

## EFFORTS AND OBSTACLES FACED IN PROVIDING LEGAL PROTECTION TO CHILDREN AS VICTIMS OF DOMESTIC VIOLENCE IN LAU GUMBA BERASTAGI VILLAGE

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**Abstract:** This research aims to determine the implementation of legal protection for children as victims of domestic violence in Lau Gumba Village and to determine the obstacles faced in providing protection for children as victims of domestic violence. This research was conducted at the Berastagi District Police and the Berastagi District Prosecutor's Office using technical observation or direct observation and interviews, namely by communicating directly through interviews with several Berastagi District Police legal officers and other informants as well as distributing questionnaires to prosecutors at the Berastagi District Prosecutor's Office. In relation to the legal protection of children which has been stipulated in Law Number 23 of 2002 and Law Number 13 of 2006 concerning the protection of witnesses and victims which is the basis of the 1945 Constitution of the Republic of Indonesia as a rule that guarantees legal protection for children who are victims of violence in the home ladder. The author will provide an overview of the form of legal protection for children who are victims of domestic violence in Lu Gumba Village which is not yet optimal from the perspective of Law Number 23 of 2002 in conjunction with Law Number 35 of 2014. The obstacles faced in provide legal protection for children as victims of domestic violence, namely: traditional constraints, psychological constraints of children and the constraints of ignorance of the children themselves and society. As well as several obstacles faced by law enforcement officers.

**Keywords:** Legal Protection, Children, Household.

### Introduction

Children are a trust and gift from Almighty God, in whom there is dignity and worth as a complete human being. Therefore, children also have human rights that are recognized and are the basis for freedom, justice and peace throughout the world. It is recognized that during the period of physical and mental growth and development, children need special care, protection and legal protection, both before and after birth. Apart from that, it should be recognized that the family is also a natural environment for the growth and welfare of children.

Children, in all their positions before the law, deserve attention to the fulfillment of their needs, both physical and spiritual. National awareness or constitutional justification for

protecting children as the main concern of the nation and state, as stated in Article 28 paragraph (2) of the 1945 Constitution, explicitly emphasizes the constitutional rights of children. Every child has the right to survival, growth and development, and protection from various forms of violence and discrimination.

Recognition, respect and guarantee as well as protection of children's rights is the realization of the state's obligations and at the same time the fulfillment of human rights. Thus, the existence of children is not just a subject that is a private or domestic or family matter, but is also a state matter. However, in reality, violence against children is increasingly common, and what is even more worrying is that violence comes from their own environment. In fact, quite a few children are forced and have to be involved in unpleasant situations or even become victims of painful treatment, either by professional criminals such as thugs, rapists, robbers and so on - as well as by their relatives or even their biological parents. Alone. However, cases and problems of violence experienced by underage children generally have not received serious attention from various parties.

In their interactions with society, children often experience acts of violence, this is of course very easy to see and even be processed legally. However, what becomes interesting is if a child experiences violence in the family, which in fact is the environment that is expected to be most conducive for the child, the first environment for the child in his life. Social legitimacy that provides full justification for the family as something normal and correct in the view of society, even though children's human rights are part of human rights contained in the 1945 Constitution of the Republic of Indonesia (UUD NKRI 1945) and Law Number 39 1999 concerning Human Rights (HAM). Specifically, matters regarding children, including their rights and obligations, are stated in Law Number 23 of 2002 concerning Child Protection. This law is the result of the ratification of the 1989 Convention on the Rights of the Child. This means that children must be viewed as legal subjects with all the rights and obligations attached to them.

Legal protection for children can be interpreted as an effort to legally protect various fundamental rights and freedoms for children, as well as various interests related to the welfare of children. Thus, the issue of legal protection for children covers a very broad scope. Child protection can also be interpreted as all forms of activities to guarantee and protect children and their rights so that they can live, grow, develop and participate optimally in accordance with human dignity, as well as receive protection from violence and discrimination. Attention to children in the international community is indeed not small and can be seen from the adoption of a number of international instruments relating to children.

