

Optimization of Human Rights Against Children in Domestic Violence Based on Law Number 35 of 2014 concerning Child Protection in Bandung City

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ARTICLE INFO

Keywords:
Human Rights,
Domestik Violence,
Child Protection.

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ABSTRACT

Within households (KDRT) in Bandung City. The family, as the smallest unit in society, should be a place of protection and love. However, reality shows that conflict in the household can lead to violence, with economic factors and childhood upbringing as triggers, as stated by the SAPA Foundation. The negative stigma in society towards domestic violence causes many victims to be reluctant to report the incident. Legal protection and human rights (HAM) for child victims of domestic violence are regulated in Law Number 35 of 2014 concerning Child Protection. However, there needs to be better implementation so that children's rights are truly protected. Preventing and anticipating negative impacts on child victims is an important step, by paying attention to the principles of protection, providing support for facilities and infrastructure, as well as cross-sector coordination. The SAPA Foundation has been active in efforts to prevent domestic violence against children, including through community-based services (LBK) and counseling. However, there are still big challenges, especially in overcoming family economic problems and psychological stress that trigger violence. In order to create a safe and supportive environment for children to engage, the active participation of communities and stakeholders is key. Public awareness about the importance of preventing domestic violence needs to be increased, and collaborative efforts between institutions, government, and society are crucial in overcoming this complex problem.

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Jurnal Restorasi :Hukum dan Politik

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INTRODUCTION

Every citizen of the Unitary State of the Republic of Indonesia has the right to welfare, including the human right to child protection. Children must have the greatest opportunity to grow and develop because they are the future leaders of the nation, the potential and heirs of the nation's ideals. They also have a crucial strategic role and have their own uniqueness that will ensure the sustainability of the nation and state in the years to come. To ensure that children receive the best possible care, both psychologically and physically, it is necessary to guarantee their rights and ensure that they are treated equally. Arif Gosita SH defines child protection law as written and unwritten laws and regulations that ensure children are able to fulfill their legal rights and responsibilities. Treatment of children who have problems with the law must also be carried out in the best interest of the child and in line with Pancasila, based on the thinking of Parents Patriae who hold that the state should protect and protect children in law. Just like parents do to their own children.

According to the explanation of "Law No. 35 of 2014" concerning Child Protection, the basis of the Law is the idea that national development activities, especially those aimed at developing the life of the nation and state, include child protection in all its forms. This law regulates the rights and responsibilities of children and how protection is applied. Based on "Law No. 35 of 2014" concerning Child Protection, this article focuses on how to maximize the enforcement of human rights against children who are victims of domestic violence.

METHOD

Normative legal research is such a type of research. Normative legal studies analyze applicable norms, including relevant laws and regulations, as legal sources for the problems faced. (Jhonny Ibrahim & Jonaedi Efendi, 2020) Analytic descriptive research is characterized by the collection of data that stays within the parameters of problem analysis and is based on general theories or concepts used to explain data or describe relationships or similarities between data and other data sets. (Sunggono, 2011)

The author of this study used qualitative descriptive research methods with empirical juridical research procedures. Qualitative research begins with preconceptions about reality or very complex social processes. Primary, secondary, and tertiary legal materials are the sources, methods, and strategies used in data collection through interviews. Qualitative descriptive data analysis is the approach used for data analysis.

RESULTS AND DISCUSSION

The State of Domestic Violence in Bandung City

The family is a kinship group consisting of genetically related individuals and is the most basic and fundamental social unit in society. Every family has rules or customary laws that govern the family. The Marriage Law of 1974 or also known as "Law No. 1 of 1974", is a government regulation that stipulates the legal conditions for a marriage or partnership. This is one of the laws and regulations governing family affairs. According to paragraph (4) of "Article 1 of Law No. 4 of 1979" concerning Child Welfare, the family is defined as the smallest social unit consisting of father, mother, and children. Children are entrusted to us by God as a precious gift, and it is our duty to continue to care for them because they have essential rights, dignity, and honor. The 1945 Constitution guarantees the protection of human rights, including the rights of children. Waluyadi's research was conducted in 2009.

