

VIOLENCE ERADICATION IN EDUCATION THROUGH A JURIDICAL-RELIGIOUS APPROACH: Seeking an Ideal Model under the Criminal Justice System

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Abstract: Violence in education has led to criminal activities that require special attention from all parties. This paper discusses preventive measures of violence in education through a juridical-religious approach under the criminal justice system. This paper is a doctrinal law study in which an analysis of legal materials is used to answer legal problems and produce legal arguments. This paper demonstrates that the incorporation and operation of these two approaches under the criminal justice system will be very effective and useful for preventing and controlling crimes in schools because, first, the juridical approach can prevent students from becoming victims of violence and educate them not to repeat the same crimes; secondly, the religious approach will instill a faithful, pious character and noble personality into students so that they avoid crimes.

Keywords: Violence Prevention, Education, Juridical-Religious Approach, Criminal Justice System

Abstrak: Kekerasan dalam dunia pendidikan telah mengarah kepada tindakan kriminal sehingga memerlukan perhatian khusus semua pihak. Tulisan ini mendiskusikan penanggulangan kekerasan dalam dunia pendidikan melalui pendekatan yuridis-religius dibawah sistem peradilan pidana. Tulisan ini merupakan kajian hukum doktrinal dimana analisis terhadap bahan-bahan hukum digunakan untuk menjawab permasalahan di bidang hukum serta menghasilkan argumentasi hukum. Tulisan ini menunjukkan bahwa bersatu dan berjalannya dua pendekatan ini di bawah sistem peradilan pidana akan sangat tepat dan bermanfaat untuk menahan dan mengendalikan kejahatan di lingkungan sekolah karena, pertama, pendekatan yuridis dapat mencegah pelajar menjadi pelaku atau korban kekerasan serta mendidik mereka untuk tidak mengulangi kejahatan; kedua, pendekatan religius akan menanamkan keimanan, ketakwaan, budi pekerti dan kepribadian yang luhur para pelajar sehingga mereka menjauhi tindak kejahatan.

Kata Kunci: Penanggulangan Kekerasan, Pendidikan, Pendekatan Yuridis-Religius, Sistem Peradilan Pidana

Introduction

The rise of violence in education has concerned many ranging from parents, students, teachers, society, law enforcement officials, to education observers. Ironically, the phenomenon leads to criminal acts and causes trauma to its victims. A plethora of violence cases already exist as examples: a Vocational High School teacher of Purwokerto slapped his students, students' parents molested a Junior High School Principal in Pontianak, and a teacher in Sampang, Madura died after being beaten by his students.

According to Retno, a KPAI (the Indonesian Child Protection Commission) commissioner, cases of violence in schools, be it physical, psychological and sexual, were still high in 2018. The cases were teachers molested students, students attacked teachers, and students fought other students. A study showed that 84% of students experienced violence which was perpetrated by teachers or school officials (45% male students) and experienced physical violence by peers (40% students aged 13-15 years). In addition, 75% of students have committed violence in schools, 22% of which were female students, and the perpetrators were teachers and school officials. 50% of children also reported that they have experienced bullying.¹

In addition, research conducted by Tamsil Muis et al. suggests that causes of violence in education are students' faults, short-tempered teachers, and various other reasons that refer to problematic student behavior, such as laziness. As for forms of violence that can be identified are, first, verbal violence, including calling with a hated nickname, secondly, psychological violence, such as ignoring or not caring, and saying things with a purpose to threaten or intimidate, third, physical violence, such as beating. Violence has resulted in feelings of infe-

riority, anger, hurt, sadness, and revenge, even though some students did not take it seriously.² While previous research focuses more on causes of violence in education, this paper focuses on the existence of the criminal justice system along with its various legal rules, including the role of central and regional governments in tackling violence in education. For this reason, this paper will be useful for building a criminal justice system with a participation of various parties (law enforcement officials, linked agencies, the public) to overcome violence in education. This paper discusses countermeasures of violence in education through a juridical-religious approach under the criminal justice system. Countermeasures of violence in education require a juridical approach that originates in rules as written in positive law while at the same time utilizing a religious approach based on Islamic teachings to realize an Islamic education system.

