

RESEARCH ARTICLE

Children Amidst the Wave of Domestic Violence: An Analysis of Legal Protection in Indonesia Legal System

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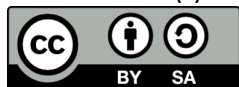
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Abstract

Domestic Violence had become a common agenda in recent decades. Some facts showed that domestic violence disproportionately affects large enough for children as victims. Violence against children is not a rare case in the community. The method used is normative research of law which is focused on the norm and the object of law as the main data, they are getting from rule and books that consist of the rule, that had to find the truth from the research that have done. The research conducted in Yogyakarta Police. The research found that the implementation of legal protection of children as victims of domestic violence can be done in two ways, namely the efforts of non-penal and penal effort. Non-penal effort done by a pre-emptive and preventive, while the efforts made by the penal repressive actions by the police Yogyakarta after psychological violence within the domestic sphere occur and are reported to the police. Constraints faced by the police in the implementation of the legal protection of children as victims of psychological violence in the household, namely: (a) The difficulty of finding strong evidence of a child victim of psychological violence, in this case the question is about how to form of psychological violence. (b) The difficulty to distinguish children who are experiencing emotional violence committed by family members in a household setting. A child who is experiencing violence usually has a psychological fear to reveal the problems they experienced because of the act of the perpetrator. (c) The number of child

victims of psychological violence to the people who shut themselves in their environment and includes the police or to Child Protective Services. (d) The delay in the reports of family members in household and includes reports from neighbours who saw or hear direct actions and words of the perpetrators of such violence.

Keywords: *Legal Protection; Domestic Violence; Child Protection; Victim of Crime*

1. INTRODUCTION

Indonesia is a legal state and within the state law states make many regulations, especially the laws and regulations that are related to certain fields. In this writing the author discusses the material about children as victims of psychological violence in the household, especially about the implementation of Law No. 23 of 2004 on Elimination of Domestic Violence (hereinafter as UU PKDRT), because although the law on PKDRT has been made by the government but on the reality has not been implemented to the child as a victim of psychic violence in the household maximally ([Wahid & Irfan, 2001](#); [Hurachan, 2006](#)).

It should be noted that the definition of the Elimination of Domestic Violence (PKDRT) contained in Law no. 23 of 2004, are *“every act against a person, especially a woman, 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”* (vide, Article 1 paragraph 1 of the UU PKDRT). Considering that the Law on Domestic Violence is a public law in which there is a threat of imprisonment or a fine for those who violate it, the wider community, especially men, in their position as heads of families should know what domestic violence is ([Gultom, 2008](#); [Setyaningtum & Arifin, 2019](#); [Kobandaha, 2017](#); [Safrina, Jauharai, & Arif, 2010](#)).

Broadly speaking, as reported by the United Nations website, domestic violence can be defined as behavior to gain or maintain power and control over a partner. Harassment or violence experienced by victims can also include physical, sexual, emotional, economic, psychological or threats. In addition, this includes behavior that scares, intimidates, terrorizes, manipulates, hurts,

insults, blames, or injures. Domestic violence can also happen to anyone of any race, age, sexual orientation, religion, or gender. Domestic violence is usually manifested as a pattern of abusive behavior towards an intimate partner, or family, in which the abuser exerts power and control over the victim. Violence can also be mental, physical, economic, or sexual. In the most severe cases, domestic violence can lead to serious physical injury, even death.

Furthermore, in several studies related to domestic violence, it was found and emphasized that efforts to fulfil the rights of victims of domestic violence must be acknowledged. The Domestic Violence Act paves the way for disclosure of domestic violence and protects the rights of Victims. Where, at first domestic violence was considered a private area that no one could enter outside the home environment. Approximately four years since it was ratified in 2004, during this law, there are still several articles that are not beneficial for women Victims of violence. PP 4 of 2006 concerning Recovery is the implementing regulation of this Law, which is expected to facilitate the process of implementing the Law as regulated in the mandate of this Law (Asagaf, 2016; Douglas & Walsh, 2010; Munir, 2005; Alfitri, 2020; Wismayanti, O'Leary, Tlbury, & Tjoe, 2021).

