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The Role and Obstacles of the Indonesian Child Protection Commission in Handling Bullying

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Abstract: The role of children is significant in bringing about changes in the nation's future. Children are expected to become individuals with noble character, and intelligence, and have a positive contribution to social life. However, children often carry out negative actions that deviate from the values and norms of society, one of which is bullying. In Indonesia, there is an institution to deal with bullying through supervision, namely the independent supervisory institution, the Indonesian Child Protection Commission (KPAI). KPAI is the government's answer to dealing with the high increase in cases of criminal acts of bullying, especially against children. This research uses a descriptive normative juridical research method with a statutory approach. Laws and problems are studied thoroughly through literature research, including legal regulations that apply in Indonesia, books, journals, expert perspectives, articles, and related issues in society. The results of this research show that KPAI has an important role as an independent institution in supervising the implementation of child protection. However, there are still many factors that hinder KPAI's movement, such as internal factors from the KPAI institutional arrangements, or external factors, namely the persistence of stigma and fear in reporting cases of violence, or the lack of legal awareness in society regarding the protection of children's rights.

Keyword: Bullying, Children, Indonesian Child Protection Commission

INTRODUCTION

Children have a very important role in the development of a country, especially as the successor of the nation who will be the roots of the Indonesian nation in the future. Children have a noble obligation to realize national ideals and goals by having basic capital that makes children able to be called *agents of change* and *agents of social control*, namely their moral strength in fighting because in essence what is made is solely based on the moral movement that becomes their idealism in fighting (S, 2018). The role of children is very important in building development and maintaining the nation's independence. Currently, the role of children is very important for the future both in the scope of science, ethics, and children who will change the status of a nation. In Bung Karno's words "Give me ten youths and I will shake the world", which means the role of youth is very important in the progress of a nation

and state. The good and bad of a country can be seen in the quality of its children because children are the successors and heirs of the nation and state (Aji, 2022).

From the explanation above, it can be concluded that children are expected to become individuals who are noble, intelligent, and contribute positively to society. Children are an inseparable part of the sustainability of human life as well as a nation and state, are a mandate and a gift from God Almighty who has a degree as a whole human being. Therefore, the physical, mental, and social development of children needs to receive guidance and protection to ensure that physical growth and development occur in a healthy and conducive environment. This has become an obligation for Indonesia, which must provide special protection for children, especially with the rapid development, globalization in the field of communication and information, advances in technology and science, and changes in the lifestyle of some parents, which have brought about a change in the lifestyle of some parents.

The lifestyle of some parents has brought fundamental social changes in society which then affect the values and behavior of children. Education is one of the efforts in the process of civilizing and empowering students through the development of a culture of reading, writing, and arithmetic for every member of society (Putera, 2012). But the reality that occurs is prone to deviate from the idealization of the applicable law. Not all children can develop by the expectations of society, and then experience inappropriate behavioral deviations. Deviant behavior in children is not by the teachings of values and morals in society, one of which is bullying. According to psychologist Andrew Mellor, bullying is an experience that occurs when someone feels wronged by others and is afraid that the deviant behavior will happen again while the victim feels powerless to prevent or prevent it (Setiawan, 2015). Andrew Mellor also explained that bullying is divided into several types, namely: 1) physical bullying, which is a type of bullying that involves physical contact between the victim and the perpetrator. Examples of physical bullying include hitting, kicking, pushing, choking, and grabbing. This type of bullying is the easiest bullying to identify compared to other types; 2) verbal bullying, which is bullying that is done verbally to hurt someone. Examples of verbal bullying are mocking, slandering, and giving inappropriate nicknames. This type of bullying often occurs in everyday life but is often not realized even by the perpetrator; 3) social relationship bullying, which is bullying that aims to systematically undermine the victim's self-esteem through neglect, exclusion, and avoidance. Examples of social relationship bullying are humiliating someone in public, laughing, and using demeaning body language; 4) electronic bullying or cyberbullying, which is bullying carried out through electronic media such as computers, cellphones, chat rooms, and websites. An example of electronic bullying is spreading writings, pictures, or videos on social media with the aim of intimidating, frightening, and hurting the victim. Children are vulnerable to bullying for physical and verbal violence, causing victims to experience prolonged trauma and often feel isolated and the worst can trigger suicide.