This research is doctrinal research which analyses legal materials as 'library based, focusing on reading and analysis of primary and secondary materials'.³ The method is by using secondary data as a process of finding legal rules, legal principles, and legal doctrines to address problems in the field of law, to yield legal arguments, legal theories or new legal concepts as prescriptions in solving problems.⁴ As for the approach, this paper uses the statute approach based on various legal regulations which become the focus

¹ <https://www.viva.co.id/indepth/fokus/1032497-setop-kekerasan-di-dunia-pendidikan>, accessed on 15 of April 2019.

² Tamsil Muis, Muhammad Syafiq, and Siti Ina Savira, "Bentuk, Penyebab, Dan Dampak Dari Tindak Kekerasan Guru Terhadap Siswa Dalam Interaksi Belajar Mengajar Dari Perspektif Siswa Di SMPN Kota Surabaya: Sebuah Survey," *Jurnal Psikologi Teori Dan Terapan* 1, no. 2 (2011): 71.

³ Johnny Ibrahim, *Teori Dan Metode Penelitian Hukum Normatif* (Malang: Bayumedia Publishing, 2005), p. 46.

⁴ N D Mukti Fajar and Yulianto Achmad, *Dualisme Penelitian Hukum: Normatif & Empiris* (Pustaka Pelajar, 2010), p. 34.

and the central theme of research.⁵ Meanwhile, the processing and analysis of legal materials are done deductively by drawing conclusions from general to concrete problems faced.

Violence in Education in Law and Religion Perspectives

In the Great Indonesian Dictionary, the word 'violence' ("*kekerasan*") means "torment, torture or mistreatment; an act of a person or a group of people that causes injury or death to someone and causes physical damage to others."⁶ Meanwhile, in Article 89 of the Criminal Code (KUHP), violence means using force or physical strength such as beating by hands or by all kinds of weapons, kicking, booting and so on so forth, making people faint or powerless.⁷ Besides, Article 1 of Law No. 35 of 2014 concerning Child Protection states that "violence is an act against children which results in physical, psychological, sexual suffering and/or neglect, which includes a threat of committing acts, coercion or deprivation of freedom against the law."⁸

It is clear that the meaning of violence is an act of persecuting, torturing or beating someone using hands or all kinds of weapons which causes physical, psychological or sexual damage to the person. Thus, if it is linked to the context of violence in education, there are several types of violence, namely:

- a. Physical, psychological or online violence;

- b. Harassment;
- c. Persecution;
- d. Fight;
- e. Provocation;
- f. Extortion;
- g. Obscenity;
- h. Rape;
- i. Relating to discrimination against ethnicity, religion, race, and/or intergroup (SARA);
- j. Other acts of violence regulated in statutory regulations.⁹

The next question is, are the above violence types included in the criminal act of violence? The answer is of course yes. It is because there is a motto "an act that is considered a crime, must meet the formulation contained in the law as a criminal offense," and acts of violence in education belong to the section of violent crime based on the Criminal Code, which is qualified as a "crime" against life (Articles 338-350 of the Criminal Code); persecution (Articles 351-358 of the Criminal Code); decency (especially Article 285 of the Criminal Code); and death or injury caused by negligence or *culpa* (Articles 359-367 of the Criminal Code). In addition, the above types of violence clearly violate Article 15 of Law No. 23 of 2002 concerning Child Protection, namely abuse in political activities, involvement in armed disputes, social unrest and involvement in events relating to violence and war.¹⁰ Next is Article 9 paragraph (1a) which reads "every child has the right to get protection in education from sexual crimes and violence committed by educators, education staff, fellow students and or other parties."¹¹

⁵ Ibrahim, *Teori Dan Metode Penelitian Hukum Normatif*, p. 302.

⁶ Wilfridus Josephus Sabarija Poerwadarminta and Pusat Pembinaan dan Pengembangan Bahasa, *Kamus Umum Bahasa Indonesia*, vol. 1122 (Balai Pustaka, 1961), p. 425.