It is undeniable that there will be friction in the household, and this dispute can turn into an act of violence or commonly called domestic violence (domestic violence). Because violence is dangerous, frightening, and destructive, violence is usually viewed as bad or counterintuitive. Meanwhile, family is a paradise characterized as a place where people can feel love and a place to relax.

Domestic violence can arise by many factors in it, according to the SAPA Foundation (Women's Education, Information and Communication Center) domestic violence factors that occur in the city of Bandung mostly occur due to unstable family economic factors that are not even sufficient in it so that it becomes a problem and the husband or wife cannot hold back anger, apart from the economy, according to SAPA domestic violence can also occur due to the innate parenting style of the husband or wife when they were young, This means that they are carried away with the behavioral habits of their parents.

The following information is according to statistics on domestic violence cases handled by the Bandung Polrestabes PPASat Reskrim Unit in 2020–2022.

Table 1. Information on Handling Domestic Violence Cases.

No.	Year	Case	CT	Execution of Things				
				Process	SP3	P21	A2	Overflow
1	2020	Physical Domestic Violence	146	100	37	8		1
2	2021	Physical Domestic Violence	114	60	50	3		1
3	2022	Physical Domestic Violence	44	44	-	-		-

Source: Bandung Police Women's and Children's Service Unit September 2022

Often victims of domestic violence choose to be silent or reluctant to report their experiences, so that the number of cases notified to the police is relatively less when compared with the total number of criminal acts that often occur in the community. This phenomenon is known as the "iceberg phenomenon" because of the stigma of society, which is saying violence that occurs in the household is a disgrace and becomes the business of the household which means it becomes a personal matter that should not be published. But when victims of domestic violence ventured to report the violence to the law because they could no longer bear it, it became clear that the authorities did not know exactly how to solve the case at the time the case was reported. Therefore, victims of domestic violence experience double victimization. (Sarah Azkia & Dian Andriasari, 2023)

Legal and Human Rights Protection of Children Victims of Domestic Violence

Almighty God has given us a child a gift that we should always cherish because they have the right to be honored, dignified, and glorified as human beings. UUD 1945 guarantees human rights, which in the absence of child rights.

There are currently several issues related to crimes committed against children and violence committed in relationships. In accordance with Law Number 35 of 2014 concerning "Child Protection, every child has the right to survival, growth and development, and protection from violence and discrimination. Ensuring the welfare of every individual, especially protecting children, is a fundamental human right".

Because children are the future young generation of the country and a reflection of their attitude to life, it is necessary to defend the human rights of children victims of domestic violence. (Sutedjo, 2010).

According to the Preamble of the State Constitution of the Republic of Indonesia in 1945, one of the main objectives of the state is to ensure the welfare of all Indonesian people. Indonesia is a welfare state that maintains the primacy of law as stated in Article 1 Paragraph 3 of the Law. The Child Protection Law passed in accordance with the 1945 Constitution of the Republic of Indonesia guarantees the rights and welfare of children. Child protection is a comprehensive set of actions taken to safeguard and defend children's rights, promote growth, progress, and meaningful participation in society, while safeguarding children's intrinsic values and protecting them from damage and discrimination.

The purpose of the state is to protect and defend human rights, including children's rights, as outlined in "Law No. 35 of 2014", an update to "Law No. 23 of 2002" which was amended and adjusted several matters regarding aspects of children's rights. The 1945 Constitution of the Republic of Indonesia, the principles of the convention on the rights of the child, and Pancasila became the basis for building legal guarantees for child protection, which included the following:

1. Non-discrimination
2. Best interests for the child
3. The right to life, sustainable livelihoods and development
4. Respect the child's opinion

The definition of a child based on the explanation of Law No. 35 of 2014 is as follows: "A child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb."

