

Brawling From the Perspective of Positive Criminal and Islamic Criminal

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Info Articles	Abstract
<p>Article History Received : 2019-07-04 Revised: 2019-07-14 Published: 2019-07-30</p> <p>Keywords: <i>Brawl, Positive Criminal Perspective, Islamic Criminal Law</i></p>	<p>Crime is an unlawful act that violates legal norms and may result in criminal sanctions, including violations of the human right to security as guaranteed by the 1945 Constitution of Indonesia. Criminal law functions to regulate prohibited acts and impose sanctions on perpetrators. From an Islamic perspective, the Qur'an emphasizes values of brotherhood, peace, justice, and prohibits conflicts or disputes without legitimate reasons. This study aims to analyze the resolution of brawls from the perspectives of positive law and Islamic law. The research employs a normative juridical method using a literature study approach by examining laws, regulations, legal doctrines, and Islamic legal sources related to juvenile delinquency and criminal acts involving brawls. The findings indicate that the handling of brawls, which generally involve children and adolescents, requires special protection in accordance with applicable laws and regulations. Such protection includes humane treatment, the provision of legal assistance, safeguarding children's rights during legal proceedings, and avoiding excessive or severe punishment. In addition, restorative and preventive approaches are considered important in addressing juvenile involvement in brawls. The study also highlights that the effectiveness of resolving brawls is influenced by the role of law enforcement officers, family supervision, educational institutions, and public legal awareness. Therefore, collaboration among these parties is necessary to prevent and reduce the occurrence of brawls while promoting justice, protection, and social harmony.</p>

I. INTRODUCTION

A general crime is defined as an act that violates the law and therefore can result in punishment. A crime exists when someone breaks the law, either directly or indirectly, or through negligence that can result in punishment. From this legal perspective, criminal behavior appears to be active, with people committing crimes. However, even "not behaving" can be a form of crime, for example, child neglect or failure to report to the authorities when they learn of child abuse in their community.

According to Article 28 G paragraph (1) of the 1945 Constitution, "Every person has the right to protection of himself, his family, honor, dignity and property under his control, and has the right to a sense of security and protection from the threat of fear of doing something which is a human right." In article 28 G paragraph (1) of the 1945 Constitution, it is intended that every action

carried out by the perpetrator of a brawl is an act that violates a person's human rights. to get a sense of security. Crime even though the act is not formulated in the law as a criminal act, people still realize that the act is a crime and deserves to be punished, the term is called *rechtsdelict* (legal offense). Contained in Book II of the Criminal Code, articles 104 to 488. These criminal acts according to their form or nature are contrary to the order or order desired by law, they are acts that violate (violate) the law. Criminal law is the whole of the regulations that determine what actions are prohibited and included in criminal acts, as well as determining what punishment can be imposed on those who do them (Saleh Roeslan, 1983).

On the other hand, in living life in the world, humans need guidance and direction from Allah SWT, because humans who lose are humans who do not get guidance from Allah SWT, and the

greatest disaster for humans is not being with the guidance of Allah SWT. In the Qur'an, many aspects of human life are explained, including the teaching that Allah SWT makes all His believing servants brothers and sisters and love each other, unite and work together, relate to each other and have compassion. As Allah SWT says in Surah Al-Hujurat verse 9:

"And if there are two groups of believers at war, make peace between them...! But if one violates an agreement with another, let the one who violates the agreement fight until it subsides, returning to the command of Allah SWT. If it has subsided, make peace between the two according to justice, and act justly; indeed, Allah Almighty loves those who act justly."

It is often heard of disputes that occur both among fellow Muslims in the world and between non-Muslims, some disputes are quickly resolved and some end in ongoing disputes that lead to wars and even lead to bloodshed in small or large amounts, how many lives are lost only sometimes for unnecessary reasons. In the Qur'an itself, Allah SWT strongly condemns any form of war or dispute that is not carried out as a form of physical effort to defend the path of Allah SWT and not as a form of freeing or saving humanity from the clutches of the enemies of Allah SWT.

Civilization has suppressed it to such an extent or packaged it in a beautiful way. In addition to the community, the police play a crucial role in prosecuting the perpetrators of brawls. The police, as law enforcement officers and maintainers of public order, must interact with the wider community at all times. In this relationship, the police expect legal awareness and orderly behavior from the public.

Based on this background, the author will review the problems that arise, namely: how to resolve brawls from a positive criminal and Islamic criminal perspective.

II. RESEARCH METHODE

This research uses an approach normative legal approach. The approach used is based on primary legal sources and considers theories, concepts, legal principles, and legal regulations relevant to this study. This approach is also called a bibliographic approach, which involves studying books, laws and regulations, and other documents related to the research (Abdulkadir Muhammad, 2004).

