

## **CIVIL CLAIM: ANOTHER HOPE TO THE BULLY VICTIMS**

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School bullying or ragging is among most prevalent problems in society and become a very crucial issue discussed by all level of society. There are a lot of cases reported such as the case of T. Nhaveen<sup>1</sup> and navy cadet officer Zulfarhan Osman Zulkarnain.<sup>2</sup> Failure to address this issue will have bad consequences for students in particular. Bullying has long lasting effect on the victims and the aggressors. Various ways have been introduced to tackle this issue and among them is through enforcement of law. In Malaysia, ragging will only become issue of law when the victims suffered physical injury or death, but did not comprehensive to cover mental as well as emotional torture.

In most cases, when bullying is reported to the police, it will be investigated according with criminal law. Penal Code does not contain any specific provision relating to the act of bullying, however this does not mean that the bullies will escape any legal implications of their action since general provisions can be used as a basis to curb this issue. For instance, the perpetrators or bullies may be charged with voluntarily causing grievous hurt; which is defined under section 322 of the Penal Code. This offence is punishable under section 323 of the Penal Code which carries the punishment of imprisonment of up to one year or a fine of up to RM2, 000 or both upon conviction; or section 326 if it involves a dangerous weapon or substance which carries a maximum jail sentence of 20 years and a fine or whipping upon conviction. Bullying may also fall under the offence of criminal intimidation under Section 506 which provides an imprisonment for up to two years, or fine, or both, upon conviction.

In the worst case if the act of bullying cause death, the offences will either be under Section 302 for murder that contains mandatory death penalty or attempt to murder that carries life imprisonment pursuant to Section 307 or Section 304 dealing with culpable homicide not amounting to murder which carries life imprisonment or imprisonment up to thirty years or fine or

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<sup>1</sup> <https://www.thestar.com.my/news/nation/2018/02/26/nhaveen-murder-case-transferred-to-high-court/>

<sup>2</sup> <https://www.nst.com.my/news/crime-courts/2019/07/508628/naval-cadets-murder-18-men-ordered-enter-defence>

both; depending on the *mens rea* of the bullies as well as the degree of probability or likelihood of causing death.

Many people did not aware the existence of another legal remedies to the victims of bullying instead of punitive which is through civil suit. This medium is rarely been known to the people because most of them only linked the activities of bullying with crimes. However, it should be noted that in seeking justice especially in defending the victims, civil lawsuit for compensation against the bullies is also one way to deter the menace. This position has been highlighted and proven when recently, Kuala Terengganu High Court ordered nine parties including five former Student of Sultan Mahmud Science Secondary School (SESMA) to pay a sum of RM616, 634.20 to the victim who have been bullied four years ago. The plaintiff initially filed a claim for RM2 million in 2017 including exemplary damages and aggravated damages as a result of the victim suffered emotional stress and trauma as well as lost his earring due to his right eardrum ruptured and can no longer engage in water-based activities after being beaten, kicked and slapped by senior student.

The Judge, Datuk Zainal Azman Ab Aziz also held the school was negligent in the absence of control, as the bully was planned and took place in the Chief Prefect's dormitory. He further commented that "the warden's duty roster schedule was also very well organized, but it is useless if the trust placed is not carried out..."<sup>3</sup> The Senior Assistant Student Affairs and former principal were also held liable in carrying out their responsibilities in maintaining the welfare of school students, especially their safety.

This landmark decision demonstrate how civil suit on compensation plays a vital role in protecting bully victim when it involves victim's physical and mental injuries and ensures a positive development as it is succeeded in defending the victim. This decision shows how deep the impact of bullying is on the future of the bully and the victim. It is also a lesson that not only the bullies will be held accountable, but also those people who have the duties related to this issues. Professor Dr Nik Ahmad Kamal Nik Mahmud said that "*Not only did their actions show a lack of morality but it has brought great shame and burden to their families as well, as the latter now has*

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<sup>3</sup> <https://www.nst.com.my/news/crime-courts/2019/09/525654/school-bully-victim-awarded-rm616634-damages>

*to find a way to come up with money for the compensation. Their future is also affected as there is a court record that states they are bullies.”<sup>4</sup>*

Tort actions against school basically is not a new phenomenon. This is because, there is “in loco parentis” relationship between the teachers and students as highlighted in the case of *Zazlin Zahira Hj Kamarulzaman*<sup>5</sup>, *Jumat bin Mahmud*<sup>6</sup> and *Mohamed Raihan bin Ibrahim*<sup>7</sup> to take reasonable care, for the safety and to prevent physical injury. These three cases were later referred in many other cases such as the case of *Nurul Atikah binti Mustafa Kamal*<sup>8</sup> and *Silvadurai a/l Kunnary*.<sup>9</sup> The Federal Court in the case of *Mohamed Raihan* held that:

*"The duty of care owed by (the teacher) required only that he should take such measures as in all the circumstances were reasonable to prevent physical injury to (the pupil). This duty not being one to insure against injury, but to take reasonable care to prevent it, required no more than the taking of reasonable steps to protect the plaintiff against risks of injury which ex hypothesi (the teacher) should reasonably have foreseen".*

*The law does not attach strict liability on a school teacher for the torts of his/her pupil, but only on proof that he/she had failed to exercise reasonable care in controlling the pupil such as would have avoided the injury to the plaintiff. Since that is a matter of evidence and inference, great care needs to be taken to see that the breach of the duty of care must be causally related to the injury received.....*

Despite the alarming cases regarding bullying, little attention was paid to the absence of any specific legislation dealing with bullying in Malaysia. Therefore, beside the claim of civil suit and also through criminal action, it is also suggested that specific law should be enacted or existing

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<sup>4</sup> <https://www.thestar.com.my/news/nation/2019/10/01/expensive-lesson-for-bullies-after-nine-parties-ordered-to-pay-more-the-rm600k-to-victim>

<sup>5</sup> *Zazlin Zahira Hj Kamarulzaman Dan Satu Lagi Lwn Louis Marie Neube Rt Ambrose A/L J Ambrose Dan Lain-Lain*, [1994] MLJU 35

<sup>6</sup> *Government of Malaysia & Ors. v. Jumat bin Mahmud & Anor* (1977) 2 MLJ 103

<sup>7</sup> *Mohamed Raihan bin Ibrahim & Anor v. Government of Malaysia & Ors.* (1981) 2 MLJ 27

<sup>8</sup> *Nurul Atikah binti Mustafa Kamal (seorang kanak-kanak mendakwa melaluibapa atau wakil litigasi, Mustafa Kamal bin Omar) v Nurazlina Suriani binti Zulkifly & Ors* [2019] MLJU 178

<sup>9</sup> *Silvadurai A/L Kunnary & Anor V Pengetua Sekolah Rendah Jenis Kebangsaan Cina Chung Hwa Asahan, Muar, Johor & Ors*, [1996] MLJU 331

law be amended or revised in order to provide extensive protection and deter the issue of school bullying in Malaysian educational institutions.

In conclusion, we can see the after-effect arises after this Terengganu bully case when there is urge from the society to the school and even the government to address this problem in utmost urgency and holistic manner. It shows how the civil claim succeeded in playing into action to serve justice to the victim. This current legal position has opened the eyes of all publics on the awareness to combat bullying and also gives hope to victims to restore justice.