

Resolution of Case of Abuse Against Child Offenders (Comparatory Study Between Bali Customary Law And National Law)

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ABSTRACT

In Indonesia, there is one crime that occurs in the environment of children, known as the crime of abuse or often known as bullying. Bullying cases not only require national law but also customary law. In principle, the settlement of cases in customary criminal law with national law, especially in the handling of crimes committed by children, is the same as in national law in resolving cases using restorative justice whose resolution involves the perpetrator, victim, family of the perpetrator/victim and other parties. Related parties to jointly seek a just solution. In customary criminal law, a similar approach is taken by Adat leaders involving perpetrators, victims, families of perpetrators/victims and other related parties to seek Settlement based on Awig-awig, agreed upon and also using the norms prevailing in Adat people. In the process, it is carried out before the case in question is brought to court, while the settlement through restorative justice is carried out with trial proceedings. The sanction in customary crimes will be imposed if the person concerned repeats the same mistake. In this study, the author uses normative legal research, which focuses on positive legal norms, the Child Criminal Justice System and Customary law in Bali, especially Klungkung and Tabanan areas.

Keywords: Child Abuse, Balinese Customary Law, National Law

1. INTRODUCTION

As we all know, crime continues to develop every year, initially simple, but over time it continues to develop and become more complex. In Indonesia, one of the crimes that occurs among children is the crime of bullying or what is often known as bullying. Bullying itself can be carried out by single perpetrators and groups. The perpetrators bully or intimidate another person or group whose position is weaker or smaller, either in intellectual ability, physical form, economic ability, and other factors or it could be because of ethnicity, belief and culture.

In resolving children in conflict with the law using a restorative justice approach for the victim and the victim's family, it sometimes does not provide justice and a deterrent effect for the perpetrator. It is true that restorative justice is not for punishment for a deterrent effect, but for the improvement/restoration of both parties, therefore it requires other alternatives in handling bullying cases. In law, it is known as *Das Sollen* or referred to as what should be done and *Das Sein* concrete events/facts. The facts that occur in the field in terms of resolving bullying cases usually prioritize the use of a restorative justice approach whose aim is to restore the parties (*Das Sollen*). However, in reality the victim does not receive a sense of justice and the perpetrator does not receive a deterrent effect from his actions. Apart from that, the public will judge that criminal acts committed by minors will receive leniency in punishment.

The resolution of a criminal act does not always only use national law, it can also use customary law or laws that exist in society. This is in accordance with the mandate of Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power which states "Judges and constitutional justices are obliged to explore, follow and understand the legal values and sense of justice that exist in society." So, in resolving bullying cases you can use customary criminal law or customary law. Customary criminal law is written or unwritten regulations that regulate all behavior in society which contains prohibitions and sanctions.

In the Customary Criminal Law/Customary Violation Law, there is no known age limit for the perpetrator and victim. From these provisions, it can be seen that there is no distinction between adult perpetrators and child perpetrators. In other words, the weight of the sanctions imposed is the same. However, in the Law on Customary Offenses, it is known as collective responsibility, which means that if the perpetrator of a customary crime cannot be held accountable for his actions, then his family, relatives or community are responsible. In resolving cases in customary criminal law with national law, especially in handling criminal acts committed by children, it is the same as in national law in resolving cases using Restorative Justice or restorative justice, the resolution of which involves the perpetrator, victim, family of the perpetrator/victim and other parties. related parties to jointly seek a just solution. In Customary Criminal Law, a similar approach is taken by traditional leaders who involve the perpetrator, victim, family of the perpetrator/victim and other related parties to find a solution based on the Awig-awig that has been agreed upon and also using the norms that apply in the traditional community. Apart from that, the thing that is different apart from the rules used by the facilitator is also different. According to Article 9 number 2 of Prosecutor's Regulation Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, it is the public prosecutor who is the facilitator, whereas in customary criminal law the facilitator is the Traditional Prajuru led by the Traditional Banddesa. The process in customary criminal law is carried out before the case in question is submitted to court, while resolution through restorative justice is carried out during the trial process.

