

RESEARCH ARTICLE

# Protection for Women Victims of Domestic Violence in Indonesia: A Victimology and Criminology Approach

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 OPEN ACCESS

**Citation:**

Dula, A. P. E. (2022). Protection for Women Victims of Domestic Violence in Indonesia: A Victimology and Criminology Approach. *Law Research Review Quarterly*, 8(4), 479-494.  
<https://doi.org/10.15294/lrrq.v8i4.63429>

**Submitted :** February 11, 2022

**Revised :** May 27, 2022

**Accepted :** August 21, 2022

**Online since:** November 30, 2022

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ISSN 2716-3415

*Law Research Review Quarterly* published by Faculty of Law, Universitas Negeri Semarang, Indonesia. Published quarterly on February, May, August, and November.

**Abstract**

Law No. 23 of 2004 concerning the Elimination of Domestic Violence, defines domestic violence as any act against a person, especially women, which results in physical, sexual, psychological misery or suffering, and/or neglect of the household including threats to commit acts, coercion, or unlawful deprivation of liberty within the household sphere. However, in this case the focus will be on women as victims, this also refers to the data available at the Indonesian National Commission on Human Rights. This is unfortunate because the position of women themselves is as the first and foremost educators in a family, they are expected to be able to develop values the value of cases of saying, equality, and equality, as well as concern for one and the other, so that in the future they are able to get rid of aggressive behavior patterns from children and adolescents. Because in time, the tradition of violence inherited from parenting in this family, will face problems with state law if it is maintained. This study aims to analyze the concept of protection for women in domestic violence in Indonesia. This study uses various legal comparisons related to the protection of women in Indonesia and international law.

**Keywords:** *Domestic Violence, Women Protection, Human Rights, Legal Protection, Justice*

## 1. INTRODUCTION

Children as creatures of God Almighty and as social beings from the womb, have the right to live and be free and to receive protection (Poerwandarminta, 2002). Because the child, both spiritually and physically, does not yet have the ability to stand alone, it is incumbent upon parents, families, communities, nations, and states to protect, guarantee, maintain and secure the interests of the child. Children are particularly vulnerable to being victims of criminal acts. Many children are targeted as objects of satisfaction from criminals. With cases that are currently very prevalent in children are children as victims of pedophilia crimes. This case of sexual abuse of minors is a scourge that needs to be addressed so that minors do not become psychic traumas that can interfere with their mentality and personality.

Quoted from Katadata.com that the amount of violence against children reached 1976 cases in 2015. In 2016, the figure jumped to 6820 cases (Katadata, 2020). Of this figure, as many as 88.24 percent of girls and 70.68 percent of boys in Indonesia aged 13-17 years experienced physical violence. As for the category of emotional violence, 96.22 percent of girls and 86.65 percent of boys in Indonesia have experienced (Lokadata, 2020). Sexual violence against children can occur anywhere, from the family environment to the educational environment. As reported by Suara.com, there were at least 17 cases of child sexual violence in the educational environment as of January-October 2019 which claimed the victims of 89 children consisting of 55 girls and 34 boys. Sadly, this is mostly done by teachers with a percentage of 88 and 22 percent by the principal. The highest percentage of cases of sexual violence against children occurs in elementary schools, considering that children are easily lured and threatened (Suara dot com, 2020). Almost every case uncovered, the perpetrator is a person close to the victim. Not a few perpetrators are people who have dominance over victims, such as parents and teachers as

obtained by the data above. There is no specific characteristic or personality type that can be identified from a child sexual abuser. In other words, anyone can be a perpetrator of child sexual abuse or pedophilia. The ability of the perpetrator to control the victim, both by deceit and threats and violence, makes this crime difficult to avoid.

We know that child sexual violence is a relationship or interaction between a child and an older person or adult such as a stranger, sibling or parent where the child is used as an object of fulfillment of the perpetrator's sexual needs (End Child Prostitution in Asia Tourism (ECPAT)). These deeds are carried out using coercion, threats, bribes, deceptions and even pressure (Noviana, 2015). Therefore, legal protection of children must be enforced, because in this case it concerns the rights of children and the implementation of the obligations and responsibilities of parents, families, communities, governments and the state to provide protection to children as stated in Law No. 39 of 1999 concerning Human Rights. With the promulgation of Law No. 35 of 2014 concerning Child Protection which is stated in article 18 that: "Every child who is a victim or perpetrator of a criminal offence is entitled to legal assistance and other assistance."

