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LEGAL PROTECTION AGAINST DOMESTIC VIOLENCE IN CHILD MARRIAGE

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ABSTRACT

The aim of law enforcement is none other than to ensure that legal subjects obtain every right. One law enforcement that must be considered is in the field of family law in marriage law. Marriage of children under the age of 18 is vulnerable to domestic violence. This research will enforce legal protection against domestic violence in child marriages, whether legalized by the state or child marriages carried out through sirri marriages. The method used is juridical qualitative with a descriptive approach and the data is processed in a qualitative juridical manner. The results of the study show that there are differences in the legal protection of victims of domestic violence in sirri child marriages. Legal child marriage and obtaining marriage dispensation can be protected by Law No. 23 of 2004 concerning the Elimination of Domestic Violence and other relevant laws and regulations. Meanwhile, the protection of domestic violence in a sirri / unregistered child marriage can only be subject to the Criminal Code and Law No. 35 of 2014 concerning Child protection.

Keywords: children; marriage; domestic violence.

INTRODUCTION

The idea of the rule of law holds that the law is a weapon that keeps both man and the ruler from acting arbitrarily. In order to ensure universal peace and justice and to achieve the well-being of society, the law establishes limits between individuals and rulers in all social interactions.¹ Law is social engineering or social planning, which refers to the use of law as a tool by a change agent or pioneer who is trusted by society to lead the change in a way that is intended or desired. If law is an ethical code that guides human behavior and serves as a means of enforcement, it can effectively alter behavior and compel people to uphold its ideals. However, for the law to become ingrained in society, it must be widely distributed.² Law enforcement is essential to the establishment of the law in society as well as to the network of legal

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¹ Muhamad Sadi Is, (2020), "Kepastian Hukum Terhadap Perlindungan dan Pengelolaan Lingkungan Hidup di Indonesia Kajian Putusan Nomor 24/Pdt.G/2015/PN.Plg", *Jurnal Yudisial*, 13 (3): pp. 311-327.

² M. Guffar Harahap Muhammad Hizbullah, (2021), "Hukum: Justifikasi Sosial, Kontrol Sosial dan Engenering Sosial", *Taqnin: Jurnal Syariah dan Hukum*, 03 (02): pp. 12-23.

procedures that includes justice, the administration of justice, lawmaking, and law enforcement.³

According to Satjipto Raharjo, law enforcement is the actual application of the law in daily life. Following the creation of legislation, law enforcement is required to put the law into practical application in society's day-to-day operations. But in other words, what is sometimes termed law enforcement, or what is sometimes called *rechistoepassing* and *rechtshandhaving* (in the Netherlands), law enforcement and application (in America).⁴

In the institutional framework of the modern state, law enforcement is an executive function that is handled by the relevant executive bureaucracy, or what are known as law-enforcement bureaucracies. The executive branch, with its bureaucracy, is a link in the chain of command for implementing the plan outlined in the law or regulation in accordance with the areas it addresses (welfare state). The realization of the concepts of justice, legal clarity, and social benefit is another goal of law enforcement. The act of putting actual effort into upholding the law or enforcing it as a set of rules for offenders in traffic or other legal interactions within the state and society is known as law enforcement. The goal of law enforcement is to put the theories and notions of the law into practice that the public hopes will be realized. The process of law enforcement is complex and multifaceted.⁵

Generally, a family is defined as individuals who are bonded to one another by marriage and progeny. (blood-related contact).⁶ Studying family law, particularly marriage law, is always fascinating because it frequently raises issues that highlight social norms and their advantages and disadvantages. The rules, content, and fairness of this field can all be examined from an early vantage point. Because there are many regulations in the area and they combine both new and old ones, there are frequently contradictions in how they are applied. Beyond its legal dimensions, it might be questioned regarding the actions of courts whose rulings frequently fall short of actual justice.

