

Elimination of Violence Against Children During the Covid-19 Pandemic based on the United Nations Convention on the Rights of the Child (UNCRC 1989)

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ABSTRACT

Violence against children is included in the highest cases of human rights violations during the Covid-19 pandemic. It will affect and has affected the lives of children throughout the world, especially in Indonesia. Children are a vulnerable group who need special protection during this pandemic because, during the pandemic, cases of violence against children are now shifting from the home. Indonesia has ratified the *United Nations Convention On The Rights Of The Child* (UNCRC 1989) through Presidential Decree Number 36 of 1990, in which the formation of national legislation, Indonesia must use the same principles based on the convention. The actualization of national law has been repeatedly launched to eliminate violence against children in Indonesia. The problem formulation of this research is how to eliminate violence against children in Indonesia during the Covid-19 pandemic based on the *United Nations Convention On The Rights Of The Child* (UNCRC 1989). The purpose of this study was to analyze the extent of the state's responsibility in realizing the elimination of violence against children during the Covid-19 pandemic based on the UNCRC 1989. This research is an empirical descriptive study. The study results show that the UNCRC 1989 has been implemented into Law Number 35 of 2014 as a form of state obligations and responsibilities. In this case, efforts to protect, recover, prevent, and eliminate violence against children in Indonesia, especially in Makassar, have not been appropriately fulfilled and are ineffective yet. This is evident from the lack of legal counseling, and the provision of legal assistance for child victims of violence has not been optimal. Hence, many children still do not get their right to feel safe and protected during the Covid-19 pandemic. It is the responsibility of all *stakeholders* to increase productivity, human resources, and implementation of the UNCRC 1989 to realize the elimination of child violence in Indonesia.

Keywords: UNCRC 1989, Elimination of Child Violence, Covid-19 Pandemic

ABSTRAK

Kekerasan terhadap anak termasuk dalam kasus pelanggaran ham tertinggi selama masa pandemi Covid-19, akan dan telah berpengaruh dalam kehidupan anak di seluruh dunia, khususnya Indonesia. Anak adalah kelompok rentan yang membutuhkan perlindungan khusus di masa pandemi ini, dikarenakan selama pandemi kasus kekerasan terhadap anak kini bergeser dari dalam rumah. Indonesia telah meratifikasi *United Nations Convention On The Rights Of The Child* (UNCRC 1989) melalui Keputusan Presiden Nomor 36 Tahun 1990, berarti di dalam pembentukan perundang-undangan nasional Indonesia harus menggunakan prinsip-prinsip yang sama berdasarkan konvensi tersebut. Reaktualisasi hukum nasional berulang kali dicanangkan demi terwujudnya penghapusan kekerasan terhadap anak di Indonesia. Rumusan masalah penelitian ini adalah bagaimana penghapusan kekerasan terhadap anak di Indonesia pada masa pandemi Covid-19 berdasarkan *United Nations Convention On The Rights Of The Child* (UNCRC 1989). Tujuan penelitian ini adalah untuk menganalisis sejauh mana tanggung jawab negara dalam terwujudnya penghapusan kekerasan terhadap anak di masa pandemi Covid-19 berdasarkan UNCRC 1989. Penelitian ini merupakan penelitian empiris yang bersifat deskriptif. Hasil penelitian menunjukkan bahwa UNCRC 1989 telah diterapkan ke dalam Undang-Undang Nomor 35 Tahun 2014 sebagai bentuk kewajiban dan tanggung jawab negara. Dalam hal ini, upaya perlindungan, pemulihan, pencegahan, dan penghapusan kekerasan terhadap anak di Indonesia khususnya Kota Makassar belum terpenuhi dengan baik, dan belum efektif. Hal ini terbukti dari kurangnya penyuluhan hukum dan pemberian

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pendampingan hukum bagi anak korban kekerasan belum optimal. Sehingga masih banyak anak yang tidak mendapatkan haknya untuk merasa aman dan terlindungi pada masa pandemi Covid-19. Merupakan tanggung jawab seluruh *stakeholder* untuk meningkatkan produktifitas, SDM, dan implementasi UNCRC 1989 demi mewujudkan penghapusan kekerasan anak di Indonesia.

Kata Kunci: UNCRC 1989, Penghapusan Kekerasan Anak, Pandemi Covid-19

INTRODUCTION

Indonesia is a developing country that has experienced a series of cases of child abuse, especially since the outbreak of Corona Virus Disease 2019 or commonly called Covid-19. The Covid-19 outbreak is a virus that has caused tens of thousands of human lives to be lost because it attacks the respiratory system and eats away at the human lungs. The origin of this virus was found in Wuhan, People's Republic of China, where the impact was not only on the health sector, but also had a broad impact including the economic, political, education and human rights sectors.

Violence against children is included in the highest cases of human rights violations during the Covid-19 pandemic, will and has affected the lives of children throughout the world, including in Indonesia. The 2018 Thomson Reuters Foundation survey stated that Indonesia was the second highest in the Asia Pacific after India for cases of violence against women and children.

