

Review of Legal Protection for Children Experiencing Violence in Positive Law In Indonesia

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Abstract. *The research objectives in this study: 1) To determine the legal protection for children who experience violence in positive law in Indonesia today; 2) To determine what are the obstacles and solutions to legal protection for children who experience violence in positive law in Indonesia today. This research uses a normative juridical approach, with a descriptive analytical research method. The data used are primary and secondary data, which will be analyzed qualitatively. The research problem is analyzed using the theory of legal objectives and the theory of punishment. The results of the study concluded that: 1) Legal protection for children experiencing violence in positive law in Indonesia currently that although there are laws and regulations designed to protect children, their implementation still faces various challenges. Law No. 35 of 2014 concerning Child Protection, although it has provided a strong legal basis, has not been fully effective in addressing the significant increase in cases of violence against children; 2) Obstacles to legal protection for children experiencing violence in positive law in Indonesia are the lack of trained human resources, limited budget, weak coordination between institutions, and social stigma that prevents victims from reporting cases of violence. In addition, there are difficulties in collecting information from suspects and victims, low parental awareness that hinders the collection of evidence. In addition, there is a problem of low awareness among law enforcement, the government, and the community that child perpetrators are also victims of the state system. The solution: the government should strengthen the implementation of the law by increasing training for law enforcement, expanding the budget for child protection services, and improving coordination between related institutions. The community also needs to be empowered through awareness campaigns and education about children's rights and the importance of reporting violence. Non-governmental organizations should continue to expand their support, both in the form of direct services to victims and policy advocacy. Furthermore, efforts to address the social stigma that prevents victims from reporting violence should be part of prevention strategies.*

Keywords: *Legal Protection; Positive Law; Violence.*

1. Introduction

Indonesia is a country based on law as regulated in Article 1 Paragraph (3) of the 1945 Constitution. Indonesia adheres to the principle of legality in its criminal justice system. The principle of legality is explained in Article 1 paragraph (1) of the Criminal Code which states that "An act cannot be punished, except based on the strength of existing criminal law provisions." Before a comparison is made of the wording of the article, it is clear that the principle of legality applies to the criminal justice system in Indonesia, meaning that an act can only be punished if there are already rules that regulate the act beforehand.

Laws are created and enforced to regulate and protect the interests of citizens to prevent conflict and to protect human rights. Law is a set of rules, regulations, and regulations, both written and unwritten, relating to the regulation of relations between citizens in society.¹

Today, empirical evidence indicates that acts of physical, psychological, and sexual violence, as well as domestic neglect, are widespread. This can be observed directly and through mass media, both print and electronic. This empirical evidence demonstrates a gap between the law on the books and the law in action, which requires attention from all parties and constitutes a problem that requires resolution through scientific research.

Indonesia has a Criminal Law which aims to protect the interests of individuals or human rights and society.²The Criminal Code (KUHP) regulates criminal acts committed by any person (general criminal law) and the criminal sanctions imposed for crimes and/or violations.³The Criminal Code regulates material criminal acts in Indonesia that are general in nature, one of which regulates Crimes against Morality which is regulated in CHAPTER XIV concerning criminal acts committed by means of violence or threats of violence related to morality which are stated in Articles 284 to 294. A complete description of the Articles is Adultery, Article 284; Rape, Article 285; Sexual intercourse with underage women, Articles 286 to 288; Molestation, Articles 289 to 294; Criminal acts

¹ Yahya Harahap, 2015, Discussion of Problems and Application of the Criminal Procedure Code (Court Hearing, Appeal, Cassation, and Judicial Review), Jakarta: Sinar Grafika, p. 1

²Alfons, M. 2017. Implementation of intellectual property rights from the perspective of a state of law. Indonesian Legislation Journal, 14(3), 301–311.

³Arief, A. 2019. Problems of Imposing the Death Penalty from the Perspective of Human Rights and Criminal Law. Kosmik Hukum, 19(1). 10.30595/kosmikhukum.v19i1.4086

against decency and morality, Articles 281 to 283.⁴As time goes by, sexual violence is increasingly prevalent, with various motives. Consequently, the legal framework governing sexual violence is deemed out of step with current developments and societal needs.⁵

Children are a trust from God Almighty, who are inherently endowed with the dignity and worth of a complete human being. Every child has dignity and worth that should be upheld, and every child born must receive their rights without the child asking for them. This is in accordance with the provisions of the Convention on the Rights of the Child, which was ratified by the Indonesian government through Presidential Decree Number 36 of 1990, and then also stipulated in Law Number 4 of 1979 concerning Child Welfare and Law Number 23 of 2002 concerning Child Protection, all of which put forward general principles of child protection, namely non-discrimination, the best interests of the child, survival and development, and respect for child participation.

The Indonesian government has guaranteed this in Law Number 34 of 2014 concerning Child Protection. The role of children as the successors to life is not accompanied by the role of parents or adults in guiding their children to become good individuals. Meanwhile, parents and adults often take on their roles unwisely. Some unwise parental actions include physical punishment.

The rate of violence against children and women in Indonesia remains very high. This is evident from the 2020 report from the Ministry of Women's Empowerment and Child Protection, which recorded 4,116 cases of violence against children. Furthermore, data from the Online Information System for the Protection of Women and Children indicates that between January 1, 2020, and July 31, 2020, 3,296 girls and 1,319 boys were victims of child abuse in Indonesia. This is due to various factors underlying these acts of violence, including economic factors, socio-cultural factors in society, psychological factors of parents, and legal regulations governing child abuse.

