

Legal Protection Of Children As Victims Of Maltreatment In Child Protection Law And Islamic Legal Perspectives

Andry Syafrizal Tanjung^{1*}, Beby Sendy², Alwy Denizly³

^{1,2,3}*Universitas Pembangunan Panca Budi, Medan, Indonesia*

*E-mail: andrisyafrizal@dosen.pancabudi.ac.id

ABSTRACT

Children are Allah's entrustment to parents, society, nation and country heirs of Islamic teachings (revelation of Allah Almighty) which will later prosper the world as rahmatan lil 'âlamîn. That every child has the right to protection from violence or persecution and discrimination as mandated in the 1945 Constitution of the Republic of Indonesia. The rights of children as victims of criminal acts of maltreatment include, such as treatment, psychological rehabilitation and compensation. This research was conducted with normative legal research. Normative legal research is research that places law as a building system of norms, consisting of principles, norms, rules of laws and regulations, court decisions, agreements and doctrines.

Keywords: Legal Protection; Children; Persecution; Child Protection Law; Islamic Law

1. Introduction

As a state of law, Indonesia adheres to a system of rule of law or rule of law, where the law has the highest power in a country, and the characteristics of the rule of law can be seen in the practice of governance, namely the existence of free and impartial judicial power and recognition of human rights. Although in practice its implementation is still not perfect and there are many violations of the characteristics of the legal state (Asshiddiqie, 2022).

Criminal law can be used to affirm a number of social values that are primary and important for shaping a person's behavior in life in society. Criminal law is only used as another way of social control wherever possible when it cannot be effectively addressed. In using criminal law, efforts must be made to minimize human rights and individual freedoms, certainly by not prejudice the protection of broader common interests in the life of a democratic society. In essence, criminal law and human rights continue to run together in law enforcement.

One form of protection for the community carried out by the state is to provide legal protection through the judicial process in the event of a criminal act. One party who really needs protection in a criminal act is the victim of a criminal act. The importance of victims to be given attention and

protection stems from the thought that victims are aggrieved parties in the occurrence of a criminal act, so they must get attention and services in providing protection for their interests. Victims of criminal acts are weak in legal protection, since the victim reports a criminal act and shows who the perpetrator of the crime is and or by submitting evidence and found at the scene of the Verdict including both physical and non-physical suffering as well as material losses and non-material losses to law enforcement officials.

With the victim having reported this, the victim does not have access to a copy of the police report file. Minutes of examination of victims/whistleblowers and witnesses, investigation warrants, prosecution warrants, Verdict files submitted to the public prosecutor, transfer of suspects and evidence to the public prosecutor, submission of indictments to the district court, criminal charges and charges and district court decisions especially to obtain compensation for the suffering and losses suffered by the victim until it has permanent legal force (Abdussalam, 2010).

A lot of violence is experienced by children, especially those under the age of 18 at this time. Most of these cases are persecution carried out together or in groups. This happens because many children have a playgroup with some of their friends who over time the group becomes a gang. In this gang, there are often fights between other gangs or even they do not hesitate to persecute an individual.

Of course, this persecution causes casualties. Many factors lead to an act of persecution, such as the grudge of the group of children, personal grudges, trivial problems, and many others. Many victims choose legal channels to resolve these issues in the hope of getting justice and providing a deterrent effect or lesson for perpetrators of abuse.

But not a few also choose silence and silence for the reason of not wanting to prolong the problem. Even though there is already a Child Protection Law that regulates every criminal act committed by and/or against children. It also regulates legal protection for victims of violence (Gultom, 2014).

Persecution leads to very harmful crimes. Victims of abuse of minors have the right to legal protection which includes aspects of security, physical and psychological recovery, and assistance during the legal process. The goal is to ensure the well-being and recovery of the victim. Maltreatment of minors has rights guaranteed by law, such as the right to access health, education, and social protection services.