Furthermore, the rules in other regulations are still in effect because Act No. 16 of 2019 on Amendments to Law No. 1 on Marriage, popularly known as the Marriage Act, does not or has not regulated all of the marriage-related laws. One of the provisions absent from the Marriage Act is the Regulation on Domestic Violence (henceforth referred to as the KDRT). Children under the age of eighteen who marry are more likely

³ Satjipto Raharjo, (2000) *Ilmu Hukum*, Bandung, PT. Citra Aditya Bakti, pp. 175-183.

⁴ *Idem*.

⁵ Dellyana, Shant, (1988) *Konsep Penegakan Hukum*. Yogyakarta, Liberty, p. 32.

⁶ Yunanto, (2019), "Penegakan Hukum Spiritual terhadap Pelanggaran dalam Hukum Keluarga", *Jurnal Hukum Progresif*, 7 (1): pp. 64-80.

to experience domestic abuse. Numerous factors impact the frequency of criminal activities that transpire in households that arise from early marriages. According to Jasra Putra, the commissioner of the Indonesian Child Protection Commission, or KPAI, which oversees civil rights and child participation, many family functions are not functioning when marriage is created at a young age.⁷ Numerous factors can affect the likelihood of domestic violence in child marriage, according to Jasra Putra. The route of the stairs will lead to violence due to various circumstances, such as a weak economy, a lack of desire to have and care for children, and young people who are still lethargic and unable to handle emotional outbursts. These factors will also produce ongoing arguments.⁸

Accordingly, based on the above description, the author's goal in this study is to investigate and evaluate the methods used to enforce legal protection against child marriage domestic abuse (KDRT), including those that are carried out through clandestine marriages (marriages performed in Islamic religious ceremonies) as well as those that are authorized by the state. The author's search turned up no study on this subject. Nonetheless, some research has looked at domestic violence in marriage. One such study was conducted by Agung Budi Santoso, who looked into issues of domestic violence against women from a social work viewpoint. The research covered topics such as types of violence, contributing causes, effects, and handling,⁹ Research on the types of domestic violence, the causes of domestic violence, the psychological effects on female victims of domestic violence, and strategies for addressing female victims of domestic abuse was conducted by Rosma Alimi and Nunung Nurwati.¹⁰

RESEARCH METHODS

In order to examine the facts and situations in the field that occurred throughout the research, the author of this study used a qualitative juridical method with a descriptive approach, explaining the legal occurrences as they transpired. The investigator deciphered and expounded upon the information pertinent to the current state of affairs, mindsets, and viewpoints that are prevalent in a community. In this study, documentation, observations, and interviews were used as data collection

⁷ <https://www.kpai.go.id/publikasi/pernikahan-dini-picu-kekerasan-dalam-rumah-tangga>.

⁸ Hazar Kusmayanti, Dede Mulyanto, (2020), "Problematics Culture of Child Marriage in Indramayu in A Legal and Cultural Perspective", *Jurnal Pembaharuan Hukum*, 7 (2): pp. 116-127.

⁹ Agung Budi Santoso, (2019) "Kekerasan Dalam Rumah Tangga (KDRT) Terhadap Perempuan: Perspektif Pekerjaan Sosial", *KOMUNITAS Jurnal Pengembangan Masyarakat Islam*, 10 (1): pp. 39-56.

¹⁰ Rosma Alimi, Nunung Nurwati, (2021) "Faktor Penyebab Terjadinya Kekerasan dalam Rumah Tangga terhadap Perempuan", *Jurnal Pengabdian dan Penelitian Kepada Masyarakat (JPPM)*, 2 (1): pp. 20-27.

methods.¹¹ Additionally, this study's data processing is done qualitatively and legally.¹² is a research that refers to the legal standards found in different laws' regulations and court rulings. The method of qualitative juridic analysis, which entails a thorough evaluation of the legal material as normative legal research, is employed in this study. Subsequently, an objective selection will be made to address the research problem by connecting the analysis results to the concerns raised by the study. The Integrated Services Centre for the Empowerment of Women and Children (P2TP2A) of the West Java Province and the District, as well as the Centre for Research and Development of Gender and Children/Centre for Women's Studies (P3GA/PSW) Unpad, provided the information that was gathered through interviews with sources from the institutions involved in this study.