III. RESULTS AND DISCUSSION

A. Views And Resolution Of Brawls From A Positive Criminal And Islamic Criminal Perspective.

Crime is often defined as behavior that violates the law and results in punishment. Crime occurs when someone breaks the law, either directly or indirectly, or through negligence that can result in punishment. A brawl is an attack or invasion (assault) against a person's physical or mental psychological integration (Barda Nawawi Arief, 2022). Brawls between students are classified as juvenile delinquency, and in the Indonesian dictionary, it can be defined as a fight involving many people, or a fight between many people whose role is to engage in human learning. Psychologically, fights involving adolescent students are classified as a form of juvenile delinquency. Juvenile delinquency, in terms of brawls, can be classified into two types: situational and systematic. Therefore, brawls are broadly defined as acts of aggression (fighting) carried out by one group against another group intended to cause suffering/hurt or even damage others.

In Indonesia, the fights carried out by students today are quite extreme, seen from the perpetrators of student brawls who are accompanied by sharp weapons as according to Kunarto in his book entitled "Reflecting on the Criticism of the Police", he said that: "the fights of children today are very intense. Weapons such as

chains, pieces of wood, iron, knives, samurai, and stones can be found when they fight on the street."

The forms of behavior that usually appear when a group is brawling are:

1. Fighting, threatening or intimidating others.
2. Damaging public facilities, such as attacking other schools, etc.
3. Disrupting other people's activities. The brawls that occurred also disrupted the activities of others or the surrounding community, such as the hijacking of buses or public transportation.
4. Violating school rules.
5. Violates applicable laws in a country.

Violating parental rules, the behavior of student brawls carried out by these teenagers has been categorized as a form of criminal act because it is not only dangerous for themselves but also makes other parties victims, even the surrounding community who are not involved in this brawl behavior also suffer physical and material losses (Agoes, Dariyo, 2004).

B. Factors That Cause Brawls

Many factors can contribute to juvenile delinquency, such as growing up in a broken home, poverty, and so on. However, emotional skills or intelligence play a role beyond family and economic strength, and this role is crucial in determining the extent to which a teenager or child is not affected by violence or the extent to which they find the core of resilience to endure violence.

Usually, brawls between students start from very trivial issues. It could be from a game or watching a concert that ends in a riot, bumping into each other on the bus, teasing each other, fighting over women, even often staring at each other between students and words that are considered jokes can start a brawl, because they take it as a challenge. And there are many other reasons. Besides spontaneous reasons, there are also brawls between students that have become traditions. Usually this is related to hostility

between schools that has been passed down from generation to generation, becoming a grudge, so that brawls can easily break out at any time. Various factors triggering brawls between students can be categorized into two, namely internal factors originating from within the students themselves and external factors from outside the students as teenagers. These factors include:

1. Internal Factors

These internal factors from within the adolescent are in the form of psychological factors as a manifestation of psychological aspects or the individual's internal conditions which occur through a process of wrong self-internalization in responding to the values around them.

a) Adaptation Factors

Adaptation factors are factors that originate from an individual's response to their environment and all external influences. Their behavior is a reaction to the learning process, manifesting as their inability to adapt to their surroundings. Hasbalah stated that adolescents' self-concept is also crucial in the adaptation process. Adolescents with a positive self-concept tend to be optimistic.

b) Thinking Factors

Ways of thinking are absolutely necessary for healthy orientation abilities and reasonable adaptation to environmental demands and as an effort to solve the difficulties and problems of everyday life.

2. External Factors

a) Family Environment

The family is the beginning of a new life; a baby is born. No one can predict whether the baby will grow up to be a leader, an office servant, or perhaps a powerful dictator. Stuart and Sundeen state that family and parental factors play a significant role in the formation of a child's self-concept. Children raised in a conducive, loving, and respectful environment will develop a positive self-concept. Conversely, a lack of love,

acceptance, and appreciation can also negatively impact a child's development.

b) School Environmental Factors

The school environment is the second most important educational environment after the family. Schools are not only places for acquiring knowledge, but also for adolescents to develop character and personality traits appropriate to their development. They also provide support for adolescents' physical development.

c) Surrounding environment

Teenagers as members of society are always influenced by the state of society and their environment, both directly and indirectly. Facts show that the emergence of juvenile delinquency is not only a disturbance to security and order alone but also a danger that can threaten the future of the nation's society, because according to Benjamin Fine, young people are "a generation who will one day become our national leader".

Currently regulated based on the articles contained in Book II, Title XIX concerning crimes against human life and Book II, Title XX concerning assault as contained in the Criminal Code (KUHP). If in a brawl incident there are fatalities then the perpetrator can be charged under Article 338 of the Criminal Code concerning murder, but if only the victim is injured the perpetrator can be charged under Article 170 of the Criminal Code concerning collective assault and Article 351 of the Criminal Code paragraph 3 concerning assault that causes death (Sudarsono, 1995).