The perspective of Indonesian society is diverse, with the majority of the population being Muslim, the law is a necessity that must be applied. So for every Muslim ideally—or perhaps it can be said to be obligated—to understand the law and its problems, especially about Islamic law itself. Despite living in a heterogeneous society, the daily activities of a Muslim cannot be separated from the problems of Islamic law, either when worshipping Allah or when muâmalâh (conducting social relations) in the midst of society.

Islamic law – which later in the contemporary context is better known as Islamic law – basically contains holy commandments from Allah Almighty aimed at regulating aspects of the life of every Muslim (Schacht, 1993) and includes pure legal material as well as religious spiritual material. Therefore, Islamic law is the living law (Al Munawwar, 2004) and developed in the midst of society since centuries ago along with the entry of Islam in the archipelago.

2. Methods

This research was conducted with normative legal research. Normative legal research is research that places law as a building system of norms, consisting of principles, norms, rules of laws and regulations, court decisions, agreements and doctrines (teachings) (Sonata, 2014). This normative legal research is carried out by reviewing and analyzing laws and regulations or other related legal materials. This study focuses on the main characteristics of examining the application of a case accompanied by legal arguments / considerations made by law enforcement, as well as the interpretation behind the enforcement (Van Hoecke, 2011). In this regard, the Qur'an discusses and hints to humans that the protection of children is basically a duty and obligation of parents that must be carried out from childhood (Ahmad, 2006).

3. Discussion and Analysis

Overview of Criminal Acts

Criminal act as an act or act that if violated gives birth to legal provisions for the perpetrator with clear and firm demands for sanctions in accordance with the Criminal Code. In the Criminal Code (KUHP) criminal acts are known as *Strafbaarfeit*. This crime is a term that contains a basic understanding in legal science, as a term formed with awareness in giving certain characteristics to criminal law events. Criminal acts have an abstract understanding of concrete events in the field of criminal law, so that criminal acts must be given a scientific meaning and clearly determined to be able to separate them from terms used daily in people's lives.

Delik in Dutch is called *Strafbaarfeit*, which consists of 3 words, namely *straf*, *baar*, and *feit*. Where all three have meanings, namely: *Straf* is interpreted as criminal and legal, *Baar* is interpreted as can and may, *Feit* is interpreted as actions, events, violations and deeds. So the term *Strafbaarfeit* is an event that can be convicted or an act that can be punished while offense in foreign languages is called *delict* which means an act whose perpetrator can be punished (Chazawi, 2011).

The types of offenses according to doctrine consist of:

a. Formil Delik and Material Delik

- 1) Formal delicacy, which is an offense that occurs by committing an act that is prohibited and threatened with crime by law.
- 2) Material offense, which is an offense that is only considered to occur after the consequences arise which are prohibited and threatened with crime by law.

b. Commission Delik and Mission Delik

- 1) Commission offenses are offenses that violate prohibitions in the law.
- 2) Transmission offense is an offense in the form of a violation of a necessity in the law.

c. Complaint Offenses and Common Delics

- 1) Complaint offenses are offenses that can only be prosecuted if complained by people who feel aggrieved.
- 2) Ordinary offenses are offenses whose prosecution does not need to wait for a complaint.

Legal Protection of Children as Victims of Abuse in the Child Protection Law

Violence often occurs against children, which can be destructive, suffering harm, not only material, but also immaterial such as emotional and psychological shocks, which can affect the child's future life. Forms of child violence can be in the form of acts of violence both physically, psychologically and sexually (Gultom, 2013).

The establishment of child protection laws must be based on the consideration that child protection in all its aspects is part of national development activities, especially in advancing the life of the nation and state. Parents, families, and communities are responsible for safeguarding and maintaining these human rights in accordance with the obligations imposed by law. Likewise, in the context of implementing child protection, the state and government are responsible for providing facilities and accessibility for children, especially in ensuring optimal and directed growth and development (Sasangka & Sagita, 2010).