⁷ R Soesilo, *Kitab Undang-Undang Hukum Pidana Serta Komentarnya Pasal Demi Pasal* (Politea: Bogor, 1991), p. 126.

⁸ Article 1 of Law Number 35 of 2014 concerning Child Protection.

⁹ Article 6 of the Republic of Indonesia's Minister of Education and Culture Regulation No. 82 of 2015 concerning Prevention and Management of Violence in the Educational Unit Environment.

¹⁰ Law No. 23 of 2002 concerning Child Protection

¹¹ Law Number 35 of 2014 concerning Amendment to Law Number 23 of 2002 concerning Child Protection.

Therefore, based on the Indonesian criminal law, acts of violence in schools, be it physical, psychological and sexual committed by teachers against students, students against teachers, or students against other students are violent crimes that are strictly prohibited and the culprits are punishable. The acts are also forbidden in Islamic teachings because they can damage the five essential revelation objectives of Islamic sharia, namely: (1) preserving religion (*hifz al-din*); (2) preserving the soul (*hifz al-nafs*); (3) preserving intellect (*hifz al-'aql*); (4) preserving descendants (*hifz al-nasl*); and (5) preserving properties (*hifz al-māl*).¹² Hence, in the concept of *jināya*, a violent crime is an act that is prohibited by *sharia* and threatens people's lives that the existence and continuity of society can be defended and sustained.¹³

Child Protection Regulations in Combating Violence in Education

As a future generation, every child must have the opportunity to grow and develop healthily physically, spiritually, and psychologically. For this reason, every child is entitled to protection, and the state has an obligation to provide protection against any treatment or action that has the potential to threaten his future. This obligation is mandated by Law Number 23 of 2002 concerning Child Protection that the state guarantees protection for children, which is related to human rights, and it has to be implemented

rationally, responsibly and beneficially. Protection for children can be in the forms of: (1) juridical in the fields of public law and civil law; (2) non-juridical in nature, namely protection in social, health and education sectors.¹⁴

The regulation of child protection in combatting violence in school refers to the following Acts:

1. Law No. 8 of 1981 concerning Criminal Procedure Law;
2. Law Number 39 of 1999 concerning Human Rights;
3. Law Number 23 of 2002 concerning Child Protection;
4. Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection;
5. Law Number 20 of 2003 concerning the National Education System;
6. Law Number 14 of 2005 concerning Teachers and Lecturers;
7. Law No. 13 of 2006 concerning Protection of Witnesses and Victims;
8. Law Number 11 of 2012 concerning the Juvenile Criminal System;
9. Government Regulation Number 17 of 2010 concerning Management and Implementation of Education;
10. Presidential Regulation No. 7/2015 concerning Ministry Organization of State Institutions;
11. Presidential Regulation Number 14 of 2015 concerning the Ministry of Education and Culture Presidential Decree Number 121/P of 2014 concerning the Creation of Ministries and Appointment of *Kabinet Kerja* Ministers for the Period of 2014-2019 as amended by Presidential Decree Number 79/P of 2015 concerning Replacement of 2014-2019 *Kabinet Kerja* State Ministers.

¹² Edi Kurniawan, "Distorsi Terhadap Maqasid al-Syari'ah al-Syatibi di Indonesia," *Al-Risalah* 18, no. 2 (2018): 179; M Zaki, "Formulasi Standar Masalah Dalam Hukum Islam (Studi Atas Pemikiran al-Ghazali Dalam Kitab Al-Mustasfa)," *Al-Risalah* 13, no. 1 (2018): 27-46; Bahrul Ulum, "Maqashid Syariah Dalam Ranah Politik (Studi Atas Terbitnya Perda Nomor 2 Tahun 2014 Tentang Pemberantasan Pelacuran dan Perbuatan Asusila di Kota Jambi)," *Al-Risalah* 15, no. 2 (2015): 213-228.

¹³ Hamzah Hasan, *Hukum Pidana Islam 1* (Alauddin University Press, 2014), pp. 1-3.