In addition, although this law is intended to provide a deterrent effect for perpetrators of domestic violence, the threat of punishment that does not include a minimum sentence and only a maximum sentence so that the threat of an alternative sentence of imprisonment or a fine is too light when compared to the impact received by the victim, even more beneficial if using the legal provisions as regulated in the Criminal Code. Especially if the victim is physically, psychologically disabled, or even the victim dies. As a law that focuses on the process of handling criminal law and punishment of victims, for this reason, strategic efforts are needed outside of the victim to support and provide protection for victims to reveal cases of domestic violence that befall them (Yudhanti, Arifin, & Rismandini, 2017; Ferguson, 2011; Eleanora & Sari, 2019).

The increasing amount of news about domestic violence encourages authors to examine the issue of domestic violence against children, dismantle the things that cause violence and physical effects, especially psychological

(child psychology) who experienced violence or criminal acts in the scope of households and the role of government, and the parties concerned in the protection of the law against children as victims of psychological violence in the household.

2. METHOD

This type of research is normative law research that focuses on prevailing legal norms and assessment of legal norms is done by examining secondary data as the main data, while the primary data as a supporting data. The legal instruments used for this study, such as the 1945 Constitution of Republic of Indonesia (UUD 1945), Law Number 23 of 2002 concerning Child Protection, and Law Number 23 of 2004 concerning Elimination of Domestic Violence.

The data obtained from the research is processed and analyzed descriptively qualitative, i.e., all data obtained is analyzed intact so that there is a systematic and factual picture. After analyzed, the authors draw conclusions by using the method of deductive thinking, which is a pattern of thinking that basing on things that are general and then drawn conclusions that are special.

3. RESULT AND DISCUSSION

A. Implementation of Legal Protection of Children as Victims of Domestic Violence

Article 8 of Law No. 39 of 1999 on Human Rights, it is explained that what is meant by protection is the defense of human rights. Every human being has the same rights and obligations. In social life there are often social conflicts that require settlement and assurance of the behavioral patterns of society. The definition of protection in article 1 of Government Regulation No. 2 of 2002 concerning the Procedures for the Protection of Witnesses and Victims is a form of service that must be carried out by law enforcement apparatus or security apparatus to provide security, both physical and mental, to victims and witnesses, from threats, disturbance, terror, and violence from any party given at the stage of investigation, investigation, prosecution and on examination in court (Wijoyo, 2006; Kasim & Kamba, 2019).

According Sudikno Mertokusumo is meant by the protection of the law is "*the guarantee*" provided by law. He further explained that which is meant by the protection of

the law is the existence of the guarantee of rights and duties for human beings to fulfil their own interests as well as in relationships with other human beings (Mertokusumo, 1988). Child protection is any effort aimed at preventing, rehabilitating, and empowering children experiencing treatment misconduct, exploitation, and neglect in order to ensure the survival and development of the child naturally, both physically, mentally and socially (Soeaidy & Zulkair, 2001).

According to Sholeh Soeaidy SH. and Drs. Zulkhair protection of children should rest on the following strategies:

- 1) Survival, aimed at fulfilling the basic needs for child survival;
- 2) b. Developmental, directed at developing potential, creativity, initiative and personal formation of children;
- 3) Protection, directed at providing protection for children from various consequences of disturbance such as, abandonment, exploitation and mistreatment; and
- 4) Participation, directed at giving children the opportunity to actively exercise their rights and obligations, through involvement in various activities undertaken in the framework of fostering the social welfare of children (Soeaidy & Zulkair, 2001).

Article 34 of the 1945 Constitution of the State of the Republic of Indonesia, the position of the child is stated in the policy of article 34 which states that the poor and neglected children are kept by the state. Article 330 of the Civil Code state family, immature persons are those who have not reached the age of 21 (twenty-one) years and are not married first (Prinst, 2003). In Act No. 4 of 1979 concerning Child Welfare explicitly stipulated that the child is a someone who has not reached the age of 21 years and has never married. The age limit of 21 (twenty-one) years is determined based on the consideration of children's welfare effort, in which the social, personal and mental maturity of a child is achieved at that age. This understanding is used as long as it has a relationship with the child in general, except for certain circumstances because of according to the law to determine the age of the other.

