

## CHILDREN AS VICTIMS OF SEXUAL VIOLENCE: A REVIEW OF ISLAMIC LAW AND INTERNATIONAL LAW

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**Abstract:** *Sexual violence is one of the most typical forms of violence experienced by women because it is closely related to the societal perspective that places women as sexual objects. In the Islamic view, crime and sexual violence occur due to the fading of human values. Legal protection of children varies from country to country, but general principles of human rights and child protection apply internationally, such as the Convention on the Rights of the Child ratified by the United Nations. The research method used is normative juridical, which is to conduct literature research which is carried out by examining literature materials, both books and journals, and secondary data as a basis for research by conducting a search for regulations or conventions and literature related to problems.*

**Keywords:** *Children; Sexual violence; Islamic Law; International Law*

### Introduction

Cases of sexual violence against children are becoming more and more concerning, making parents have to be more vigilant in guarding their children. Without realizing it, Indonesia is currently experiencing an emergency of sexual violence. The factors that cause sexual violence against children are due to the position of children who are seen as weak and helpless, low morality of society, especially perpetrators of sexual violence, lack of religious education, poverty and information globalization<sup>1</sup>.

The Child Protection Law defines child protection as "All activities to guarantee and protect children and their rights so that they can live, grow, develop and participate optimally in accordance with human dignity and dignity, as well as receive protection from violence and discrimination." (Article 1 Number 2). The protection of children is a form of manifestation of justice in a society, both directly implemented and in the laws and regulations of a country<sup>2</sup>. Some aspects of early childhood legal protection include<sup>3</sup>:

1. Basic rights of children: Children have basic rights such as the right to life, the right to education, the right to health, and protection from exploitation, violence, and discrimination.
2. Health protection: The law must ensure that children receive adequate access to health services, immunizations, good nutrition, and medical care.

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<sup>1</sup> Reni Dwi Septiani. The Importance of Family Communication in the Prevention of Cases of Sexual Violence in Early Childhood. *Journal of Child Education*, Volume 10(1), 2021, 50-58

<sup>2</sup> Refusing Himmatul Ulya. Legal Protection of Children Victims of Sexual Violence from the Perspective of the State and Maqashid Sharia. *Journal of Islamic Law and Family Studies* Vol. 4, No. 1, 2021, pp. 1-21

<sup>3</sup> Rahimah, Ismail Koto. Early Childhood Legal Protection: A Case Study on the Implementation of Legal Policies in Early Childhood Institutions. *SANKSI Journal* 2023. Page 192

3. Education: Legal protections should include early childhood access to quality education, including preschool education that supports their physical, cognitive, social, and emotional development.
4. Protection from violence and exploitation: The law should protect children from violence, abuse, sexual exploitation, and other forms of ill-treatment.
5. Protection from discrimination: Children should not be discriminated against on the basis of gender, race, religion, or other characteristics. The law must protect them from all forms of discrimination.

The Commission on Women and Children categorizes sexual violence into several types, namely rape, sexual intimidation, sexual harassment, sexual exploitation, trafficking in women for sexual purposes, forced prostitution, sexual slavery, forced marriage, forced pregnancy, forced abortion, forced contraception and sterilization, sexual torture, inhuman and sexual punishment, traditional practices of sexual nuances that harm or discriminate against women, sexual control<sup>4</sup>.

Juridically, at the international and national levels, Indonesian legal instruments and laws recognize the principle of equal rights and oppose all forms of violence, including sexual violence.

Sexual violence against children includes forced sexual relations carried out by adults against children divided into 3 (three), namely:

- 1) Rape, which often occurs with the perpetrator first threatening and showing his power against the child
- 2) *Insect*, the occurrence of sexual relations where marriage between the perpetrator and the victim is prohibited by law or culture and usually occurs for a long time.
- 3) Exploitation can include prostitution and pornography or often involves a group to participate.