Another difference between the handling process in national law and customary criminal law in bullying cases is that there are differences in the guidance and sanctions process. Sanctions in customary criminal law will be imposed if the person concerned repeats the same mistake. In resolving cases of bullying, Awig-awig and pararem (customary law) are still used for sanctions. According to I Made Sukadana, he said that "when the same mistake is repeated". Only then will there be sanctions, which are imposed and then imposed in stages. 1. Improved, 2. No receive customary services and are not permitted to use customary facilities, 3 being excluded from the customary community environment."

2. METHODS

The method used in the research is Normative Legal Research, which focuses on positive legal norms, namely the Child Protection Law, the Child Criminal Justice System Law and Balinese customary law specifically in the Klungkung and Tabanan areas. This research uses secondary data related to the implementation of resolution of criminal cases of bullying against child perpetrators. Data collection consists of literature study by studying primary legal materials and secondary legal materials, which include: Legislation, books related to Balinese customary law, books related to bullying, and other sources. relating to the resolution of criminal cases by applying criminal law/law of Balinese customary violations. Then as secondary data the author conducted interviews with 4 sources, namely Prof. Dr. I Wayan Windia, SH., M.Sc. as a professor at Atma Jaya University Yogyakarta, I Made Sukadana as a PHDI Tabanan figure, I Ketut Surya as the Traditional Bandesa of Jumpai village, Klungkung and Anak Agung Made Aripathi Nawaksara, S.H., M.H. as a panel of judges at the Denpasar District Court. These resource persons have competence in their fields or have experience in certain fields.

3. RESULTS AND DISCUSSION

3.1 Settlement of Abuse Cases Against Child Abusers (Comparative Study Between Balinese Customary Law and National Law) according to Balinese Customary Law in the Tabanan and Klungkung regions.

a. The process of resolving bullying cases and classification of bullying in customary law
The process for resolving bullying cases according to Balinese customary law varies in each region, depending on the Awig-awig and Pararem in each traditional village.

1) According to Balinese customary law in Tabanan:

a) Process for resolving bullying cases according to Pararem Krama Banjar Adat Panca Dharma Pasekan Beledon (Tabanan city traditional village 2002)

The process of resolving bullying cases according to Balinese customary law in Pararem is included in Sargah/Chapter 3 concerning Sukerta Tata Pakraman which means welfare/protection of the Kaping indigenous community. 7 concerning Dusta Miwah Baya which means bad behavior/danger Paos/verse 60 which reads: "Response to the citizens banjar sane uning wenten jadma carried out a lie ring sajeroning banjar pakraman, it is worth digelis atur upekra ring prajuru," which if translated into Indonesian means: "Every banjar resident who knows that there are people or residents who can commit lies in the traditional banjar area must be immediately reported to traditional leaders", what is meant by lies in paragraph 60 is contained in Article 59 which reads:

Like sane sinanggeh lie, it reads, that (1).mamamaling/robbing, (2).marikosa, (3).and astika utawi ducara religious ring. If translated into Indonesian, it means lying, namely stealing/robbing, raping, and violating religious norms and treating other people outside the context of religion.

Next, after the perpetrator is reported to the traditional officer and/or traditional village head, a deliberation is held at the village hall to discuss the customary violations that occurred in the traditional village which were committed by the perpetrator and then how the perpetrator is given sanctions and what sanctions can be imposed as regulated in the pararem. The traditional village is based on the results of an agreement between the village administrator, the traditional village head, and also the traditional community of the village. It should be remembered that sanctions can also be imposed on people outside the traditional village who violate the provisions of the Awig-awig/traditional village pararem with the implementation provisions determined by the Balinese traditional village officer. Awig-awig are regulations originating from a community/traditional village manner which are usually created as a result of deliberation and consensus among members of that community which contain guidelines for behavior in society based on the norms that apply in Balinese traditional communities. An example is Tri Hita Karana who explains that apart from being based on norms, a sense of justice in society can also be the basis for making Awig awig in Balinese traditional villages, the form of Awig-awig can be written or unwritten. Meanwhile, Pararem is a derivative of Awig-awig which was created to explain the main rules in Awig-awig with the aim of making it easier to implement as a kind of technical guide. Prajuru Traditional Village is the Pakraman Village Leadership Team which consists of the chairman (bandesa), deputy chairman (petajuh), secretary (sarinarian) and treasurer (juru raksa).

b) Classification of bullying according to Balinese Customary Law in the Tabanan area.