In this case, the child's understanding includes the situation in which a person in his or her life attains growth,

needs the help of another (parent or adult). Victims are those who suffer bodily and spiritually as a result of the actions of others who seek the fulfillment of self-interest or others that are contrary to the interests and suffering that suffers. Victims are people who both individually and collectively have suffered losses, including physical or mental, emotional, economic, or substantial disruptions to their fundamental rights, by acts or commissions in violation of the criminal law of each country, including the abuse of power (Gosita, 2004).

There are several common rights for people who are victims of violence, namely:

- 1) The right to obtain compensation for the circumstances he experienced. Such indemnification may be granted by the perpetrator or other party, such as a state or special institution established to deal with the remedies of victims of crime;
- 2) Right to get coaching and rehabilitation;
- 3) The right to obtain protection from the perpetrator's threat;
- 4) Right to legal aid;
- 5) The right to recover his / her property (property);
- 6) Right to access to medical services;
- 7) The right to be informed if the offender will be expelled from temporary detention, or if the fugitive flees from detention;
- 8) The right to obtain information about police investigations relating to crimes affecting victims;
- 9) The right to personal freedom/privacy, such as concealment of telephone numbers or other victims' identities (Mansur & Gultom, 2007).

In the other context, the term violence is used to describe behavior, with the use of force to others. Therefore there are 4 (four) types of violence, namely:

- 1) Open violence, i.e., visible violence such as fights;
- 2) Closed violence, i.e., hidden or non-direct, open or closed violence and either offensive or defensive, accompanied by threatening behavior;
- 3) Aggressive aggression, i.e., to get something like a jabber;
- 4) Defensive violence, i.e., violence committed as a protection measure (Santoso, 2002).

Violence is the act of a person or a group of persons causing injury or death to another person or physical damage or other person's goods (KBBI, 2002). In the Indonesian Language Dictionary, violence is defined by the subject of a violent character, the deeds of someone causing the injury or death of another person or causing physical harm or other person's goods, or of being compelled (Samadi, 2013). According to this explanation, the violence is a manifestation of more physical acts that result in injury, disability, pain or suffering in others. One of the elements to be considered is in the form of coercion or non-coercion or the absence of other parties' injured consent (Wahid & Irfan, 2001).

According to Yan Pramadya Puspa, violence is an act that uses physical or physical strength that can be expected consequently by the party affected by the act to be unconscious, powerless or unable to do anything (Puspa, 2017).

B. Implementation of Legal Protection Against Children as Victims of Psychological Violence in the Household

Article 1 Sub-Article 15 of Law Number 23 Year 2002 on Child Protection, special protection is protection provided to children in emergency situations, children in conflict with law, minority and isolated children, children who are economically and / or sexually exploited, trafficked children, child victims of narcotics abuse, alcohol, psychotropic and other addictive substances (drugs), child abductee, sales, trafficking, child victims of violence both physical and / or mental , children with disabilities, and child victims of mistreatment and neglect.

Article 45 paragraph (1) of Law Number 23 Year 2004 regarding PKDRT stipulates that every person committing acts of psychological violence within the scope of household as referred to in Article 5 letter b shall be sentenced to a maximum imprisonment of 3 (three) years or a maximum fine Rp 9,000,000.00 (nine million rupiah). Article 45 Paragraph (2) of the Law on Domestic Violence stated that in the case of an act referred to in paragraph (1) by a husband to wife or otherwise not causing illness or obstacle to perform official or livelihood work or day-to-day activities, imprisonment of a maximum of 4 (four) months or a maximum fine of Rp 3,000,000.00 (three million rupiah).

Further context and based on interview concerning the implementation of legal protection for children as victims of psychic violence in the household, Kompol Sumartilah, who served as Head of Unit of Protection of Woman and Child Police (KANIT PPA POLDA) in Yogyakarta Special Region (DIY), it can be seen that legal protection for children as victims of psychic violence in household can be done with two ways, namely: Non-Penal Efforts and Penal efforts.