There are several factors that cause a person to commit sexual violence against children, including<sup>5</sup>:

- 1) Obstacles in psychological development that cause the inability of the sufferer to establish reasonable heterosocial and homosexual relationships.
- 2) There tends to be an anti-social personality characterized by obstacles to the development of mature sexual patterns accompanied by obstacles to moral development.
- 3) There is a combination of regression, fear of impotence, and low ethical and moral pressure.

In this sexual violence, the victims are usually children most often, where physically and psychologically children are helpless to face violence committed by adults<sup>6</sup>. Sexual violence that happens to children can have a huge impact on a child's psyche and physicality. Children will have personalities that are not usual, he can be quiet or vice versa, easily blame himself, easily suspicious, withdraw from others, sleep difficulties, depression, anxiety disorders, panic, loss of confidence and many other things while in his physical child will experience physical injuries.

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<sup>4</sup> Saptaning Ruju Paminto, Kori Hermawanti. June 2023. THE PROTECTION OF VICTIMS OF SEXUAL VIOLENCE IN INDONESIA POSITIVE LAW AND INTERNATIONAL LAW BASED ON THE BEIJING DECLARATION. *Journal of Legal Dialectics* 5 (1)

<sup>5</sup> Sawitri Supardi Sadarjoen, Bunga Pourai Case of Psychosexual Disorders, Cet. I, (Bandung: PT Refika Aditama, 2005), p. 15.

<sup>6</sup> Hadi Sopeno, *Schools Are Not a Safe Place for Children*, (Jakarta: Kompas, 2008), p. 7.

## Literature Review

### 1. Child

Children according to *the World Health Organization* (WHO) are the age from the womb to the age of 19. Meanwhile, Article 1 of the Convention on the Rights of the Child states that a child is all a person under the age of 18, unless otherwise determined by the law of a country. The KHA regulates various rights of the child but leaves it to the State to decide who constitutes a child and at the same time allows the State to determine the adult age of the child<sup>7</sup>. Islamic law determines the definition of a child based on the signs on a person whether they are adults or not. This means that a person is declared an adult if he already has the signs of an adult as determined in Islamic Law<sup>8</sup>

### 2. Sexual violence

According to the WHO definition, it is "All acts related to sexual activity or attempted sexual activity or comments or other acts that forcibly attack a person's sexuality regardless of the relationship between the victim and the perpetrator". The discussion initiatives are focused on criminalizing acts of violence, forgetting the more important and urgent issue of victims<sup>9</sup> rights.

### 3. Islamic Law

As quoted from the journal Mardani, the word Islamic law is not found at all in the Qur'an and legal literature in Islam. What is in the Qur'an are the words shari'ah, fiqh, the law of Allah and those who are rooted in it. The words Islamic law are translations of the term "*Islamic law*" from Western literature. In the explanation of Islamic law from Western literature, the definition of Islamic law is found, namely: the entire book of Allah that governs the life of every Muslim in all its aspects. From this definition, the meaning of Islamic law is closer to the meaning of sharia.<sup>10</sup>

### 4. International Law

International Law is the part of law that regulates activities on an international scale. Initially, international law was only interpreted as the behavior and relations between countries, but in the development of increasingly complex patterns of international relations, this understanding later expanded so that international law also concerned the structure and behavior of international organizations and to a certain extent, multinational corporations and individuals.

## Method

A study cannot be said to be research if it does not have a research method<sup>11</sup>. Legal research is a process to find legal rules, legal principles, and legal doctrines to answer the legal issues faced<sup>12</sup>. The type of research used in this writing is library research. The research method used is normative juridical, namely legal research conducted by examining literature materials or

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<sup>7</sup> Copyright © 2018 Proceedings of the University of Wisconsin.

<sup>8</sup> Nursariani Simatupang, Faisal. 2018. Child Protection Law. Terrain. CV. Prima Library. Page 6

<sup>9</sup> World Health Organization, World Report on Violence and Health (UN World Health Organization 2002) (2002).