DISCUSSION

Each person's life begins anew when they get married, with new responsibilities and rights. The roles that each person plays in a peaceful family will define their responsibilities and tasks. The Marriage Act, which safeguards the validity of such relationships in society, would regulate the institution of such marriages. Once a couple marries, they form a family that may include a mother, father, and child or may not have any children at all. Family life is not always as simple and enjoyable as it seems; there must be many issues that the family must deal with.¹³

To be able to satisfy the demands of every family member, there must be understanding and a feeling of togetherness within the family. Every couple who marries expects to have a loving, peaceful, and happy family, but the reality is that domestic violence—whether it be physical, psychological, or psychological, sexual, emotional, or family transfer—causes many families to feel unhappy and depressed. KDRT can result from both internal and external factors, either separately or in combination. This is particularly true in this day and age of openness and information technology advancement, where violent acts frequently surface through the media and have a detrimental effect on people's ability to live comfortably in their homes. The child's capacity to function well in school is often hampered by this condition, which tends to interfere with the child's natural growth and development. It is necessary to treat the KDRT case psychologically and educationally, both in a repressive and

¹¹ Soerjono Soekamto dan Sri Mamudji, (2015) *Penelitian Hukum Normatif*, Jakarta, PT. Rajagrafindo Persada, P. 5.

¹² *Idem*

¹³ Edwin Manumpahi, Shirley Y.V.I. Goni, Hendrik W. Pongoh, (2016) "Kajian Kekerasan dalam Rumah Tangga Terhadap Psikologi Anak di Desa Soakonora Kecamatan Jailolo Kabupaten Halmahera Barat", *e-jourvo Acta Diurna*, V (1),1

preventive manner, in order to preserve the child's optimal growth and development. This will benefit the perpetrators, primarily the victims of the KDRT and the society at large.¹⁴

The term "juvenile marriage," often known as "child marriage," is modern. The moment that is very early in a certain time is linked to the present. A dissolution of marriage is his adversary. It is not unusual, nor exceptional, for people who lived in the early 1900s and earlier to marry a man at the age of 17 and a woman at 15. But it is an oddity in modern culture. A woman who weds a minor is viewed as abnormal and prematurely married. A marriage is a covenant of trust between a husband and wife, involving mutual responsibility. It takes a lot of bravery for a man to decide to get married and make a pledge of loyalty.

The minimum age requirement for the prospective groom-19 for men and 16 for women-is one of the marriage requirements outlined in Article 7, paragraph 1 of Act No. 1 of 1974 on Marriage. As a means of putting the decision into practice, the Council of People's Representatives later amended the laws governing the minimum age of marriage by passing Law No. 16 of 2019 on marriage, which sets the minimum age for marriage at 19 years old for both men and women. This age also falls into the adult age category, thereby establishing gender equality and doing away with discrimination based on gender in the minimum age of marriage policies. This clause was then changed to 19 years for men and women in Act No. 16 of 2019, which revised the Law No. 1 of 1974 regarding marriage. The modification is based on Constitutional Court ruling No. 22/Law-XV/2017, which addresses the age limit for marriage.

Because of Islam in general, it appears that there is no set age restriction in the religion. Scholars of fiction, however, interpret the concept of baligh differently. Unmarried couples get into marriage at a high rate. They must not have been psychologically or physically ready. It is necessary that the potential spouse is unaware of the reality of a marriage. Conversely, the prospective spouse is aware of and cognizant of the rights and obligations of the partner in creating a household.

Despite Indonesia's clear legislative framework on the legal age of marriage, the number of minor weddings has increased significantly. With 50.2% of juvenile marriages occurring in the 15–18 age bracket in 2016, West Java ranked second among all provinces. High juvenile marriage rate, as evidenced by the volume of applications for marriage dispensation.¹⁵

¹⁴ *Ibid*, p. 2.

¹⁵ Dede Kania, Siti Nur Fatoni, Mochammad Rizky Afriansyah, Hazar Kusmayanti (2021), Marriage Dispensation After the Decision of Constitutional Court Number 22/PUU-XV/2017, *Jurnal Hukum Islam*, 19 (1), pp. 43-64.