Efforts to protect children need to be carried out as early as possible, namely from the fetus in the womb to the child aged 18 (eighteen) years. This stems from a complete, comprehensive, and comprehensive conception of child protection. Child protection laws should also lay down the obligation to provide protection to children based on nondiscriminatory principles, the best interests of the child, the right to life, survival, and development, and respect for the opinions of children.

Child protection is all activities to guarantee and protect children and their rights in order to live, grow, and develop and participate optimally in accordance with human dignity and dignity, and receive protection from violence and discrimination as stated in Law number 35 of 2014 on Amendments to Law Number 23 of 2002 concerning Child Protection Article 1.

Laws and regulations governing legal protection for child victims of criminal acts, have been regulated in Law of the Republic of Indonesia number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning child protection, that every child has the right to survival, growth and development and the right to protection from violence and discrimination as mandated in the Constitution of the Republic of Indonesia Year 1945.

Children are buds, potentials, and the next generation of young people who are the ideals of the nation's struggle have a strategic role, characteristics, and special characteristics so that they must be protected from all forms of inhuman treatment that result in human rights violations. Protection of children who experience violence aims to ensure the fulfillment of children's rights so that children can grow, develop, and participate optimally in accordance with human dignity and dignity, and get protection from violence and discrimination, in order to realize Indonesian children who are qualified, have noble character, and prosper.

The Criminal Act of Child Abuse has been regulated in Law Number 35 of 2014 concerning Child Protection. Based on Article 76c of Law Number 35 of 2014 concerning Child Protection, namely: "Everyone is prohibited from placing, allowing, committing, ordering to commit, or participating in violence against children". Meanwhile, criminal sanctions for people or

perpetrators of violence/abuse who violate the above articles are determined in Article 80 of Law Number 35 of 2014 concerning Child Protection.

Article 76C of the Child Protection Law states that "Everyone is prohibited from placing, allowing, committing, ordering to commit, or participating in violence against children." It is clear that everyone in Indonesia, both Indonesian citizens and foreign nationals, is prohibited from allowing violence against children, committing violence against children, and ordering violence against children. Then regarding the regulation of criminal sanctions stipulated in Article 80 paragraph (2) of the Child Protection Law, it is explained that anyone who violates the provisions of Article 76C of the Child Protection Law which causes serious injury, the perpetrator is threatened with imprisonment for a maximum of 5 (five) years and or a maximum fine of IDR 100,000,000.00 (one hundred million rupiah).

Based on the Criminal Code, acts of persecution, whether committed against a person or several people, are considered criminal offenses, and the perpetrators are threatened with criminal punishment. The provisions of Article 351 of the Criminal Code state that:

1. Mistreatment is punishable by imprisonment with a maximum duration of two years and eight months or a maximum fine of four thousand five hundred rupiah.
2. If the act results in serious injury, the perpetrator may be subject to imprisonment with a maximum duration of five years.
3. If the act results in death, the perpetrator can be threatened with a maximum prison sentence of seven years.
4. Mistreatment is considered equivalent to intentional damage to health.
5. Attempts to commit this crime will not be criminalized.

Specific protection of children mentioned in Article 59 paragraph (2) of the Child Protection Law is as follows:

1. Child in emergency situations;
2. Children facing the law;
3. Children from minority and isolated groups;
4. Children who are economically and/or sexually exploited;
5. Children who are victims of abuse of narcotics, alcohol, psychotropics, and other addictive substances;
6. Children who are victims of pornography;
7. Children with HIV/AIDS;
8. Child victims of abduction, sale, and/or trafficking;
9. Child victims of physical and/or psychological violence;
10. Child victims of sexual crimes;
11. Child victims of terrorist networks;
12. Children with disabilities
13. Child victims of mistreatment and neglect;
14. Children with deviant social behavior; and
15. Children who are victims of stigmatization from labeling are related to the condition of their parents.