It should be noted that not all children are victims of *bullying*, but many of them also become perpetrators of *bullying* themselves. This is due to many factors, such as they have been victims of bullying themselves so they do this to others in the hope that they will no longer be *bullied*. Another factor is involved in the distorted upbringing of parents. One example is a physically abusive upbringing that makes their child an aggressive and violent character to others, and/or can make a child suppress their emotions and take them out on others. This behavior makes it difficult for the child to interact with the surrounding environment, the child will experience problems with abnormal, hyperactive, and prosocial behaviors when engaging in social interactions, with the perpetrator's response to the surrounding social environment very much related to these considerations. In bullying perpetrators such as a lack of empathy in interaction, as well as the high possibility of the perpetrator to experience mental health disorders. So it can be concluded that both victims and perpetrators of *bullying* actions experience mental health problems due to these

aggressive actions. Both parties experience mental health problems, especially emotional symptoms. They are often socially isolated, do not have close friends or companions, and do not have a good relationship with their parents.

Therefore, the state and society must pay special attention to the various reports of bullying violence, especially those caused by children. If such behavior is not followed up, it will lead to a moral crisis in children. The perpetrator may continue to bully and this aggressive behavior can threaten the life of someone who is bullied and harm others and oneself. It can be seen in a recent case that happened to a 4th-grade elementary school student, where the victim and his friend burned garbage because he was given an assignment by his teacher. The victim's friend allegedly poured kerosene on the victim's body as a joke, which resulted in the student's body being burned instantly (Pratiwi & Yuzarion, 2019). The role of the Indonesian government itself has established a juridical basis to provide such protection such as the Child Protection Law, or institutions that are tasked with carrying out preventive, mitigating, or supervisory actions against the above cases; one of them is the Indonesian Child Protection Commission (KPAI). For acts of bullying, especially those committed by children, it has been regulated in various laws and regulations, namely Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection and Law Number 23 of 2002 concerning Child Protection.

The year 2002 on Child Protection and Law Number 11 Year 2012 on the Child Criminal Justice System. As for the KPAI institution, it is an independent institution established by the state based on statutory regulations, to protect children's rights and ensure that Indonesian children receive proper protection by applicable laws. In the context of bullying cases, KPAI plays a role in various aspects, ranging from advocacy, and supervision, to legal assistance, so the role of KPAI is crucial in dealing with the rapid increase in bullying cases among children. However, it should be noted that legal protection as a child's right results in the application of double standards of treatment for perpetrators. There is a dilemma between the protection given to children as perpetrators of bullying who are still minors and the accountability of these children for their actions. On the one hand, there needs to be special protection for children in conflict with the law so that children can face their future and be allowed to become the right individuals through guidance. On the other hand, there are some opinions or assumptions that special protection in reality has not been implemented effectively. This protection does not provide a deterrent effect on the perpetrator and does not pay attention to the interests of the victim, so it does not provide justice for the community (Komunitas Peradilan Semu Satria Paramartha FH UGM, 2023).

Based on the above study, the problems that will be discussed in this research are 1) What is the role of KPAI in handling *bullying*, and 2) what are the obstacles experienced by KPAI in carrying out its role?

The purpose of this research is to find out the role and obstacles experienced by KPAI in carrying out its duties and authority in the case of *bullying* crime.

METHOD

The study in this paper is a normative legal study that examines law as a system of norms that regulate community behavior and relies on secondary data. The secondary data used consists of laws and regulations (dhi. Law No. 35/2014 on Child Protection and Law No. 11/2012 on Juvenile Justice System), legal doctrines, and various scientific legal publications. In addition, the study in this paper also uses the statute approach and conceptual approach.