The provisions of the article form the basis for children's victims of criminal acts to obtain legal assistance. The provision is part of fulfilling the responsibility of the government and other state agencies to provide special protection for children in emergency situations, children facing the law, children from minority and isolated groups, economically and sexually exploited children, trafficked children, and others. As a national movement in an effort to provide legal protection for children, it is necessary to involve all existing segments. Such as government agencies, Community Social Institutions (NGOs), social organizations, law enforcement, religious leaders, from the press as well as academic institutions and experts to work together, shoulder to shoulder in realizing Indonesian

children who are firm in their faith, educated, healthy and resilient in competing and can determine their own future (Sholeh, 2001). Indonesian laws that ensnare perpetrators of pedophilia are not serious. So that the punishment for pedophiles is not worth what has been done and the risk of damage to the future of the victim. In addition, protection from the community for victims of pedophilia is also very lacking. The attention of society, especially in the context of children, at this time is more focused on the behavior of children who violate the rule of law, criminal behavior carried out by children. But with regard to the issue of children being victimized, especially for cases of sexual violence, it rarely receives attention (Damayanti, 2015).

Based on the description above, the author wants to know a lot about the criminal act of pedophilia and legal protection efforts for victims of child sexual violence (pedophilia) based on regulations that contain protection of children, especially Law No. 35 of 2014 concerning Child Protection.

## **2. METHOD**

This study used a normatif method with some comparative approaches. Based on the background of the problems mentioned above, research problems can be formulated as follows:

- 1) How is the criminal act of perpetrators of sexual violence against children (Pedophilia) based on Law No. 35 of 2014 concerning Child Protection?
- 2) How are the legal protection efforts for victims of child sexual violence (Pedophilia) based on Law No. 35 of 2014 Tentang Child Protection?

Based on the formulation of the problem mentioned above, the objectives of this study are:

- 1) To determine the criminal act of perpetrators of child sexual violence (Pedophilia) based on Law No. 35 of 2014 concerning Child Protection

- 2) To find out legal protection efforts for victims of child sexual violence (Pedophilia) based on Law No. 35 of 2014 concerning Child Protection

### **3. RESULT AND DISCUSSION**

#### **A. Child Sexual Abuse**

In general, child sexual violence can be defined as sexual contact with an adult that occurs under one of the following three conditions:

- 1) When there is a large age or maturity difference between partners
- 2) When the couple is in a position of upper authority or in a parenting relationship with anak
- 3) When such acts are committed against children using or trickery violence (Finkelhor, 1984).

However, there is no universal agreement on the exact details of the definition, for example how much age or maturation difference should occur. Obviously, individual and cultural factors play a role. But there is widespread international agreement on most of the common types of situations that confront us in actual practice: sexual acts between pre-independence adults and children, between parents and their children, and sex acts against children using coercion and violence

According to the academic nasakah of the Draft Law on the Elimination of Sexual Violence oleh KOMNAS Perempuan, Sexual Violence is any act of degrading, insulting, attacking and/or other acts, against the body related to sexual desire, sexual desire, and/or reproductive function, forcibly, against one's will, and/or other actions that cause a person to be unable to give consent in a free state, due to the aberration of power relations, gender relations and/or other causes, which result in or may result in suffering or misery to physically, psychically, sexually, economically, socially, culturally and/or politically harm (MAPPI FHUI, 2018).

According to Lyness, sexual violence against children includes the act of touching or kissing a child's sexual organs, sexual acts or rape of children, showing pornographic media/objects, showing genitals to children and so on. Sexual abuse is a type of abuse that is usually divided into two categories based on the identity of the perpetrator, namely (Maslihah, 2006):

1) Familial Abuse

Including familial abuse is incest, which is sexual violence where the victim and the perpetrator are still in a blood relationship, being part of the nuclear family. In this case it includes someone who is a substitute for the parents, for example a stepfather, or a lover, a nanny or a trusted person taking care of the child. Mayer mentioned the category of incest in the family and associated with violence against children, namely the first category, molestation, which includes noncoitus, petting, fondling, exhibitionism, and voyeurism interactions, all things related to stimulating the perpetrator sexually. The second category is rape (sexual assault), in the form of oral or related to the genitals, masturbation, oral stimulation of the penis (fellatio), and oral stimulation of the clitoris (cunnilingus). The last most fatal category is called forcible rape, which includes sexual contact (Tower, 2002).