¹⁴ Abdul Rahman Kanang, *Hukum Perlindungan Anak Dari Eksploitasi Seks Komersial Perspektif Hukum Nasional Dan Internasional* (Makassar: Alauddin University Press, 2014), p. 21.

12. Minister of National Education of Republic of Indonesia Regulation Number 39 of 2008 concerning Student Development;
13. Minister of Education and Culture of the Republic of Indonesia Regulation Number 23 of 2015 concerning Character Building;
14. Minister of Education and Culture of the Republic of Indonesia Regulation Number 82 of 2015 concerning Prevention and Management of Violence in Education Institutions.

As a brief description of the child protection regulation against crimes or violence (including violence in education) above, it can be formulated as follows:

First, violence in education is an act that violates the law and the perpetrators can be convicted according to the Criminal Code (KUHP) relating to persecution, slander, insults, unpleasant acts, rape, immoral acts, and defamation.

Second, Law Number 23 of 2002 concerning Child Protection in Accordance with Article 1 paragraph (2) states that child protection is an activity to warrant and protect children and their rights to live, grow, develop and participate optimally consistent with human dignity, and receive protection against violence and discrimination. The criminal sanctions for the perpetrators of violence against children are written in Chapter XII of Articles 77-90.

To illustrate, Article 80 (1) states that a person who commits an atrocity, violence, a threat of violence, or child abuse is sentenced to a maximum imprisonment of 3 (three) years 6 (six) months and/or a maximum fine of Rp. 72,000,000 (seventy two million Rupiahs). In addition, section (2) states that if the act results in a serious injury, then the maximum imprisonment will be 5 (five) years and/or a maximum fine of Rp 100,000,000 (one hundred million Rupiahs). If it results in the death of a child, the perpetrators will be sentenced to a maximum of 10 (ten) years

in prison and/or a maximum fine of Rp. 200,000,000 (two hundred million Rupiahs) (section 3) and the sentence will be added by a third if the one who commits an abuse is a child's parent (section 4).

Third, Law Number 39 of 1999 concerning Human Rights as Stated by Article 65 explains that one of the protections given to children is to provide protection against exploitation and sexual harassment, including sexual trafficking. Likewise, child protection according to Article 1 of Law No. 23 of 2002 concerning Child Protection is an action to warrant and protect children and their rights so that they can live, grow, develop, and participate safely from violence and discrimination. The rights and obligation of children are listed in Law No. 23 of 2002 concerning Child Protection in which children have the rights to: live, grow, develop and participate; receive education and teaching; state and be listened to their opinions; take a rest and enjoy free time; receive protection against discrimination, exploitation, neglect, cruelty, physical and psychological violence, abuses and injustice.

Similarly, the Minister of Education and Culture Regulation Article 11 section (1) letters a, b and c Number 82 of 2015 concerning Prevention and Management of Violence in the Educational Unit Environment states that sanctions may take the forms of a verbal reprimand; written warning; and other actions educational. Meanwhile, section (2) states that an education unit organized by a community can impose sanctions on educators or educational staff appointed by it or other parties working for it in the forms of: a verbal reprimand; written warning; reduction of rights; and temporary/permanent dismissal from positions as educators/education personnel or termination of employment.

In imposing these sanctions there needs to be a judicious legal policy so that the protection efforts undertaken do not have negative consequences. This must be done ration-

ally and responsibly reflecting an effective and efficient effort.

Seeking an Ideal Model under the Criminal Justice System: a Juridical-Religious Approach

According to Mardjono Reksodipoetra, the criminal justice system is a system that exists in society to tackle crimes by reporting perpetrators to the court so that they are found guilty and receive criminal sanctions.¹⁵ Meanwhile, Romli Atmasasmita argues that the criminal justice system is a working mechanism for crime prevention by means of a number of basic system approaches, namely: first, focusing on a coordination and synchronization of the criminal justice system components ranging from the Police, Attorney's Offices, Courts, to Prison. Second is supervision and control that are related to the use of power by the criminal justice subsystem. Third, the effectiveness of crime prevention takes precedence over the efficiency of case resolution. Fourth is to establish the administration of justice as a legal instrument.¹⁶ Thus, in general the criminal justice system has two functions, namely: as a means for society to detain and control crime in certain situations (crime containment system), and a secondary prevention, which is to minimize a crime that has been committed and the prevalence of committing a crime through a process of detection, punishment and criminal execution.¹⁷

