

Implementation of School Protection for Students from Domestic Violence in Surabaya-Indonesia

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Implementation of School Protection for Students from Domestic Violence in Surabaya -Indonesia

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Abstract

The present paper employed an empirical-legal approach to examine the implementation of school protection for the students who have been the victims of domestic abuse. The study indicated that the schools are aware of the Child Protection Law. Therefore, if their students fall prey to violence, the schools are supposed not to neglect them. In fact, they are obliged to help the victims and find the perpetrator to find out the reasons for what he has done and to persuade him not to repeat the action. If such action has caused physical injury to the victims, the schools have to make a police report as a personal injury-based lawsuit against the perpetrator. Attentiveness of the schools, as part of the community, to protect their students from violence reflects their responsibility to take part in the implementation of the Law on Child Protection.

Keywords: Protection, School, Children, Violence

1. Introduction

Violence, in a general term, refers to the action taken by an individual or a group of individuals that inflict injuries on the victims. Violence is part of a criminal act that causes a person to fall victim to such an violent act. Victims, according to Arif Gosita, are those who suffer physical or psychological harms because of the actions of someone who seek to fulfil his personal desire or interest that run contrary to the interest or the rights of the sufferer[1]. The victim of violence acts may suffers not only physically, but also psychologically, economically, socially as a consequence of power abuse.

A victim is also a citizen whose rights must be protected. In general, victim's rights include:[2] (1) the right to claim compensation, depending on an offender's ability to pay; (2) the right to reject compensation if deemed unnecessary; (3) the right to financial compensation of the legal successors, ie the heirs of deceased victims; (4) the right to psychological treatment and rehabilitatin; (5) The right to return of personal property; (6) the right to refuse to testify for security reasons; (7) the right to protection from threats of the perpetrator when asked to testify; (8) right to have the assistance of legal counsel; and (9) the right to take legal action. The rights of the victim can be fulfilled if both the victim and the community have the will to report domestic violence or abuse. Therefore, as domestic violence is part of social problems, individuals knowing

someone who suffer domestic abuse is supposed to report to the authority, instead of neglecting it as if nothing has happened.

Domestic violence and abuse can be said to be casuistic, which means it can happen to anyone. A case of domestic abuse is a largely hidden crime, especially when the victim is a child and the perpetrator is his or her parent. As the term suggests, domestic abuse occurs primarily at home and, consequently, it largely regarded as a private matter even if it involves violation of children's rights.

Children, according to Haditono, are individuals who need care, love and a place for their development [3]. Children are supposedly treated as part of a family to whom the parents put great hope in them as their successors. Therefore, parent should nurture and guide their children's development. It is consistent with the Article 45 paragraph (1) of Law No 1 of 1974 on Marriage stipulating that Both parents bear the responsibility for the sustenance and education of their children to the best of their ability. Furthermore, article 26 paragraph (1) of Law No 23 of 2002 on Child Protection (subsequently referred to as Law on Child Protection)—as amended by Law No 35 of 2014—stipulates that parents are obliged and responsible for: (a) caregiving, nurturing, educating, and protecting a child; (b) growing and developing a child in line with his/her competencies, talent and interest; (c) preventing early marriage at child's age; and (d) providing character education and cultivating values in children. However, it is unfortunate that in nurturing and educating their children, parents resort to physical abuse with the excuse of 'disciplining' their children. Factors that causes child abuse include the parents or family life situation such as parents experiencing physical violence or abuse in their childhood; parent marriage that take place at early age with unstable emotion; lacking in nurturing skills, socially alienated, poverty, crowdedness, lack of social interaction with surrounding communities; depression and mental problems, short interpregnancy interval, unplanned pregnancy, single parent, parental nurturance pattern, parental values, and lack of understanding about the development and the rights of children [4].

Children who are victims of violence are in a weak position, because they must obey their parents. Even worse, as Titik Lestari opined, abused children will face more serious problems in the future, either in their mental health or well-being [5]. The Law on Child Protection has been ratified in Indonesia to guarantee the fulfillment of children's needs to live, grow, develop and participate optimally in conformity with human dignity and pride. It is also intended to protect children from violence and discrimination for the realization of quality Indonesian children who have noble morals and are well-being [6].