Child abuse in Indonesia is a part of criminal law that will impact the imposition of criminal sanctions. Criminal sanctions stipulated in criminal law are sanctions or punishments that can be harsher and sharper when compared to sanctions in civil law and administrative law. The existence of criminal sanctions for every crime or criminal violence in Indonesia is a manifestation of the government's legal approach, which is formed and formulated to be able to prevent and overcome the many acts of violence and criminal crimes, particularly child abuse violence, which cases of which are increasing day by day. Criminal violence

⁴Asmadi, E. 2021. Formulation of Crimes and Punishment for Criminal Acts of Defamation on Social Media. *De Lega Lata: Journal of Legal Studies*, 6(1), 16–32. <https://doi.org/10.30596/dll.v6i1.4910>

⁵Anggraini, RD 2022. Analysis of the Concept of Secularization from the Perspective of Nurcholish Madjid. *Islamic Thought of Nurcholish Madjid*, 147

specifically refers to acts of violence or crimes that have been clearly proven to violate applicable law. In addition, these actions also contribute to widespread harm to various parties, can cause chaos, polemics, violence and loss of life.

Violence committed against children is a focus of problems that arise in society today. However, many people do not realize that violence against children is often carried out by people closest to and around them, whether consciously or not. Violence against children itself can result in psychological trauma, physical injuries, and even death, which is the definition of violence in accordance with the contents of Law Number 17 of 2016. Through Law Number 17 of 2016 concerning Child Protection, which explains that the definition of violence is a criminal act that has resulted in injuries, loss of limbs or loss of function of limbs that are expected to heal again perfectly using force or energy. Based on the elaboration of the contents of Law Number 17 of 2016, it reaffirms that when viewed from the perspective of legal subjects, if someone commits violence will be punished without exception, both other people and families will still be punished. Thus, the legislation has clearly explained regarding sanctions and protection regarding the existence of equal rights for emergency children to receive protection, care, development and growth in continuing their lives without discrimination, especially in the context of implementing legislation regarding legal protection specifically for victims of violence against children as stated in Article 1 Paragraph (15) of Law Number 35 of 2014 and Article 76 C of Law Number 35 of 2014.

Law Number 20 of 2025 concerning the Criminal Procedure Code (KUHP) provides strong legitimacy for the presence of victim advocates—whether social workers, psychologists, or women's and children's protection agencies. This changes the power relations in the examination room. Victims are no longer alone in facing the state; the state is obligated to provide a support system.

Law Number 1 of 2023 concerning the Criminal Code (KUHP) also has a direct impact on how judges and law enforcement view crimes against women and children. The impact on victims is now a mandatory factor in sentencing. Sexual violence, power-based violence, and crimes against children can no longer be treated as "ordinary cases" simply because they do not cause serious physical harm. The psychological suffering of victims is recognized as a legal reality, not merely an emotional narrative.

Threats of murder or serious violence against life can be prosecuted under Article 449 of the Criminal Code. Meanwhile, coercing a victim into doing something by force or threat of force, such as forcing them to give money or perform certain acts, can be prosecuted under Article 448 of the Criminal Code concerning coercion.

Article 462 of the Criminal Code stipulates that anyone who encourages, assists, or provides the means for another person to commit suicide and the person dies by suicide shall be punished with a maximum prison sentence of four years. Threats of violence conveyed through electronic means may also be subject to Article 29 of Law 1/2024 in conjunction with Article 45B.

Meanwhile, referring to Article 351 of the Criminal Code and Article 466 of Law 1 of 2023, perpetrators of violence/assault can be charged as follows:

Article 351 of the Criminal Code

1. Assault is punishable by a maximum prison sentence of 2 years and 8 months or a maximum fine of IDR 4,500,000.
2. If the act results in serious injury, the guilty party is threatened with a maximum prison sentence of 5 years.
3. If it results in death, the threat of a maximum prison sentence of 7 years
4. With abuse is equated with intentionally damaging health
5. Attempt to commit this crime is not punishable

Article 466 of Law 1 of 2023

1. Anyone who commits assault shall be punished with a maximum prison sentence of 2 years and 6 months or a maximum fine of category III, namely IDR 50,000,000.
2. If the act as referred to in paragraph (1) results in serious injury, the penalty is a maximum prison sentence of 5 years.
3. If the act as referred to in paragraph (1) results in the death of a person, the punishment shall be a maximum prison sentence of 7 years.
4. Included in the abuse as referred to in paragraph (1) are acts that damage health.
5. Attempts to commit a crime as referred to in paragraph (1) shall not be punished.

Based on the description above, the author is interested in conducting research with the title "Review of Legal Protection for Children Experiencing Violence in Positive Law in Indonesia".

This study aims to determine the legal protection for children who experience violence in positive law in Indonesia today; to find out what obstacles and solutions to legal protection for children who experience violence in positive law in Indonesia today.

2. Research Methods

This research uses a normative juridical approach, with a descriptive analytical research method. The data used are primary and secondary data, which will be analyzed qualitatively. The research problem is analyzed using the theory of legal objectives and the theory of punishment.