The classification of bullying according to Balinese customary law varies in each region but on average is similar. Bullying according to Balinese customary law in the Tabanan Region is included in acts of lying and baya in Pararem Krama Banjar Adat Panca Dharma Pasekan Beledon (Tabanan City traditional village 2002) bullying is included in Sargah/Chapter 3 concerning Sukerta adat adat which means the welfare/protection of the Kaping traditional community 7 about Dusta Miwah Baya which means bad behavior/danger paos/verse 59, namely Marikosa/rape and Nastika utawi ducara ring religion/violating religious norms and treating other people outside the context

of religion, marikosa/rape referred to in rape here is not only sexual but can be understood as raping people's rights, raping rights, raping freedom these acts fall under marikosa. Marikosa means committing violence without someone's consent, marikosa is an act of committing violence to lose life, property, injure someone, consider other people as inferior or ugly, this is marikosa. It should be remembered that the meaning of Balinese sentences and Indonesian sentences is different, therefore marikosa in this pararem has a fairly broad meaning. Then Nastika utawi ducara ring religion/violates religious norms and treats other people outside the context of religion, acts of bullying basically violate religious norms because they conflict with religious norms, namely tat wan compassion and morals. Tat wan asih means "you are me" which can be defined as when humans live in society they should treat each other as they treat themselves. It's like if someone hurts another person. That's the same as hurting yourself, while morality comes from the words Su = (good) Sila = (behavior), morality itself is a person who behaves badly, whether he is slandering, treating people unkindly, considering that person to be inferior.

- 2) According to custom in the Klungkung area
 - a) Process for resolving bullying cases according to the opinion of the traditional village head, see I Ketut Surya. Based on the results of the author's interviews with related sources, if, for example, a case of bullying occurs in the Jumpai traditional village, he will process the case by prioritizing deliberation involving the prajuru, traditional village head and also the community. Meanwhile, regarding the imposition of sanctions, the sources only conveyed several types of sanctions. Based on the informant's information, there are no written rules regarding bullying because basically cases of bullying in the Jumpai Traditional Village have never occurred, in the Jumpai Traditional Village itself they do not make rules if there have not been cases. \
 - b) Classification of bullying according to the opinion of I Ketut Surya Bandesa Adat Jumpai based on the results of the author's interview with him regarding the classification of bullying according to the customary law of the Jumpai village, there is no special classification according to the existing rules in the Jumpai traditional village.

3.2 Sanctions for violating customs for perpetrators of criminal acts of bullying According to the Pararem Krama of the traditional village of Tabanan City 2002 and the Opinion of the traditional village bandes of the traditional village of Jumpai Klungkung

- 1) According to the Pararem Krama of the traditional village of Tabanan City 2002 Sargah/Chapter 3 concerning Sukerta Tata Pakraman which means welfare/protection of the Kaping traditional community 7 concerning Dusta Miwah Baya which means bad behavior/danger Paos/verse (64) which reads "Prade ring banjar kahanan old soul, appropriate kawentenang pangepah ayu banjar, appropriate kaprabiya manut desa kala patra," which if translated into Indonesian means that if in the customary area there is something that endangers human life, he is subject to a fine for holding a large ceremony in the banjar area. If bullying occurs, this sanction can be imposed because basically bullying, especially physical bullying, can endanger a person's life if serious abuse occurs. Apart from the sanctions regulated in paragraph 64 above, there are other sanctions that can be imposed. According to I Made Sukadana, there are other sanctions that can be imposed: coaching, carrying out ceremonies, being expelled from the

traditional community, not receiving community services and not having the right to carry out funeral ceremonies in traditional village areas.

- 2) In the opinion of the Klungkung Traditional Village Head, I Ketut Surya, said that the most severe sanction that can be imposed on the perpetrator is not being invited to join the community. Apart from these sanctions, a lighter sanction that can be given if a case of bullying occurs is that the perpetrator is ordered to make a stamped statement. If the person concerned violates then there are 2 options, option 1 is not being invited into the community and option 2 is being handed over to the authorities to be punished according to National Law. In imposing customary sanctions the method is quite simple. For example, when a customary violation occurs and it is brought to a banjar meeting, the people at the banjar meeting can propose sanctions for the perpetrator to the traditional prajuru and traditional village officials and then the sanctions are asked again to the community present at the banjar meeting if the community agrees/to the proposed sanctions. then sanctions can be imposed.