RESULTS AND DISCUSSION

Indonesian Child Protection Commission as an Independent State Institution

Independent institutions are defined as institutions that are formed and authorized as a decision of the government as a state to establish or form its own body, have its authority, and are facilitated by the state without interference from the executive, legislative, or judicial powers. The establishment of these organs has the aim of meeting the needs of state practice which continues to grow along with the increasing complexity of increasingly dynamic state problems, which cannot be achieved only by the *main* organs of the state, but requires a form of supporting institutions (*state auxiliary* organs) as independent state institutions outside the government in achieving these goals (Mangar & Ridho, 2022). It should be noted that not all independent institutions function only as auxiliaries, they can be categorized into several degrees of independence, namely: 1) agencies that carry out certain functions permanently (*state independent* agencies); 2) agencies that function as support and have the authority to form their own rules (*state auxiliary agencies*); 3) agencies that carry out certain *supervisory* functions (*independent supervisory* agencies), and; 4) agencies that carry out mixed functions between regulatory, administrative, *supervisory*, and law enforcement functions at once (Mochtar, 2016).

Ashiddiqie (2012) only divides them into two groups based on their position and function, namely primary constitutional organs and auxiliary state organs. Primary state institutions are state institutions that, if they do not exist, the state will not be able to carry out its functions as a state, while auxiliary state institutions are state institutions that complement and support the main state institutions in carrying out the main functions of the state so that they can run well (Rayhan & Nida, 2021)). The determination of state institutions between the two groups is determined based on their formation. In the Indonesian constitutional structure, state institutions are divided into three layers of institutional levels, namely 1) state institutions formed based on the constitution, the 1945 Constitution; 2) state institutions formed based on regulators or regulators under the Law (assidqi). State institutions in the first group are positioned as main state institutions, while state institutions in the second and third groups are auxiliary state institutions (Putera, 2012)

The state constitution and laws and regulations establish the KPAI, whose authority and position are regulated by regulations under it. After the reform movement that prompted the amendment of the 1945 Constitution, the existence of KPAI is a new phenomenon. KPAI was established as an independent state institution (state commission) to oversee the implementation of human rights, especially the protection of children's rights. Therefore, it is important to examine KPAI according to its constitutional status.

First, the positioning of KPAI in Indonesian governance. KPAI, created by the Child Protection Law, is an independent institution free from the influence of other institutions and serves to authorize the performance of certain functions outside the scope of the executive, legislative, and judicial branches of power (Republik Indonesia, 2014). However, KPAI does not mean that it must be detached from the three branches of power of the Trias Politika (Sidauruk, 2023). The background to the formation of various independent state commissions was initiated by the public's concern over government actions related to government institutions that tended not to exercise their authority by their functions during the New Order era. So to deal with this suspicion, independent institutions were born to monitor the life of the nation and state.

It is hoped that the establishment of the state commission will accelerate the implementation and application of the reform agenda, especially about bureaucratic reform, law enforcement, corruption eradication, and public services. The establishment of the state commission also shows the transition process in the government system towards the realization of democracy (S, 2017). Knowing that KPAI is a state institution established by

law, namely Law Number 35 of 2014 concerning Child Protection, KPAI's position in Indonesian governance is as a supporting state institution that functions as a supervisory institution for the implementation of child protection.

Second, the position of KPAI in the integrated criminal justice system in Indonesia, namely as a supporting institution, namely state auxiliary bodies. KPAI was formed with arguments, namely: 1) as a reform of the neoliberal approach, 2) the existence of transitional obligations to support certain things, 3) the need to accelerate democracy, 4) as part of the image of power, 5) reducing the duties of dispute resolution institutions between the state and citizens, 6) disappointment with old institutions, and 7) the haste in legislation (Mochtar, 2016). It is stated in Article 74 of the Child Protection Law that the government established the Indonesian Child Protection Commission (KPAI) as a supervisory institution that is expected to play the best possible role in improving the efficiency of the fulfillment and protection of children's rights. The authority of KPAI in supervision means that KPAI does not actively handle advocacy like the function of the technical implementing agency for child protection, namely the executive agency of the Ministry of Women's Empowerment and Child Protection. KPAI also does not replace individual community advocacy functions that are usually carried out by other civil society and non-governmental organizations. For example, one of KPAI's responsibilities, according to Article 76 Letter A of the Child Protection Law, is to receive public complaints. They are tasked with receiving complaints and conducting pro-justice investigations which means by law, for law, or statute. KPAI complaints themselves are different from complaints made by victims seeking justice to law enforcement agencies (police or prosecutors) as stipulated in KUHAP (S, 2017).