3. Results and Discussion

3.1. Legal Protection for Children Experiencing Violence in Current Positive Law in Indonesia

Violence against children refers to actions committed by teachers that have physical, emotional, or psychological impacts on children. This type of violence can include physical violence, emotional violence, and neglect. In positive law, this action is regulated by Law Number 35 of 2014 concerning Child Protection, which provides legal protection for children from various forms of violence, exploitation, and discriminatory treatment. The Child Protection Law stipulates in Article 76C that everyone is prohibited from committing violence against children. Violations of this provision are subject to criminal sanctions. Article 80 of the same law specifically regulates criminal acts of violence against children, where perpetrators can be subject to imprisonment and fines. Furthermore, in the Criminal Code (KUHP), Article 351 regulates abuse, which can serve as a legal basis for acts of violence committed by teachers against students.

From a positive legal perspective, law enforcement must be carried out consistently to provide a deterrent effect on perpetrators of violence. Facts show that perpetrators of child violence tend to repeat the act, despite peace efforts and behavioral changes. Article 1 number 2 of the UUPA defines child protection as all efforts to guarantee children's rights to live, grow, develop, participate optimally, and be protected from violence and discrimination. Violence in Article 1 number 15a of the UUPA includes physical, psychological, sexual, neglect, threats, coercion, and deprivation of liberty. The UUPA also guarantees children's freedom of religion and expression (Article 6).

Special protection is provided to children who are victims of trauma from violence (Article 1 number 15 of the UUPA), in accordance with the child's right to live, grow, develop, participate, and be protected from violence and discrimination (Article 4 of the UUPA), as well as the right to health services and social security (Article 8 of the UUPA). The Child Welfare Law also guarantees the child's right to welfare, care, upbringing, loving guidance (Article 2 paragraph (1)), development of abilities (Article 2 paragraph (2)), and protection from the womb (Article 2 paragraph (3)). If parents are unable to protect the child, Article 33 paragraph (1) of the UUPA allows the appointment of a guardian in the best interests of the child. The appointment of a guardian is important in cases of child abuse by parents to prevent trust issues and the potential for recidivism.

The law must prioritize the interests of the child and provide punishment to perpetrators of violence, not just compensation. Criminal liability is based on the perpetrator's ability to think sufficiently to control their thoughts and will to be aware of their actions. Article 37 of the Criminal Code regulates exceptions to the absence of criminal liability.

Child protection is regulated in the 1945 Constitution, the Criminal Code, Law No. 13 of 2006 concerning Protection of Witnesses and Victims, Law No. 31 of 2014, Law No. 11 of 2012 concerning the Child Protection System (SPPA), Law No. 23 of 2004 concerning Domestic Violence, Law No. 39 of 1999 on Human Rights, Law No. 35 of 2014, Law No. 23 of 2002, and Law No. 17 of 2016. The government has provided a strong legal basis for child protection. However, the implementation of punishment for perpetrators of child violence has not been optimal due to a lack of public understanding of the law and the assumption that violence within the family is an internal matter. Proving criminal charges is also often hampered by a lack of evidence. The law has protected the rights of child victims, but has not fully guaranteed the victims' future. Factors triggering child violence are diverse (economic, family, parental education, past experiences, environment, social media). The government's best efforts are to improve the law and increase social education about child protection. Violence against children is a crime. It generally includes abuse, but is specifically regulated under Article 80 of the UUPA, which carries more severe penalties, particularly if the perpetrator is a parent.

Article 13 paragraph (1) of the UUPA also protects children from various forms of ill-treatment. If the perpetrator is a parent, the sentence is increased by one-third. Articles 35-59 of the UUPA regulate special protection for children in emergency situations and children in conflict with the law, and Article 64 regulates protection for child victims and perpetrators of criminal acts. Parents are considered legally competent and must be criminally responsible for violence against children (Article 45 and Article 72). Criminal acts by parents against children are specifically regulated in the UUPA (*lex specialis derogat legi generali*), overriding the Criminal Code regarding general abuse. The development of special criminal law gives rise to new legal responsibilities outside the Criminal Code. Strict sanctions for parents who commit child abuse are important as a means of coercion and deterrence so that such actions do not become a culture. Harming children is a serious act that must be dealt with firmly for the future of children and the nation.

So, whether we like it or not, Indonesia should uphold human rights because human rights as an inseparable part of the concept of a state based on law has implications for the constitutional recognition that guaranteeing the protection

of human rights is an essential element in the construction of the modern Indonesian state.⁶

To realize the concept of a state based on law, the 1945 Constitution of the Republic of Indonesia already contains several human rights, seen from the macro understanding of human rights, it will be even more firm if it is then followed by other laws and regulations that can always adapt to developments in society and the international world.⁷

Children are an inseparable part of the goal of protecting all of Indonesia's people, especially since children are classified as a vulnerable group. This vulnerability occurs because of claims that this community group is weak, which results in this group often being marginalized in the policy formulation process due to factors of age and psychological maturity.⁸

This statement is supported by Law Number 39 of 1999 concerning Human Rights which states that children are included in vulnerable groups of society together with the elderly, the poor, pregnant women, and the disabled, where protection for this vulnerable group is entitled to receive more treatment and protection regarding their special characteristics. Then, general human rights provisions are regulated in the 1945 Constitution of the Republic of Indonesia. General human rights provisions contained in the 1945 Constitution of the Republic of Indonesia become the basis for the formation of other laws and regulations that further regulate the rights and protection for children, specifically in Article 28B paragraph (2) which states "Every child has the right to survival, growth and development and has the right to protection from violence and discrimination" and Article 34 paragraph (1) which states "The poor and neglected children are cared for by the state" which is then used as the basis for the formation of Law Number 23 of 2003 concerning Child Protection.