Children are a vulnerable group during this pandemic. Many of them require special protection. This is because during the pandemic all family members are required to stay at home in the long term, plus economic problems due to loss of income and other problems, while the needs of children and families continue, so it is not uncommon for new problems to arise. Many parents experience stress and then it is their children who become victims of their frustration. This situation can encourage violence against children, even though the home should be the most comfortable and safest place for children to get protection. For that reason, many have committed various violations of the law during this pandemic, such as sexual abuse of children, exploitation of children, children being married off to trafficked children and so on.

In addition, the outbreak of the Covid-19 pandemic has also stopped almost all activities of children and adolescents outside the home such as school and restrictions on meeting with peers by not keeping a distance. So that children feel anxious, bored, depressed to stress being in the house continuously which is sometimes expressed through their emotions and behavior. (Ministry of Health, 2020)

The data reveals that violence against children perpetrated by the closest people spiked during Covid-19 pandemic. The Online Information System for the Protection of Women and Children or abbreviated as SIMFONI PPA recorded cases of violence against children, especially sexual violence in Indonesia during the Covid-19 pandemic for the period January 1, 2020 to December 11, 2020, reaching 5640 cases. contrary to the Law on Child Protection in fulfilling children's rights in Indonesia.

Indonesia is one of the developing countries that has ratified the United Nations Convention of the Rights of the Child 1989 through Presidential Decree No. 36 of 1990. Indirectly, in the formation of national legislation, Indonesia must use the same principles based on the convention. . However, in its application there are still some shortcomings or violations of children's rights in Indonesia. The strategy to eliminate violence against children has not been maximized, resulting in the deprivation of children's rights that continues and is increasing.

It can be said that violence against children continues to occur because the state fails to implement the strategies and policies that have been made to protect and realize children's rights. The handling of various cases of child abuse is still not effective, especially during this Covid-19 pandemic. Children as

victims of violence have experienced many traumas, and have not received full justice, and it is very clear that this case is part of a real violation of international principles and provisions.

If it is not immediately prevented cases of violence against children will continue to be the scourge of crime, it is possible that children who have become victims will repeat and vent when they are adults, and will rotate in the same circle. The impact of violence against children is very bad, such as brain and nervous system disorders, causing negative attitudes in children, depression in children, decreased appetite, sleep disorders, physical and mental injuries, deep trauma, and even death. The impacts that arise can certainly damage the future of children, children become unproductive, have problems in the social environment, behave badly, commit crimes, so that they can backfire more dangerous in the future.

Although legal issues regarding the elimination of violence against children have been resolved in national and international law. However, this does not reduce cases of violence against children, especially since the outbreak of the Covid-19 pandemic. What is the state's responsibility in this regard, prompted the author to conduct a study entitled Elimination of Violence Against Children During the Covid-19 Pandemic Based on the United Nations Convention On The Rights Of The Child (UNCRC 1989).

RESEARCH METHOD

This type of research is empirical legal research because the purpose of this research is to confirm the existing hypotheses, so the approach taken in this research is the convention or law approach (statute approach) and case approach (case approach). The use of the statute approach is intended, namely that this research begins with an inventory of international human rights laws or regulations concerning the elimination of violence against children based on the United Nations Convention on the Rights of the Child 1989. Furthermore, the case approach is to analyze several cases to find out the role of these legal regulations in protecting and fulfilling children's rights during the Covid-19 pandemic in Indonesia.

RESULT AND DISCUSSION

Indonesia is an archipelagic country with more than 17,000 islands, with an area of more than 1.9 million square kilometers, and has more than 1300 ethnic groups from around 271 million inhabitants. The total population so far this year has increased by 32.56 million people compared to 2010. (Central Bureau of Statistics, 2021)

The fourth largest child population in the world is occupied by Indonesia, where a third of Indonesia's population consists of children or about 84.4 million children. It consists of 43.2 million boys and 41.1 million girls. (Sitepu, 2020) They are the next generation and the nation's future assets. Therefore, the success of eliminating violence against children will determine the quality of human resources and will become the strength of the Indonesian nation to face the challenges of the world in the future.

However, there are various kinds of problems that Indonesia has faced in the last two years or during the Covid-19 pandemic. The increasing number of cases of violence against children is one of them. The higher the incidence of violence against children, the longer the development of protection and fulfillment of children's rights will be fulfilled.

The Online Information System for the Protection of Women and Children (SIMFONI PPA) recorded 11,278 cases of violence against children during the Covid-19 pandemic for the period 1 January 2020 – 31 December 2020 and in the January – October 2021 period there were 11,149 cases of violence against children, bringing the total cases of violence against children during the last two years or so during

the Covid-19 pandemic reached around twenty-two thousand cases. Where emotional, physical and sexual violence are the most frequent cases of violence experienced by children in Indonesia.

The State's Obligations to Human Rights Through the Implementation of the UNCRC 1989

When the state has ratified international human rights instruments, it means that the state has legally bound itself to carry out its obligations (Khosyi'ah et al., 2021). Human Rights (HAM) based on case law requires two main legal obligations for the state or government.

"primary rules, namely the duty to abstain from infringing upon human rights, and secondary rules, namely the duty to guarantee respect of human rights".