In the author's opinion, the resolution of bullying cases uses Balinese Customary Law, in this case the 2002 Tabanan City traditional village pararem and the resolution according to the opinion of the Jumpai Klungkung Traditional Village Traditional Village is in accordance with the sense of justice in the community, especially in the two traditional villages because it is based on the norms adopted by the community, which apart from providing a deterrent effect on the perpetrator without giving the perpetrator an evil label/labeling, also provides a sense of justice for victims of bullying and of course the community feels that they have received a sense of justice in accordance with the norms they adhere to. Sanctions imposed on perpetrators also have a weight that is appropriate to the actions carried out by the perpetrator. The existence of sanctions in the form of traditional ceremonies can certainly be a form of self-reflection for the perpetrator to realize that his actions were wrong and detrimental to other people. The difference between the process of resolving bullying according to Customary Law and National Law is the avoidance of evil/labeling from the community, sanctions that provide a deterrent effect and are in accordance with the sense of justice according to indigenous communities.

3.3 Settlement of Bullying Cases Against Child Abusers (Comparative Study Between Balinese Customary Law and National Law) according to the opinion of Customary Law expert Prof. Dr. I Wayan Windia, SH., M.Sc

- 1) Understanding bullying in Balinese, the process of resolving bullying cases and classification of bullying in customary law. Bullying in Balinese is called nyacad. According to Prof. Windia, bullying in Balinese can be called bullying. Sacrilege is an attitude or behavior that disfigures something about a person, be it physical, words or actions, which may or may not be truly bad, but which is always discredited by the perpetrator of nyacad. The process of resolving cases of logging in Bali is carried out by village officials or in Balinese language called by Balinese traditional village prajuru who are led by the Balinese traditional village officials based on Customary Law and the Awig-awig of the traditional village. According to Prof. Windia, according to Prof. Windia, according to Prof. Windia, the classification of bullying in Balinese customary law does not have any written rules governing bullying, but this does not mean that bullying is justified or cannot be sanctioned because bullying violates the 3 norms that exist in the Balinese

customary law community, namely: Religious Norms, especially religion. Hinduism, Manners and Moral Norms, therefore the perpetrator of the crime needs to be given sanctions.

- 2) Sanctions for violating customs for perpetrators of bullying/bullying. In Balinese Customary Law, there are 2 sanctions that can be given to perpetrators of logging. The first sanction is Painget which in Indonesian is called a warning given by village officials and/or traditional village leaders. Then the second sanction is Ngaksakma which in Indonesian is called an apology. This sanction can be given if the first sanction is ignored or the bullying/abuse carried out is considered quite severe and repeated. The process of implementing sanctions is divided into 2 procedures, namely for adult perpetrators and child perpetrators. If the person carrying out the saccade is an adult then the person concerned himself/herself will receive painget/warning from the traditional Prajuru and/or Bandesa. If it is assessed that the first sanction has been ignored or the bullying/scandal that has been carried out is considered to be quite severe and repeated, then the second sanction, namely Ngaksakma, will be given. /apology made by the perpetrator of the crime to the victim. For offenses carried out by child perpetrators, the process of giving sanctions is more or less similar, the only difference being that the person carrying out the sanctions is accompanied by a parent, for painget/warning is given to the parents of the perpetrator and for Ngaksakma/apology it is done by the perpetrator's parents by contacting the victim's parents. bullying/bullying. In the author's opinion, the views expressed by Prof. Windia regarding bullying in Balinese is slightly different and contradicts the 2002 Tabanan City Traditional Village Pararem on Bullying according to Prof. Windia is called backup. Sacrilege is an attitude or behavior that disfigures something about a person, be it physical, words or actions, which may or may not be truly bad, but which is always discredited by the perpetrator of nyacad. The source said that physical bullying does not fall into the category of bullying but rather falls under persecution. So, bullying/harassment is only limited to bad-mouthing people if physical bullying occurs, including abuse. According to him, the sanctions for bullying/harassment are slightly different, but the process for resolving bullying cases is the same as the Balinese Customary Law Pararem Traditional Village of Tabanan City 2002 and Settlement according to the opinion of the traditional village village customary village. Meet Klungkung, according to him there are only 2 sanctions, namely Painget which in Indonesian is called a warning and the second is Ngaksakma which in Indonesian is called an apology. Even though there are differences in sanctions and classification, the community's sense of justice regarding the process of resolving bullying cases and existing sanctions, in my opinion, in relation to several things is still similar to Balinese customary law, the 2002 Tabanan City traditional village pararem and the resolution of bullying cases according to the opinion of the Jumpai traditional village village band. Klungkung.

