

RESEARCH ARTICLE

# Gender-Based Violence: How Child and Women are Protected?

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## Abstract

Right is an element inherent in man since the man is still in the womb until he died. In society, efforts are often made to fulfill human rights by everyone, and because the fulfillment of those rights, results in the violation of rights against other individuals. Speaking about human rights there are now many cases of human rights violations against women and children. The most common case is violence in women and children. Violence against women today is not only a matter of individuals, but also national and even international problems. Violence against women can happen anywhere and by anyone. It is certainly a concern. In addition to the issue of human rights violations against women, there are also violations of human rights against children. The future of the nation lies in the welfare of children. Currently there are many violations of children's rights. Many children are abandoned to become street children, wage workers even become beggars. This research is intended to analyze the gender-based violence and the protection of women and children in Indonesia.

**Keywords:** *Gender-based Violence, Women Protection, Children Protection*

## 1. INTRODUCTION

Gender is a discourse and movement to achieve equality positions and roles between men and women, who still remain today become a phenomenon of icebergs. Responses and opinions pop up, start from supporting, rejecting, accepting as a theoretical discourse but cannot

implemented empirically (Kaligis, 2006). Conditions support and reject not only done by men but also women. Although gender issues are usually synonymous with injustice for women and children, but surprisingly, women and children many accept the conditions of injustice as a condition that should be accepted (taken for granted). The problem of injustice that leads to forms of violence, solving, and inhuman such as persecution and so forth. Discourse on violence against women and children is always an interesting thing because much to be discussed by practitioners, On-Governmental Organizations (NGOs), academics and the wider community along with developments a time that tends to pay more attention to human rights without seeing or distinguishing the sexes (Melani, 2013).

Violence against women and children as a global problem, is already worrying Indonesia as a developing country, holds the title bad in the case of human rights violations, one of them violation of human rights of women and children Today is violence against women and children is very much worried about especially among those who care about women (Sudarsono, 2000). Although since 1993 there has been a Declaration on the Elimination of Violence against Women but violence against women remains and even tend to increase Domestic violence or violence occurring within the environment families occupy the largest share in cases of violence that befall children in the 3-6 year age range (Luhulima, 2007). As many as 80% of that violence befall children done by their families, 10% occur in the environment education, and the rest of strangers. Every month there 30 cases of violence reported by the victim to the counseling body. Furthermore, some previous studies highlighted that gender-based violence (violence against women and children) still have many obstacles, one of the unclear protection and bias on law itself, whereas legal clarity is one form of legal certainty in cases of violence against women and children (Jhon, et.al., 2020; Crooks, 2019; Hadi, 2017; Johnson, et.al., 2020; Saraswati, 2021; Ratnasari, et.al., 2021).

Indonesian Child Welfare Foundation stated that as many as 60% are victims of mild violence, in the form of verbal violence or verbal abuse, while the remaining 40% were physically assaulted. Cases of violence against men,

women and even children often become headlines in various media. From a legal marriage will have legal consequences among them are children who was born of the marriage became a legitimate child, the obligation of the husband to finance and to educate the children and their wives and to seek shelter together, have the right to inherit each other between husband and wife and children with parents, the father has the right to be the child's marriage guardian and if one of the husbands or wives dies one, the other is entitled be a watchdog against children and property (Maruapey, 2007).

The Marriage Law as the legal basis governing marriage in general, is intended to provide protection for the people, namely to the position of husband, wife, and children born of legal marriage, in the sense of being carried out in accordance with religion and their respective beliefs and also recorded (Furaida, 2021; Rizki & Hanum, 2020; Ydhanti, et.al. 2017). Types of child abuse are psychologically diverse. The most common is the type of emotional violence While the types of violence against women on a frequent basis can be divided into 3 major groups namely domestic violence, sexual harassment, and rape (Ardianto, 2013).