The first is the state's obligation not to commit human rights violations, either by taking action or by omission. Second, the obligation of the state to prevent violations, investigate if they occur, carry out legal proceedings against the perpetrators, and make reparations for the losses incurred. (ICJ, 2021)

Conventions are agreements between several countries, or are included in the classification of multilateral agreements where agreements entered into by many parties or countries are generally open agreements. (Ashri, 2012) This agreement is legally and politically binding (law making treaties) therefore the convention is an international law or can also be referred to as an international instrument. Children's rights mean Human Rights for Children, so it can be said that The United Nations Convention on the Rights of the Child 1989 is a legally and politically binding agreement between various countries that regulates matters relating to children's rights.

The United Nations Convention on the Rights of the Child 1989 was then set forth in UN Resolution No. 44/25. Based on the legal materials included in the UNCRC 1989, they are as follows: a. Affirmation of children's rights; b. Protection of children by the state; c. The participation of various parties (government, community, and private sector) in ensuring respect for children's rights. (Bahri, 2020) Legal materials regarding the principles contained in the UNCRC 1989 are grouped into 4 (four) categories of children's rights, namely: (Kemen PPPA, 2015)

1. The principle of non-discrimination, meaning that all rights recognized and contained in the UNCRC 1989 Article 2 must be applied to every child without any distinction.
2. The principle of the best interest of the child, i.e. the government and private social welfare organizations, together with the judicial system, government agencies, and legislative bodies handle all actions concerning children. These entities must ensure that the best interests of the child are their top priority. (Article 3 Point 1);
3. The principle of survival, growth and development (the rights to life, survival and development), which means that participating countries recognize that every child has an inherent right to life (Article 6 Point 2);
4. The principle of respect for children (respect for the views of the child), the purpose of this principle is to appreciate all opinions of children which are related to matters concerning children's lives in every decision making (the rights of a child to express her/ his views in all matters affecting that child), (Article 12 Point 1).

The basis of the binding power of international law lies in the will of the state and the Vienna Convention on International Treaties. The United Nations Convention On The Rights Of The Child 1989 is an international legal agreement on children's rights that is binding, meaning that if the state has agreed and ratified an agreement, the state will automatically be bound by these rules and the state is obliged

to implement it. The fundamental thing that Indonesia does in an effort to fulfill children's rights and child protection according to UNCRC 1989 is to include the issue of child protection in the constitution.

The United Nations Convention On The Rights Of The Child Article 2 Point 2 reads:

“States Parties shall take all appropriate measures to ensure that the children is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.”

And UNCRC 1989 Article 3 Point 3:

“States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.”

From these two articles, it is emphasized that the state as a subject must be obliged and responsible for taking steps so that children are protected by ensuring that all government institutions and agencies are truly responsible for the care and protection of children.

Basically, in the UNCRC 1989 there are five clusters of substance, namely the first, the civil rights and freedoms cluster listed in Articles 7, 8, 13-17, and 37. It contains the identity and participation of children. The Indonesian state has regulated the identity of children in the form of birth certificates, according to data from the Director General of Population and Civil Registry of the Ministry of Home Affairs in July 2021 reaching 93.49 percent or as many as 78,427,943 children aged 0-17 years. Then, in 34 provinces in Indonesia there is a forum called the Children's Forum. Located in 458 cities/districts, 1,625 sub-districts, and 2,694 villages/kelurahan. The Children's Forum is under the Ministry of Women's Empowerment and Child Protection, and has been involved in many discussions and debates. The right of participation is poured into the Children's Forum, which functions as a pioneer, reporter, and participant in many discussions and decisions. (Ministry of PPPA, 2021) Currently, the South Sulawesi Provincial Development Conference has started well by involving children, but has not yet reached the village. even if there are only 1-2 children.

The second cluster in UNCRC 1989 Articles 5, 9-11, 18-21, 25, 27, and 39 is the family environment cluster and alternative care, such as prevention of child marriage and improper care. This cluster is very crucial during this Covid-19 pandemic. In 2020, the National Socio-Economic Survey (SUSENAS) shows that the number of child marriages is increasing alarmingly to 8.19% of children aged between 7 and 15 years. In fact, in 20 of Indonesia's 33 provinces, the prevalence of child marriage is higher than the national average. West Sulawesi, Central Sulawesi, and Southeast Sulawesi have the highest prevalence of child marriage among these provinces. Around 1 million children get married before they are 18 years old. (Unicef Puskapa UI, 2020)

The third cluster regarding basic health and welfare is contained in UNCRC 1989 Articles 6, 18, 23-24, 26-27, for example prevention of stunting in children or now better known as stunting, breastfeeding or exclusive breastfeeding, and prevention of child smoking.

