

Child and women domestic abuse victims' social health insurance protection: an affirmative justice perspective



Satryo Sasono ^{a,1,*}, Isharyanto Isharyanto ^{b,2}, Delasari Krisda Putri ^{b,3}

^a Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia

^b Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia

^c Public International Law, Utrecht University, Utrecht, Netherlands

* corresponding author: s4tryosasono@gmail.com

Article Info

Received: 18 February 2023

Revised: 26 May 2023

Accepted: 25 June 2023

Keywords:

Legal Protection

Health Insurance

Affirmative Justice

Abstract

As the times develop, the more complex the problems faced, one of which is problems related to the family, namely domestic abuse (KDRT). The emergence of abuse results in victims who must be protected, both physically and psychologically. The protection provided to victims of domestic abuse is legal protection and health protection based on affirmative action principle. Health social security for victims is an important factor needed by victims of abuse, legal protection for victims is no less important considering that until now there are still not many victims who report acts of domestic abuse that have befallen them. Based on the description above, it becomes an interesting problem which is outlined in the formulation of the problem as follows: 1) Cases of abuse and influencing factors; 2) Principles of health insurance protection for victims of domestic abuse; 3) Legal protection efforts for children and women as victims of domestic abuse. Thus, the focus of this research is how the urgency of regulation on the protection of victims of criminal acts in obtaining social health insurance. This research is a normative-empirical legal research (applied law research) that uses case studies in the form of legal behavior products. This research is a normative legal research that is perspective analysis with a statutory approach. The result of this research is the importance of social health insurance and legal protection for victims of domestic abuse as providing the affirmative action for this case.

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1. Introduction

The family is the smallest unit in society and the first place a person gets an education. Article 28B paragraph (1) of the 1945 Constitution explains that everyone has the right to form a family and continue their descendants through legal marriage. This means that everyone has the right to form a family and have offspring or children. The definition of

<https://doi.org/10.62264/jlej.v1i2.8>

journaloflawandjustice@gmail.com

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marriage in Law Number 1 of 1974 concerning Marriage is a physical and mental bond between a man and a woman as husband and wife with the aim of forming a happy, eternal family (household) based on God Almighty. The family has an important role in shaping the personality of each of its members. One of the goals of forming a family is to be happy, if in the family there are frequent conflicts between family members, then the initial purpose of marriage or forming a family is difficult to achieve.

Crimes of abuse are still common in Indonesia, especially domestic abuse where many women and children are victims.¹ Households are considered the safest place for every person or individual and ideally the safest place to take refuge from all kinds of crimes, especially abuse, which can be anywhere. However, the assumption regarding this is not entirely true, this is because there are now many acts of Domestic Abuse (KDRT). Acts of abuse can be committed with abuse or threats of abuse carried out or what tools are used, each depending on the case that arises. These acts can happen to anyone, both men and women, from children to adults, especially if the abuse occurs within the scope of the household, often this act of abuse is called a hidden crime (hidden crime) called so, because both the perpetrator and the victim try to keep the act secret from public view, sometimes also called domestic abuse (domestic abuse).²

These acts of abuse can take the form of physical, psychological, sexual abuse or domestic neglect as described in Article 5 of Law No. 23/2004 on the Elimination of Domestic Abuse. Abuse is a violation of human rights against human dignity. The explanation of human rights to dignity is explained in Article 28G paragraph (1) of the 1945 Constitution "Everyone has the right to protection of self, family, honor, dignity and property under their control, and is entitled to a sense of security and protection from threats of fear to do or not do something that is a human right." The preamble of Law No. 12/2006 on Citizenship of the Republic of Indonesia also explains that "Citizens are one of the essential elements and basic elements of a state. Citizenship status creates a reciprocal relationship between citizens and their country. Every citizen has rights and obligations towards their country. Conversely, the state has an obligation to provide protection to its citizens".

Human rights are the rights of every human being that cannot be contested by

¹ Ridha Fahmi Ananda and others, 'Perlindungan Hukum Terhadap Anak Sebagai Korban Kejahatan Pelecehan Seksual Dalam Perspektif Viktimologi', *Locus Journal of Academic Literature Review*, 2023 <<https://doi.org/10.56128/ljoalr.v2i1.125>>.