## 2. METHOD

To be able to know and discuss a problem required by using certain methods of a nature scientific. The research method used by the author in the preparation this thesis is as follows: Writing method using descriptive research specification Analysis. This research should be able to achieve a goal where called Descriptive Analysis, which is intended to provide as accurate data as possible about humans, circumstances, or symptoms certain. The point is to reinforce the hypothesis, in order to strengthening old theories or within the framework of composing theories new. This paper uses the descriptive analysis research specification is to centralize the applicable legislation is associated with the theories and implementation of positive law or laws that apply in the present, especially concerning the problem of crime of rape and solving problems that exist in the present and actual. And Approach method in this research is done by method of Juridical Normative approach, that is: Method approach which is done by examining the library material which is secondary data and

referred to the biblical legal research. This paper uses the Juridical-Normative approach method, research on the legal principles contained in the rules of regulations, related scientific literature and writings with the object of research and the juridical approach of the vicarious, can be revealed and obtained a profound meaning of position victims and protection (Rasdi, 2007; Annisa, 2020).

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

#### ***A. Forms of Violence against Women and Women and Women and Children***

Look at the opinions of experts on those terms used to declare forms of violence against women does not seem to have in common terms, some use forms, some use types. This paper according to the corresponding forms in Law No. 23 of 2004.

Kristi E. Purwandari in Archie Sudiarti Luhulima put forward some forms of violence against women and children as follows: (1) Physical violence: hitting, slapping, choking and (2) Psychological violence: shouting, swearing, threatening, harassing and so on; (3) Sexual violence, such as: conduct actions that lead to sexual assault such as touching, kissing, forcing sex without the consent of the victim and other sect; (4) Financial violence: taking the victim's goods, holding back or does not provide for financial needs and so on; (5) Spiritual violence: demeaning beliefs and beliefs of victims, forcing victims to practice certain rituals and beliefs. Related to forms of violence against women and children, as follows: (1) Physical violence. Example: beaten by hand, beaten with spoon, opposed, strangled, pulled, shaved, head banged into wall; (2) Psychological violence. Examples: threatened, sworn, the victim's opinion is never assimilated, forbidden to associate, never to be invited to argue, humbled by saying words that are degrading women's position; (3) Economic violence. Example: charging the full household cost to women (women working formally) or not providing financial fulfilment to women, thus abandoning the household (Soetodjo, 2006; Pramana, 2019; Kamilla, 2021).

#### ***B. Factors Causing Violence Causes Women and Child***

Violence against women can occur without distinguishing the background economic, educational,

occupational, ethnic, age, length of marriage, or physical form of the victim. Violence is a cross-sector phenomenon and does not stand alone or just happen (Ummah, 2015). Basically, there are consequences of course there is a cause. In that connection Fathul Djannah suggests several factors: (1) economic independence of women. In general, women's dependence on men can be a cause of violence, but not entirely so because women's independence can also cause women to accept violence by men; (2) Due to women's work. Women working outside the home can cause women to be victims of violence; (3) Male infidelity. Male infidelity with other women or married men can again commit violence against women; (4) Third party interference. Intervention family members of the male party, especially the mother-in-law may cause men to commit violence against women; (5) Misunderstanding of religious teachings. Understanding wrong religious teachings can lead to violence against women in household; (6) Because of the customs of men, where men do violence against women repeatedly to become a habit (Sitorus, 2019; Suhadi, et.al. 2018; Faridah & Afiyani, 2019; Putra, 2019).