The fourth cluster in UNCRC 1989 Articles 28, 29 and 31 concerning the right to education, the use of leisure time, cultural and recreational activities, for example the 12-year compulsory education. Even during the Covid-19 pandemic in Indonesia, children as students are asked to continue to follow the distance learning process according to the Circular of the Minister of Education and Culture No. 4 of 2020. However, it is undeniable that distance learning is considered less effective than face-to-face learning. In 2021 there will be 1 in 1000 children who drop out of school at the elementary level, 9 out of 1000 children must drop out of school at the junior high school level, and 11 out of 1000 dropout children who have high

school education. (BPS, 2021) In addition, until now there are 44,979 schools that have declared themselves as Child Friendly Schools. (KPPPA, 2021)

The fifth cluster contained in UNCRC 1989 Articles 22, 23, 30, 32-40 is a core cluster that deals with special protection for children, namely the prevention and elimination of violence against children and child labour. During the pandemic, in particular, there were about twenty-two thousand cases of violence against children that occurred. This shows that there are gaps and conditions that are not ideal.

Implementation of the UNCRC 1989 into National Instruments

The implementation of the UNCRC 1989 in Indonesia was through Presidential Decree Number 36 of 1990, then Law Number 23 of 2002 concerning Child Protection with two main pillars, namely the fulfillment of children's rights and special protection for children. These two pillars are like two inseparable currencies. The law has been amended twice through Law Number 35 of 2014 and Law Number 17 of 2016.

Regarding this matter, there are two of the three optional protocols of the UNCRC 1989 which have been ratified by Indonesia, namely:

1. The UNCRC 1989 Optional Protocol on the Involvement of Children in Armed Conflict is implemented by Law No. 9 of 2012 concerning the Ratification of the Optional Protocol to the Convention on the Rights of the Child concerning the Involvement of Children in Armed Conflict;
2. The UNCRC 1989 Optional Protocol concerning the Sale of Children, Child Prostitution, and Child Pornography into Law Number 10 of 2012 concerning the Ratification of the Optional Protocol to the Convention on the Rights of the Child concerning the Sale of Children, Child Prostitution, and Child Pornography;
3. The UNCRC 1989 Optional Protocol on Communications Procedures. This protocol has not yet been ratified by Indonesia. In reality, in the current Covid-19 pandemic, regulations regarding information and communication for children are very crucial. Where currently mobile phones or gadgets are very close to children. Either online school needs or anything else.

In addition, there are 23 laws that have been made by the government as a legal umbrella for the fulfillment of children's rights. There are quite a lot of laws and regulations in efforts to protect children in Indonesia. However, children are still the target of continuous violence, and it is increasingly prevalent during the Covid-19 pandemic.

The obligations and responsibilities of the state are also stated in Law Number 35 of 2014 article 21 paragraph 1 which reads,

"The State, Government, and Regional Governments are obliged and responsible for respecting the fulfillment of children's rights without distinction of ethnicity, religion, race, class, gender, ethnicity, culture and language, legal status, birth order, and physical and/or mental condition".

And paragraph 3

"To ensure the fulfillment of children's rights as referred to in paragraph 1, the Government is obliged and responsible in formulating and implementing policies in the field of implementing Child Protection".

In Law Number 35 of 2014, the government is obliged and responsible for implementing and supporting national policies and the implementation of child protection in the regions which can be realized through regional efforts to build child-friendly districts/cities, as well as providing support

for facilities, infrastructure, and availability of resources. human resources in the implementation of child protection.

Likewise, the regulation that refers to the UNCRC 1989 is contained in article 58 of Law Number 39 of 1999 concerning Human Rights which reads:

"Every child has the right to obtain legal protection from all forms of physical or mental violence, neglect, ill-treatment, and sexual harassment while in care. parents/guardians, or other parties or those responsible for the care of the child."

The article reveals, without exception, that it applies to both parents/guardians, families or even the state to fulfill them. The state's obligation includes two aspects, namely the obligation to act (obligations of conduct) and the obligation to carry out with certain results (obligations of result). So, if there is negligence or violation of the said obligations, it can cause international responsibility for the state if the conduct or omission can be distributed to the state based on international law, or is a violation of the state against its international obligations. (Ashri, 2018).

State Responsibilities in Legal Protection, Prevention and Elimination

Liability arises from failure to carry out obligations. However, until now the issue of state responsibility has not been clearly regulated in international law. This ambiguity is indicated by the absence of an international agreement that regulates it. Therefore, other sources of international law such as international customs, general legal principles relating to the implementation of state responsibility can serve as a legal basis for resolving problems of human rights violations. (Sujatmoko, 2005)

The form of state responsibility is heeded by punishing the perpetrators through national legal mechanisms by providing compensation, restitution, and rehabilitation for child victims of violence. Carrying out a complete legal process for perpetrators of human rights violations based on national laws and regulations by the state is a form of responsibility regulated in international human rights law.

UNCRC 1989 which has ratified that child victims of violence must be protected, as stated in UNCRC 1989. Article 19 point 1 states that there are no exceptions. The state has consistently maintained the position that any form of violence against children, however minor, is unacceptable. "All forms of physical or mental violence" do not provide space for any level of violence against children in any situation and condition, including during the Covid-19 pandemic. The frequency of severity, harm, and intent to harm are not prerequisites for the definition of violence. States parties may refer to these factors in strategies to enable proportionate responses in the best interests of the child, without undermining the child's inalienable right to human dignity and physical or psychological integrity. So that all forms of violence occur because of violations and must be accounted for.