² Syifa Pradnya Kusumawardhani and others, *PADA PERANCANGAN PUSAT REHABILITASI PEREMPUAN KORBAN KDRT DI SURAKARTA*, Januari, 2022.

humans, groups, or groups outside themselves.³ Human rights themselves essentially exist from the time a human being is in his mother's womb until he is born and throughout his life until he dies.⁴ The National Commission on Human Rights (Komnas HAM) itself is to minimize unfair and discriminatory behavior which is a violation of human rights both vertically (committed by the state against citizens) and horizontally (committed by between citizens), and even some of these human rights violations fall into the category of gross violation of human rights. The role of Komnas HAM is also to ensure the implementation of human rights, especially the human rights of every Indonesian citizen.⁵

Children's rights are one segment of human rights whose implementation must be guaranteed, protected and also fulfilled both from parents who are the first and main environment, family, community, state and government all these aspects have an important role in fulfilling children's rights. The rights of children include five aspect : 1) Right to family environment and alternative care, women and children are legally protected to obtain the right to a social environment and alternative protection as stipulated in the sexual abuse law and child protection law; 2) Basic health and welfare rights, national health insurance and welfare are part of the constitutional mandate that must be fulfilled as the rights of citizens who are equal before the law and the wider community; 3) Education rights, equal rights and opportunities to obtain education from an early age both through the 12-year school program and higher levels; 4) The right to the utilization of leisure time and cultural activities, ability to develop other cognitive abilities outside of academics and cultural activities both arts and other religious activities; 5) Special protection rights of children, Special protection is intended for women and children who need assistance whether it is social environmental conditions such as natural disasters, children and women in conflict with the law, and others.

Legal protection of children can be interpreted as legal protection efforts against various fundamental rights and freedoms of children as well as various interests related to the welfare of children.⁶ Through Presidential Decree No. 36 of 1990 concerning the Ratification of the Convention on the Rights of the Child, the Indonesian government has

³ Attilio Pisanò, 'Towards an ASEAN Human Rights Mechanism: The ASEAN Commission on the Promotion and Protection of the Rights of Women and Children', *International Journal of Human Rights*, 20.3 (2016) <<https://doi.org/10.1080/13642987.2015.1079019>>.

⁴ Fauzi Fauzi, 'HUMAN RIGHTS CHILDREN AND WOMEN PROTECTION IN THE VERSES OF AL-AHKAM', *Jurnal Ushuluddin*, 27.1 (2019) <<https://doi.org/10.24014/jush.v27i1.6329>>.

⁵ Arasy Pradana A Azis, 'BIROKRATISASI PENEGAKAN HAK ASASI MANUSIA PASCA REFORMASI MELALUI PEMBENTUKAN KEMENTERIAN URUSAN HAM DAN PENGUATAN KOMNAS HAM', *Yurispruden*, 2.2 (2019) <<https://doi.org/10.33474/yur.v2i2.1876>>.

⁶ Esyin Chew, Umer Sikander Khan, and Pei Hsi Lee, 'Designing a Novel Robot Activist Model for Interactive Child Rights Education', *International Journal of Social Robotics*, 13.7 (2021) <<https://doi.org/10.1007/s12369-021-00751-3>>.

ratified the 1989 Convention on the Rights of the Child. So that in every stage and process of development that involves the lives of children must refer to the 1989 Convention on the Rights of the Child. To implement the 1989 Convention on the Rights of the Child, the Indonesian government has enacted various laws and regulations, including Law No. 23 of 2002 on Child Protection and Law No. 35 of 2014 on Amendments to Law No. 23 of 2002 on Child Protection.

2. Research Method

The research method used in this research is literature review. Literature review is a method used to collect data or sources related to a particular topic that can be obtained from various sources such as journals, books, the internet, and other literature. This research uses descriptive qualitative research and the method used is normative juridical. Furthermore, this research uses normative-empirical legal research (applied law research) which uses case studies in the form of legal behavior products. Normative legal research is a legal research method conducted by examining library materials or secondary data, while empirical legal research is a research method conducted to obtain primary data and find the truth using inductive and critical thinking methods. This research is a normative legal research that is perspective analysis with a statute approach and affirmative justice as one of the conceptual ingredients of this paper, followed by the various laws and regulations that use as material.⁷

3. Results and Discussion

Analysis of Domestic Abuse Cases and Their Determining Factors in Indonesia

The number of cases of abuse against women throughout 2020 amounted to 299,911 cases. This data was collected from 3 sources, namely; PN / Religious Courts totaling 291,677 cases, from Komnas Perempuan partner service institutions totaling 8,234 cases; and from the Service and Referral Unit (UPR), a unit deliberately formed by Komnas Perempuan, to receive direct complaints from victims, totaling 2,389 cases, with a record of 2,134 cases being gender-based cases and 255 cases of which were non-gender-based cases or providing information.⁸ The data above can be used as a comparison to the number of abuse against women in previous years, but it cannot exclude the fact that women are never free from the threat of experiencing abuse, whether the percentage per year increases or decreases. The irony of the 31% decrease in reported cases in 2020 is actually caused by victims not daring to report because they are close to the perpetrators during the pandemic (PSBB) so they tend

⁷ Rahmida Erliyani, 'Metode Penelitian Dan Penulisan Hukum', *News.Ge*, 2020.