The Ministry of Women's Empowerment and Child Protection (PPPA) reports that up to 55,000 applications for the dispensation of child marriage were made in religious courts nationwide in 2022. Compared to 2021, when there were 60,000 applications for child marriage dispensation, this figure is marginally lower. According to Thowilan, the head of the Religious Affairs Office of Menteng Jakarta Central District, there were up to 184 complaints of child marriage dispensation in Jakarta in 2022.

At a public discussion on the Day Against Violence Against Women: Optimization of the Role of the Society in the Prevention of Child Marriages, held in the building, Jakarta Central, on behalf of INCLUSION and the Institute of Human Resources Research and Development Major Manager Nahdlatul Ulama, Thowilah stated that while the Menteng district contributed one child marriage per month, Indonesia had 5,923 KUA. "Imagine if one Indonesian district had only 1 case (every month), how terrible it would be for the future of Indonesia," Thowilah said. Maria Ulfah Anshor, the Women's Chamber Commissioner and the Director of the Family Commodities Institution of the Major Manager of the Nahdlatul Ulama, stated that Indonesia's high rate of child marriage cases, particularly in light of the surge in KDRT instances, brought up a variety of home concerns. Of the 6500 violent cases that occurred, 79% of them were KDRT cases.¹⁶

Thirty percent of KDRT incidents involved sexual violence (coercion), thirty-one percent involved physical assault, and twenty-eight percent involved psychological abuse. According to Mary, the situation of child marriages-many of which also happened in the vicinity of preschool education institutions-is even more unexpected. Something typically happens when an instructor and his young mother-in-law are together. Mary did not, however, provide data on the number of child marriages in the nursery district. Still, he clarified that there were several reasons why a child marriage occurred. Misunderstandings ranging from religion to cultural difficulties are among them. We also have a culture where a person cannot be turned away from an application when a man decides to marry his child right away primarily due to poverty. In addition, it stems from the educational component of the child's parenting style. Additionally, a child's awareness of poor reproductive health paves the way for extramarital pregnancies that result in early childhood marriage.¹⁷

Acts of physical, psychological, sexual, or other forms of abuse against oneself are considered domestic abuse. The victims' rights have been partially fulfilled by Act No. 23 of 2004 on the Elimination of Domestic Violence (CPDRT), although protection from such abuse has been given. The goal of the PCDRT Act is to prosecute criminals, which

¹⁶ *Ibid.*

¹⁷ *Ibid.*

frequently has a detrimental effect on the victims, including divorce and unrest in the home. The penalty also runs counter to the other goals the law intends to achieve, which include maintaining the integrity of a prosperous and peaceful household. Under the PKDRT law, which promotes restorative justice as a form of local wisdom that is already well-known in Indonesia, governments, victims, and the community can all be involved. If the crime is to be used in the KDRT case settlement in the interim, it is preferable that it be used as sparingly as possible, particularly in cases where the victim's survival would be threatened and jeopardized by the acts of the KDRT. Domestic violence frequently results from domestic disputes.

Since domestic abuse affects families, most people in the area don't care because it's a private affair. When it comes to types of violence, it goes beyond acts that are purely physical, like beatings, persecutions, or torture that are readily visible. Violence, in many senses, always exists in several forms and dimensions. Psychological violence is another type that is difficult to prove but leaves a lasting impression on everyone: continual anxiety, getting threats, and humiliating someone.¹⁸

In addition to the penalties that the judge handling this KDRT case may impose, the DRC Abolition Act regulates certain legal protections for victims of DRC in child marriage, including the possibility of interim protection ordered by the court before the trial starts, as well as sanctions that could include jail time and fines.¹⁹

Act No. 23 of 2004 on the Elimination of Domestic Violence.²⁰

Numerous incidents of violence occur, particularly when husbands abuse their wives at home. Act No. 23 of 2004 on the Elimination of Domestic Violence takes this into account. (henceforth referred to as UUPKDRT). This legislation expressly governs domestic violations with criminal aspects distinct from the criminal offense of persecution governed in the Code of Criminal legislation, in addition to the prevention, protection, and rehabilitation of victims of domestic abuse. (henceforth referred to as KUHP). According to Article 5 of the Constitution, "Anyone must not employ any of the following methods to perpetrate domestic violence against a member of their household:

- a. Physical violence.
- b. Psychological violence.