The implementation of the enforcement of children's human rights contained in the Child Protection Law then led to the formation of the Indonesian Child Protection Commission (KPAI) through Presidential Decree Number 77 of 2003 concerning the Indonesian Child Protection Commission, which functions to increase the effectiveness of supervision of the implementation of the fulfillment of children's rights.⁹Based on this function, KPAI has the authority to monitor and supervise the implementation of child protection carried out by stakeholders

⁶Majda El Muhtaj, *Dimensions of Human Rights: Analyzing Economic, Social, and Cultural Rights*, (Jakarta: Rajawali Pers, 2008), p. 59.

⁷Mukhamad Luthfan Setiaji, Aminullah Ibrahim, *Human Rights Studies in the Rule of Law: Between Progressive Law and Positive Law*, "Lex Scientia Law Review", Vol. 1 No. 1, 2017, p. 74.

⁸Mahda El Muhtaj, *Loc.Cit.*

⁹Teguh Kurniawan, *The Role of Parliament in Child Protection*, "DPR Journal", Vol. 6 No. 1, 2015, p. 40.

who have an obligation to implement child protection as stated in Article 20 of the Child Protection Law.¹⁰

The Criminal Code provides protection for children from criminal acts committed by adults. Criminal acts regulated in the Criminal Code related to child protection are crimes against morality, namely Article 283 concerning the prohibition of displaying or showing writing, images, or objects that are contrary to decency, Article 287, and Article 290 concerning the prohibition of committing acts that lead to sexual activity against children. In addition, there are also provisions regarding crimes against children's freedom in Article 330 concerning the prohibition of kidnapping children and Article 331 concerning the prohibition of hiding children. The child protection articles in the Criminal Code are not yet specific to a particular act, which can be seen from the formulation of the offense by using general wording such as in Article 283 which prohibits writing, images, or objects that are contrary to decency, in this case the scope of things that are contrary to decency itself is still very broad.

The reservations in several of the provisions above were then revoked by the Indonesian government in September 1994 so that Indonesia only made reservations in Article 17 concerning the right of children to access information, Article 21 concerning child adoption, and Article 22 concerning the protection of children in refugee camps. The SPPA Law was essentially created to protect children in conflict with the law so that children can face their long future and provide opportunities for children to gain their identity through guidance to become independent, responsible, and useful human beings for themselves, their families, communities, nations, and countries. The material contained in the SPPA Law was previously contained in Law Number 3 of 1997 concerning Juvenile Courts, which was later revoked because it was deemed unable to provide comprehensive protection to children in conflict with the law. The name of this law focuses on the protection of children in conflict with the law in criminal cases. The protection provided in this law starts from the investigation process to the execution of criminal penalties for children. The form of protection provided by the SPPA Law is divided into several articles, namely Article 3 which contains provisions for child protection in the judicial process, such as that children who are in conflict with the law have the right to be treated humanely by paying attention to needs according to their age, separated from adults, receive legal assistance and other assistance effectively, free from torture, punishment or other cruel, inhumane treatment, and degrading their status and dignity, receive justice before a Juvenile Court that is objective, impartial, and in a trial that is closed to the public, obtain a private life, obtain

¹⁰Sherly Livinus, Mety Rahmawati, The Role of the Indonesian Child Protection Commission in Providing Legal Protection to Child Victims of Criminal Acts of Abuse (Case Study: Abuse of Adopted Children at the Le Meridien Hotel, Central Jakarta by CW), "Adigama Law Journal", Vol. 1 No. 1, 2018.

education, and others. In addition to the form of protection during the judicial process provided by Article 3, there is also protection in the case resolution process, namely the existence of a diversion procedure that prioritizes a restorative justice approach.¹¹

The existing child protections in Indonesian positive law are not yet fully adequate for children in cyberspace due to the diverse types of crimes or unpleasant acts against children in cyberspace. In addition to the aforementioned laws, child protection is also found in other laws and regulations, such as Law Number 44 of 2008 concerning Pornography, which prohibits pornography and the sexual exploitation of children.¹² Law Number 11 of 2008 concerning Electronic Information and Transactions relates to criminal threats for anyone who distributes information or electronic documents concerning morality or sexual exploitation of children,¹³ and Law Number 13 of 2003 concerning Manpower which regulates the prohibition on employing children.¹⁴

With these indicators, it is hoped that member countries can identify risks and vulnerabilities for children in cyberspace, raise awareness of the risks through various approaches, develop tools that can help governments, the private sector, organizations, and parents to minimize risks, and share knowledge and experiences from strategic cooperation internationally.

The new Criminal Procedure Code (KUHP) attempts to correct this imbalance by including the Victim Impact Statement (VIS) as part of the victim's rights. The VIS is the right for victims to convey the impact of the victim's statement. The VIS is

¹¹Restorative justice based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System in Article 1 states "Restorative Justice is the resolution of criminal cases by involving the perpetrator, victim, the perpetrator/victim's family, and other related parties to jointly seek a just solution by emphasizing restoration to the original state, and not revenge. The substance of restorative justice contains principles, including: Building joint participation between perpetrators, victims, and community groups to resolve an event or criminal act. Placing perpetrators, victims, and the community as stakeholders who work together and directly try to find a solution that is considered fair for all parties (win-win solutions). For criminal cases committed by children, restorative justice at least aims to repair/restore (to restore) criminal acts committed by children with actions that are beneficial for children, victims and their environment.