## **Literature Review**

### **Understanding Children as Victims of Crime**

In Law of the Republic of Indonesia Number 13 of 2006 concerning Protection of Witnesses and Victims, Article 1 paragraph (2) states that a victim is someone who experiences physical, mental suffering and/or economic loss resulting from a criminal act. Humans as victims of criminal acts are more or less the same as the article in this law states, the difference is the age limit for humans who can be categorized as children. In general,

what is meant by children is offspring or the next generation, a result of sexual relations or sexual intercourse between a man and a woman, either within the bonds of marriage or outside the bonds of marriage. Then in Customary Law as stated by Soerojo Wignjodipoero in his book *Introduction and Principles of Customary Law* (1987: 111): Parents as the next generation and the child are also seen as a vessel where all the parents' hopes in the future must be poured out, they are also seen as protector of their parents in the future if they are parents.

The definition of a child also includes the period when the child exists. This is to avoid poisoning regarding the child's understanding in his relationship with his parents and the child's own understanding after becoming a parent. Kasiram (Setiady, 2010: 25) said: Sexual violence is a psychological totality and different characteristics and structures in each human being. In the laws and regulations concerning children, it is often stated that children are a trust and gift from Almighty God, in whom there is inherent dignity and worth as a complete human being and children are the shoots, potential and successors of the ideals of the nation's struggle, have strategic role and has special characteristics and traits that guarantee the continued existence of the nation and state in the future.

These laws and regulations regulate age restrictions for children. Law Number 23 of 2002 concerning the Protection of Children who are not yet 18 (eighteen) years old, including children who have committed criminal acts or are in conflict with the law, the age restriction is based on Law Number 3 of 1997 concerning Juvenile Justice, namely in Article 1 Number (1) where it is stated that: Children who are 8 (eight) years old but have not yet reached the age of 18 (eighteen years).

Furthermore, according to Article 1 Number (2) of the Juvenile Justice Law, it is stated that: a. Children who commit criminal acts; or b. Children who commit acts that are declared prohibited for children, either according to statutory regulations or according to other legal regulations that exist and apply in society. Apart from statutory provisions, there are also various opinions of experts regarding age restrictions for children, including Gunarso D. Singgih and Yulia D. Gunarsa (Setiady, 2010: 41), and B. Simandjuntak (1984: 29) stated that determining the predicate of a child in the meaning of a day -Today is still unclear because it is not uncommon for us to hear the use of the words elementary school children, middle school children, high school children and law faculty children. It is based on daily observations that those who behave juvenile are approximately 15 to 18 years old (final middle school, high school level). However, along with legal developments in Indonesia, the Constitutional Court (MK) conducted a Judicial Review of Article 12 1 number (1) of the Juvenile Justice Law where the Constitutional Court changed the sound of the Article to read: children who are 12 (twelve) years old but have not yet reached age 18 (eighteen) years and the Constitutional Court (MK) in its decision stated that the age limit for children who can be held criminally responsible is 12 years.

The Constitutional Court is of the opinion that the minimum age limit of 12 years guarantees children's rights to grow and develop and receive protection as guaranteed in Article 28B Paragraph (2) of the 1945 Constitution. can be classified as a child and can be faced in the trial process. A child is a person who has committed a crime who at the time of

the crime was aged between 12 years and 18 years and the person has never been married before. Then the definition of children who are victims of violence is given an age limit, as stated in Article 1 paragraph 1 Number 23 that children aged 18 (eighteen) years, including children still in the womb. This aims to protect the interests of children if their 13 rights are violated due to a criminal act. This is in line with the theory of legal fiction which states that children must be considered to exist even though they are still in the womb if their interests require it, for example in matters of inheritance. Children as victims of criminal acts are children who experience physical and/or psychological suffering caused by one or more acts that are included in or fulfill the definition of an offense under the Law.

### **Violence Against Children**

Initially, the term violence or child abuse came from the world of medicine. Around 1946, radiologist Caffey reported cases of clinical symptoms such as multiple fractures in children or babies accompanied by bleeding for unknown reasons (unrecognized trauma). In the medical world, this case is known as Caffey Syndrome.

The case that Caffey found above increasingly attracted public attention when Henry Kempe in 1962 wrote about this problem in the Journal of the American Medical Association, and reported that of the 71 hospitals he studied, it turned out that there were 302 cases of violence against children, of which 33 were children. reportedly died as a result of the abuse they experienced, and 85 suffered permanent brain damage.