Meanwhile, Aina Rumiati Azis expressed the factors that cause violence against women, namely: (1) Patriarchal culture that occupies men as superior creatures and women as inferior creatures; (2) Misperception of religious teachings so as to assume men may rule over women; (3) Impersonation of a boy living with a beat-up father, sexual abuse involves coercion of sexual intercourse being committed against that person settled within the scope of the household (such as wives, children and housewife). Furthermore, it is explained that sexual abuse is any act that enforces sexual intercourse, coercion of sexual intercourse in an unnatural way and or dislikes, coercion of sexual intercourse with others for a specific commercial purpose or purpose. Child Social Violence may include child neglect and child exploitation (Huraerah, 2006). Abandonment of children is the attitude and treatment of parents who do not give proper attention to the process of growth and development of children. For example, children are ostracized, alienated from family, or not provided with proper education and health care. Child exploitation refers to discriminatory attitudes or ill-treatment of children committed by families or communities. For example, forcing

a child to do something for the sake of economic, social, or political interests without regard to the child's right to protection in accordance with his physical, psychological, and social status. For example, the child is forced to work (Setiawan, et.al., 2019; Choirunnisa, 2021).

### *C. Efforts to tackle violence against children and women*

Some efforts that can be done to overcome violence against children are:

#### 1) Enough Parents Education and Knowledge

Acts of violence against children, very influential on their development both psychic and physical. Therefore, we need to stop the violence. With higher education and sufficient knowledge, parents are expected to be able to educate their children towards a satisfactory development without any violence.

#### 2) Warm and Democratic Families

In a proven study that IQ children who live in homes whose parents are indifferent, hostile, and harsh, or broken home, the child's IQ development has decreased over a three-year period. Conversely, a child who lives in a home whose parents are understanding, warmly affectionate and sets aside time to communicate with his children, explains his actions, gives the child a chance to make decisions, dialogue and discussion, the result of an average IQ (even Emotional Intelligence) children experience an increase of about 8 points. The results of the study also proved that 63% of bad boys in a children's educational institution delinquent (naughty), came from a family that is not intact (broken home). Then the results of research K. Gottschaldt in Leipzig (Germany) states that 70, 8 percent of children who are difficult to learn came from families that are not regular, not intact or experiencing excessive pressures of life.

#### 3) Building Effective Communication

The key to the issue of violence against children is the lack of effective communication within a family. So that appears is stereotyping (stigma) and prejudice. The two then undergo an accumulation process that is sometimes spiced with third-party intervention. To avoid violence against children it is necessary family members who interact with effective communication.

In an effort to promote development in favour of the best interests of children, it is necessary to develop a PUHA strategy with a view to making fulfilment and protection of children's rights a primary consideration of decision makers in national, provincial and district/city development planning. The Strategy for the Mainstreaming of the Rights of the Child (*Pengarusutamaan Hak Hak Anak*, PUHA) is defined as a rational and systematic strategy to achieve child protection and development through the integration of children's rights into the preparation of legislation, policies, programs, activities, and budgets, from the planning, preparation, implementation, monitoring and evaluation with the best interest principle for the child. PUHA serves as a limitation and a foothold in preparing a policy and program. Strategy of Mainstreaming Child Rights (PUHA) includes three levels namely macro, meso and micro. The macro level is a strategic law and policy. Planning in short-, medium- and long-term programs is a meso level. At the micro level includes activities and budgets that take the side of the child.

PUHA as a strategy to achieve protection and growth of children must be able to prove that the aspects of child protection and growth really reflected and integrated in the four main functions of program management, namely:

- 1) Planning: formulate a clear statement or purpose for the protection and growth of the child.
- 2) Implementation: ensuring that the strategy described has an impact on the child.
- 3) Monitoring: measure progress in program implementation in terms of participation and benefits for children.
- 4) Assessment: ensuring that the child is truly protected as a result of the initiative.

Furthermore, referring to the tasks, principals and functions of the Office of Women's Empowerment and Child Protection (KP3A), a program implementation strategy, namely Gender Mainstreaming (PUG) and Mainstreaming Children (PUA), with emphasis on:

- 1) Harmonization of laws and regulations
- 2) Improved coordination, good consultation to higher institutions and institutions covered by the Government.

- 3) Building networks through institutional and community strengthening.