2) Extra Familial Abuse

Sexual violence is violence committed by others outside the victim's family. In patterns of sexual abuse outside the family, the perpetrator is usually an adult who is known by the child and has built a relationship with the child, then lures the child into situations where the sexual abuse is committed, often by providing certain rewards that the child does not get in his home. The child usually remains silent because if it is known they are afraid that it will trigger anger from their parents

Child sexual violence is an act of criminality caused by several factors. There are several theories in criminology that underlie the onset of sexual violence in children including (Harahap, 2013):

1) Criminal Biological Theory

Cesare Lombroso, a doctor who is an expert in Judicial Medicine is an important figure of this theory, putting forward his teachings as follows:

- a. A villain is a person who has evil talents
- b. The evil talent is obtained by birth or obtained from ancestors (borne criminal)
- c. The evil talent can be seen from certain biological characteristics, such as an asymmetrical face, thick lips, a snub nose and others lain
- d. That the evil talent cannot be changed, meaning that the evil talent cannot be influenced

According to Dugdale, evil is an innate trait inherited through genes. In his book Dugdale (and other theorists) trace family history/history through several generations. Dugdale himself studied the lives of more than a thousand members of one family he called jukes. His interest in the family began when he found six interconnected/related people in one prison in New York. Following that one branch of the family, descended from ada jukes, whom she referred to as the "mother of criminals". Dugdale found that among the thousands of outgoing members were 280 poor people, 60 people stealing, 7 murderers, 40 other criminals, 40 people with venereal diseases, 50 prostitutes

2) Theory Containment

According to Reckless, containment theory describes the occurrence of crime from the position of the individual (perpetrator of the crime) between social pressures and social pulls. The position of the individual in and between these two factors largely determines the form of behavior patterns that will occur. Evil is the weakness of both the control (inside) of a person's person (internal

control) and the lack of outside control over the person concerned (external control) in the face of both social pressure and social pull. Criminology through this theory sees the occurrence of sexual violence against minors as caused not only by the problem of weak internal control but also the lack of external control or structural constraints (moral education in the family, environment, residence of the perpetrator and criminal justice mechanisms in cases of sexual violence against minors)

### 3) Theory of Criminal Sociology

The main object of criminal sociology is to study the relationship between society and its members, between groups both due to the relationship of place and ethnicity with its members, between groups and groups, as long as those relationships can give rise to crimes. In addition, it is also studied about age and sex, it's just that it is different from criminal biology, so here what is studied is sex and age with its social role that can produce crime.

From the explanation of the theories of diatas, it can be concluded that violence against children occurs due to various factors that influence it so complex.

## **B. Child Protection According to the Statutory System**

In the nature of the fulfillment of human rights, the State must not discriminate between one person and another, because in essence everyone is the same subject in the eyes of the law. This is in accordance with Article 28d number 1 of the 1945 Constitution of the Republic of Indonesia which states that: "Every person is entitled to fair legal recognition, assurance, protection and certainty and equal treatment before the law."

This also applies to children both born and still in the womb. In Indonesia, the protection of children's rights has been accommodated in Article 28b number 2 of the 1945 Constitution of the Republic of Indonesia which contains:



"Every child has the right to survival, growth and development and the right to protection from violence and discrimination

The rights of the child have been included in international instruments and national instruments because the rights of the child are human rights that require proper protection and enforcement, because if the rights of the child are not protected and not enforced then there is no protection of human rights. This was realized with the ratification of the Convention on the Right of the Child by the United Nations on November 20, 1989, which contained the need for special guarantees and care for the child before and after his birth. In Indonesia, the legal protection of children is regulated in Law No. 35 of 2014 concerning Child Protection. Article 1 Paragraph 2 states that it brings: "Child protection is any activity to guarantee and protect children and their rights so that they can live, grow, develop, and participate optimally in accordance with the dignity and dignity of humanity, as well as receive protection from violence and discrimination"

Rights of children in Law Number 35 of 2014 concerning Child Protection including:

1) Chapter 9 Verse 1

Every Child has the right to education and teaching in the context of his personal development and level of intelligence in accordance with his interests and talents

2) Article 9 Paragraph 1a

Every child has the right to protection in the education unit from sexual crimes and violence committed by educators, education staff, fellow students, and/or other parties