Cases of neglect and abuse experienced by children are called Battered Child Syndrome, which is any condition caused by a lack of care and protection for children by parents or other caregivers. Apart from Battered Child Syndrome, another term to describe cases of abuse experienced by children is Maltreatment Syndrome, which includes physical disorders as above, as well as emotional disorders of children and the consequences of inadequate care, sexual and economic exploitation, giving food that is not suitable for children. malnourished children or food, neglect of education and health and medical-related violence.

Here are some opinions about violence against children (<http://click.infospace.com/>):

1. According to Sutanto (2006), child abuse is the treatment of adults/older children by using their power/authority against helpless children who should be their responsibility/caregiver, which results in suffering, misery, disability or death. Child abuse is more of a form of physical abuse with marks or wounds on the child's body. If violence against children in the household is carried out by parents, then this can be called domestic violence. The act of domestic violence which is included in the act of domestic violence is causing suffering both physically and mentally beyond certain limits to other people in the same house; such as against a spouse, child or parent and the act of violence is committed at home. Many parents consider violence against children to be normal. They think violence is part of disciplining children. They forget that parents are the people most responsible for seeking the welfare, protection, increasing survival and optimizing the growth and development of their children. The family is the first place where children learn to know the rules that apply in the family

and community environment. Of course, in this learning process, children tend to make mistakes. Based on the mistakes made, children will know more about actions that are useful and not useful, appropriate or inappropriate. However, parents respond to their child's wrong learning process with violence. For parents, children's violating actions need to be controlled and punished. For parents, the child's actions are a violation and need to be controlled and punished.

2. Wikipedia Indonesia (2006) provides the definition that violence refers to acts of aggression and violations (torture, rape, beatings, etc.) that cause or are intended to cause suffering or harm to others. The term violence also connotes an aggressive tendency to carry out destructive behavior. Violence occurs when someone uses their strength, power, and position to harm another person intentionally, not by accident. Violence also includes threats and actions that can result in injury and loss. The resulting injuries can be physical, emotional or mental injuries, which are detrimental to health and mental health.
3. According to Andez (2006) violence against children is any form of action that injures and harms them physically, mentally and sexually, including humiliation, including: Neglect and ill treatment, exploitation, including sexual exploitation, as well as trafficking/buying and selling of children. Meanwhile, Child Abuse is all forms of violence against children carried out by those who should be responsible for the child or those who have power over the child, who should be trusted, for example parents, close family and teachers.
4. Nadia (2004) defines violence against children as a form of abuse, both physical and psychological. Physical abuse is rough actions that harm children, and all other forms of physical violence against children. Meanwhile, psychological abuse is any act of degrading or belittling a child. Alva added that there was abuse of children.

## Method

The type of research used by researchers in this research is qualitative research. Bogdan and Taylor define qualitative methods as research procedures that produce descriptive data in the form of written or spoken words from people and observable behavior (Mamik, 2015). This type of qualitative research is used because in this research the data is presented descriptively in the form of words, not numbers, which discusses legal protection for children as victims of domestic violence (case study in Lau Gumba Village, Berastagi District, Karo Regency).

As you need to know, in general discussions of legal science, legal research is divided into two research models, namely normative legal research and empirical legal research. In this research, the research model that the researcher uses is empirical legal research. Because in this research the researcher started from real behavior obtained from the field research location, namely regarding the resolution of industrial relations disputes between labor unions and companies through a combined process carried out by several companies in North Sumatra as primary data. This is in accordance with the definition of empirical legal research explained by Abdulkadir Muhammad who explains that empirical legal research does not

start from written positive law (legislation) as secondary data, but from real behavior as primary data obtained from field research locations. research) (Muhaimin, 2020). Thus, empirical legal research is legal research that functions to see the law in real terms and examine how the law works in society (Muhaimin, 2020).

## **Result and Discussion**

### **Obstacles Faced in Providing Protection to Children as Victims of Domestic Violence.**

Patriarchal culture in Indonesia has systematically influenced society's mindset which places men (husbands) above women (wives). This cannot be separated from a series of problems that have an impact on discriminatory actions against women. The condition is even worse because of the low level of education and poverty that surround women's lives, the increasingly strong tidal waves of religious fundamentalism and cultural absolutism are currently making life increasingly difficult for women. In fact, restrictions on women's freedom of movement and expression are common things that bind women. (Israpil, 2017).