¹²Indonesia, Law of the Republic of Indonesia Number 44 of 2008 concerning Pornography, State Gazette of the Republic of Indonesia (LNRI) of 2008 Number 181, and Supplement to the State Gazette of the Republic of Indonesia (TLNRI) Number 4928, Article 1 paragraph (4).

¹³Indonesia, Law of the Republic of Indonesia Number 11 of 2008 concerning Electronic Information and Transactions, State Gazette of the Republic of Indonesia (LNRI) of 2008 Number 58, and Supplement to the State Gazette of the Republic of Indonesia (TLNRI) Number 4843, Article 27 paragraph (1) in conjunction with Article 52 paragraph (1).

¹⁴Indonesia, Law of the Republic of Indonesia Number 13 of 2003 concerning Manpower, State Gazette of the Republic of Indonesia (LNRI) of 2003 Number 39, and Supplement to the State Gazette of the Republic of Indonesia (TLNRI) Number 4279, Article 68.

currently accommodated in Article 144 letter x of Law Number 20 of 2025 concerning the Criminal Procedure Code, which emphasizes that victims have the right to convey a statement regarding the impact of the crime they experienced, both in writing and verbally. This regulation is not simply an addition of procedural rights, but rather reflects a significant paradigm shift in criminal procedure law: from a purely legalistic approach to a more balanced and recovery-oriented justice system.

By accommodating the VIS, lawmakers explicitly recognize that criminal acts are not merely abstract violations of legal norms, but also concrete events that cause real suffering to individuals. Within this framework, justice is measured not only by the fulfillment of the elements of a crime and the imposition of a criminal sentence, but also by the extent to which the justice system recognizes and responds to the impact of the crime on the victim.

In certain cases of abuse, for example, it is not uncommon for the victim's physical injuries to be considered relatively minor, while the psychological and social impacts are long-lasting, resulting in a loss of security, social stigma, and disruption to economic activity. Furthermore, in cases of Sexual Violence (TPKS), victims are often not given the opportunity to convey the psychological, social, or economic impacts they have experienced. Without a mechanism like the VIS, these dimensions have the potential to be incompletely captured in the trial process. The presence of the VIS allows judges to view cases more contextually (whole), without shifting the boundaries of proof, but by enriching the basis for sentencing considerations to be more proportional and just.

Historically, Victim Impact Statements (VISs) have developed within the criminal justice systems of common law countries since the late 1970s, in line with the growing victims' rights movement, which criticized the dominant offender-oriented approach. The United States was a pioneer in integrating VISs into the sentencing process, followed by Canada, the United Kingdom, Australia, and New Zealand. This practice later gained international legitimacy through the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985).

Over time, the VIS has been understood not as evidence, but as a victim participation tool to help judges gain a more comprehensive picture of the consequences of the crime. The VIS includes statements from victims about the physical, psychological, social, and economic impacts of the crime, presented at specific stages in the judicial process, particularly prior to sentencing.

The VIS provisions in the new Criminal Procedure Code strengthen the victim's position as an active legal subject. The right to report the impact of a crime affirms that victims have a direct interest in the judicial process and outcome. Thus, criminal procedural law no longer solely regulates the relationship

between the state and the perpetrator, but also recognizes the legal relationship between the state and the victim as the party most impacted by a crime.

Violence committed by a child's caregiver can also be categorized as a form of abuse if the caregiver hits, pulls hair, or engages in other acts of violence that can cause physical injury to the child, or verbal violence that can cause psychological injury to the child. These acts can be reported as violations of Article 76C of Law No. 35 of 2014 as follows:

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

This article explains that anyone who violates the provisions in Article 76C of Law 35 of 2014 has the potential to be subject to a maximum prison sentence of 3 years and 6 months and/or a maximum fine of IDR 72,000,000, as regulated in Article 80 paragraph (1) of Law 35 of 2014.

If the child suffers serious injuries, the perpetrator can be sentenced to a maximum of 5 years in prison and/or a fine of up to Rp 100,000,000. If the child dies, the perpetrator can be sentenced to a maximum of 15 years in prison and/or a fine of up to Rp 3,000,000,000.

Under Law Number 23 of 2004 concerning the Elimination of Domestic Violence (the PKDRT Law), the scope of the household includes children and anyone who works to help with the household and works within the household. Therefore, childcare providers are considered working individuals and are considered family members for the duration of their time in the household.

However, in practice, investigators can apply multiple articles to a criminal act that meets the elements of violence/abuse as stipulated in Law 35/2014, the Domestic Violence Law, the Criminal Code, or Law 1/2023. This means that if the elements of the crime are met, investigators can use these articles.

In Article 81 paragraph 2 of the new Criminal Procedure Code, the restorative justice mechanism is carried out without pressure, coercion, intimidation, deception, threats of violence, violence, torture, and actions that demean humanity against suspects, defendants, victims, and/or their families.

In Article 80 of the new Criminal Procedure Code, there are three points that allow for the restorative justice path to be taken, namely a. the crime is only punishable by a maximum fine of category III or is punishable by a maximum imprisonment of 5 (five) years; b. the crime is committed for the first time; and/or c. is not a repetition of the crime, except for crimes for which the verdict is a fine or crimes committed due to negligence.

However, not all types of crimes are eligible for restorative justice. Article 82 of the new Criminal Procedure Code explains that there are nine types of crimes that are exempt from restorative justice.