Responsibilities in Legal Protection

In relation to legal protection for child victims of violence, the applicable law in this case is related to law as a system. Then, in Abintoro's book what is meant by legal protection is an act to protect the rights of individuals or a number of individuals who are less or unable or helpless physically or mentally, socially, economically, and politically both preventively and repressively based on laws that apply in an effort to realize. (Prakoso, 2016)

Legal protection for children who are victims of violence in Indonesia is getting tougher every year, during the Covid-19 pandemic, this issue is getting more serious and urgent to pay attention to. The Covid-19 pandemic has prompted an increase in violence against children, not only in Indonesia but

also in the world. The results of a United Nations study in December 2021 revealed that the triggering factors for violence against children include finance, work, food insecurity, and domination in the family.

The forms and types of violence against children that occurred during the Covid-19 pandemic are included in the category of special protection in Law Number 35 of 2014 Article 59 paragraph 1, which explains that when a child is in certain conditions and situations which are included in any conditions and situations that are dangerous and unsafe for children, either in the child's survival or in the child's growth and development process, they meet the category for special protection.

The results of the study found that the four highest forms of violence against children occurred in Makassar City during the Covid-19 pandemic, along with the legal protections:

Children Facing the Law (ABH)

Legal protection for children victims of violence in the form of Children in Front of the Law (ABH) is stated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, that Indonesia as a State Party to the UNCRC 1989 which regulates the principle of legal protection against children has an obligation to provide special protection against children in conflict with the law. The entire process of resolving ABH cases starts from the investigation stage, up to the mentoring stage after the juvenile crime is committed.

Detention of children still upholds the dignity as a child by not discriminating. During the Covid-19 pandemic, the detention period of children is shortened by 50%, for example, the prosecutor demands a child of 1 year in prison, the judge may decide the remaining 8 months, but due to the pandemic it can be 4 months. Based on Article 4 Paragraph (1) of the Law on the Criminal Justice System, juveniles are entitled to a reduced detention period.

Underage Marriage

Legal protection is contained in Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, detailing legal protection for underage marriages. The law states that the minimum age for marriage for boys and girls is 19 years. This change was made as an effort to prevent child marriage, because previously the minimum age limit for women to marry was 16 years.

Violence against children in the form of discrimination from a report from the Central Statistics Agency on the analysis of child marriage which explains that the practice of child marriage also has a fatal impact, where girls aged 10-14 years have a 5 times greater risk of dying in pregnancy and childbirth than children. woman. BPS stated that 85% of girls end their education after being married, because after marriage access to education is immediately cut off. (Sacharina, 2020)

In addition, so that children's rights can be fulfilled to optimize children's growth and development, including parental assistance, to provide children with access to the highest possible education. (Article 7 paragraph 2). In the event that there is a deviation from the provisions referred to, namely if the deviant child has previously been pregnant but is not married, then as meant by the parents of the male and female parties, they can request a dispensation from the Court with very urgent reasons accompanied by strong evidence to support it.

Although it has been updated, this aspect can be seen as a weakness of the legal instrument of the Marriage Law in Indonesia, as well as a weakness in the behavior of the Indonesian people during the Covid-19 pandemic. Because the *das sollen* that the law aspires to are different from the *das sein* that occurs in the field.

Sexual Violence

Legal protection for child victims of sexual violence is contained in Law Number 10 of 2012 concerning Ratification of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, which explains that state parties are obliged to take steps Measures to protect the rights and best interests of children who are victims, including by recognizing their special needs, seriously considering their opinions, providing the necessary support during the legal process, and freeing them from all forms of threats and revenge.

Cases of sexual violence against children that occurred during Covid-19 do not yet have strong legal certainty, especially in terms of evidence in court. Due to the fact that during the pandemic period it is not possible to meet face-to-face so that the judicial process is carried out online, the prosecutor only uses video calls because the suspect is not released and is not presented at trial.

Psychic Violence

Legal protection for children victims of psychological violence is stated in Law Number 23 of 2004 concerning the Elimination of Domestic Violence, Article 7 states that psychological violence is an act that results in fear, loss of confidence, loss of ability to act, feeling helpless, and/or or severe psychological suffering on a person. This violence was revealed during the Covid-19 pandemic.

Article 10 section (a) the victim is entitled to protection from the family, police, prosecutors, court advocates, social institutions, or other parties, either temporarily or based on the stipulation of a protection order and trial.

Perpetrators of psychological violence against children are subject to criminal sanctions as regulated by the Child Protection Act and Article 26 of the Domestic Violence Law that the victim has the right to directly report domestic violence to the police, either at the victim's place or at the scene of the case, or through the assistance of the UPT, PPA or LBH.

Overall, all perpetrators of violations of violence against children will be charged with Law Number 17 of 2016 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection into Laws. Specifically for violence against children whose perpetrators are parents themselves, it is stated in the Child Protection Law, Article 81 paragraph (3), namely the threat of imprisonment imposed on parents, guardians, families, child caretakers, educators, education staff, officers who handle child protection, or committed by more than one person together, the penalty is added 1/3 (one third) of the threat of a fine as referred to in Article 81 Paragraph (1).