This is intended to limit or prevent KPAI from acting without a legitimate basis in receiving complaints and investigations and aims to prevent overlapping duties. The handling of violations of children's rights is under the auspices of the police, prosecutor's office, and judiciary, by the provisions stipulated in the Criminal Procedure Code, the Police Act, and the Prosecutor's Office Act. It should be noted that in achieving justice, KPAI is not authorized to move in the realm of law enforcement like the police and prosecutors, so KPAI relies on institutions that implement or enforce children's rights (S, 2018).

KPAI is based on one of the standards that has become universally accepted, namely that children are considered unique individuals who are entitled to human rights that must be protected. According to this perspective, adults (biological parents, government, and society) should take full responsibility for every child born into the world, no matter where they are born or where they live. Therefore, the implementation of human rights includes the protection of children. Article 1 of the Declaration of Human Rights states that everyone is born free and equal in rights and dignity. They have extraordinary minds and consciences, and they wish to unite in a spirit of brotherhood. Then, Article 2 of the Declaration of Human Rights states that everyone is entitled to all the rights and freedoms outlined in this declaration without distinction as to race, color, sex, language, religion, political or other beliefs, national or social origin, property, birth or other status. This also applies to children. At the beginning of its existence as a state institution, KPAI emphasized institutional strengthening by making regulations, strategic plans, and short-term and long-term programs, as well as structuring ongoing annual activities. They also strengthened infrastructure and organizational structure by establishing teams and working groups, secretariat staff, and internal guidelines (S, 2017).

In terms of the limitations of KPAI to carry out its duties towards the implementation of child protection throughout Indonesia, it is necessary to establish a Regional Child Protection Commission (KPAD) by the local government, both at the provincial and district/city levels as stipulated in Article 74 paragraph (2). KPAD is an independent institution that can be established by the Governor, Regent/Mayor to support the supervision

of child protection implementation in the region if needed. In carrying out its duties, KPAD at both the provincial and district/city levels needs to coordinate with KPAI.

The relationship between KPAD and KPAI is coordinative, consultative, and integrative which is regulated in the guidelines of this decision by the vision mission, and strategy of KPAI, the relationship between the two is also written in Article 27 paragraph (3) and Article 28 paragraph (1) of the Presidential Regulation of the Republic of Indonesia Number 61 of 2016 concerning the Indonesian Child Protection Commission (Data, 2023). KPAD can seek guidance and consultation through KPAI regarding the implementation of child protection supervision. It is expected that KPAD will function as an extension of KPAI in its efforts to improve the supervision of the implementation of Child Protection in all regions in Indonesia.

Based on the Law of the Republic of Indonesia Number 35 of 2014 concerning Child Protection as explained in Article 76, KPAI must supervise the implementation of the protection and fulfillment of children's rights, provide input and proposals in the formulation of policies on the implementation of child protection, collect data and information on child protection, receive and review public complaints regarding violations of children's rights, mediate disputes over violations of children's rights, cooperate with institutions formed by the community in the field of child protection, and provide reports to the authorities on alleged violations of this Law (Republik Indonesia, 2014).

The main role of KPAI has been stipulated in the above Law, namely as an independent institution that aims to increase the effectiveness of monitoring the implementation of the fulfillment of children's rights in the face of rampant crimes against children in society. So it should be noted again that KPAI's authority is limited only as a supervisor, counterweight, and comparator of child protection violations (Sidauruk, 2023). It can be concluded that in following up on cases of violence against children, KPAI's authority is only limited to the coordination function. KPAI is not authorized to impose internal or administrative sanctions directly or to assist victims directly but is tasked with reporting and cooperating with parties who have the authority to take direct action, such as the National Police, P2TP2A, as well as the community and parents concerned.

However, if KPAI is unable to resolve the case through mediation and the disputant wants to proceed to legal channels, then KPAI can follow up with the Integrated Service Center for the Protection of Women and Children (P2TP2A) or can also go directly to the police. KPAI will get a report on the progress of the case and if it is resolved through the KPAI Court, then KPAI can directly monitor whether the child's rights have been fulfilled or not. Children here are victims of circumstances, social media, the environment, and others that can make children bully both as perpetrators and victims. So the rights of children cannot be violated, therefore, KPAI protects both without distinguishing between perpetrators and victims (Lestari, 2018).