⁸ Komnas Perempuan, 'PELUNCURAN CATAHU KOMNAS PEREMPUAN 2022 Peningkatan Jumlah Kasus KBG Di Tahun 2021 Menjadi Alarm Untuk RUU TPKS Segera Disahkan', *Catatan Tahunan Komnas Perempuan Tahun 2020*, 2022.

to choose to remain silent; technological literacy issues; and complaint service models that are not ready for pandemic conditions. The above factors are in line with the results of Komnas Perempuan's survey on the dynamics of Abuse Against Women during the pandemic. This makes the phenomenon of a decrease in reported cases not something encouraging.

According to 2021 Catahu data, the number of abuse against wives in households in 2020 was 3,221 cases.⁹ Forms of domestic abuse can include psychological, physical, economic, and even sexual abuse. Based on the characteristics of domestic abuse, the highest number of abuse is physical abuse and sexual abuse. In addition to the victim's dependent position in domestic life and the difficulty of protecting themselves because they are in close proximity to the perpetrator, physical and sexual abuse that is still considered taboo is a factor in the abuse occurring regularly.¹⁰ The stigma of a society that considers physical and sexual abuse a disgrace in the family makes victims choose the option to remain silent and ignore the adverse effects on themselves.¹¹ This does not mean that psychological and economic abuse can be underestimated. Economic abuse harms the victim by creating economic dependence on the perpetrator or the risk of being exploited in the household. Both economic and psychological abuse have long-term effects.¹²

Factors in the occurrence of abuse against women in the household, especially those committed by husbands against wives, namely:¹³ 1) There is an unbalanced power relationship between husband and wife. Patriarchal culture puts men or husbands in a higher level of power than women or wives, so it is not uncommon for women when married to be considered the property of their husbands. This creates inequality in the relationship because the husband has more power over his wife than his own wife. The inequality in relations between men and women means that both men and women are forced to comply with the gender roles that society attaches to them. The husband is the leader (ruler) in the family, the wife belongs to the husband and is under his control. This control often uses abuse. Second, Economic dependence. Education and patriarchal culture that has become part of society gives the view that a wife should depend on her husband. This phenomenon often makes some wives not accustomed to being independent or economically empowered, so that when

⁹ Komnas Perempuan.

¹⁰ Ellen Turner and others, 'Referral of Sexual Abuse against Children: How Do Children and Caregivers Use a Formal Child Protection Mechanism in Harare, Zimbabwe?', *SSM - Qualitative Research in Health*, 2 (2022) <<https://doi.org/10.1016/j.ssmqr.2022.100184>>.

¹¹ Anugriaty Indah Asmarany, 'Bias Gender Sebagai Prediktor Kekerasan Dalam Rumah Tangga', *Jurnal Psikologi*, 35.1 (2015).

¹² Nur Asjeti and others, '(Journal of Public Health ScieJurnal Ilmu Kesehatan Masyarakatnces', *Penyebab Dan Dampak Pernikahan Dini Di Wilayah Kerja Puskesmas Kabun Kabupaten Rokan Hulu Tahun 2019*, 10.1 (2021).

¹³ Joaquín Alcañiz-Colomer, Miguel Moya, and Inmaculada Valor-Segura, 'Gendered Social Perceptions of "The Poor": Differences in Individualistic Attributions, Stereotypes, and Attitudes Toward Social Protection Policies', *Sex Roles*, 89.7–8 (2023) <<https://doi.org/10.1007/s11199-023-01375-9>>.

domestic abuse occurs, the wife must survive. This behavior also makes the husband feel that he has more power over his wife's helplessness.

Third, abuse as a tool to resolve conflict. Abuse against wives usually occurs against the background of a mismatch between the husband's expectations and reality. Abuse is carried out with the aim that the wife can fulfill his expectations without putting up a fight because of her helplessness. This phenomenon is also still one of the cultural foundations in society that if a woman or wife does not obey, then she must be treated harshly so that she becomes obedient. There is an unbalanced power relationship between husband and wife. Patriarchal culture puts men or husbands in a higher level of power than women or wives, so it is not uncommon for women when married to be considered the property of their husbands. This creates inequality in the relationship because the husband has more power over his wife than his own wife. The inequality in relations between men and women means that both men and women are forced to comply with the gender roles that society attaches to them. The husband is the leader (ruler) in the family, the wife belongs to the husband and is under his control. This control often uses abuse.