Nine criminal acts that are excluded are: a. crimes against state security, crimes against friendly countries, heads of friendly countries and their representatives, crimes against public order, and crimes against morality; b. crimes of terrorism; c. crimes of corruption; d. crimes of sexual violence; e. crimes punishable by imprisonment of 5 (five) years or more, except due to negligence; f. crimes against human life; g. crimes punishable by a special minimum sentence; h. certain crimes that are very dangerous or detrimental to society; and/or i. narcotics crimes except for those who have the status of users or abusers.

However, with the enactment of [Law No. 20 of 2025](#) Article 81 of the Criminal Procedure Code (KUHAP) stipulates that restorative justice mechanisms are exempt from nine types of crimes, including crimes against morality and sexual violence. Restorative justice, or RJ, can be implemented from the investigation stage, but it does not involve forcing peace.

Legal protection for children experiencing violence in positive law in Indonesia currently shows that although there are laws and regulations designed to protect children, their implementation still faces various challenges. Law No. 35 of 2014 concerning Child Protection, although it has provided a strong legal basis, has not been fully effective in addressing the significant increase in cases of violence against children.

3.2. Obstacles and Solutions to Legal Protection for Children Experiencing Violence in Current Positive Law in Indonesia

Child abuse is an individual's actions against a child that cause physical, psychological, and social pain and suffering. Children still need help to grow and develop and love from those closest to them. However, it is also true that some children become victims of violence inside and outside the home. Article 1(3) of the 1945 Constitution states that "Indonesia is a state of law," and all matters relating to society, statehood, and national life are subject to applicable law. Therefore, violence and issues related to children must be prevented and addressed, because all children have the right to protection from all forms of violence. Some people assume that violence against children is only physical violence, when in fact it is only one form of violence against children.

There are four types of violence against children: physical violence, psychological violence, social violence, and sexual violence. A 2013 survey showed that one in two boys and one in six girls under the age of 18 have experienced at least some form of violence due to abuse by parents, caregivers, or other adults. One of the most obvious examples of violence against children is repeated physical attacks resulting in cuts and scratches. However, it is clear that inadequate nutrition and

unmet nutritional needs, as well as neglect of health and education, are part of violence against children, commonly referred to as child abuse.

Violence against children has many internal and external causes. Various studies have identified three factors causing violence against children: parental or family factors, environmental factors, and personal factors. However, the most important factors contributing to violence against children are poor environmental conditions, poor socioeconomic conditions, and 4,444 unaffected households. The impact on children who experience violent behavior can result in a variety of behaviors, reflected in poor physical and mental health and a lack of trust in children. In line with Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection, providing a comfortable place for activities and mobilizing support from various child protection organizations. Preventing violence against children by children. Criminal legal protection for child victims of violence is a form of criminal accountability for individual perpetrators. As stated in Article 76 paragraph C of Law Number 35 of 2014 concerning Child Protection, "No one may commit, authorize, commit, order, or participate in violence against children, it must not be prohibited." Therefore, Article 80 of Law Number 35 of 2014 concerning Child Protection provides sanctions for violations of these provisions of six months per year/or a fine of Rp. 72,000,000.00. Law Number 35 of 2014 concerning Child Protection Article 80 (4) Child protection itself is based on human dignity and protection from violence and discrimination, enabling children to live, develop and participate optimally, and guaranteeing the realization of children's rights.

The challenges of VIS implementation still require serious consideration. The risks of subjectivity and excessive emotionality must be balanced with clear guidelines to prevent VIS from becoming a means of dramatizing cases. The VIS delivery mechanism must also ensure that victims are free from pressure and manipulation, and be supported by understanding from law enforcement officials to prevent VIS from becoming a symbolic norm.

Therefore, further regulation through implementing regulations and technical guidelines is an inevitable necessity, including standards regarding the form, timing, and procedures for submitting the VIS. Ideally, the VIS should be submitted after the evidence is complete and the defendant's guilt is established, but before the verdict is rendered. This is done so as not to influence the assessment of guilt but rather to serve as a basis for considering proportional sentencing.

The inclusion of the Victim Impact Statement (VIS) in Article 144(x) of the new Criminal Procedure Code (KUHAP) reflects a paradigm shift in Indonesian criminal procedure law toward a more inclusive and balanced approach. The biggest challenge now is no longer the norm, but rather the consistency of implementation. Without a commitment from law enforcement officials to

integrate the VIS in a serious and measured manner, this right risks becoming merely symbolic. However, if implemented properly, the VIS could signal that Indonesian criminal justice is truly moving beyond simply punishing perpetrators to restoring victims—a significant leap toward substantive justice.

The most significant change begins with the victim's position in the investigation process. The new Criminal Procedure Code no longer views victims merely as "sources of information." Rather, they are subjects whose rights must be protected from the first report. Investigators are now required to provide regular updates on case developments. This is no longer an internal policy or a matter of mercy from the authorities. It is a legal mandate. For victims of domestic violence, sexual assault, or child exploitation, ensuring that their report is not "lost" is the most basic form of protection: a sense of security.

Furthermore, the new Criminal Procedure Code explicitly mandates investigators assess and address the specific needs of women and vulnerable groups, including children. This means that in practice, examinations of female and child victims should no longer be treated the same as those of adult suspects. Repeated examinations that reopen old wounds, questions that corner victims, or examinations without a companion are now not just ethical violations, but violations of procedural law.