From the two functions above, we can conclude a common thread that the goal of the criminal justice system is to: prevent so-

ciety from becoming objects/victims; resolve crimes so that society is satisfied that justice has been upheld and the guilty convicted; and to ensure that those committed a crime will never repeat it. Thus, in order to tackle a crime or violence through the Criminal Justice System in education, it can be pursued through:

First is creating monitoring and reporting schemes between sub-systems in the Criminal Justice System in all education activities through collaboration with communication forums between schools, parents, students, community leaders, education experts, local and central governments, and education offices to guarantee a sense of security for children in education. Second, there is a common insight among the Criminal Justice Sub-systems when violence in education occurs, which is prioritizing the future and psychological development of children. Third is treating children fairly and prevent discriminatory actions against them. Fourth is conducting counseling and coaching as a preventive measure of child protection to avoid physical, psychological and sexual violence in education. Fifth is developing both formal and informal education that supports children protection efforts, including mechanisms to prevent violence in education as mandated by the Law on child protection based on religious teachings, Pancasila, the 1945 Constitution of the Republic of Indonesia and the Principles stated in the Convention on the Rights of the Child by involving students, parents, the public, and governments (regional and central). Sixth is imposing sanctions against perpetrators of violence, ranging from reprimands to disrespectful termination of employment to create a deterrent effect.

Meanwhile, a religious approach requires an understanding and practice of divine values to realize a balance between physical and spiritual needs. This balance can be attained through an Islamic education which is not

¹⁵ See, Heri Tahir and others, *Proses Hukum Yang Adil Dalam Sistem Peradilan Pidana Di Indonesia*, 2002, pp. 9-10.

¹⁶ Yesmil Anwar and Adang, *Sistem Peradilan Pidana: Konsep, Komponen & Pelaksanaannya Dalam Penegakan Hukum Di Indonesia* (Bandung: Widya Padjadjaran, 2009), pp. 34-35.

¹⁷ Tahir and others, *Proses Hukum Yang Adil Dalam Sistem Peradilan Pidana Di Indonesia*, p. 10.

only concerned with the mastery of science, but also a noble character. This is because based on the meaning of Islamic education (*tarbiyah*) itself, which is a process of knowledge transformation to students so that they have a good attitude and enthusiasm in understanding and appreciating their lives to create a faithful, pious, and noble personality.¹⁸

Education in Islam is based on Islamic ethics, moral formation and mental training that aim to form devout individuals.¹⁹ This is in line with the mandate contained in Law No. 20 of 2003 concerning the National Education System which states that national education aims to develop competences and shape a dignified and civilized national character to enlighten the nation to help students reach their full potential to become humans who have faith in God, to have a noble attitude, to be healthy, knowledgeable, capable, creative, independent, democratic and responsible citizens (Article 3). Therefore, there are principles in the administration of education that are based on religious values as guidance to avoid violence in education. Hence, socialization activities through a religious approach will open students' minds to take positive actions in accordance with the teachings of their religion.²⁰

Conclusion

From the above explanation it can be concluded that the resolution of violence in education can be done through a juridical-

religious approach. A juridical approach is a resolution of violence in education based on positive laws in force in Indonesia. A religious approach, on the other hand, utilizes Islamic teachings as sources to realize an Islamic education system (*tarbiyah*) and emphasizes humanity aspects for the benefit of humans both physically and spiritually. If these approaches are incorporated and implemented under the criminal justice system, they will be very effective and useful for preventing and controlling crimes in schools because, first, the juridical approach can prevent students from becoming victims of violence and educate them not to repeat the same crimes; secondly, the religious approach will instill a faithful, pious character and noble personality into students so that they avoid crimes.

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