¹⁸"Perlindungan Hukum Terhadap Korban Kekerasan dalam Rumah Tangga dalam Sistem Peradilan Pidana di Indonesia", <https://kejadi-bangkabarat.go.id/2018/04/12/perlindungan-hukum-terhadap-korban-kekerasan-dalam-rumah-tangga-dalam-sistem-peradilan-pidana-di-indonesia/> diakses 08/03/2023, Pukul 23.35 WIB

¹⁹Rita Serena Kolibonso, (2008), "Penegakan Hukum Kekerasan dalam Rumah Tangga", *Jurnal Legislasi Indonesia*, 5(3), p. 40.

²⁰Dewi Karya, (2013), "Tindak Pidana Kekerasan dalam Rumah Tangga yang dilakukan Suami Terhadap Isteri, DIH," *Jurnal Ilmu Hukum*, 9 (17), pp. 39-41.

- c. Sexual violence, or
- d. Physical violence, as described in Article 5 letter a, is defined as an act that results in pain, illness, or significant harm, according to Article 6 of the UNDCP.

The UNCTAD General Explanation's fourth paragraph-which reads, "...States consider that all forms of violence, especially domestic violence, are violations of human rights and crimes against human dignity as well as discrimination"-provides additional evidence that KDRT is a form of discrimination and gender-based violence.

"Everyone has the right to the protection of his personal, family, honor, dignity, and property under his control, as well as to the sense of security and protection from the threat of fear to do or not do something that constitutes a right," states article 28G paragraph (1) of the Republic of Indonesia of 1945 as amended, which enshrines the State's declaration of views. "Every person has the rights to facilities and special treatment for equal opportunities and benefits in order to equality and justice," according to Article 28H paragraph (2) of the 1945 Constitution of the National Law of Indonesia.

Furthermore, according to article 7 of the UUPDKRT, psychological violence-which is defined in article 5 letter b-is any act that causes a person to experience extreme psychological anguish, fear, a loss of self-confidence, the inability to act, a sense of helplessness, or any combination of these. The army's definition of sexual violence as specified in article 8, UUPDKRT, letter c, includes:

- a. forced sexual relations performed against an individual who is a member of that home,
- b. forcing someone to have sex with someone else when they are living together for business or other specific reasons.

Then Article 9 of the UUPDKRT stated,

- a. It is against the law to abandon a man in his home if he is obligated to provide for him in terms of life, care, or food by a covenant, agreement, or other legal document.
- b. The extradition mentioned in paragraph (1) also pertains to anyone who forces a victim into economic dependency by limiting or outlawing respectable employment, whether done within or outside, in order to keep the victim under their authority.

The Act additionally stipulates that the offense of physical assault, as mentioned in paragraph 4 of article 44, is considered a crime of complaint (article 51). In the same vein, the offense of psychological aggression, as specified in paragraph 2 of article 45, is illegal (articles 52 and 53)

Chapter VIII of the Constitution regulates the Criminal Provisions, which range from Articles 44 to 53. Regarding the penal provisions for physical abuse perpetrated by

a husband against a woman, the following are stated in Article 44 paragraphs (1) through (4) of this Constitution:

1. Any individual who engages in physical violence within the household as defined by Article 5 letter A faces a maximum sentence of five (five) years in jail or a fine of up to Rp 15,000,000.00.
2. When the victim of the conduct mentioned in paragraph (1) becomes ill or suffers a serious injury, the offender faces a maximum sentence of 10 (ten) years in jail or a minimum punishment of Rp 30,000,000.00.
3. If the victim dies as a result of the conduct mentioned in paragraph (2), the offender faces a maximum sentence of 15 (fifteen) years in jail or a fine of up to Rp 45,000,000.00;
4. If a husband commits the act mentioned in paragraph (1) against his wife or in any other situation that does not result in illness or make it difficult for him to perform his duties as an employee or in day-to-day living, he faces a maximum sentence of four (four) months in prison or a fine of not more than five million dollars;