In addition, parents as perpetrators of violence are also threatened with the Law on Domestic Violence Article 44 paragraph (1) Anyone who commits acts of physical violence within the scope of the household as referred to in Article 5 letter a shall be punished with imprisonment for a maximum of 5 (five years) or a maximum fine of Rp. 15,000,000.00 (Five million rupiahs); paragraph (2) In the case of the act as referred to in paragraph (1) resulting in the victim getting sick or seriously injured, the punishment is imprisonment for a maximum of 10 (ten) years or a fine of a maximum of Rp. 30,000,000.00 (thirty million rupiah).

Thus, it can be said that the legal rules for child protection in Indonesia have been fulfilled, although their implementation is still not effective, due to various factors, be it negligence or disaster, one of which is the Covid-19 outbreak.

The rights of children victims of violence during the Covid-19 pandemic are as follows (UPT PPA Makassar, 2021) :

Legal Assistance

The role of legal assistance or assistance to children who are victims of violence is very much needed, because a child who is a victim of violence who faces investigators, prosecutors or judges is likely to feel afraid in expressing what he is experiencing. The provision of legal assistance to child victims of violence must be carried out, whether at the request of the victim or not. Considering that what needs assistance is the age of the child, where the child does not know anything about legal issues. The attitude of letting children who are victims of violence do not get proper legal assistance can have an impact on children who are victims of violence worse off. (Mansur & Gultom, 2007)

In the UNCRC 1989 Article 37 point d, it is stated that every child who is deprived of his liberty has the right to immediately obtain legal assistance and other appropriate assistance. Furthermore, in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, Article 64 states that special protection for children in conflict with the law as referred to in Article 59 paragraph (2) letter b is carried out through: c. provision of legal aid and other assistance effectively.

Both international and national instruments indicate that every child victim of violence has the right to receive proper and effective legal assistance. However, the procedure for obtaining legal assistance for child victims of violence from underprivileged families is not explained. Makassar City DPPP already has a special lawyer to assist children victims of violence in Makassar City, but it is limited, so the UPT PPA often asks for assistance through the local LBH.

Furthermore, legal protection efforts that are often carried out by UPT PPA Makassar are more prioritizing the principle of restorative justice, where the settlement of cases or cases of children is resolved by a process where all interested parties in certain offenses meet together with the aim of finding solutions together how to resolve the consequences of the case for the sake of the future. (Sudewo, 2021) In addition, this principle is intended to make the law in favor of law-vulnerable groups, including children, the elderly, and the poor. (Karim, 2019)

Restorative justice has been adopted and accommodated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Article 1 paragraph 7 defines restorative justice as the settlement of criminal cases involving the perpetrators, victims, families of perpetrators/victims, and other related parties to together seek a just solution by emphasizing restoration to the state of things, and not redemption.

Identity Withheld

The secrecy of the identity of child victims of violence is part of legal protection for child victims of violence, as mandated in the UNCRC 1989 Article 8 point 2.

“Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.”

In the UNCRC 1989 it was stated that the state must provide appropriate assistance and protection with the aim of restoring the child's identity. This has also been stated as one of the special protections for children in the Child Protection Act as an obligation of the government and state institutions. (Law No.35/2014 Article 64(i))

All forms of violence against children without exception as stated in the Law on Child Protection Number 54 Article 72 Paragraph 5, dissemination of information is the dissemination of information that is useful for children and protection of the news of children's identities to avoid labelling. What is meant by mass media includes print media (newspapers, tabloids, magazines), electronic media (radio, television, film, video), information and communication technology media (websites, news portals, blogs, social media).

The exposure of children who are victims of violence in the mass media is due to the fact that information and communication technology is now more advanced and developing. Everyone already has a cellphone/gadget that can easily capture moments and receive information even from the ends of the world, and spreads it to social media very quickly. So that when the community disseminates the identity of children it is probably because they do not know that there are regulations that protect child victims/perpetrators of violence.

Getting Rehabilitation or Recovery

Children's rights in getting rehabilitation are physical, psychological, social recovery and prevention of disease and other health. (Law No.35/2014 Article 59A(a)) Efforts to recover child victims of violence have been listed in UNCRC 1989 Article 39,

“States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.”

The article reveals that the state must take appropriate action for the recovery of child victims of violence. However, what happens in the field is that the government still considers that when the case has been concluded by criminal law, the case will be considered finished until that stage, without thinking about the next settlement, namely to the rehabilitation stage.

Cases of child victims of sexual violence who have not completed traumatic psychological recovery will have a long-term impact with many fears that can hinder the future of the child, or this is what makes children as adults can become perpetrators. An example of the second case is ABH who repeatedly entered the Child Special Guidance Institution or LPKA. Not a few children who have left LPKA but re-entered because they are not finished in their family, or the mindset of children who have mistakenly thought LPKA is heaven. This is what the government needs to pay attention to that the rehabilitation of post-traumatic children's syndrome is so important, because in rehabilitation children are taught self-concept, children are given knowledge so that they are directed after leaving LKPA. The reasons for not running Article 39 are as follows:

1. The shortage of psychologists and counselors is the main reason.
2. There is no special budget for the rehabilitation of child victims of violence.
3. Even if there is a psychologist, but only during the case, not for post-traumatic syndrome.