In this context, the new Criminal Procedure Code strongly legitimizes the presence of victim advocates—whether social workers, psychologists, or women's and children's protection agencies. This changes the power relations in the examination room. Victims are no longer alone in facing the state; the state is obligated to provide a support system.

The new Criminal Code also has a direct impact on how judges and law enforcement view crimes against women and children. The impact on the victim is now a mandatory factor in sentencing. Sexual violence, power-based violence, and crimes against children can no longer be treated as "ordinary cases" simply because they do not cause serious physical harm. The psychological suffering of victims is recognized as a legal reality, not merely an emotional narrative.

For child victims, the new Criminal Code and Criminal Procedure Code strengthen the dividing line between protection and criminalization. Children should no longer be dragged into criminal proceedings simply to fulfill the formal requirements of a case. If a child becomes both a victim and a perpetrator due to coercion, exploitation, or dependency, the new law provides real opportunity to halt the criminal process and replace it with protective measures. This is not a legal compromise, but a correction of long-standing, flawed practices.

This is where the strong intersection with the Women and Children Protection Law becomes apparent. The Women and Children Protection Law has often been stalled as a sectoral norm. With the new Criminal Code and Criminal Procedure

Code, the principles of the Women and Children Protection Law are being forced into the heart of the criminal justice system. Investigators who neglect victim protection now face legal consequences, not just internal reprimands.

However, it must be honestly acknowledged: this law does not automatically protect anyone. Protection will only be felt if law enforcement officials, especially investigators, change their mindset. The new Criminal Code and Criminal Procedure Code provide tools, but the human factor remains the deciding factor. Without empathy, courage, and integrity, these progressive norms will revert to mere discourse. Therefore, the measure of the success of the new Criminal Code and Criminal Procedure Code is not the number of articles, but rather a simple question from women and child victims: "Do I feel safer after reporting?" If the answer is yes, then the law is working. If not, then we have failed once again.

Although many laws have been enacted to protect women and children from violence, their implementation in the field remains hampered. Various obstacles arise from legal, social, and cultural aspects, as well as weaknesses in the law enforcement system itself. One of the main challenges in providing this protection is the fear of victims to report, which is the biggest obstacle to legal action for women and children who are victims of violence and harassment. The perpetrators' fear and reluctance to report are caused by several factors, including: 1) fear of the perpetrator, 2) social pressure and negative societal stigma, and 3) economic dependence. Victims of violence often remain economically dependent on the perpetrator. Therefore, if the victim reports the perpetrator, the victim fears that they will lose their source of income or livelihood from the perpetrator. Lack of Optimal Socialization: Effective socialization is key to raising public awareness about child protection. Another crucial obstacle is low public legal awareness. Most people do not understand the correct procedures for reporting acts of violence and sexual harassment. This is primarily due to minimal socialization and education regarding the law among the community.

In essence, criminal law is a form of protection for society and retribution for unlawful acts. Furthermore, Roeslan Saleh also stated that criminal law contains other things, namely that criminal law is expected to be something that will bring harmony and criminal law is an educational process to make people acceptable back in society. In this context, Muladi proposed a combination of criminal law objectives that are considered suitable with sociological, ideological, and philosophical juridical approaches based on the basic assumption that criminal acts are a disturbance to the balance, harmony, and compatibility in social life, which results in individual or societal damage. Thus, the purpose of criminal law is to repair the individual and social damage caused by criminal acts.

Obstacles to legal protection for children experiencing violence under positive law in Indonesia include a lack of trained human resources, limited budgets, weak inter-agency coordination, and social stigma that prevents victims from reporting cases of violence. This is due to the lack of government support in providing these facilities before cooperation between the police and related agencies is established. Furthermore, there are difficulties in gathering information from suspects and victims, and low parental awareness hinders evidence collection. Furthermore, there is a lack of awareness among law enforcement, the government, and the public that child perpetrators are also victims of the state system. Law enforcement officials often lack understanding of children's rights to legal assistance from legal counsel. They still view the presence of legal counsel as a barrier to the investigation process at various legal institutions, such as the police, prosecutors, and courts.

The solution: The government should strengthen the implementation of the law by increasing training for law enforcement, expanding the budget for child protection services, and improving coordination between relevant agencies. Communities also need to be empowered through awareness and education campaigns about children's rights and the importance of reporting violence. Non-governmental organizations should continue to expand their support, both in the form of direct services to victims and policy advocacy. Furthermore, efforts to address the social stigma that prevents victims from reporting violence should be part of prevention strategies.

4. Conclusion

Legal protection for children experiencing violence in positive law in Indonesia currently shows that although there are laws and regulations designed to protect children, their implementation still faces various challenges. Law No. 35 of 2014 concerning Child Protection, although it has provided a strong legal basis, has not been fully effective in addressing the significant increase in cases of violence against children. Obstacles to legal protection for children experiencing violence under positive law in Indonesia include a lack of trained human resources, limited budgets, weak inter-agency coordination, and social stigma that prevents victims from reporting cases of violence. This is due to the lack of government support in providing these facilities before cooperation between the police and related agencies is established. Furthermore, there are difficulties in gathering information from suspects and victims, and low parental awareness hinders evidence collection. Furthermore, there is a lack of awareness among law enforcement, the government, and the public that child perpetrators are also victims of the state system. Law enforcement officials often lack understanding of children's rights to legal assistance from legal counsel. They still view the presence of legal counsel as a barrier to the investigation process at various legal institutions, such as the police, prosecutors, and courts. The solution: The