In protecting children who are perpetrators of bullying and victims of bullying, KPAI looks at the principles of child protection. These principles consist of 1) children cannot fight alone, children are the main capital for the survival of the nation, therefore their rights must be protected because children cannot protect their rights; 2) the best interest of the child, for the implementation of child protection properly, there is a principle that states that the best interests of the child must be seen as of paramount importance (obtaining the highest priority) in every decision concerning children. The principle of the best interest of the child is used because many things that children do are caused by ignorance due to their age of development; 3) life-circle approach, in realizing child protection there is an understanding that protection must begin early and continuously. The family, educational institutions, and social/religious institutions are required to have quality in the growth and development of children; 4) cross-sectoral, the fate of children depends on various micro and macro factors.

Poverty, displacement, and the education system affect children's development (Gultom, 2014).

KPAI's Obstacles in Handling Bullying Cases

Bullying in a short sense is an act by a person or group as the use of power or strength to harm a person or group so that the victim feels depressed, traumatized, and helpless; either physically, verbally, or psychologically (Rukmana, 2022). If it occurs against children, juridically, the act of violence is an act against children that results in physical, psychological, sexual, and/or neglect, including threats to commit acts, coercion, or unlawful deprivation of liberty.

From the explanation above, bullying is included in the criminal offense regulated in Law Number 35 of 2014 concerning Child Protection. The article on bullying in physical and verbal forms is regulated in Article 76C of Law Number 35 of 2014 concerning Child Protection which regulates that every person is prohibited from placing, allowing, committing, ordering to commit, or participating in violence against children. If this is violated, the perpetrator may be subject to Article 80 of Law No. 35 of 2014 concerning Child Protection, namely (1) every person who violates the provisions of Article 76C of Law No. 35 of 2014, may be sentenced to imprisonment for a maximum of 3 years and 6 months and/or a maximum fine of IDR. 72 million; (2) if the child is seriously injured, the perpetrator will be sentenced to imprisonment for a maximum of 5 years and/or a maximum fine of Rp. 100 million; (3) if the child dies, the perpetrator will be sentenced to imprisonment for a maximum of 15 years and/or a maximum fine of Rp. 3 billion; and (4) the penalty is increased by one-third of the provisions in paragraphs (1), (2), and (3) if the perpetrator is the parent. In addition, if the bullying action is in the form of attacking someone's honor / good name carried out through social media, it will refer to Article 27A of Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions.

The existence of children's rights to protection is stated in Article 28B of the 1945 Constitution of the Republic of Indonesia, where the state must protect from violence and discrimination against children's survival, growth, and development. Article 4 of Law Number 23 of 2002 further explains child protection, namely that "Every child has the right to be able to live, grow, develop, and participate reasonably by the dignity of humanity, and receive protection from violence and discrimination". Therefore, it is important to have legal protection for child victims of bullying to create conditions where children can carry out their rights and obligations (Pratiwi & Yuzarion, 2019).

This right to protection also applies to children who are or are suspected of being perpetrators of bullying, namely special protection when dealing with the law, by Article 40 of the convention on the Rights of the Child which states that, "every child accused of violating the law shall be treated in ways that respect his or her rights". This is demonstrated in the establishment and implementation of Law No. 11/2012, where children in conflict with the law receive special protection in the form of settlement efforts through Restorative Justice or diversion.

The main obstacle faced by KPAI is that the authority granted is limited to supervising and monitoring the implementation of protection. The imposition of restrictions or prevention on the authority of KPAI in preventing abuse of power has resulted in difficulties for KPAI institutions in realizing the existence of KPAI, namely to increase the effectiveness and efficiency of the implementation of the protection of children's constitutional rights. KPAI's space is limited because it cannot impose internal or administrative sanctions on perpetrators of child rights violations, but only appeals or recommendations (Dewiyanti & Firdausy, 2020).

The establishment of KPAD is explained in Article 74 paragraph (2) of the Child Protection Law which states that the establishment of the Regional Child Protection Commission (KPAD) by the local government is optional. This causes legal uncertainty and the potential weakening of KPAI's role because local governments are not required to form KPAD. This dualism contradicts Article 20 of the Law which states that child protection is a joint obligation between the state, government, and society. The Judicial Review of Article 74 paragraph (2) reveals that this legal uncertainty hinders the necessary establishment of KPAD.