1. Murder

The perpetrator of murder in the Criminal Code can be charged under Article 338 of the Criminal Code which states: "Anyone who intentionally takes the life of another person, is threatened with murder with a maximum prison sentence of fifteen years." However, in the process of applying this article it must be known

- a) That the act must be intentional and the intention must arise immediately (dolus

repentinus or dolus impetus), aimed with the intention of causing the person to die.

- b) Taking someone's life must be a "positive" act, even if it is a small act.
c) The act must cause the death of a person, immediately, or some time after the act is committed.

2. Mob attack

Mob violence is regulated in Article 170 of the Criminal Code, which states that: "Anyone who openly and with joint force uses violence against people or property, is threatened with a maximum prison sentence of five years and six months." Mob violence is also a criminal act that occurs during brawls. The elements contained in this article are:

- a) In public, crimes committed in public places that can be seen by the public (general public).
b) Committing violence together, where the violence is committed together by at least two or more people, people who are only involved and do not actually participate in committing the violence cannot be charged under article 170 of the criminal code.
c) Whoever, includes anyone (the perpetrator) who commits a criminal act and the element of whoever is the subject or perpetrator of the incident.
d) Causing something to be injured/injured, the cause of injury if the violence is an unintentional result of the perpetrator.
e) Serious injuries to the body.
f) Causing death of people.
- With a maximum prison sentence of seven years, if he intentionally destroys goods or if the violence used results in injury;
 - With a maximum prison sentence of nine years, if the violence results in serious injury;
 - With a maximum prison sentence of twelve years, if the violence results in death.

3. Persecution

The perpetrator who is found guilty can be threatened with: Abuse is an act carried out intentionally which causes discomfort (uncomfort), pain or injury to the victim. Meanwhile, in Article 351 paragraph (4) of the Criminal Code, abuse is defined as an act or deed carried out intentionally to damage the health of another person. Provisions of Article 351 of the Criminal Code

- a. Assault is punishable by a maximum prison sentence of two years and eight months.
- b. If the act results in serious injury, the guilty party shall be subject to a maximum prison sentence of five years.
- c. If it results in death, the penalty is a maximum of seven years' imprisonment.
- d. abuse is equated with intentionally damaging health.
- e. Attempt to commit this crime is not punishable.

4. The Impact of Brawls

- Impact on Himself
 - a. Decreased Enthusiasm for Learning Teenagers who have been involved in brawls between students will experience a decreased enthusiasm for learning, because their focus is only on having fun with their friends and fighting with other school students.
 - b. Students cannot enjoy the growth and development of adolescents that they should. The growth and development of adolescents that should be able to play with their peers, if they are involved in legal matters, then the students cannot play with their peers because the person concerned will undergo legal proceedings.
 - c. Experiencing mental disorders If teenagers are involved in brawls between students, they are likely to experience

mental disorders because they will be ostracized by their neighborhood.

- d. Students tend to be self-destructive. Students who are involved in brawls between students and are involved in the law, usually do things that are self-destructive, because they feel they are no longer useful to their families, or the students are embarrassed by their peers.

Indifferent to the environment, parents and family Students who are involved in brawls between students will be indifferent to their surroundings and will focus on themselves to find their identity or to please themselves (Maroni, 2016)

- The Impact of Student Brawls on Families
 - a. The family's good name is tarnished. Students who engage in deviant behavior and end up getting involved with the law will automatically have their family's good name tarnished, because parents will definitely be called to accompany their children in the legal process.
 - b. Can make parents feel sad and disappointed Students can make parents sad and disappointed if the student commits a deviation that causes the teenager to be involved in the law, such as brawls.
 - c. Can destroy the hopes of the future of parents. If a student is involved in a brawl between students that involves the law, the student has automatically destroyed the future of the parents, for example, if the parents want their child to become a civil servant but the student is involved in the law because of a brawl between students, then it will be difficult for the student to become a civil servant.
 - d. Can cause a strained relationship between parents and children. Students who are involved in cases of brawls between students usually have a bad relationship

with their parents, because parents feel that the child should be given a lesson but the lesson should be given in a rough way, on the other hand the child wants to be noticed by being given love and attention from their parents.