Economic dependence. Education and patriarchal culture that has become part of society gives the view that a wife should depend on her husband. This phenomenon often makes some wives not accustomed to being independent or economically empowered, so that when domestic abuse occurs, the wife must survive. This behavior also makes the husband feel that he has more power over his wife's helplessness. Abuse as a tool to resolve conflict. Abuse against wives usually occurs against the background of a mismatch between the husband's expectations and reality. Abuse is carried out with the aim that the wife can fulfill his expectations without putting up a fight because of her helplessness. This phenomenon is also still one of the cultural foundations in society that if a woman or wife does not obey, then she must be treated harshly so that she becomes obedient.

Competition. Basically, humans live full of competition and never want to lose, as well as a husband and wife. Competition between husband and wife occurs due to inequality between the two to fulfill each other's desires, both in education, socialization, economic control, work environment conditions and society can lead to competition which can lead to the occurrence of Domestic Abuse (KDRT). Culture also creates a view that men should not be inferior or inferior to women, so it is not surprising that abuse against women or wives occurs just to fulfill the ego of men or husbands. Frustration. Abuse can also occur as a result of psychological exhaustion that leads to self-frustration and the husband's lack of stress coping skills. Frustration arises from the mismatch between expectations and reality perceived by the husband. This is common in couples who are not ready to marry, the husband does not yet have a job and a steady income that meets the needs of the household, and is still limited in freedom. In these cases, the husband usually seeks escape through drunkenness and other negative actions that lead to abuse against his wife, whether physical, sexual, psychological, or even family neglect.

Lack of opportunities for women in the legal process. In court proceedings, there are very few opportunities for wives to disclose the abuse they have experienced. This can also be seen from the lack of KUHAP discussing the rights and obligations of the wife as a victim, because her position is only as a reporting witness or victim witness. This is important because it is possible that the victim's report to the legal authorities is not considered a criminal act but only a misunderstanding within the family.

As for cases of abuse against children, the Online Information System for the Protection of Women and Children (SIMFONI PPA) noted that cases of abuse experienced by Indonesian children during the period January to September 2020 reached 5,697 cases with 6,315 victims.¹⁴ This figure increased when compared to data from the Indonesian Child Protection Commission in 2019 of 4,369 cases, and in 2018 of 4,885 cases of child abuse. The records of cases of abuse against children above are motivated by various factors and forms.¹⁵

There are five forms of abuse against children, namely¹⁶: (1) physical abuse; this form is the easiest to recognize, victims of this type of abuse are usually seen directly on the victim's physique such as: bruises, bleeding, and other forms of heavier conditions. (2) Psychological abuse; this form is not so easy to recognize. The form of this abuse can be in the form of harsh words, mockery, humiliation, and so on. The impact of this type of abuse will affect the situation of feeling unsafe and comfortable, inferior, weak in making decisions, and even a decrease in self-esteem and dignity of the victim. (3) Sexual abuse; included in this category are all actions that appear in the form of coercion to have sexual intercourse. (4) Economic abuse, this type of abuse is very common in the family environment. In children, this abuse often occurs when parents force underage children to be able to contribute to the family economy, so the phenomenon of selling children, street buskers, child beggars, and others is widespread. (5) Social child abuse, this type of child abuse includes child neglect and child exploitation. Child neglect is the attitude and treatment of parents who do not give proper attention to the child's growth and development process. Based on a survey conducted online on June 8-14, 2020 by the Indonesian Child Protection Commission (KPAI) involving 25,146 children spread across 34 provinces in Indonesia, it is known that children admit that they often experience physical abuse from their parents, such as being pinched (39.8 percent), pinched (19.5 percent), hit (10.6 percent) and pulled (7.7 percent). In addition to physical abuse, psychological abuse is also often received by children, such as being scolded (56 percent), compared to other children (34 percent), yelled at (23 percent), and glared at (13

¹⁴ Komnas Perempuan.

¹⁵ M Maemunah, H Hafsah, and ..., 'Penyuluhan Perlindungan Hukum Terhadap Korban Kekerasan Anak Dan Perempuan Di Era Pandemi Covid-19', *JCES (Journal of Character ...)*, 2022.