KPAD can only be established by the needs of the local government as stated in Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states that if necessary, the Regional Government may establish a Regional Child Protection Commission or other similar institution to support the supervision of the Implementation of Child Protection in the region. The use of the word "may" in the article seems to consider KPAD only as a complement and not as an obligation that must be carried out by the Regional Government. This contradicts Article 20 of the Child Protection Law which states that the State, Government, Local Government, Community, Family, and Parents or Guardians are obliged and responsible for the implementation of Child Protection. The two articles that are considered conflicting cause the Child Protection Law to provide dualism regarding the presence of KPAD in the regions.

The the Judicial Review conducted on Article 74 paragraph (2) of the Child Protection Law, namely the use of the word "may" considers that the existence of an independent KPAI is structurally weakened by the provisions that determine the formation of KPAD is hampered and there is no legal certainty if the local government needs KPAD. Regulations imposed on local governments weaken the organizational system of KPAI. The Constitutional Court rejected the application through Constitutional Court Decision Number 85/PUU-XVII/2019 because the relevant regulation states that the formation of KPAD is not an obligation that must be carried out by the local government, so in practice, it is the institution formed by the community that has an active tendency to improve child protection in the region (Sidauruk, 2023).

In addition, KPAI's current institutional position still faces various limitations as a work unit induced by other institutions. In many cases, the recognition of KPAI's existence is itself an obstacle. KPAI finds it difficult to provide advocacy to children due to factors such as 1) lack of public recognition; and 2) lack of performance. In general, the public is more prone to seek justice for children from the National Commission on Child Protection, thus forgetting other child protection institutions such as KPAI. The lack of legal awareness about children's rights in the community also hinders the process of reporting and intervention to KPAI to provide legal assistance or advocacy (Milenia & Adhari, 2023).

One-third of bullying victims do not tell their parents about what they have experienced or they will only discuss it years later after the incident occurred (Pinjungwati, 2024). This is because many victims feel afraid and worried that if the perpetrator is reprimanded by the authorities, the perpetrator will retaliate for the victim's actions and even become more cruel to the victim who reports. This is the reason why children who are victims of bullying will keep it a secret or tell their parents with the request not to report the bullying incident to the authorities of the situation.

In addition, there is still stigma and fear among victims, who are often afraid to report bullying incidents, especially in an educational environment that is prone to violence. Some teachers still assume that such incidents are just part of child's play and often ignore the issue and are reluctant to take further action for fear of tarnishing the school's reputation. As a result, many schools do not report bullying cases to the authorities. This makes it difficult for the Indonesian Child Protection Commission (KPAI) to investigate and help victims of

bullying in schools, as many schools still do not want to open up about bullying incidents that occur in their environment (Milenea).

CONCLUSION

Based on the results and discussion, it is concluded that the Indonesian Government seeks to provide protection related to bullying through the Child Protection Law and the institutions in charge, one of which is KPAI which is an independent institution, formed by the state based on statutory regulations to establish or form its own body, has its powers, and is facilitated by the state without any interference from the executive, legislative, or judicial powers. The main role of KPAI has been stipulated in Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection as an independent institution that aims to assist the effectiveness of monitoring the implementation of the fulfillment of children's rights. If KPAI is unable to resolve the case through mediation and wants to continue through legal channels, then KPAI can follow up with the Integrated Service Center for the Protection of Women and Children (P2TP2A) or directly to the police. KPAI's authority is limited to supervising, balancing, and comparing child protection violations. KPAI experiences several obstacles in carrying out its duties and authority in overcoming this bullying, the authority possessed by KPAI is only limited to a supervisor in the implementation of child protection making it difficult for KPAI to achieve its goals. This causes KPAI to only have the authority to provide recommendations or appeals to perpetrators of child rights violations. Then, the formation of KPAD as the right hand of KPAI in the Child Protection Law states that the formation of KPAD is optional, this causes legal uncertainty and weakens the role of KPAI. There are also victims of bullying who do not want to report the incident to their parents or school because of the fear that the bullying committed by the perpetrator will get worse, and there are teachers who still underestimate bullying by considering it a joke and turning a blind eye to bullying that occurs to maintain the good name of the school.

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