As is known, in general, women have the role of managing family finances, who must be ready to manage all household needs. Apart from that, they must also be ready to serve all the needs of parents, husbands and children with water and food as well as looking after the house. If a woman fails in financial management and taking care of the household, then the woman is considered to have failed as a housewife and is given a bad label or stigma towards the woman by internal family members such as husband, in-laws, in-laws, etc., and also from the surrounding environment. (Hadiati Soeroso , 2006)

The burden on women's lives continues to increase day by day. In addition, economic pressure has resulted in increasing poverty rates from year to year, the impact of which has led to more and more chaos in households, so that in some cases, women are the targets of physical violence and psychological violence by men in general, which often results in beyond human tolerance.

Based on data on domestic violence cases in Indonesia, it is known that women experience a lot of violence, most of which occurs in their own homes by people they know. Domestic violence is often considered less 'criminal' than offenses committed on the street and committed by strangers. The police and the public often consider that domestic commotion and violence, whether physical or psychological, is within the limits of normality, even though the impact of this violence is sometimes worse than crimes that occur outside. (Mandalan, 2019)

According to Mandalan (2019), law enforcers, especially the police, still do not consider domestic violence as part of their duties, so the criminal prosecution approach is not considered an optimal solution to overcome this problem. Domestic violence often occurs without being openly aware of it. While physical and sexual violence can usually be seen through signs of cuts or bruises, this is not the case with the psychological violence that the victim may experience. On the other hand, people who experience psychological violence do not always experience physical violence directly.

The impact of psychological violence produces different consequences from other forms of violence, where victims often demonstrate concrete behavior that illustrates the

psychological effects of the violence they experience. These effects include feelings of limitation, loss of self-confidence, and inability to act, as well as fear and serious psychological suffering. These signs can be seen from the victim's behavior which shows a loss of interest in taking care of themselves, a lack of interest in interacting with other people, symptoms of depression such as feeling sad, crying easily, losing interest in activities or work, and a lack of self-confidence. Violence in this form is a real threat that is difficult to see directly, so it is difficult to prove its existence if there is no direct report from the victim. The lack of reporting of cases of violence by victims is influenced by the victim's lack of knowledge about the various types of domestic violence that can be reported. However, Article 1 Paragraph (1) of Law no. 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT) clearly states that domestic violence includes actions against someone, especially women, which cause physical, sexual or psychological suffering, and/or domestic neglect, including threats to commit action, coercion, or restriction of freedom. This law strictly limits four forms of violence, namely physical, psychological, sexual violence and domestic neglect that causes suffering or misery.

In the context of domestic violence, women are often considered as separate entities, where law enforcers tend to prioritize family unification without prioritizing the criminal legal process, on the grounds that maintaining family unity is more important than protecting victims by criminally prosecuting perpetrators of domestic violence. In addition, many victims of domestic violence, especially women and children, choose to remain with their perpetrators, forced to remain silent, in order to maintain family integrity, even though they continuously experience physical and psychological torture from the perpetrators (Criminologist et al., 2020).

Apart from the lack of attention from law enforcers, the existence of a patriarchal culture, and the problem of poverty, there is the issue of legal dualism in Indonesia which also has an impact on this situation. Even though Law Number 23 of 2004 has determined domestic violence as a criminal act with sanctions for the perpetrator, the Compilation of Islamic Law still indirectly provides a gap for domestic violence against wives, based on the provisions of Article 48 of the Compilation concerning Nusyuz (wife's disobedience) towards husband) (Rofiah, 2017). This article gives husbands freedom to use violence against their wives. This factor arises due to the wrong interpretation of some men (husbands) regarding the Nusyuz chapter, which they then use as an excuse for self-defense.

## **Conclusion**

Domestic violence often occurs, especially against women and children, including forms of physical and mental violence. Factors that influence the incidence of domestic violence include a patriarchal culture where men's roles are considered more dominant than women's. Apart from that, low levels of education and poverty also make women vulnerable to becoming victims of domestic violence. On the other hand, external family factors such as the views of society and legal authorities who consider domestic violence as a personal problem often hinder efforts to resolve it criminally. Legal protection for victims of domestic violence consists of preventive measures, such as temporary protection provided by the

police or courts, placing victims in safe places, and curative approaches to treating them both physically and mentally. In addition, repressive protection is provided in the form of arrest and detention of perpetrators of domestic violence. However, victims' complaints are often hindered by fear and worry, preventing the provision of appropriate protection. When there are no complaints from victims, special protection efforts become difficult to implement.

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