1) Non-Penal Efforts

Mrs. Kompol Sumartila, S. Sos ., also explains the prevention of psychological violence against children in the household can be done by Preemptif and Preventif which in its implementation involves various departments and related institutions and Non-Governmental Organizations (NGOs) as follows:

- a. Preemptive, is early prevention, through educative activities with the aim of influencing the factors causing, pushing and the opportunity factor commonly referred to as criminogenic correlative factor of the perpetrators of violence to create an awareness and alertness and the power of deterrence, in order the development of conditions of conduct and norms of life free from the treatment of violence against children in the family. It is necessary for the community, family or parents to have consistent, continuous policies, services, resources and training on violence prevention in children. These prevention strategies include:
 - a) Prevention for all parents in an effort to improve parenting skills and to prevent misconduct or abuse does not occur, including childcare and adequate services, supportive workplace policies, and life skill training for children. What is meant by life skill training includes non-violent conflict resolution, stress handling skills, resource management, effective decision-making, effective interpersonal communication, guidance, and child development.
 - b) Prevention is aimed at high-risk community groups in the effort to improve parenting skills, including training and victim services to keep false treatment from occurring in the following generations.
- b. Preventive, i.e., that prevention is better than eradication. Therefore, supervision and control by both the police and family, the community, teachers, and

religious leaders can be done to prevent psychic violence in the household, by doing the following:

- a) Socialization of Law Number 23 of 2003 regarding Child protection and Law Number 23 Year 2004 on the Elimination of Domestic Violence especially against parents so that parents understand that the child has a set of rights that must be protected especially by their own parents.
- b) Environmental monitoring to reduce or eliminate opportunities for psychological abuse of children in the household.
- c) Guidance or guidance of active community participation to avoid psychic violence against children by filling positive activities.
- d) Reducing violent impressions in the mass media and building collective awareness in the community to reject any form of violence.
- e) Anti-violence campaigns undertaken jointly by governments and communities, continuously through various means and methods including by holding seminars or discussions.
- f) Prevention of child psychological violence by identifying high-risk families.
- g) Any institution that handles a child must be guided by the law and should not violate the rights of the child, so any handling and service provided to the child should be oriented to the child's basic rights and in the best interests of the child (Lay, 2008).

2) Penal Efforts

Penal effort is an attempt by law enforcement to protect victims of psychic violence in the household after the victim has experienced psychic violence in the household.

C. Constraints in the Implementation of Legal Protection Against Children

As Victims of Domestic Violence i Household Based on the interview with Ibu Kompol Sumartilah, S. Sos who served as Head of Unit for Protection of Women and Children of Police of Special Region of Yogyakarta (KANIT PPA POLDA DIY), it can be seen that obstacles faced by Yogyakarta Special Police in providing legal protection for children as victims of psychological violence in households in Yogyakarta are:

- 1) the difficulty of finding strong evidence from a child victimized by psychic violence. In this case, what is meant by the form of psychological violence, because the rules regarding psychological violence as set forth in Article 7 paragraph (1) of Law Number 23 Year 2004 on PKDRT has not yet explained in full how the form of psychic violence against children in household scope.
- 2) Difficulty to distinguish children who are experiencing psychic violence committed by family members in the household sphere. A child who is experiencing psychic violence usually has the fear to express the problem he experienced because of the act of the perpetrator.

4. CONCLUSION

This study concluded that the Implementation of legal protection for children as victims of psychological violence in the household can be done with two (2) ways, namely non-penal efforts and penal efforts. Non-penal effort is conducted by Preemptive means of early prevention, through educational activities with the objective of influencing the factors causing, pushing and the opportunity factor commonly referred to as criminogenic correlative factor of the perpetrators of violence to create an awareness and alertness as well the power of deterrence, in order to promote the condition of behavior and norms of life free from the treatment of violence against children in the family and the Preventive way is that prevention is better than eradication.

5. 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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