Violence According to the Law

The definition of violence is based on the explanation in Article 1 number 15 a of Law No. 35 of 2014 concerning "Amendments" to "Law No. 23 of 2002" concerning Protection of Children (Law No. 35/2014), as follows:

"Violence is any act against a child that results in physical, psychological, sexual, and/or neglectful misery or suffering, including threats to commit unlawful acts, coercion, or deprivation of liberty."

Legal Action for Perpetrators of Child Abuse

As stated in the caption on "Article 80 paragraph (1) jo. Article 76 c of Law 35 of 2014 concerning Child Protection" explains, namely "perpetrators of violence against children may be subject to imprisonment for a maximum of three years and six months or pay a maximum fine of Rp72 million".

Article 76 c of Law No. 35 of 2014

"Everyone is prohibited from placing, allowing, committing, ordering to commit, or participating in violence against children."

Article 80 (1) of Law No. 35 of 2014

"Any person who violates the provisions as referred to in Article 76 c shall be punished with a maximum imprisonment of 3 (three) years 6 (six) months and/or a maximum fine of Rp72,000,000.00 (seventy-two million rupiah)."

Furthermore, if a large loss arises, the perpetrator can be threatened with imprisonment with a maximum period of five years and or pay a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah).

Article 80 (2) of Law No. 35 of 2014

"In the event that the child as referred to in paragraph (1) is seriously injured, the perpetrator shall be sentenced to a maximum imprisonment of 5 (five) years and/or a maximum fine of Rp100,000,000.00 (one hundred million rupiah)"

Prevention and Anticipation for Child Victims of Domestic Violence

The prevalence of violent crime and illicit activities targeting minors has attracted great attention from several sources. This shows the weakness of child protection efforts and laws and regulations. According to "Article 20 of Law Number 23 of 2002", the duty and responsibility of a state, government, family, community, and parents is to take action to ensure the safety and protection of children. Articles 21 and 25 of the Law contain further provisions regarding the protection and responsibility of minors. The scope of Law Article 2 Number 23 of 2004 entitled "elimination of domestic violence" includes protection of children at risk of violence in their own homes. The "Witness and Victim Protection Act" provides an indirect legal protection for children. "Article 5 paragraph 1 letter a of Law Number 13 of 2006" stipulates that "a witness or victim has the right: to obtain protection for the safety of himself, his family, and his property, and to be free from threats related to the evidence he has. will, is, or has been provided." This article explains the basics of the family and how children become part of the family. The above legal documents show how Indonesian law considers the existence of children. In order to overcome or reduce a violence against children, it is also necessary to understand the basics of carrying out a care to children which include the principle or basis of non-discrimination, what is relatively better for children, getting the right to life, getting guaranteed survival, and child development, as well as respect. (Jama, 2014)

In addition, anticipation for a child who is a victim of domestic violence is an important step to reduce the negative consequences that can occur to children who are part of the victims of violence. Here are some anticipatory steps you can take:

1. Uphold children's human rights: Children's rights should be upheld without regard to factors such as their legal status, birth order, physical or mental health, or their ethnicity, religion, race, class, gender, or culture.
2. Supporting infrastructure and facilities: Encourage the growth and development of children who are experiencing violence by providing equipment and a safe atmosphere.
3. Ensuring the maintenance, safety, and well-being of minors: Pay attention to the responsibilities and rights of guardians, parents, and others who normally bear responsibility towards children, and be aware of the use of violence (Kobandaha, 2017)
4. Provision of legal aid: Provide legal training and information to child victims so that they know their rights and understand what they really are
5. Confidentiality of victims' identities: Maintaining the confidentiality of victims' identities to maintain privacy and protect children from social stigma
6. Arrest of perpetrators with preliminary evidence: Identifying and controlling violent perpetrators with evidence of a legitimate initiation
7. Other assistance in the form of health services: Providing health services and medical support for child victims of violence
8. Rehabilitation efforts: Design rehabilitation programs to help abused children restore balanced lives and cope with inherited social, emotional, and psychological trauma
9. Spreading awareness of limiting domestic violence: Teaching communities about the importance of stopping domestic violence and how best to help victimized children.
10. Organize with law enforcement and volunteer assistance: coordinate with law enforcement authorities, assist volunteers, and send people working in the social field to ensure data collected is more precise and reaches child victims comprehensively