¹⁶ Anggun Lestari Suryamizon, 'PERLINDUNGAN HUKUM PREVENTIF TERHADAP KEKERASAN PEREMPUAN DAN ANAK DALAM PERSPEKTIF HUKUM HAK ASASI MANUSIA', *Marwah: Jurnal Perempuan, Agama Dan Jender*, 16.2 (2017) <<https://doi.org/10.24014/marwah.v16i2.4135>>.

percent).¹⁷ The data on physical and psychological abuse against children above are just some of the clear evidence that just like women, children are never completely free from the risk of domestic abuse.¹⁸

The increasing cases of abuse against children cannot be separated from the things that encourage and cause abuse against children to occur. At least, there are four aspects that influence and encourage the increase in cases of abuse against children, including psychological, social, cultural and legal aspects. From these cases, it can be seen that the COVID-19 pandemic has forced the learning system in schools to be carried out through online media from home. This activity is known as Distance Learning (PJJ) where parents become a companion for children in learning at home.¹⁹ This is new to parents so not all parents have sufficient knowledge to understand the scheme. As a result, when children are judged to have not mastered the learning material, parents are unable to control their emotions. From here the opportunity for abuse against children arises.²⁰

Health insurance principles for children and women affected by domestic abuse: an affirmative justice approach

Social security according to Article 1 Paragraph (2) of Law Number 24 of 2011 concerning the Social Security Organizing Agency is a form of social protection in order to guarantee all people to be able to meet the basic needs of a decent life. The meaning of the contents of the article is that a community life has been guaranteed by law in a proper manner which aims to prosper. One form of social security is in the form of social health insurance which has a function to guarantee and fulfill the need for health services for the community.²¹ One of the instruments of protection for victims of abuse is the law. Legal protection based on Law Number 23 of 2004 concerning the elimination of domestic abuse in Article 1 paragraph (4) explains that "Legal protection is all efforts aimed at providing a sense of security to victims carried out by the family, advocates, social institutions, police, prosecutors, courts, or other parties, either temporarily or based on a determination from the court.

Abuse against women is the most serious consequence of the unequal relationship between men and women where women are in a vulnerable position to abuse. Meanwhile, child abuse or child mistreatment is an arbitrary act committed by someone who is supposed to look after and protect a child (caretaker) on a child either physically, sexually, or

¹⁷ KPAI, 'KPAI: Aduan Anak Jadi Korban Kekerasan Fisik Mendominasi Pada 2021', *Komisi Perlindungan Anak Indonesia (KPAI)*, 2021.

¹⁸ Monavia Ayu, *KPAI Catat 4.124 Kasus Perlindungan Anak Hingga November 2022*, *Data Indonesia*, 2022, xxxiii.

¹⁹ Sania Mashabi, 'KPAI: Angka Putus Sekolah Pada Masa Pandemi Covid-19 Cukup Tinggi', *KOMPAS.Com*, 2021.

²⁰ Mashabi.

²¹ Frances Hillier-Brown and others, 'The Effects of Social Protection Policies on Health Inequalities: Evidence from Systematic Reviews', *Scandinavian Journal of Public Health*, 2019 <<https://doi.org/10.1177/1403494819848276>>.

emotionally.²² Until now, the handling of victims of abuse against women (VAW) and abuse against children (VAC) in hospitals has not been integrated and is like other general patient services.²³

The director and his staff have not seen cases of KIP and KtA as cases that need to be taken seriously. Health workers as the front line of public services are the first people to go to if a victim is seriously injured. Their understanding and sensitivity is needed to be able to identify cases like this. In addition, cases of abuse are usually chronic and often manifest in other forms of illness, such as psychosomatic, depression, stress, and often even to the point of disrupting the health of individuals in the long term that are not realized by the victim. Given the above, it is necessary to improve services for victims of abuse, both women and children, in hospitals.²⁴

Article 22 paragraph (1) of Law Number 40 of 2004 concerning the Health System, states that health insurance benefits are individual services in the form of services that include promotive, preventive, curative, and rehabilitative services, including drugs and consumable medical materials needed. In the authentic interpretation, namely in the explanation of the article, it explains that health services include health services and counseling, family planning services, immunization, hospitalization, outpatient care, emergency services, and other medical actions including heart surgery and dialysis. The services provided are in accordance with the existence of standardized services, both in terms of quality and type of service in order to ensure participant satisfaction.

Social security is one of the government programs that has the aim of organizing social security or protection in order to fulfill the basic needs of life. The basic principles regarding the Social Security Organizing Agency (BPJS) are contained in Law Number 24 of 2011 concerning the Social Security Organizing Agency, which is to adjust the conditions in the applicable organizing arrangements, so as to provide legal certainty to the community in order to fulfill the basic needs of a decent life. Protection of victims of domestic abuse is part of legal protection for every human being. The right to obtain justice for victims is a human right where everyone is entitled to recognition, guarantee of protection, and fair legal treatment as well as certainty and equal treatment before the law. Every person is recognized as a human being who has the right to demand and obtain equal treatment and protection in

²² Vincent Ekow Arkorful and others, 'Social Protection Policy or a Political Largesse: Disability Fund Efficacy Assessment and Roadblocks to Sustainable Development Goals', *International Journal of Public Administration*, 43.15 (2020) <<https://doi.org/10.1080/01900692.2019.1669048>>.