3) Article 15

Every Child has the right to protection from:

- a. Abuse in political activities
- b. Involvement in armed disputes
- c. Involvement in social unrest

- d. Involvement in events containing the element violence
- e. Involvement in war
- f. Sexual mischief

In addition, the State and the Government are also obliged and responsible for providing support for facilities and infrastructure in the implementation of child protection. As mentioned in Art. 23 Verses 1 and 2 that:

- 1) The State, Government, and Local Government guarantee the protection, maintenance, and welfare of a child by taking into account the rights and obligations of parents, guardians, or other persons legally responsible for the Child
- 2) State, Government, and Local Government oversee the implementation of Child Protection

In addition to Law No. 35 of 2014 concerning Child Protection, in this case it also concerns Human Rights as stated in Law No. 39 of 1999 concerning Human Rights Paal 52 Paragraphs 1 and 2 that:

- 1) Every child has the right to protection by parents, family, society, and the state
- 2) The right of the child is a human right and in its interests the right of the child is recognized and protected by law even since in the womb

Furthermore, in article 57 it is stated that:

- 1) Every child has the right to legal protection from all forms of physical or mental abuse, neglect, ill-treatment, and sexual abuse while in the care of his or her parents or guardians, or any other party or responsible for the care of the child.
- 2) In the event that a parent, guardian, or caregiver commits any form of physical or mental maltreatment, neglect, treatment, and sexual abuse including rape, and or murder of a child who is supposed to be protected, then harus is subject to punitive penalties

### C. Legal Protection Theory

Legal protection is any effort to fulfill rights and provide assistance to provide a sense of security to witnesses and or victims, which can be realized in such forms as through restitution, compensation, medical services, and legal assistance (Soekanto, 1984). According to Pjillipus M. Hadjon, legal protection is aimed at the people as a preventive and responsive government action (Hadjon, 1987).

Preventive legal protection aims to prevent disputes from occurring, which leads to prudent government actions in decision-making based on discretion and preventive protection aims to prevent disputes from occurring, including handling them in the judiciary (Alfons, 2010).

Satjipto Rahardjo revealed that the law is present in society to integrate and coordinate interests that can collide with each other. Coordination of these interests is carried out in a manner, limiting and protecting those interests (Rahardjo, 2000). The law protects a person's interests by giving him the power to act in fulfilling his interests. The granting of power, or what is often referred to as this right, is carried out in a measured manner, breadth, and depth. Upaya protection for children from criminal acts of sexual violence is contained in Law Number 35 of 2014 concerning Child Protection which can be concluded as follows:

1) Article 76 C

Forbidding people placing, letting, doing, ordering to do, or participating in the commission of violence against the Child

2) Article 76 D

Forbidding people to do violence or threat forcing the Child to have intercourse with him or with others

3) Article 76 E

Forbidding people is prohibited from committing violence or threat, coercion, committing deception, committing a series of lies, or persuading the Child to commit or allow to be committed obscene acts

From the understanding of *ditas*, it can be concluded that legal protection is a form of protection to protect everyone from acts that violate the law or the rights of others carried out by the government through its law enforcement apparatus in ways based on applicable laws or regulations.

#### **D. Handling of Child Victims of Sexual Violence**

Because victims are citizens who have special rights (Wolhuter, Olley, & Denham, 2008). Likewise with children who are witnesses and victims of a criminal act. The consequences of such citizenship give rise to the obligation of the state to provide appropriate protection or rights to the child victim and/or child witness. Furthermore, these rights must be substantive in order to ensure that the state can anticipate children because it is vulnerable to being targeted by victims of crime (Wolhuter, Olley, & Denham, 2008). If there are children who have already become victims of violence, it is necessary to take the following steps (Somaliagustina & Sari, 2018):

- 1) Perpetrators of violence can report to Komnas HAM, KPAI, local police stations, hospitals, NGOs and leaders. To more quickly handle it, children's victims of violence accompanied by their families can directly report to the local integrated service center (PPT), where the PPT is a form of integrated service delivery based on hospitals in dealing with victims of violence against women and children which includes, medicolegal, psychosocial, and legal assistance services carried out across fusions and across sectors.
- 2) If further treatment is needed according to their needs, the victim can be referred to a designated institution and has the capacity as needed by the victim