In an effort to prevent domestic violence, it is important to involve the community and stakeholders of child victims in order to create an environment that feels peaceful and able to support children involved.

Based on the results of our research from the Sapa Foundation that domestic violence in children is quite a lot. This can occur including several factors including in terms of economics, mental and unqualified couples, and so on. The Sapa Foundation tries to prevent more domestic violence in children, so the Sapa Foundation created a community called LBK (community-based services).

In the case of domestic violence against these children, of course, many complain to the Sapa Foundation with various conditions. There are those who come with physical attacks (battered) and those who complain a lot are those who experience pressure on their psyche, and of course the most disadvantaged in domestic violence is the child, especially until both parents divorce.

Various efforts to prevent domestic violence in children have certainly been carried out by the SAPA Foundation, including the existence of LBK (community-based services) so that victims are easier to complain about their problems, and also counseling services for children who experience psychological trauma.

CONCLUSION

From the description that has been submitted, it can be interpreted that domestic violence is a serious problem faced by the community, especially in the city of Bandung. Factors such as family economic instability, parenting, and negative stigma against reporting violence make this

phenomenon difficult to overcome. Although laws and human rights protections have been enacted to protect victims of violence, their implementation still faces obstacles.

The human rights of children in becoming domestic violence must be upheld in accordance with Law "Number 35 of 2014 concerning Child Protection". However, the actual situation shows that providing a sense of security for a child who is a victim of domestic violence is not ideal. Children's rights require special consideration so that they can develop unhindered by violence.

Anticipatory and preventive efforts need to be increased to reduce the adverse effects of domestic violence on children. This includes upholding children's human rights, supporting infrastructure and facilities, ensuring the safety, welfare, and protection of children, offering legal support, safeguarding victims' identities, arresting perpetrators based on early evidence, offering health services, conducting rehabilitation programs, encouraging violence prevention socialization, and working with law enforcement.

SAPA Foundation as an institution that cares for victims of domestic violence, especially children, has carried out various prevention efforts and provided community-based services. However, cross-sectoral cooperation and active community participation are still needed to create a peaceful and supportive environment for children involved in domestic violence cases.

REFERENCE

- Jama, L. (2014). "Perlindungan Korban Kekerasan Dalam Rumah Tangga Dalam Hukum Pidana Indonesia". *Jurnal Cita Hukum*, 2, 249–272.
- Jonaedi Efendi, & Jhonny Ibrahim. (2020). "Metode Penelitian Hukum Normatif dan empiris." Kencana Pranada Media Group.
- Kobandaha, M. (2017). *Kata kunci: "Perlindungan Hukum Bagi Anak, Korban Kekerasan dalam Rumah Tangga"* 1. 23(8), 82–91.
- Sarah Azkia, & Dian Andriasari. (2023). "Studi Kasus KDRT di Polrestabes Bandung Ditinjau dari Aspek Hukum Pidana dan Kriminologi. *Jurnal Riset Ilmu Hukum*", 55–62. <https://doi.org/10.29313/jrih.v3i1.2139>
- Sunggono. (2011). "Metodologi Penelitian Hukum". PT. Raja Grafindo Persada.
- Sutedjo, W. (2010). "Hukum Pidana Anak" (Cetakan ke). PT.Refika Aditama.
- Waluyadi. (2009). "Hukum Perlindungan Anak". Mandar Maju.