The basic principles of the Law on Child Protection are those of the Convention on the Rights of the Child which includes:[7] (1) non-discrimination; (2) best interest for children; (3) rights to live, survive, and develop; and (4) appreciation of child's opinion. The principle of non-discrimination means that there is no distinction, limitation or exclusion of a child based on religion, ethnicity, race, social status, economic status, culture or gender which can affect the fulfillment and protection of children's rights [8]. The principle of the best interest for children is meant to guarantee that the protection of children is carried out properly, so the best interests of the child must be seen as the highest priority in every decision concerning children [9]. Furthermore, in any child-relevant action taken by the government, the community, the legislative and judicial bodies, the interests of the child must be the main consideration [10]. This relates to the principles of the right to life, survival, and the development that are further elucidated as the right to live safely, peacefully, peacefully, happily, prosperously, and the right to grow and develop properly that should be in the best interest of children and treated as the main consideration in the fulfillment of children's rights. The principles of appreciation for child's opinion includes:[11] (1) the right to express opinion and to be listened to about his or her opinion; (2) the right to seek, receive and give information; (3) the right to associate; and (4) the right to receive proper information and protected from misleading or false information.

Efforts to protect children from violence acts are not only stipulated in the Laws on Child Protection, but also in the Law No. 23 of 2004 on the Elimination of Domestic Violence (subsequently referred to as the Law on the Elimination of Domestic Violence), where children are included therein. This is consistent with Abintoro Prakoso's opinion that child protection constitutes every effort to create a favorable condition for every child to fulfill their rights and obligations to enable them to develop and grow properly either physically, mentally or socially [12]. However, the fact remains that such efforts still not fully implemented as many children fall victim to domestic abuse perpetrated by their own parents. Data from the Indonesian Child Protection Commission showed that children who are victims of domestic violence perpetrated by their parents for the last 5 years are as follows:

Children as victims of	Year				
	2014	2015	2016	2017	2018
Scramble for custody	347	251	260	196	189
Denied access and contact to parents	238	255	273	213	210
Economic abandonment	223	182	183	147	163
Parental problems	0	0	0	17	72
Abandonment by parent	0	0	24	32	56

Source: Indonesian Commission On Child Protection, 2019.

From the data above, it can be seen that the number of children who are victims of parental problems and of neglect has increased. In fact, it is not only the state or government who bear some responsibility for the child victims, but also community around them, as set out in Article 15 of Law on Child Protection. Schools are part of the community as it can be said that they can serve as the second home for kids where they can interact with their schoolmates. The duties of the teachers in the school are not only to convey the knowledge to the students in the process of learning, but also to know and recognize the character of each of their students. This can be done by becoming a conversation partner for them to understand their personalities, especially exploring the problems they are facing. Therefore, this paper will discuss how schools provide protection for their students who become victims of domestic abuse.

2. Methodology

This paper employs an empirical legal approach, which means it requires a field research to gather primary data supported with legal sources as the secondary data for analysis. This research paper studies the effectiveness of a legal system to explore how it operates in society [13]. By this, we mean that the current paper deals with the effectiveness of the Law on Child Protection that involves community—the schools, in this case—especially in effort to protect children from becoming victims of domestic abuse. The primary data is collected from interviews with Indonesian Commission On Child Protection staff and from Focus Group Discussion (FGD). FGD is part of primary data collection to find the answer of how schools implement child protection for their students who are the victims of domestic violence. To be more focused in finding the answers, FGD participants were randomly selected using a purposive sampling method.

Those selected participants consist of the principals, counseling teachers, and homeroom teachers at Senior High Schools in Surabaya.

This paper uses a descriptive analytic method to provide a comprehensive and systematic description of children who are victims of domestic violence. It also intended to provide analysis to find the solution to minimize the number of child victims of domestic violence.

3. Results and Discussion

3.1. Violence in the Lives of Children

According to Gelles, as cited in Harrys Pratama Teguh, there are four types of child maltreatment:[14] (1) physical abuse; (2) emotional abuse (psychologic abuse); (3) sexual abuse; and (4) economic abuse. Physical abuse can be easily recognized from either light or severe bruising. Physical abuse can take a number of forms, such as slapping, kicking, biting, and harming with sharp object. Contrary to physical abuse, emotional or psychologic abuse can be much more difficult to detect as it left no observable traces in victims. Psychologic abuse can take the forms of harsh words, threat, and public humiliation. Emotional abuse wears down the victims' self-esteem and undermines their self-respect, and makes them feel useless. It isn't always easy to recognize the signs of mental and emotional abuse in a person, psychological assessments from the relevant experts are necessary. Sexual abuse also includes sexual harassment such as showing explicit pornographic content, coercive sexual intercourse and verbal sexual harassment. By economic abuse, we mean not only things related to children being forced to work for economic family survival, but also to that of parents who neglect their family members. This type of abuse includes not providing for the family, neglecting the family members, restricting or prohibiting the victim from working inside or outside the home, therefore the victim remains under the control of the perpetrator [15].