According to Article 50 of the Constitution, a judge may impose extra punishments like the following in addition to the criminal offense covered in this chapter:

1. limitations on the movement of offenders, which are either meant to keep the offender away from the victim for a specific amount of time or distance, or limitations on specific rights related to perjury.
2. According to Article 51, the physical violence offense mentioned in Paragraph 4 of Article 44 is a complaint.

As required by the Law on the Elimination of the KDRT, there hasn't been a court ruling up to now that imposes further criminal penalties on those who commit KDRT. According to Article 50 of the UUPKDRT, a judge may impose additional penalties in addition to the criminal ones mentioned in this chapter, like:

1. limitations on the movement of offenders, whether meant to prevent the offender from seeing the victim for a specific amount of time or distance, or limitations on the rights of those who have caused harm;
2. identification of offenders under the guidance of a certain agency after a counseling program.

It is anticipated that the Court's decision will serve as a means of safeguarding victims' legal rights and as a response to the imperative of averting the ongoing danger posed by the KDRT conduct. In addition, a counseling program that helps the offenders change the KDRT's behavior has to be set up. Women's Partners, in partnership with several male counselors from similar fields and BAPAS officers who are creating

modules for the necessary counseling services, has started the project to create programs and arrange counseling for KDRT offenders.²¹

A number of women are filing divorce petitions before the State Court or the Religious Court, citing the KDRT's acts as justification for their actions, according to data from the Women's Crisis Centre (WCC). Those who want to take legal action to end their husband's history of violence during their marriage but do not want to disparage their spouses do this.²²

A provision containing a protection order that may be issued by the Court as provided for in Articles 28 to 38 of the Law on the Elimination of the CDRT is one of the legal protections that is specifically intended to address the needs of victims of crimes of the KDRT and members of their families. Unless there is a valid explanation, the President of the Court must issue a warrant verifying the protection order within 7 (seven) days of receiving the application.

These kinds of demands might be made verbally or in writing. According to Article 29 of the KDRT Elimination Act, the following parties may submit an application for a protection warrant:

- a. Victim or victim's family;
- b. Victim's friend;
- c. Police;
- d. Accompanying volunteers; or
- e. Spiritual guide.

The public uses this type of legal protection, which is likewise not well-known or utilized by law enforcement. A new State Court in Central Java has issued many protection warrants for victims, processing them in less than seven days, based on the surveillance of non-governmental organizations till 2008.²³

The Law on the Elimination of Domestic Violence's final section addresses criminal measures, which include jail time, fines, and surveillance, among other types of punishment. Since the limitations of this criminal determination are never stated, as is the case with other legislation, the magnitude of prison sentences and penalties is in the range of one year to fifteen years, which appears to correspond to the provisions of the CEDAW. Once the parameters for establishing new criminal punishments have been established, it becomes possible to define what should serve as the foundation for financing considerations. The KUHP Formulation Team has developed a gravity-based

²¹Rita Serena Kolibonso, (2008), "Penegakan Hukum Kekerasan dalam Rumah Tangga", *Jurnal Legislasi Indonesia*, 5 (3), p. 42.

²²Mitra Perempuan, *Catatan Kekerasan terhadap Perempuan & Layanan Women's Crisis Centre: Laporan 2007*, p. 2.