<sup>10</sup> Mardani. 2008. *Islamic Law in the National Legal System*. Journal of Law and Development, Vol. 38. No. 2.

<sup>11</sup> Ismail Koto, (2021). Legal Protection of Victims of Terrorism Crimes, Proceeding the National Seminar on Entrepreneurship, 2 (1), pp. 1052-1059.

<sup>12</sup> Peter Mahmud Marzuki, (2005), Legal Research, Jakarta: Kencana Prenada Media Group, p. . 35

secondary data<sup>13</sup>. The approach used in this study is to use a legislative approach. Legal materials are carried out using the content analysis method which is carried out by describing the material of legal events or legal products in detail to facilitate interpretation in the discussion<sup>14</sup>

## Result and Discussion

### 1. Sexual Violence in the Perspective of Islamic Law

Sexual violence is one of the forms of violence that is most often experienced by women because it is closely related to the societal perspective that places women as sexual objects<sup>15</sup>. In the Islamic view, crime and sexual violence occur due to the fading of the human values that Allah attaches to every human being. It is because of human values that he is called a human being. Through his humanity, humans also love, love, protect, respect, and help each other. If someone commits violence, it means that his humanity is in trouble. That is why whenever someone commits an act that harms and harms others, Islam teaches to repent and be *Islah*. Islam calls for repentance and *islah* not only for the perpetrators, but especially for the sacrifice<sup>16</sup>

In the aspect of sexual violence, according to the Hanafi school, the act of sexual violence (in this case rape) is included in the classification of adultery, which makes the punishment of the perpetrator related to *the law of hadd* include exile, whipping, or stoning. It's just that the nature of this adultery is "adultery accompanied by coercion". Meanwhile, the Maliki school accommodates the view that the problem of sexual violence is not only a matter of morality regulated in *hadd*, but also a matter of physical and property (taking power or *ightisab*)<sup>17</sup>

Child protection in Islam is a multi-layered, synergistic and perfect protection model for children's growth and development<sup>18</sup>. *First*, the child is protected by the family, in this case the parents and all their members. Islam has the concept of *Hadhanah* which emphasizes the care of children to both parents and close families, so that children can be cared for with affection and responsibility. That way the life and safety of children will be more guaranteed and protected. *Second*, children are protected by all components in society, by always being *amar ma'ruf nahi munkar*. When one of the members of the community sees a threat to a child, the community is obliged to play an active role in preventing it. In Islam, there must be concern and not apathetic to the circumstances around them. *Third*, children are cared for and protected by the state. This is the most basic in providing protection to children, because only the state can provide regulations related to children's rights. The state is obliged to educate and foster the piety of the community so that the vision and mission of this life purpose is solely to seek the pleasure of Allah SWT, when something is forbidden in religion, then with the awareness of the community will leave it. So that the problem of pornography that triggers child sexual violence is considered a harm and a sin that must be avoided. The state must be able to maintain the atmosphere of faith of the community and provide a sense of security in maintaining the harmony of social life so that it does not suffer damage in the midst of society.

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<sup>13</sup> Ismail Koto. (2022). Legal Policy on the Acts of Using the Same Trademark in Essence, SANKSI: National Seminar on Law, Social and Economics.

<sup>14</sup> Rahmat, Ramadhani and Ramlan. (2019). Build Operate and Transfer Agreement (Bot) of Merdeka Field Medan in the Perspective of State Administrative Law and Business Law. *De Lega Lata: Journal of Legal Sciences*, 4 (2). Page 528.

<sup>15</sup>Helen Intania Surayda.2017. LEGAL PROTECTION FOR VICTIMS OF SEXUAL VIOLENCE IN THE STUDY OF ISLAMIC LAW. *Journal of Ius Constituendum* Vol 2 No 1.

<sup>16</sup> Nakha'i, Imam. 2020. Islam Rejects Sexual Violence, accessed from [https://: swarahima.com](https://swarahima.com).