The general public believes that the act of violence against a child is a private affair that people outside his or her family are not allowed to interfere with. People must understand that the incident of domestic violence with child as the victim is a social problem, so that everyone who hears, sees or knows it can provide protection in accordance with his or her abilities. The results from this study indicate that out of 106 respondents, 37 have reported to school that they had experienced violence in their life. When asked who did the domestic violence, out of the 37 students, 18 students answered that their father did it, and 19 students answered that their mother did it. The difference is

indeed negligible, therefore it is safe to say that the perpetrator of domestic abuse is the parent. The results also suggest that parents commit domestic abuse against their children for several reasons listed in the table below:

Reason	Total
Reluctance to study	24
Refuse to help	5
Getting home late	3
Get caught lying	3
Truancy	1
Abusive parent	1

Source: Primary Data, 2019.

From the table above we can see that the most common reason for parents to commit domestic violence is reluctance to study. Many parents think that physical punishment is an integral part in disciplining their children [16]. They didn't realize that physical violence against children is a violation of children's rights because they forced children to obey them for what they think is the best for the children's future. The results show that children who are reluctant to study become the victims of abusive act of their parent. By doing so, the parent hoped that their kids will study diligently for their brighter future and to achieve their dream.

Some factors underlying the occurrence of violence in children include:

1. Parental behavior which is lacking in terms of being wise, polite, and having affection for children;
2. Authoritarian parents in caring for children by imposing their own will without giving children the opportunity to have an opinion;
3. The lack of parental education factors, which leads to poor understanding of the functions of each family member;
4. The selfish nature of parents who always feel right in educating children;
5. The busyness of each family member lowers the interaction of togetherness in the family.

There are 2 factors that affect parents to commit violence against children: internal and external. The internal factor can be the personality of the parents with childhood exposure to violence; therefore they tend to repeat the violence later against their children. This is in line with the opinion of Moerti Hardiati Soeroso who argues that if abusive acts

are common in a family, it is highly likely that the children will do the same later in their life [17]. The external factor that causes parents to commit violence against their children may include a difficult situation that frustrates them, such as when they face difficult economic problems. Such economic difficulty may be due to job loss or the rising cost of living that makes parents feel depressed, emotionally sensitive, and easily scolding their kids [18].

As for the intensity of violent act experienced by the kids, the results of the study indicate that the 37 respondents stated that they were only occasionally exposed to abusive acts, especially when they disobeying their parents. This means that parent will act violently when they asked the kids to study but the latter refuse to do so or showing reluctance. The violent act can take the forms of children being scolded and yelled at by their parents. The detailed figures are as follows: 2 students were beaten, 2 were slapped, and 28 were scolded and yelled at. Scolding and yelling at are psychologic violence that can undermine the victim's self-esteem; therefore it takes a lot of courage on the part of the victim to reveal the violent act to another trusted adult who can help him or her.

3.2. School Participation in Child Protection

Indonesian Penal Code stipulates that maltreatment constitutes one of violent acts. Maltreatment is divided into two types; severe maltreatment as regulated in Article 354 of Indonesian Penal Code and mild maltreatment as stipulated in Article 352 of Indonesian Penal Code. Severe maltreatment is identical with serious injury, the formulation of which is set out in Article 90 of Indonesian Penal Code. As previous description indicates, child maltreatment is not explicitly regulated in Indonesian Penal Code, however Article 356 of Indonesian Penal Code laid down enchaned punishment by one third if the maltreatment was committed against his or her child. Maltreatment is categorized under criminal complaint. By criminal complaint it means that the victim must file a criminal complaint against the suspect in order for the case to be heard by judges in court [19]. Criminal complaint is divided into 2: absolute and relative. Absolute complaint can only be filed by the victim, while relative complaint can be filed by person other than the victim. Children who experienced maltreatment in their life can not protect themselves and can not easily find the right person to help them with their problem. Therefore, anyone who sees child victim of maltreatment by his or her parents is obliged to provide protection. This is in line with Article 20 of Law on Child Protection stating that the state,

community, family, and parents have the obligation and responsibility for arranging child's protection.

It is important to note that the Law on Child Protection was originally the Law No 23 of 2002 that represents a concrete effort on the part of the Indonesian Government to ratify the Convention on the Rights of the Child under the Presidential Decree no 36 of 1990 concerning the ratification of Convention on the Right of the Child. The Law on Child Protection is intended to make sure that children have equal treatment and opportunity in proportion with their needs in every walk of life. Before the ratification of Law on Child Protection, Indonesia regulates child's rights in general in the Law No 39 of 1999 concerning Human Rights that specifically regulating child's rights in Article 52. A child has the right to the protection by parents, family, and community as defined in Article 52 paragraph (1). Here we can see that community has shared responsibility in providing for protection of children, especially those who are victims of maltreatment. The responsibility for providing for protection of children is regulated in Article 25 paragraph (1) of Law on Child Protection, stating that obligations and responsibilities of community toward child's protection are carried out through activities of peoples' roles in arranging child's protection. In an anticipatory effort to protect children from becoming victims of violence, change in the mindset of the community is necessary, i.e. that the parental violence against their kids is no longer a private matter that other person can not interfere with. People can play an active role in reporting the incidence of violence against children in order to help minimize the number of child victims of violence. Every member of the community can strive to provide protection for children in all situations and conditions.