- e. Can create an uncomfortable home atmosphere The involvement of students in cases of brawls between students can create an uncomfortable home atmosphere, because the relationship between parents and children is not good, for example, children want attention from their parents, but parents pay attention to the child with behavior that is not appropriate according to the child, even though the parents do this with the aim of making their child better.
- f. These families may be ostracized by the surrounding community due to concerns that their children will be influenced. In communities where families of students involved in student brawls, especially those involving legal issues, the community often forbids their children from associating with them, as they don't want their children to be influenced negatively.
- The Impact of Brawls on the Environment
 - a. The student is labeled as the dregs of society. Students are labeled as the dregs of society if the student disturbs the comfort and peace of society, things that can disturb the comfort and peace of society include brawls.
 - b. Students will be considered disruptive to social institutions and the rules of society. Students disrupt social institutions and the rules of society if their behavior deviates from societal rules.

Can disrupt public safety and security. Students can disrupt public safety and security if they engage in activities that deviate from social

norms, such as brawls (Septian Bayu Rismanto, 2013).

5. Solution to Brawls

Because most of the perpetrators of brawls are children or teenagers who are not yet legally competent according to criminal law. The imposition of criminal penalties for children or teenagers is regulated in Article 59 paragraph (2) letter b of Law Number 35 of 2014 concerning Child Protection, that a child who is in conflict with the law is given special legal protection, namely:

- a) Humane treatment with attention to needs according to age.
- b) Separation from adults.
- c) Effective provision of legal aid and other assistance.
- d) Implementation of recreational activities.
- e) Freedom from torture, punishment or other cruel, inhuman or degrading treatment.
- f) Avoidance of the imposition of the death penalty and/or life imprisonment.
- g) Avoidance of arrest, detention or imprisonment, except as a last resort and for the shortest possible time.
- h) Providing justice before a juvenile court that is objective, impartial and in a trial that is closed to the public.
- i) Avoidance of publication of his identity.
- j) Providing support from parents/guardians and people trusted by the child.
- k) Providing social advocacy.
- l) The gift of personal life.
- m) Providing accessibility, especially for children with disabilities.
- n) Providing education.
- o) Provision of health services.
- p) Granting of other rights in accordance with the provisions of laws and regulations.

The police's preventive and repressive measures to address student brawls have not been effective, as they continue to occur frequently in Salaman District. Interviews

revealed factors contributing to student brawls include:

1. Personality-related factors. Examples of personal factors include: puberty, envy, prejudice, mental illness, children's curiosity, and the process of discovering their identity.
2. Factors related to the family Factors related to the family include: broken homes, lack of affection from parents, parents being too busy working, parents rarely being at home, the family's economic situation being mediocre, having less than harmonious relationships with the family, lack of supervision at home.
3. Factors related to schools: Schools that are less comfortable for students, teachers who are too pushy in giving assignments, teachers who are too boring in delivering material, schools that provide rules that are too disciplinary.
4. Factors related to the environment: Society is less welcoming of differences, the many deviations seen and heard by teenagers make teenagers want to do the same things, wrong playmates, indecent shows seen by teenagers both on social media and mass media, lack of activities to fill their free time and an uncomfortable environment (Ikhya Ulumudin, 2016).

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System also contains regulations regarding the actions and types of criminal penalties that can be imposed on children in conflict with the law. The actions given are regulated in Article 5 paragraph (1):

- 1) The Juvenile Criminal Justice System must prioritize a Restorative Justice approach.
- 2) The Juvenile Criminal Justice System as referred to in paragraph (1) includes:
 - a. Investigation and prosecution of criminal cases against children are carried out in accordance with the provisions of laws and regulations, unless otherwise stipulated in this Law;

- b. Child trials conducted by courts in the general judicial environment; and
 - c. Guidance, mentoring, supervision and/or assistance during the process of carrying out criminal or criminal action and after serving the criminal or criminal action.
- 3) In the Juvenile Criminal Justice System as referred to in paragraph (2) letters a and b, diversion must be attempted.

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

A general crime is defined as an act that violates the law so that a person can be punished. A crime will exist if a person violates the law either directly or indirectly, or through negligence that can result in punishment. According to Article 28 G paragraph (1) of the 1945 Constitution, criminal acts violate a person's basic right to feel safe.

Criminal law is the entire regulation that determines what actions are prohibited and included in criminal acts, as well as determining what punishment can be imposed on the perpetrator. In living life, humans need guidance from Allah SWT, and the Qur'an teaches about making all His faithful servants as brothers and sisters who love each other, unite and work together. The Qur'an strongly condemns any form of war or conflict that is not carried out as a form of physical effort to defend the path of Allah SWT. The police have an important role in prosecuting perpetrators of brawls and expect legal awareness and orderly behavior from the community.

B. Suggestion

Criminals who violate the law must be strictly regulated by Criminal Law, which defines actions and what constitutes a crime, as well as determining the punishment. Criminal acts can violate a person's basic

right to feel safe. Therefore, the police have influence over brawlers and expect legal awareness. As the Quran teaches, all His faithful servants are treated as brothers and sisters.

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