²³Rita Serena Kolibonso, *Penegakan Hukum Kekerasan dalam Rumah Tangga... Op. Cit*, p. 43

classification system for criminal offenses in order to define the boundaries of criminal determination. Using semantic scale approaches, the rankings are broken down into five levels, ranging from "very mild" to "very serious," with the caveat that while "very light" offenses are not punishable by deprivation of independence, "very serious" crimes carry a sentence of more than seven years in prison.²⁴

The fact that this size architecture has not been expanded further is quite regrettable. Consequently, there are issues with estimating the percentage of each crime as well as with ranking and qualitative distance (parity, rank-ordering, and spacing) between crimes. The Formula Team's definition of the category of criminal offenses is not explained, but it doesn't seem like a particular approach has been discovered to ensure that the KUHP and the KDRT Elimination Act's categorization, ranking, and determination of criminal sanctions are still comparable.²⁵

Implementation of prison and fine threats Implementation of prison and fine threats.²⁶

The word "strafbaar feit," which is used in Dutch criminal law, is the source of the term "criminal act." While this term appears in both the Dutch Indian Wetboek (KUHP) and the Dutch Wetboek van Strafrecht (WvS), no formal definition of "strafbare feit" is provided. We can therefore infer that the definition of a crime is an act that is carried out by a person for which they are accountable and that the act is forbidden by criminal law and subject to criminal penalties.

A criminal act contained in the Criminal Law Book according to P.A.F. Lamintang and C. Djisman Samosir generally has two elements: the subjective element which is inherent to the perpetrator and the objective element which is related to the circumstances.²⁷ The objective elements of a crime are the nature of the violation of the law, the quality of the perpetrator, and causality, i.e. the relationship between an act as a cause and a fact as a consequence.²⁸ Crime prevention is an attempt to prevent a crime

²⁴Josua Otniel Sondakh Walangitan, (2020), "Sanksi Pidana dalam Pemberantasan Tindak Pidana Kekerasan Rumah Tangga yang Dilakukan Suami pada Istri", *Lex Privatum* 8(1), p. 80.

²⁵*Ibid*, p. 82.

²⁶Adami Chazawi, *Pelajaran Hukum Pidana I Stelsel Pidana, Tindak Pidana, Teori-teori pemidanaan & Batas Berlakunya Hukum Pidana*, Jakarta, PT Raja Grafindo Perada, 2010, p. 67. (dikutip oleh Khairiah Nafisah, Nursiti (2018), "Tindak Pidana Kekerasan dalam Rumah Tangga Oleh Suami terhadap Istri", *JIM Bidang Hukum Pidana*, 2 (3).

²⁷P.A.F. Lamintang, C. Djisman Samosir, (2009), *Delik-delik Khusus, Tarsito*, Bandung: Sinar Baru, p. 193. (dikutip oleh Khairiah Nafisah, Nursiti (2018), "Tindak Pidana Kekerasan dalam Rumah Tangga oleh Suami terhadap Istri", *JIM Bidang Hukum Pidana*, 2 (3).

²⁸*Ibid*, p. 193.

by using various alternative means. Crime is a social symptom that is constantly faced by every society in this world.²⁹

Prior to the entry into force of Act No. 23 of 2004, the law enforcement authorities used Article 356 of the Covenant to arrest perpetrators of domestic violence. It states: The penalties specified in Articles 351, 353, 354, and 355 may be added to one quarter: if the perpetrator commits the crime against his mother, his legal father, his wife (husband), or his child.

- a. The punishment for persecution is imprisonment for life for two years and eight months or a fine of up to Rp. 135,000.
- b. If he is seriously injured, the perpetrator is sentenced to five years' imprisonment.
- c. If he dies, he shall be sentenced to seven years' imprisonment.
- d. with persecution equated with deliberately damaging people's health.
- e. The attempt to commit this crime is unpunishable. Looking at the sound of paragraph (4) above, it must be interpreted that any act committed by a person, whether it be beating, kicking, punching, and otherwise that may result in damage to a person's health, shall be considered as persecution.

The enforcement of the law of the DRC child marriage is subject to Act No. 23 of 2002 on the Protection of Children.

The issue of legal protection and the rights of children is one aspect of the approach to protecting Indonesian children. The protection of children's rights must be carried out in a regular, orderly, and responsible manner, and legal regulations must be in line with the development of Indonesian society. The child deficit under Act No. 35 of 2014 is as follows: "A child is a person who is not 18 (eighteen) years of age, including a child in the womb.

