regarding the importance of a person's right to have peace, security, happiness, prosperity physically and mentally while living in a society without a discrimination of age.
2. To inform the readers regarding the possible legal protection that could be obtained by youth individuals, specifically those who are not considered as a child.

## **1.4 Research Benefits**

### **1.4.1 Theoretical Benefit**

1. To educate readers, schools, government and institutions regarding the importance of the rights of a person to have peace, security,

happiness, prosperity physically and mentally while living in a society without a discrimination of age.

2. To inform readers, schools, government and institutions regarding the need of legal protection of the rights for all individuals, not only to children, but also to those who are not considered children anymore.

#### 1.4.2 Practical Benefit

1. To raise awareness of readers, schools, governments and institutions regarding the importance of handling bullying as a serious matter within the youth society.
2. To raise the awareness of readers, schools, governments and institutions regarding the importance of legal protection regarding bullying for all people regardless of age, ethnicity, race, and religion.

### 1.5 Structure of Writing

#### Chapter 1: Introduction

At the time someone went to school, they must have or even often encountered deeds that were not in accordance with school regulations performed by fellow students. People who attend school must also often find something called Bullying. Bullying that occurs throughout the world does not recognize age, in the sense that it can occur in children who are still in school, adolescents, even adults. Bullying also takes place in various forms such as physical violence, verbal violence, and bullying through social media, which is now better known as cyberbullying. At present, schools in the world,

including Indonesia, are building an anti-bullying movement. As citizens of Indonesia, the rights of someone are protected. Since bullying does not only occur to children, but also to adolescents and adults, it means that adolescents' and adults' rights need to be protected too. The legal protection about bullying that we could find is more for children. On the other hand, we rarely hear about the protection of bullying whose victims are teenagers or adults. In fact, in fact, it is not only children who feel the effects of bullying, but adolescents and adults can also feel the effects, as we often hear, namely social pressure.

## Chapter II: Literature Review

Rosen et al. (2017) explains several factors that cause bullying in his book, including internal and external factors. Internal factors that cause bullying are temperamental factors and psychological factors on the intensity of acts of aggression, while the external factors that cause bullying includes parenting, which happens at their family. Family is considered as the first social institution a child would encounter. Marini, Farbaim, and Zuber (1999), in their journal, simplified the role of bullying into three groups which included bullies or perpetrators of bullying, victims, and bystander or supporting roles that supported bullying.

## Chapter III: Research Methodology

In this study, the author has used a type of normative legal research by comparing written theories and regulations, with existing issues. In Normative Legal Research, the data used are secondary data. Secondary data in legal

research can be classified into 3 (three) levels, namely Primary Legal Materials (Indonesian Civil Code, Law No. 39 of 1999 concerning Human Rights, etc.), Secondary Legal Materials (books, journals, etc.), and Tertiary Legal Materials (dictionaries, websites, etc.). In this study, the secondary data is obtained through literature study or library research, which is a technique for gathering information relevant to topics or problems that are the object of research through books, scientific papers, theses, dissertations, encyclopedias, the internet, and other sources. In this research, the information is mostly obtained from internet journals. The author used the approach on legal case or case study, which is carried out by analyzing relatable cases, which could be with a permanent legal force at the time this research is conducted or not. The analysis of data in this research is done qualitatively through the comparison of the theories created and the implementation of it in the society.

#### Chapter IV: Research Result and Analysis

Bullying is a problem that has been frequently heard around the world. Based on the actions carried out, bullying can be divided into various types, which includes physical bullying, verbal bullying, and cyberbullying. Bullying is an action that is usually discussed in the aspect of criminal law. However, bullying can also be discussed in the aspect of civil law. In the aspect of civil law, bullying can be categorized as a tortious act. In order for an act to be categorized as a tortious act, the act needs to have elements of an illegal act in it that are in accordance with Article 1365 of the Indonesian Civil Code: 1) There is an act; 2) The act is unlawful; 3) There is a fault committed; 4) There

is damage suffered by the victim; and 5) There is a causal relationship between the actions committed and the damage received by the victim. After that, then, the perpetrator would be obliged to pay compensation to the victim.

#### Chapter V: Conclusion and Recommendation

Bullying is an action that violates the rights of others and needs to be taken seriously. At this time, bullying does not only happen to those who are still in elementary school, junior high school, or high school, but also those who are already studying and working. Different in how it is handled, adult bullying can be seen as a more serious treatment. This could be because bullying to adults is more associated with criminal or illegal acts than bullying committed by children. There is a need for a serious view of bullying from various parties, be it family, neighborhood, school, and so on. The support from friends, teachers, and family for those who are victims of bullying will greatly help reduce the losses suffered by victims, especially immaterial losses.