***D. Criminal law enforcement in the handling of criminal acts violence against women***

Law enforcement is not merely a rule legislation alone but covers the execution of judge decisions. Human rights are inherent rights to human beings who reflect their dignity, which must obtain legal guarantees, because their rights can effective if those rights can be protected by law. In other words, law enforcement is also an attempt to enforce the legal protection of the society which must be regulated in positive law in order to be understood and obeyed so that everyone will get equal treatment in law (Suryamizon, 2017; Tahir, 2016).

Law is essentially a reflection of Human Rights, so that the law contains justice or not, is determined by Human Rights which is conceived and regulated or guaranteed by the law. The law is no longer seen as a mere reflection of power, but it must also radiate protection of the rights of citizens. Laws Based on human values reflect norms that respect human dignity and recognize human rights. Legal protection is a protection granted to legal subjects in the form of both preventive and repressive tools, both written and oral. In other words, it can be said that the protection of the law as a separate feature of the function of the law itself, which has the concept that the law gives a justice, order, certainty, benefit and peace.[12] Preventive legal protection measures, aims to prevent violence and crimes against women and children. In addition to the foregoing, preventive protection has also been made that violence against women and children is a violation of human rights, including women's rights. According to recommends over the need for legal protection include:

- 1) The need for special laws or arrangements concerning internal violence household.
- 2) The need for a grievance mechanism, the protection of the rights of victims.
- 3) The need for the identification of criminal and civil procedure related procedures other.



- 4) The need for procurement services to complement the roles that have been not owned by other law enforcement agencies.

Law enforcement is not a mere exercise legislation only but covers the execution of judges' rulings. In other words, law enforcement is also an effort to implement legal protection of the people, which must be regulated in positive law in order to be understood and obeyed, so that all will be treated equally in law, so that the protection of the law against the rights of the people can be guaranteed (Siregar, 2015). From the above, according to is expected to prevent legal protection can reduce the level of violence against women and children depriving their human rights of liberty.

#### *E. Legal protection of child victims of violence*

Based on Law Number 23 of 2002 Article 20 concerning child protection, that which is responsible and responsible for the implementation Child protection is the state, government, community, family, and parents. Articles 21 and 25 of the Act also further regulate protection and responsibility to the child. In Law Number 23 of 2004 on abolition of domestic violence in Article 2 in respect of the scope of this article also includes the existence of a child to be protected from domestic violence stairs. Legal protection of children is also shown implicitly in the witness protection and victim legislation. Law Number 13 of 2006 on Article 5 paragraph 1 point a "*a witness or the victim has the right: to obtain protection for personal security, family, and possessions, and are free of Threats with regard to testimony that would be, is, or has been granted*".

In general terms this article describes the family, and the child becomes a member. The above legal instruments proof that the law in Indonesia is paying attention to presence of the child. As for things to be understood again for preventing violence against children is the principle of protection against the child (Yudaningsih, 2013). The principle of non-discrimination, the principle that is best for the best interest of the child, the principle of the right to life, survival life and development of children, and the principle of appreciating views Based on Article 1 point 2 of the Protection Act Child: "*Child protection is all activities to ensure and protect children and their rights in order to live, grow, develop, and participate, optimally in accordance with the dignity*

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*and the dignity of humanity, and have protection from violence and discrimination”.*

The obligations and responsibilities of the State and Government in Child protection efforts are regulated under the Protection Act Children Article 21 - 24 namely: 1) Respect and guarantee human rights every child regardless of race, religion, race, class, type sex, ethnicity, culture, and language, the legal status of the child, the order child birth and physical and / or mental condition; 2) Deliver support facilities and infrastructure in the implementation of protection child; 3) Ensuring protection, maintenance, and welfare children with due regard to the rights and duties of parents, guardians, or other people who are generally responsible for the child and supervise the implementation of child protection; 4) Ensure the child to exercise his or her right of expression accordingly with age and intelligence level of the child. UN Member States including Indonesia as countries that have signed treaties and international conventions, are responsible for compliance agreements, protocols and conventions that have been ratified in their national territory. Convention on the Rights of the Child United Nations (English: United Nations Convention on the Rights of the Child) is a convention international organization that regulate civil, political, economic, social, and children's culture. Therefore, the government bears the whole responsibility for implementing obligations international, as well as leadership mandate in implementing rules and mechanisms necessary to realize such obligations. And, as a tangible form of GOI commitment in the protection of children, has been ratified Law No. 23 of 2002 on Child Protection. There is a wide variety of notions about children on the provisions of Indonesian legislation, where in various legal devices apply the determination of the boundary of the child different too. The child's age limit is the age grouping maximum as a form of child's ability in legal status or the legal standing of the child. Child protection aims to ensure fulfilment the rights of the child to live, grow, develop, and participate optimally in accordance with dignity and prestige humanity, and protection from violence and discrimination, for the sake of the realization of quality Indonesian children, noble, and prosperous (Rakhmad, 2016).