3.4 Settlement of Abuse Cases Against Child Abusers (Comparative Study Between Balinese Customary Law and National Law) according to National Law.

- a) The process of resolving bullying cases and the classification of bullying in national law. The process of resolving bullying cases according to national law is divided into 2 ways, namely penal and non-penal, both of which are implemented based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. In the process of resolving cases of bullying in a penal manner, the legal basis used is the Criminal Code (Law Number 1 of 1946). It is important to remember that because

bullying in the context of this research is a criminal act committed by children, the legal basis used is the Law. Law Number 23 of 2002 concerning Child Protection and Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. In the process of resolving bullying cases in a penal manner, the stages are the same as the penal/criminal process in general, but there are several adjustments in accordance with Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, where at each stage there is always an offer to carry out a non-penal settlement/ non-litigation, of course the decision is in the hands of the parties. The process of resolving bullying cases in a non-penal way is usually carried out if the parties receive advice from law enforcers at every level in the criminal process with considerations given, among others, 1. It can still be discussed as a family, 2. The victim or perpetrator is still very young, 3. Still a minor crime. If the parties, especially the victim, want to accept a non-penal method of settlement, then the settlement can be done outside of court using Diversion or Restorative Justice.

- b) Criminal sanctions for perpetrators of criminal acts of bullying if the bullying/bullying case is resolved using penal/criminal channels. The criminal sanctions for perpetrators of criminal acts of bullying that can be imposed are imprisonment, fines and sanctions determined by law. Sanctions are imposed based on the Criminal Code (Law Number 1 of 1946), Law Number 23 of 2002 concerning Child Protection and Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. In the author's opinion, resolving bullying cases using national law does not provide a deterrent effect and a sense of justice for victims if using non-penal channels. On the other hand, if using penal channels does provide a deterrent effect but the perpetrator gets a bad label from society, therefore it is necessary to have Another alternative in the process of resolving bullying cases which must provide a deterrent effect for the perpetrator, provide a sense of justice for the victim and the absence of evil/labeling that will be attached to the perpetrator. According to Mr. Anak Agung Made Aripathi Nawaksara, who is one of the judges at the Denpasar District Court, said that it is easier to use Balinese customary law in the process of resolving bullying cases than using national law, although according to him in practice this has never happened at the Denpasar District Court.

CONCLUSION

Based on the results of research conducted by the author, the author can draw the conclusion that the comparison of resolution of cases of bullying against child perpetrators is between Balinese customary law, especially in the Tabanan and Klungkung areas, with national law in the process of resolving bullying/bullying cases. According to Balinese customary law, there is a settlement process that prioritizes amicable settlements which are based on the sense of justice that exists within the Balinese customary law community and in the author's opinion the settlement process that exists in Balinese customary law can not only provide a deterrent effect for perpetrators without also giving them an evil label. can provide a sense of justice for the victims and of course can restore balance in the Balinese traditional law community. Meanwhile, according to National Law, the process of resolving bullying cases according to national law is divided into 2 ways, namely penal and non-

penal, the implementation of which is both based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. In the author's opinion, resolving bullying cases using national law has provided a deterrent effect for the perpetrator if it uses a penal process and if it uses a non-penal process, even though it does not aim to punish the perpetrator, it aims to restore the victim and perpetrator. Based on the results of the research conducted by the author, according to the author, resolving cases of bullying against child perpetrators, especially in the Bali region, can use Balinese customary law as an alternative to complement national law regarding the sense of justice according to the Balinese traditional community. Meanwhile, resolving bullying cases using national law is still relevant for Indonesian society.

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