Special protection measures that can be taken for children who are included in children who are entitled to special protection are contained in Article 59A of the Child Protection Law, namely

1. Prompt treatment, including physical, psychological and social treatment and/or rehabilitation, as well as prevention of diseases and other health problems;
2. Psychosocial assistance at the time of treatment until recovery;
3. Provision of social assistance for children who come from poor families; and
4. Provision of protection and assistance in every judicial process.

The rights of children who are victims of serious maltreatment are also mentioned in Article 71D paragraph (1) of the Child Protection Law which reads "Every child who is a victim as referred to in Article 59 paragraph (2) letter b, letter d, letter f, letter i, and letter j has the right to apply to the court in the form of the right to restitution which is the responsibility of the perpetrator of the crime." Explanation of Article 71D paragraph (1) of the Child Protection Law, namely children who receive special protection in this case children who face the law, children who are exploited economically and/or sexually, children who are victims of pornography, children who are victims of physical and/or psychological violence, and children who are victims of sexual violence are entitled to compensation for losses suffered which are the responsibility of the perpetrators of crimes submitted to court. This right is called the right of restitution.

Protection of Children in the Perspective of Islamic Law

Legal growth has an internal logic. That is, change is not only the adaptation of the old to the new, but also part of a pattern of change. This does not happen randomly but results from a reinterpretation of past rules with current conditions and future needs. In its growth, law interacts with sectors of social life systemically.

Along the way, when there is interaction with social life, there is a tug-of-war between reality and ideality in legal society. In this position, Islamic law has a perfect and universal nature. Islamic law also applies throughout the ages (*likulli zamân*), covering all of humanity without borders—not limited to any particular country, continent, land, or sea—and not only regulates the legal aspects of society but also regulates the interests of *ukhrawî* (Muslehuddin & Asmin, 1991).

Man is an honorable being: "And verily We have glorified the sons of Adam, We carried them on land and in the sea, We gave them sustenance from the good and We exalted them with perfect superiority over most of the creatures We have created". (Q.S. Al-Isra, [17]:70).

As a trust, children must be safeguarded and protected all their interests, physical, psychic, intellectual, rights, dignity and dignity. Protecting children is not the obligation of their biological parents alone but is the obligation of all of us. As a religion that is loaded with affection (*rahmatan lil alamin*), Islam pays special and serious attention to children, starting from the child is still in his mother's womb until the child is approaching adulthood. The obligation to breastfeed (*radha'ah*), nurturing (*hadhanah*), the ability of mothers not to fast during pregnancy and breastfeeding, the obligation to provide halal and nutritious bread, to be fair in giving, to give a good name, to accuse, circumcision, to educate, are manifestations of this love (Zaki, 2014)

The human rights of human children in the Islamic dimension have a very broad scope, ranging from personal rights to social life teachings. Therefore, in the context of Indonesia's very diverse and multicultural society, the position of protection of children's rights as potential successors of generations has not been fully "touched" by the family, society, nation and state. Whereas if the rights of children are observed and protected by laws—both Islamic law and positive law—it will have an effect on this nation. Responding to this, Abdur Rozak Hussein stated, if the seeds of children in society are good, then surely the community is formed into a good society as well. In addition, in Islam it is also stated that children are seeds that will grow to form society in the future (Nurjanah, 2018).

Therefore, parents, society, nation and state have the obligation to fulfill the rights of children. However, on a smaller scale—parents as the main element as protectors of their children—have obligations and responsibilities in fulfilling the protection of children's rights. Furthermore, so that children do not fall into the abyss of tyranny, because they have neglected and neglected the rights of children, parents as the main bulwark of protection for children should be obliged to pay attention to the rights of children before birth and after birth (Nurjanah, 2018b)

4. Conclusion

Children are gifts from Allah Almighty to parents, communities, nations and countries heirs of Islamic teachings (revelation of Allah Almighty) which will later prosper the world as rahmatan lil 'âlamîn. That every child has the right to protection from violence or maltreatment and discrimination as mandated in the Constitution of the Republic of Indonesia Year 1945 and Law number 35 of 2014 concerning amendments to Law Number 23 Year 2002 concerning child protection . The rights of children as victims of maltreatment include, such as treatment, psychological rehabilitation and compensation.