### *F. Legal Protection Against Women*

Efforts to protect the law against women as victims. Domestic Violence is currently regulated in legislation in Indonesia, such as: The Criminal Code, Law No.23 of 2004 About. Elimination of Domestic Violence. Form of legal protection directly through the existing institutions such as: Integrated Service Centre, as well as Legal Aid Institutions. Constraints of law enforcement officers in implementing legal protection against women victims of domestic violence by: The victim and the victim's family did not want to give testimony there will be domestic violence because of embarrassment, Case Domestic violence is not followed up at a later stage because the victim chose with draws its reasons for maintaining the family's unity meet material requirements such as the absence or escape of action (Hadiarti, 2011). Does not meet formal requirements such as lack of evidence. The victim did not attend the trial. BAP from the Police is incomplete, the victim did not give any information. Perpetrators do not present in trial.

## **4. CONCLUSION**

Right is an element inherent in man since the man is still in the womb until he died. In society, efforts are often made to fulfil human rights by everyone, and because the fulfilment of those rights, results in the violation of rights against other individuals. violence against women and children as follows: (1) Physical violence: hitting, slapping, choking and (2) Psychological violence: shouting, swearing, threatening, harassing and so on; (3) Sexual violence, such as: conduct actions that lead to sexual assault such as touching, kissing, forcing sex without the consent of the victim and others; (4) Financial violence: taking the victim's goods, holding back or does not provide for financial needs and so on; (5) Spiritual violence: demeaning beliefs and beliefs of victims, forcing victims to practice certain rituals and beliefs. Related to forms of violence against women and children, as follows: (1) Physical violence. Factors Causing Violence Causes Violence against and against Women and Child. factors: (1) economic independence of women. In general, women's dependence on men can be a cause of violence, but not entirely so because women's independence can also cause women to accept violence by men; (2) Due to women's work. Women working outside the home can

cause women to be victims of violence; (3) Male infidelity. Male infidelity with other women or married men can again commit violence against women; (4) Third party interference. Intervention family members of the male party, especially the mother-in-law may cause men to commit violence against women; (5) Misunderstanding of religious teachings. Efforts to protect the law against women as victims Domestic Violence is currently regulated in legislation in Indonesia, such as: The Criminal Code, Law No.23 of 2004 on the Elimination of Domestic Violence. Form of legal protection directly through the existing institutions such as: Integrated Service Center, as well as Legal Aid Institutions. The child as part of the next generation is the successor of the dream the struggle of the nation as well as human capital for the capital National development. The government has issued regulations legislation that specifically regulates child protection that is Law Number 23 of 2002 on Child Protection. Article 1 point 1 of Law Number 23 of 2002 explains that child protection is all activities to guarantee and protect children and their rights can live, grow, develop, and participate optimally in accordance with the dignity and dignity of humanity, and got protection from violence and discrimination.

## **6. DECLARATION OF CONFLICTING INTERESTS**

The Author declares that there is no potential conflict of interest in the research, authorship, and/or publication of this article.

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*To protect women in  
times of war, we must  
first make sure  
women receive equal  
rights in times of  
peace.*

**Martti Ahtisaari**

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