The definition of violence in accordance with Article 1, paragraph 15a of the Act No. 35 of 2014 on Amendment of the Law No. 23 of 2002 on the Protection of Children, namely:

"Violence is any act against a child resulting in physical, psychological, sexual, and/or sexual misery or suffering, including the threat to commit an act, coercion, or deprivation of liberty against the law."

The perpetrators of violence against children may be charged under Article 80 (1) jo. Article 76 c of Law No. 35 of 2014 on the Protection of Children (hereinafter referred

²⁹Wildiada Gunakarya, *Kebijakan Kriminal Penanggulangan Tindak Pidana Pendidikan*, Bandung: Alfabeta, 2012, P. 13. (dikutip oleh Khairiah Nafisah, Nursiti (2018), "Tindak Pidana Kekerasan dalam Rumah Tangga Oleh Suami terhadap Istri", *JIM Bidang Hukum Pidana*, 2 (3).

to as Law No. 35 2014) with the threat of criminal imprisonment for a maximum of 3 (three) years 6 (six) months and/or a fine of up to Rp. 72 million.

Article 76 c of the Law No. 35 of 2014 "Everyone is prohibited from placing, letting, committing, commanding, or accompanying violence against a child." Article 80 (1) of Act No. 35, 2014 "Anyone who violates the provisions as referred to in article 76 c, is punishable by imprisonment for a maximum of 3 (three) years 6 (six) months and/or a fine of up to Rp 72,000,000.00."

In addition, if resulting in serious injury then the perpetrator can be threatened with a penalty of imprisonment for a maximum of 5 (five) years and/or a fine of up to Rs100,000,000.00 (one hundred million rupees) Article 80 (2) of the Law No. 35 of 2014 "In the case of children as referred to in paragraph (1) of the Penal Code, then perpetrators are sentenced to a criminal sentence of up to 5 (fifth) years in prison and/or a fine up to 100,000,000"

The description provided above states that because of their sexual orientation, victims of the KDRT in child marriages are not granted the same legal safeguards. A woman suffers tremendously when her marriage is not legally recognized since she is not seen as a legitimate wife. Furthermore, the rights of the wife and the children to happiness, security, and fulfillment are compromised by an unregistered marriage. The woman would also suffer from not being able to obtain legal protection in the event that she becomes a victim of the KDRT due to her unregistered marriage. A minority marriage occurs when a person whose age disqualifies them from being married under the terms of the Marriage Act is married to a woman who can assure a man that they would be able to have a married relationship...³⁰

In Indonesia, child weddings are not protected by the UUPDKRT; child marriages cannot be protected by the UUPKKRT if they are not registered with the authorized authority. Only Section 351 of the Criminal Code, Code of Persecution, paragraph (1), may be used to prosecute the offender and carry a maximum sentence of two years to eight months in prison. However, under Article 44 of Chapter VIII of the Penal Provisions of the UUPKDRT, if it can provide proof of the validity of marriage, the offenders risk imprisonment for a maximum of five years or a fine of Rp 15,000,000. ³¹ Furthermore, the implementation of the law against child marriage is governed by Act No. 23 of 2002 on the Protection of Children, since the KDRT also applies to child marriages that are conducted on a personal basis.

³⁰Sonny Dewi Judiasih, et al. (2018) *Perkawinan Bawah Umur di Indonesia*, Cet. I, Bandung: Refika Aditama, p. 1.

³¹Rian Fauzi, (2020) *Perlindungan Hukum Korban Kekerasan Rumah Tangga dalam Perkawinan Sirri*, *AKTUALITA*, 3 (1), pp. 147-164.

CONCLUSION

The issue of legal protection and the rights of children is one aspect of the approach to protecting Indonesian children. The protection of children's rights must be carried out in a regular, orderly, and responsible manner, and legal regulations must be in line with the development of Indonesian society. Based on the above description, there is a difference in the legal protection of victims of the KDRT in child marriages in terms of sexuality. Unrecorded marriages can only be protected by law through the Criminal Code and the Child Protection Act, while child marriage is not protected by the Penal Code or the Children's Protection Act.

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