²³ Turner and others.

²⁴ Dennis Bengtsson, Åsa Landberg, and Carolina Jernbro, 'Increased Risk of Child Maltreatment and Mental Health Problems among Adolescents with Restrictions Regarding Choice of Future Partner: Results from a Swedish School-Based Survey', *Scandinavian Journal of Public Health*, 50.8 (2022) <<https://doi.org/10.1177/14034948211053138>>.

accordance with their human dignity before the law.²⁵

This is one form of government responsibility after Law Number 23 of 2004 concerning the Elimination of Domestic Abuse (PKDRT) Article 11 states that the Government is responsible for efforts to prevent domestic abuse. This indicates that the occurrence of domestic abuse is the responsibility of the government and all Indonesian people, whether in terms of preventing domestic abuse or prosecuting domestic abuse. Article 13 of the Law on the Elimination of Domestic Abuse states that to organize services for victims of domestic abuse, the government and local governments in accordance with their respective functions and duties can make efforts as provision of special service rooms at police stations; provision of officials, health workers, social workers, and spiritual counselors; the creation and development of systems and mechanisms for service program cooperation involving parties that are easily accessible to victims; and provide protection for victim advocates, witnesses, family and friends.

In Article 16 and Article 17 of Law No. 23/2004 on the elimination of abuse in a household also provides protection to victims of crime or abuse which says that in Article 16 which is as follows: Within 1 x 24 hours, the police must request a protection order from the court, starting from the protection as described in paragraph 1. In paragraph 1 temporary protection is given for a maximum of 7 days from the time the victim is received or handled. Within 1 x 24 hours the police must request a court order for protection of victims of abuse.

Recently, the government revoked the regulation of the Health Social Security Organizing Agency (BPJS) for victims of criminal acts and victims of domestic abuse as stipulated in Presidential Regulation Number 82 of 2018 concerning Health Insurance. Not only victims of crime and victims of domestic abuse, BPJS Health services also do not apply to victims of persecution, sexual abuse, terrorism, and human trafficking. Presidential Regulation No. 82/2018 on Health Insurance implements further regulations from the 1945 Constitution, Law No. 40/2004 on the National Social Security System and Law No. 24/2011 on the Social Security Organizing Agency. Victims of domestic abuse who are no longer covered by BPJS are then regulated in a different regulation, namely in the Minister of Health Regulation (PMK) to obtain health costs. In addition, Government Regulation No. 4/2006 also regulates the Organization and Cooperation for the Recovery of Victims of Domestic Abuse.

Not only experiencing physical suffering, but victims of domestic abuse also experience psychological suffering, so victims of domestic abuse need health services as soon as possible.²⁶ In providing health services to victims of domestic abuse, Article 21 paragraph (1)

²⁵ Muhammad Rahman and others, 'Mental Distress and Human Rights Violations During COVID-19: A Rapid Review of the Evidence Informing Rights, Mental Health Needs, and Public Policy Around Vulnerable Populations', *Frontiers in Psychiatry*, 2021 <<https://doi.org/10.3389/fpsy.2020.603875>>.

²⁶ Mesfin Mulugeta Woldegiorgis, 'Inequality, Social Protection Policy, and Inclusion: Pertinent Theories and Empirical Evidence', *Journal of Social and Economic Development*, 24.2 (2022) <<https://doi.org/10.1007/s40847-022-00185-1>>.

of the Law on the Elimination of Domestic Abuse states that in providing health services to victims, health workers must (1) examine the victim's health in accordance with professional standards, (2) make a written report on the results of the examination of the victim and a post mortem at the request of police investigators or a medical certificate. Considering the negative impact experienced by victims is psychological in nature, it requires psychological services or therapy from a psychiatrist. In addition, victims also need counseling. In this regard, based on Article 22 of Law No. 23/2004 on the Elimination of Domestic Abuse, social workers who will provide services to victims are required to (1) conduct counseling to strengthen and provide a sense of security for victims, (2) provide information regarding the rights of victims to obtain protection from the police, social institutions needed by victims.

Does The Legal Protection For Children And Women As Victims Of Domestic Abuse Utilise "Affirmative Justice" ?