When viewed from the budget allocation for the fulfillment and protection of children, that is 20% of the fulfillment of the rights to education, health and the Social Service (Alia & R, 2019). However, for the recovery and healing of the child's soul there is nothing. UNICEF itself has made a smartklink link to calculate the budget for child protection and has been forwarded to the center, but until now KPPPA has received the least budget, especially in the regions.

Guarantee of Safety as Child Victims of Violence

The provision of this safety guarantee is stated in the UNCRC 1989 Article 3 point 3, and confirmed in Article 1 Paragraph 15 of the Child Protection Law, namely, special protection is a form of protection received by children in certain conditions to get a guarantee of security against dangerous threats self and soul in its growth and development. Giving guarantees is expected so that children feel free to express all the events they experience without feeling afraid or intimidated by anyone.

Although it has been explicitly stated in legal instruments, the fact is that child victims of violence have not fully received safety guarantees at every level of examination. Likewise, there are still many fears of children who are victims of violence in describing the events they have experienced. So that special techniques and a longer time are needed in providing confidence and a sense of comfort for children who are victims of violence in describing the events they have experienced. (Aidah, 2021)

Furthermore, in fulfilling the guarantee for the safety of children who are victims of violence, it is the responsibility of the state to protect children who are victims of violence, namely by providing safe houses for children who are victims of violence. This safe house is provided by the Makassar city government to accommodate and secure all victims of violence with the aim of providing maximum protection. A safe house is a safe house whose location and whereabouts are kept secret, so that no one can intervene.

Information on Case Development

In cases of violence against children, children must go through a long process, starting from an investigation, then to the district attorney where the public prosecutor conducts an examination of the case for its eligibility to be forwarded to the court for trial.

The provision of accessibility of case developments can be directly informed to children who are victims of violence as stated in Law No. 35/2014 Article 64 Paragraph 3 letter d, but most of the provision of this case development is informed to the companions, parents, or legal counsel of the child. Crucially, the provision of information on the progress of the case at each level of examination aims to be able to immediately take the necessary actions if in the process there are deviations that are not in accordance with the applicable laws and regulations.

Court Decision

For cases of violence against children that go through restorative justice, the case is not forwarded to court. Then, if the diversion fails, the case will continue until a court decision is made. In the UNCRC 1989 Article 37 point d "and to a prompt decision on any such action." The child has the right to immediately obtain a decision regarding the deprivation of liberty. Likewise, what has been stated in Article 35 of the Juvenile Criminal Justice System Act, if the maximum period of 15 days has expired but the Judge has not made a decision, then the child must be expelled by law, this provision applies to ABH. In connection with this, the basic principle of the theory of state responsibility for children's rights is that the court must avoid that its government does not violate the UNCRC 1989 international agreement.

Fulfilling children's rights during a pandemic is quite difficult. Where while all societies are trying to adjust to the unprecedented situation affecting countries around the world, the Government of the Republic of Indonesia in particular the Makassar City Government is facing a new challenge namely how to continue to uphold the rights of children in the context of eliminating violence in times of restrictions due to COVID-19 outbreak.

Prevention and Elimination Efforts

The United Nations Guidelines on Prevention and Treatment (Beijing Rules) are contained in the UNCRC 1989 article 19 point 2.

“Such protective measures should, as appropriate, include effective procedures for the establishment of social programs to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.”

This article is a legal guide which includes the three theories in this writing in preventing and eliminating violence against children in all countries, one of which is Indonesia, and in particular the city of Makassar as a research location in the Covid-19 pandemic situation.

In an effort to prevent and eliminate child violence in Indonesia, KPPPA RI makes a strategy to reduce the number of child violence in 2021-2024, there are 3 priorities, namely:

1. The priority is on preventive action, namely strengthening policies by encouraging the ratification of the PKS Bill and the issuance of PP No. 70 of 2020. Then ensuring the role of the Regional Government in supporting the reduction of violence against women and children by involving families, schools and the community. Communities with PATBM, families with PUSPAGA, and educators with positive discipline;
2. Improving the reporting system and complaint services by providing services that are easily accessible to the public, getting a response as quickly as possible with SAPA 129;
3. Reform of case management, namely the management of case handling quickly, with integrity, and more comprehensively. One Stop Service consists of complaint services, health services, assistance services such as legal aid, social rehabilitation and social reintegration.