4. References

- Abdussalam, R. (2010). *Victimology*.
- Ahmad, A. (2006). Human Rights: An Islamic Perspective. *Policy Perspectives*, 101–112.
- Al Munawwar, S. A. H. (2004). Islam dalam Pluralitas Masyarakat Indonesia. *Kaifa, Jakarta*.
- Asshiddiqie, J. (2022). *Peradilan Etik dan Etika Konstitusi: Perspektif Baru tentang Rule of Law and Rule of Ethics & Constitutional Law and Constitutional Ethics (Edisi Revisi)*. Sinar Grafika.
- Chazawi, A. (2011). Penafsiran Hukum Pidana, Dasar Penindakan, Pemberatan & Peringatan, Kejahatan Aduan, Perbarengan & Ajaran Kausalitas. *Jakarta: Rajawali Pers*.
- Gultom, M. (2013). *Perlindungan Hukum Terhadap Anak dan Perempuan*, Bandung: PT. *Refika Aditama*.
- Gultom, M. (2014). *Perlindungan Hukum terhadap Anak dalam Sistem Peradilan Pidana Anak di Indonesia* (Bandung: Refika Aditama, 2008). *Cet. I*.

- Muslehuiddin, M., & Asmin, Y. W. (1991). *Filsafat hukum Islam dan pemikiran orientalis: studi perbandingan sistem hukum Islam*. Tiara Wacana Yogya.
- Nurjanah, S. (2018a). Keberpihakan Hukum Islam Terhadap Perlindungan Anak. *Al-'Adalah*, 14(2), 391–432.
- Nurjanah, S. (2018b). Keberpihakan Hukum Islam Terhadap Perlindungan Anak. *Al-'Adalah*, 14(2), 391–432.
- Sasangka, H., & Sagita, A. (2010). *Peraturan perundang-undangan tentang hak asasi manusia:(susunan dalam satu naskah)*. Mandar Maju.
- Schacht, J. (1993). *An introduction to Islamic law*. Clarendon Press.
- Sonata, D. L. (2014). Normative and Empirical Legal Research Methods: Distinctive Characteristics of Legal Research Methods. *Journal of Legal Sciences*, 8(1).
- Van Hoecke, M. (2011). Legal doctrine: Which method (s) for what kind of discipline? In *Methodologies of legal research: which kind of method for what kind of discipline?* (pp. 1–18). Hart Publishing.
- Zaki, M. (2014). Perlindungan anak dalam perspektif islam. *ASAS: Jurnal Hukum Ekonomi Syariah*, 6(2).
- Ismaidar, R Rahmayanti, Legal Protection for Children as Victims of Domestic Violence, *Randwick International of Social Science Journal* 4 (1), 2010
- Ramadani, Suci, Protection Of Human Rights Against Female Commercial Sex Workers as Victims of Trafficking in Person Under law Number 21 of 2007 Concerning The Crime of Trafficking in Persons, *ISCIS2023: International Seminar And Conference On Islamic Studies Vol.2*, Oktober 2023, hal. 704
- Sahlepi, Muhammad Arif, Bantuan Hukum Bagi Masyarakat Dalam Meningkatkan Keadilan Di Indonesia, *Jurnal Hukum Kaidah : Media Komunikasi dan Informasi Hukum dan Masyarakat*, Vol. 17 No. 2 (2018)
- Sumarno, Perkawinan dibawah tangan dipandang dari sudut hukum Islam dan hukum positif di Indonesia (studi desa Timbang Lawan Bahorok Sumatera Utara). Sumarno. PKM, 2012
- Syahrannuddin dan Suci Ramadani, Criminal Law Policies In Overcoming Cyber Crime In Indonesia, *Proceedings of The International Conference on Multi-Disciplines Approaches for The Sustainable Development*