Providing affirmative justice to women and children victims of abuse is part of a breakthrough to eliminate the negative distribution of gender discrimination in society. However, de-stigmatizing cases against women and children is a major challenge for law enforcement in Indonesia. The antinomy of various laws and regulations governing the protection of children is also one of the factors contributing to the massive violations of children's rights in Indonesia. contributing factors to the massive violations of children's rights in Indonesia. When we examine the existing laws and regulations, the antinomy even departs from the definition of children, which is a fundamental norm in a law and regulation. Where between one regulation and another, it is difficult to synchronize. For example, in Article 1 number 1 of Law No. 23 of 2002 jo Law No. 35 of 2014 concerning Child Protection states that a child is someone who is not yet 18 years old (eighteen years) including children who are still in the womb. Meanwhile, in the provisions of Article 1 number 2 of Law No. 4 of 1979 concerning Child Welfare, states that a child is someone who has not reached the age of 21 years (twenty-one years) and has never been married. married.

The description shows that until now the hope to realize legal protection for children and women by making arrangements regarding children's rights as subordinate in various laws and regulations is still a mirage. Violations of the law that take away children's human rights are still increasing every year, while law enforcement efforts have not yet found their effective point. Every family wants to build a happy family and is full of mutual love both physically and mentally, in other words that every family hopes to build a harmonious and happy family which is often called a *sakinah* family.²⁷ But the fact is that not all families can run smoothly in navigating the ark of their household, because there are families who are not fully able to feel happiness and love and care for each other, instead they get a sense of discomfort, pressure, or sadness and feelings of fear and hatred among each other. This is indicated by the fact that there are still a number of problematic households, and even various forms of

²⁷ Mira Santika and Ahmad Zaki Abdul Aziz, 'Pola Komunikasi Interpersonal Dalam Membentuk Keluarga Sakinah Mawadah Dan Rahmah', *JURNAL SYNTAX IMPERATIF: Jurnal Ilmu Sosial Dan Pendidikan*, 3.2 (2022) <<https://doi.org/10.36418/syntax-imperatif.v3i2.161>>.

domestic abuse.

This is in accordance with Article 1 of Law No. 23/2004 on Domestic Abuse. What is meant by domestic abuse is "Domestic abuse is any act against a person, especially women, which results in physical, sexual, psychological, and/or domestic neglect, including threats to commit acts, coercion, or unlawful deprivation of independence within the scope of the household.". In its development, victims who experience domestic abuse find it difficult to express their suffering to law enforcement. This is because abusive treatment within the family sphere is part of a private event (household affairs), so they are reluctant to report to law enforcement officials. Not only experiencing physical suffering, but victims of domestic abuse also experience psychological suffering, so victims of domestic abuse need health services as soon as possible.²⁸

The definition of legal protection according to Satjipto Rahardjo, legal protection is the provision of protection for human rights (HAM) that are harmed by others, legal protection is given to the community so that they can enjoy their rights that have been given by law. Everyone is entitled to protection, one of which is legal protection. There are two types of legal protection, namely preventive legal protection and repressive legal protection. Preventive legal protection can be in the form of legal rules in which there are prohibitions that must be obeyed by the community, so that legal violations will be minimal. This preventive legal protection is sought to prevent or minimize the occurrence of violations of the law. Meanwhile, repressive legal protection is a method carried out after a violation of the law such as problem solving and can be implemented by imposing sanctions on the actions that have been committed.²⁹

In essence, the protection of victims as legal promises by the criminal justice system seeks to realize the primary function of law as expressed by I.S. Susanto in three ways: 1) Protection, the law serves to protect people from the threat of danger and harmful actions from others and groups of people including those carried out by the holders of power (government and state) and those coming from outside, which are aimed at their physical, mental, health values and human rights; 2) Justice, the law preserves, protects from justice for all people. Negatively, it can be said that a law is unjust if it is seen to violate the values and rights that are believed to be safeguarded and protected for all people; 3) Development, Law is used as a vehicle both in determining the direction, objectives, and implementation of development in a fair manner. This means that the law is simultaneously used as a development tool but also as a control tool so that development is carried out fairly.

Legal affirmative protection efforts in Indonesia are carried out by the government by issuing various regulations whose purpose is to provide protection to people who are victims

²⁸ I Dewa Ayu Dwika Puspita Dewi and Nurul Hartini, 'Dinamika Forgiveness Pada Istri Yang Mengalami Kekerasan Dalam Rumah Tangga (KDRT)', *INSAN Jurnal Psikologi Dan Kesehatan Mental*, 2.1 (2017) <<https://doi.org/10.20473/jpkm.v2i12017.51-62>>.