<sup>17</sup> Abnan Pancasilawati, Vience Ratna Multi Wijaya, Esti Royani, PROTECTION OF CHILDREN AGAINST SEXUAL VIOLENCE: POSITIVE LAW AND ISLAMIC LAW. CV. Amerta Media. Banyumas. Central Java. Page 89.

<sup>18</sup> Ibid p. 82

In principle, Islam does not want violence<sup>19</sup> as explained in the Qur'an Surah al-Hujurat [49]:11. "O you who believe, let not one community of men demean another, it may be better for the one who is degraded than those who are degraded. And don't let the women's community degrade other women's communities, maybe the ones who are degraded are better. And do not reproach yourself and do not call with a call that contains abuse. Such degrading and abusive attitudes and actions are bad behavior of a believer. Whoever does not return to improve himself, they are the unrighteous."

## 2. Protection of Child Victims of Sexual Violence in the Eyes of International Law

Sexual violence against women and children can occur both in conflict and peaceful conditions. Sexual violence basically began to be known by the international community after World War II in 1945. This condition occurred when the Batavia Trial was held in order to punish Japanese soldiers for their treatment of Dutch women as sexual slaves in 1948<sup>20</sup>.

*UN Women* defines sexual violence as any abuse that occurs in a state of vulnerability, namely vulnerability to power or trust for sexual purposes, including in order to benefit financially, socially or politically from the sexual exploitation of others<sup>21</sup>. The UN General Assembly recognizes that violence against women, one of which is sexual violence, is an obstacle to world development and peace, so in 1993 based on Article 1 of the Declaration on the Elimination of Violence Against Women, the UN General Assembly defined violence against women as an act of gender-based violence that produces or is likely to result in physical, sexual, or psychological harm or suffering to women. including threats to commit acts like this, coercion or random deprivation of freedom, whether it occurs in public or private life<sup>22</sup>.

The dignity and dignity of a human being in international legal instruments are protected by various provisions such as the right to individual safety, the right to liberty and personal security, and protection from all forms of discrimination. Personal freedom and security and related rights are regulated in international human rights instruments ranging from the *Universal Declaration of Human Rights* (UDHR), ICCPR, and CEDAW, and the *accompanying General Comment and General Recommendation*. These international legal instruments are the basis for protection, both directly and indirectly, for victims of sexual violence<sup>23</sup>.

The emergence of the *International Criminal Tribunal of Yugoslavia* (ICTY) in 1993 regarding cases of rape committed by combatants during the war provided the first jurisprudence in international law. Then the *Beijing Declaration and Platform for Action* was formed, which is one of the international legal instruments used to achieve gender equality and the fulfillment of women's rights in various fields. *The Beijing Declaration and Platform for Action* is also a guideline for governments in various countries that have adopted the instrument in fulfilling the rights of women in their countries in protecting women and children from various forms of violence<sup>24</sup>. *The 1995 Beijing Declaration and Platform for Action* describes several actions in the context of the elimination and prevention of violence against women, including sexual violence.

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<sup>19</sup> Atikah Rahmi, The Urgency of Protection for Victims of Sexual Violence in the Integrated Criminal Justice System with Gender Justice. *MERCATORIA Journal*, Vol. 11(1)June (2018)

<sup>20</sup> Mella Fitriyatul Hilmi 2019, "Sexual Violence in International Law," *Jurist-Diction* 2, no. 6

<sup>21</sup> United Nations High Commissioner for Refugees, 2003

<sup>22</sup> Declaration on the Elimination of Violence against Women, 1993. General Assembly A/RES/48/104.

<sup>23</sup> A woman made by Khristianti Weda Tantri. Protection of Human Rights for Victims of Sexual Violence in Indonesia. *Journal of Media Iuris* Vol. 4 No. 2, June 2021

<sup>24</sup> Saptaning Ruju Paminto, Kori Hermawanti. June 2023. Protection of victims of sexual violence in Indonesian positive law and international law based on the Beijing Declaration. *Journal of Legal Dialectics* 5 (1)

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