Based on Law No. 31 of the Amendment to Law No. 13 of 2006 on Witness and Victim Protection, *lpsk* is given a new mandate regarding services for victims of crime, in which the *lpsk* provides assistance to victims of trafficking, victims of sexual violence crimes. This assistance includes

medical assistance and psychosocial and psychological assistance. With this new authority, child victims of crimes can receive services from the lpsk specifically for trafficking and sexual crimes. In addition to these two types of crimes, previously the LPSK also had a mandate to protect victims in general through mechanisms to protect the procedural rights of victims in the judiciary, and the right of restitution. Based on Law No. 13 of 2006 and Law No. 31 of 2014, victims are entitled to:

- 1) Medical assistance
- 2) Assistance of rehability psychosocial and psychological breast milk
- 3) Compensation
- 4) Restitution

In the explanation of Law No. 31 of 2014, Assistance is What is meant by "medical assistance" is assistance provided to restore the physical health of the Victim, including carrying out management in the event of the Victim dies, for example the management of the body to the funeral and what is meant by "psychosocial rehabilitation" is all forms of psychological and social services and assistance aimed at helping to alleviate, protect, and restore the physical, psychological, social, and spiritual condition of the victim so that they are able to carry out their social functions again reasonably, among others, the LPSK seeks to improve the quality of life of the victim by cooperating with relevant authorities in the form of assistance in fulfilling clothing, food, boards, assistance in obtaining work, or educational continuity assistance. While What is meant by "psychological rehabilitation" is the assistance provided by psychologists to victims who have suffered trauma or other psychiatric problems to recover the victim's psychiatric condition (Eddyono, et.al., 2016).

The right to restitution is the right to compensation for which the perpetrator of the criminal act is responsible. Based on Article 8A of Law No. 31 of 2014. Victims of criminal acts are entitled to restitution in the form of:

- 1) Restitution of loss for loss of wealth or income
- 2) Restitution of harm caused by suffering directly related as a result of a criminal act; and/or
- 3) Restitution of medical and/or psychological treatment costs.

#### **4. CONCLUSION**

Children are creatures of God Almighty spiritually and physically do not yet have the ability to stand alone and social beings who since the womb have the right to live and be free and to receive protection. Therefore, a son is very vulnerable to being a victim of criminal sexual violence. Sexual violence itself is an act of criminality caused by several factors, both internal and external. Most cases reveal that the perpetrator of child sexual abuse is committed by the closest person (parent / teacher). as said by Lyness which divides the identity categories of perpetrators of child sexual abuse, namely Familial Abuse and Extra Familial Abuse. In Indonesia, the regulation on child protection is stipulated in Law No. 34 of 2014 concerning Child Protection. Regulations on child protection are contained in various matters such as the 1945 Constitution, the Convention on the Rights of the Child to Law No. 39 of 1999 concerning Human Rights. Of all the above regulations, condemn the existence of acts of sexual violence against children, that children have the right to be protected from various crimes such as article 15 of Law No. 35 of 2004 concerning child protection, that Every Child has the right to obtain protection from P enyaabusan in political activities, P involvement in disputes with a dispute, P involvement in social unrest, P elibatan in events containing elements of kekerasan, Pelibatan in the fight n and K sexual abuse. The handling of child victims of sexual violence is carried out by the Witness and Victim Protection Agency in accordance with Law No. 31 of the Amendment to Law No. 13 of 2006 concerning Witness and Victim Protection. The LPSK is given a new mandate regarding services for victims of crime, in which the LPSK

provides assistance to trafficking victims, victims of sexual violence. This assistance includes medical assistance and psychosocial and psychological assistance. Based on Law No. 13 of 2006 and Law No. 31 of 2014, victims are entitled to rehabilitation psychosocial and psychologicals and compensation and Restitution. In addition, violence can be reported to Komnas HAM, KPAI, local police stations, hospitals, NGOs and figures for follow-up. Of the many cases of sexual violence against children, there needs to be extra attention from the government. Sanctions for perpetrators of sexual violence must be strict, because the harm suffered by victims of violence is not only physical but also spiritual. Sex education must be given as one of the preventive efforts and sexual violence of children.

## **5. DECLARATION OF CONFLICTING INTERESTS**

Data collection to analysis and writing of this article was only carried out by one author.

## **6. FUNDING**

None

## **7. ACKNOWLEDGEMENT**

None

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