²⁹ Pujiyono Suwadi and others, 'Legal Comparison of the Use of Telemedicine between Indonesia and the United States', *International Journal of Human Rights in Healthcare*, ahead-of-p.ahead-of-print (2022) <<https://doi.org/10.1108/IJHRH-04-2022-0032>>.

of abuse in order to get a sense of security. Regulations issued by the government contain prohibitions, for example as contained in Article 5 of Law Number 23 of 2004 concerning the Elimination of Domestic Abuse that every person is prohibited from committing abuse in their household which includes acts of physical abuse, psychological abuse, sexual abuse or domestic neglect. With the existence of regulations governing the elimination of domestic abuse, it is hoped that the community can report the acts of abuse they experience. The government must also conduct socialization, education and provide information to the public regarding regulations governing domestic abuse.³⁰

Apart from the government, the community is also obliged to make efforts to prevent domestic abuse in accordance with Article 15 of Law Number 23/2004 on the Elimination of Domestic Abuse. Efforts that can be made by the community include preventing criminal acts from taking place, providing protection to victims, providing emergency assistance and also assisting in the process of applying for a protection determination. Repressive protection efforts are carried out by providing criminal sanctions for committing unlawful acts in the form of domestic abuse. This effort is made to provide a deterrent effect to the perpetrator.³¹

The form of protection for victims of domestic abuse against children and women is not only carried out by the government.³² The community also has an important role in preventing domestic abuse, namely by reporting the occurrence of criminal acts of domestic abuse to the authorities. Not only the community, victims must also be aware that they have the right to report criminal acts of domestic abuse they experience. Article 26 of Law No. 23/2004 on the Elimination of Domestic Abuse explains that victims have the right to report domestic abuse directly to the police either where the victim is or at the scene of the crime. In this case, public awareness of the importance of the impact that can be caused by acts of abuse in the home must be high, this can also be a preventive measure to minimize the number of acts of domestic abuse that occur in Indonesia. It is hoped that awareness of the problem of abuse will increase along with the expansion of service coverage and improving the quality of services provided to victims of abuse.³³

4. Conclusion

The number of cases of abuse against women throughout 2020 amounted to 299,911

³⁰ A. Valentino Sinaga, Ronny A. Maramis, and Emma V. T. Senewe, 'MEKANISME PERLINDUNGAN HUKUM HAM TERHADAP PEREMPUAN DAN ANAK', *SUPREMASI: Jurnal Pemikiran, Penelitian Ilmu-Ilmu Sosial, Hukum Dan Pengajarannya*, 16.1 (2021) <<https://doi.org/10.26858/supremasi.v16i1.20268>>.

³¹ Rian Saputra and others, 'Reform Regulation of Novum in Criminal Judges in an Effort to Provide Legal Certainty', *JILS (Journal of Indonesian Legal Studies)*, 6.2 (2021), 437–82 <<https://doi.org/10.15294/jils.v6i2.51371>>.

³² Melissa Hamilton and Meredith G.F. Worthen, 'Sex Disparities in Arrest Outcomes for Domestic Abuse', *Journal of Interpersonal Abuse*, 26.8 (2011) <<https://doi.org/10.1177/0886260510370592>>.

³³ Bambang Sugeng Rukumono and others, 'Arrangement Registration Of Geographical Indications Of Traditional Alcoholic Beverages In Indonesia Based Multiculturalism', *Revista de Gestão Social e Ambiental*, 17.6 (2023), 1–14 <<https://doi.org/10.24857/rgsa.v17n6-001>>.

cases. This data was collected from 3 sources namely; PN / Religious Courts totaling 291,677 cases, from Komnas Perempuan partner service institutions totaling 8,234 cases; and from the Service and Referral Unit (UPR), a unit deliberately formed by Komnas Perempuan, to receive direct complaints from victims, totaling 2,389 cases, with a record of 2,134 cases being gender-based cases and 255 cases of which were non-gender-based cases or providing information. Meanwhile, cases of abuse against children from January to September 2020 reached 5,697 cases with 6,315 victims. Social security according to Article 1 Paragraph (2) of Law Number 24 of 2011 concerning the Social Security Organizing Agency is a form of social protection in order to guarantee all people to be able to meet the basic needs of a decent life. One of the instruments of protection for victims of abuse is the law. Legal protection based on Law Number 23 of 2004 concerning the elimination of domestic abuse in Article 1 paragraph (4) explains that "Legal protection is all efforts aimed at providing a sense of security to victims carried out by the family, advocates, social institutions, police, prosecutors, courts, or other parties, both temporary and based on a determination from the court. Social security is one of the government programs that has the aim of organizing social security or protection in order to fulfill the basic needs of life. Legal protection efforts can be carried out in a preventive and repressive manner, preventive efforts are made to prevent domestic abuse by the government conducting information counseling, education about domestic abuse. In addition, another preventive effort that can be made by the government is to issue regulations governing domestic abuse, for example Law Number 23 of 2004 concerning the Elimination of Domestic Abuse. Meanwhile, repressive legal protection efforts by imposing sanctions on perpetrators of domestic abuse, this is intended to deter the perpetrators.

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