Based on the KPPPA RI strategy, the Makassar City government did not remain silent. Various efforts to prevent and eliminate violence against children have been programmed by the Makassar City government, as follows:

1. Socialization to the community is carried out by promoting children's rights;
2. The 2P program is aimed at enabling children to become agents of the Reporting and Pioneer. That is, children are given special awareness so that they can report anything that deviates around them and know where to report it, and pioneers, namely children, can be role models for other children;
3. The Children's Forum is an organization that is fostered by the government starting from the national level, there are 33 provinces, South Sulawesi Province is in 24 districts. Then, the district level children's forum is a combination of several sub-districts, and the village level children's forum is a combination of several hamlets. Aims to fulfill children's participation, how to prepare regions for children's participation;
4. Shelter Warga is a community-based service program for temporary and immediate emergency response to female and child victims, which is managed by the sub-district and village. This is a follow-up program before the Covid-19 outbreak, where the forum is to advocate for the community down to the lower level;
5. The Family Service Center (PUSPAGA) is a form of child violence prevention service under the DPPPA coordinator as a form of state concern in improving family life and resilience through education/care programs, parenting skills, child protection skills, the ability to increase children's participation in the family as well as organizing counseling programs for children and families;

6. The Friends of Women and Children Service (SAPA 129) is the latest program launched during the COVID-19 pandemic on March 8, 2021, which is one form of implementation of Presidential Regulation Number 65 of 2020 regarding the addition of tasks and functions of the Ministry of PPPA. This service is a manifestation of the presence of the Ministry of PPPA as the final referral service provider for women and children victims of violence who need special protection where national and international level coordination is needed. This service can be accessed by all Indonesians even though they are in the 3T area (underdeveloped, frontier, outermost) by having five complaint channels, namely by telephone, WhatsApp hotline 08111129129, incoming mail, SP4N Lapor application, and receiving direct complaints;
7. Jagai Anakta is a comprehensive program that has recently been emphasized by the Makassar City government in handling problem children, including neglected children, prevention and rehabilitation through assistance for children victims of violence in Makassar City. Danny Pumanto as Mayor of Makassar will provide land for the construction of a children center that has complete and integrated educational support facilities for children and will provide a talent house to foster children's talents, which is also expected to be a place of learning for parents in order to maintain and observing the growth and development of children from the womb to birth and growth, so that later they become a qualified generation who understands religion. This program was launched on 23 April 2017 at the peak of the Three Ends Exploration activity in Makassar City with the aim of ending three things, namely ending violence against women and children, ending human trafficking, and ending unfair economic access.

There are many programs launched in the government's efforts to prevent and eliminate violence against children, but in the Covid-19 pandemic situation the government still has gaps in being less responsive in implementing these various programs. There are always reasons for the ineffectiveness of implementing these programs. In fact, in a pandemic situation like this, these efforts are very much needed. Covid-19 has further stimulated an increase in cases of violence against children. Although efforts to prevent and eliminate violence against children is not an easy thing, it must still be done in order to protect children and their rights, especially during the Covid-19 pandemic.

First, starting from the child's closest environment, namely parents and family. The government must be aware of this, that during the Covid-19 pandemic with all its limitations, the shift in cases of violence occurs more in the home, so the government is required to actively provide education on the prevention and elimination of violence to parents and families through the ball pick-up system. Creating legal and parenting counseling webinars that can be directly reached by parents through gadgets. That way, parents can be more introspective in caring for their children during this Covid-19 pandemic.

Second, DPPPA cooperates with all relevant institutions such as the Social Service, Education Office, and Health Office in educating teenagers about reproductive knowledge, so that no more children fall into the world of prostitution. From the cases that have occurred so far, children have never received education about reproduction, the effects and diseases that will be suffered from promiscuity from both parents and the relevant government.

Third, digitizing complaints services that are more easily accessible to children, both in the form of applications and google forms. Where children are free to think, express their feelings, and tell what happened to them without fear, and urges every child to have the application. Thus, even during the Covid-19 pandemic, the government can be more agile in serving children who are victims of violence. Likewise, children can be saved more quickly.

Fourth, provide special training for prospective married couples or prospective parents in educating and caring for children today, as a condition before carrying out marriage. Thus, the prospective partner has provisions before actually becoming a complete parent and engaging directly in parenting their own children. This can also break the chain of toxic parenting from previous parents.

Fifth, providing guarantees for child victims of violence is not only physical health recovery but also includes psychological recovery for children charged to BPJS, in order to create legal certainty for the protection of child victims of violence. Then, if the perpetrator of violence is unable to pay compensation, the sentence must be increased.

Last, empowering human resources and increasing APBD funds as much as possible which is devoted to the welfare of Indonesian children, especially Makassar City. All efforts to prevent and eliminate violence against children above are impossible to implement and fulfill their effectiveness, if human resources are not adequate and funds are not sufficient. The Covid-19 pandemic has resulted in more funds that will be needed to carry out all Makassar City government programs as a form of state responsibility in protecting the law and fulfilling children's rights.

CONCLUSION

The state's responsibility in eliminating violence against children during the Covid-19 pandemic in Indonesia based on the United Nations Convention on the Rights of the Child, especially Makassar City has not been fulfilled properly and its application is still not effective. This is evident from the high levels of violence against children, the lack of legal counseling, and the provision of legal assistance for children who are victims of violence has not been maximized, so that there are still many children who do not have the right to feel safe and protected in the investigation process to court decisions. In addition, children who are victims of violence also do not get post-traumatic syndrome recovery, only during the case. The Makassar City Government is still less active in carrying out socialization and has not carried out its authority properly in improving child protection services during the Covid-19 pandemic. It is the responsibility of the state in this case all stakeholders to increase productivity, human resources and implementation of the UNCRC 1989 in order to realize the elimination of child violence in Indonesia, especially Makassar City.

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