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5. References

Journals:

- Alfons, M. 2017. Implementasi hak kekayaan intelektual dalam perspektif negara hukum. *Jurnal Legislasi Indonesia*, 14(3).
- Arief, A. 2019. Problematika Penjatuhan Hukuman Pidana Mati Dalam Perspektif Hak Asasi Manusia Dan Hukum Pidana. *Kosmik Hukum*, 19(1). 10.30595/kosmikhukum.v19i1.4086
- Asmadi, E. 2021. Rumusan Delik Dan Pidanaan Bagi Tindak Pidana Pencemaran Nama Baik Di Media Sosial. *De Lega Lata: Jurnal Ilmu Hukum*, 6(1), 16–32. <https://doi.org/10.30596/dll.v6i1.4910>
- Zaidan, M. Ali. "Norma Sanksi Dan Teori Pidana Indonesia." *Jurnal Yuridis* 1, no. 1 (2017): 107-124.

Books:

- Amiruddin dan H. Zainal Asikin, 2006, Pengantar Metode Penelitian Hukum, Jakarta:PT. Raja Grafindo Persada.
- Anggraini, R. D. 2022. Analisis Konsep Sekularisasi Ditinjau dari Perspektif Nurcholish Madjid. *Pemikiran Islam Nurcholish Madjid*.
- Bambang Waluyo, 2017, Penegakan Hukum di Indonesia, Jakarta: Sinar Grafika.
- Barda Nawawi Arief, 1998, Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana, Citra Aditya Bakti, Bandung.
- Barda Nawawi Arief, 2005, Bunga Rampai Kebijakan Hukum Pidana, Citra Aditya Bakti, Bandung.
- Barda Nawawi Arief, 2016, Kebijakan Formulasi Ketentuan Pidana Dalam Peraturan Perundang-Undangan, Semarang: Pustaka Magister.
- C.S.T. Kansil, Latihan Ujian Hukum Pidana, Sinar Grafika, Jakarta, 2001.

- Daryanto, Kamus Bahasa Indonesia Lengkap, Surabaya: Apollo, 1997.
- Departemen Pendidikan dan Kebudayaan, Kamus Besar Bahasa Indonesia, cet. Ke-2, Balai Pustaka Jakarta, 1989
- Ediwarman, 2010, Monograf, Metodologi Penelitian Hukum, Program Pascasarjana Universitas Muhammadiyah Sumatera Utara, Medan.
- H. Muladi, 2005, Hak Asasi Manusia, PT. Refika Aditama, Bandung.
- Kamus Besar Bahasa Indonesia (KBBI), Edisi Kedua, Cet. 1, Balai Pustaka, Jakarta.
- Kartonegoro, Diktat Kuliah Hukum Pidana, Jakarta: Balai Lektur Mahasiswa, 2010.
- Koeswadji, 1995, Perkembangan Macam-macam Pidana Dalam Rangka Pembangunan Hukum Pidana, Cetakan I, Citra Aditya Bhakti, Bandung.
- Marlina, 2011, Hukum Penitensier, Bandung: Refika Aditama.
- Muladi dan Barda Nawai Arief, 1998, Teori-teori dan Kebijakan Pidana, Alumni, Bandung.
- Muladi dan Barda Nawawi Arief, 2005, Teori-Teori dan Kebijakan Pidana, Alumni, Bandung.
- Muladi dan Barda Nawawi, 1992, Teori dan Kebijakan Pidana, Alumni, Bandung.
- Muladi, 1995, Kapita Selekta Sistem Peradilan Pidana, UNDIP, Semarang.
- Muladi, 2002, Lembaga Pidana Bersyarat, Alumni, Bandung.
- P.A.F. Laminating, Dasar-Dasar Hukum Pidana Indonesia, Sinar Baru, Bandung, 1984.
- Peter Mahmud Marzuki, 2010, Penelitian Hukum, Jakarta: Kencana Prenada.
- Salahuddin, Kitab Undang-Undang Hukum Pidana, Acara Pidana dan Perdata (KUHP, KUHP dan KUHPdt), Cet-1. (Jakarta : Visimedia, 2008).
- Samosir, Djisman, 2002, Fungsi Pidana Penjara Dalam Sistem Pemidanaan di Indonesia, Bina Cipta, Bandung.
- Setiono, 2004, Supremasi Hukum, UNS, Surakarta.
- Sudikno Mertokusumo, 2003, Mengenal Hukum Suatu Pengantar, Liberty, Yogyakarta.
- Wahbah Zuhaili, Fiqih Imam Syafi'i, (ter: Muhammad Afifi, Abdul Hafiz), Jilid 3, (Jakarta: Almahira, 2010).

Wirjono Prodjodikoro, *Perbuatan Melanggar Hukum*, (Bandung: Mandar Maju, 2000).

Yahya Harahap, 2015, *Pembahasan Permasalahan dan Penerapan KUHAP (Pemeriksaan Sidang Pengadilan, Banding, Kasasi, dan Peninjauan Kembali)*, Jakarta: Sinar Grafika.

Yrama Widya ,2003, *Kamus Umum Bahasa Indonesia*, Grapika, Bandung.

Regulation:

Criminal Code (KUHP)

Criminal Procedure Code (KUHP)

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System

Law Number 2 of 2002 concerning the Republic of Indonesia National Police

Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection.

The 1945 Constitution.