Schools as the formal educational institutions, from the elementary, secondary, and tertiary level, are part of the community that are supposed to contribute to the protection of their student's rights. The protection of child's rights is not limited only to the fulfillment of the right to education, but also children's right to grow and develop. Teachers are part of school who take part in the processes of education, teaching, training, evaluation of students, as mandated in the Law No 14 of 2005 on Teachers and Lecturers. Therefore, they are expected to not only convey the knowledge but also to understand the students' personalities to make sure that students succeed in both academic and non-academic fields as well as in building their character to bring pride to their family, community and even nation.

The teachers as part of the community must also protect their students from violence not only in school, but also in the family environment, therefore they must also aware and knowledgeable of the Law on Child Protection. The results of the study show that, of 147 respondents—consisting of the principal, homeroom teachers, and counseling teachers—85 said that they know about the Law on Child Protection, and the rest 62 said that they didn't know about the Law on Child Protection.

As we are all aware, the Law on Child Protection has been twice amended; the first to be ratified was the Law No 23 of 2002 which then amended by the Law No 35 of 2014. What's new in the amended law is the enhanced punishment for the perpetrator of child maltreatment, especially if the perpetrator is the parent, guardian, care giver, educator, or education staff, the sanction may be enhanced by one third. As for the Law on Child Protection, out of 85 respondents who are aware of the enactment of the Law, 66 respondents know and the rest 19 respondents didn't know the amendment of the Law on Child Protection.

The notion that teachers serve not only to educate but also to build the character of the students is manifested in the protection provided for their students in order to prevent them from becoming the victims of maltreatment by their own family. A total of 85 respondents have taken preventive actions for their students who reported being maltreated. The preventive actions are detailed in the following table:

Preventive Action	Total
Meeting the offender	37
Meeting the student with the offender	20
Giving advice to students	10
Filing a police report	20

Source: Primary Data, 2019.

The results indicate that 37 respondents help the student victims of violence by meeting the offender with the hope that they will find out the reasons for doing the violent act. Twenty respondents have brought the student victims and the offender together with the hope that they will listen to each other to find the solution. The preventive action by 10 respondents was performed by giving advice to the student victims not to repeat the same conducts that the offender considered wrong. Another 20

respondents took a preventive action by filling a police report in case the offender acts will harm the victim both physically and psychologically.

To the students who are victims of parental mistreatment and have reported their case to the principal, 37 respondents took the follow-up actions as follows:

Preventive Action	Total
Meeting the offender	18
Bring the students and the offender together	7
Giving advice to the students	12

Source: Primary Data, 2019.

As indicated in the table above, the school has been quite responsive in providing protection to the student victims. From this, it can be said that the Principal as the school leader, counseling teachers, and homeroom teachers who took part in the teaching and learning process turned out to be sensitive to what their students have experienced. Their sensitivity is in line with their understanding of students' psychological state as represented by their deteriorating academic performance, absenteeism, and depression during school hour [20].

4. Conclusion

From the above description, we can see that children have the rights that are protected by the Law on Child Protection. Unfortunately, however, children are in a weak position and lacking in protection from maltreatment perpetrated by their own parents. Parents commit abusive acts with the excuse of disciplining their kids when, in fact, what they have done constitutes a violation of children's rights. General public regarded violence against children perpetrated by parents as a private matter that others can not interfere with. This can be said as a denial and, to some extent, is part of the violation of child rights.

School as the second home for our children serves not only as a place to study, but also a place where the teachers help students with their study try to understand the personality traits of their students. Therefore, if some of their students become the victims of parental violence they can take a follow-up action in order to bring both parties together to avoid potential violence in the future. The results also indicate that while the school is aware of the Law on Child Protection, it takes a lot of courage on the part of the

students to reveal the violence they have experienced. In effort to enhance teachers' understanding of the Law on Child Protection, the school can collaborate with relevant government office such as Office of Education and Women's and Children's Empowerment Service in order to disseminate information concerning the Law on Child Protection. Such an activity can involve parents or homeroom teachers for the purpose of enhancing parents' awareness to control their emotion and prevent abusive acts against their children.

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