



# Fulfillment of Rights Protection for Children with Disabilities Who Experience Physical Violence

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**Abstract.** The journal entitled “Fulfillment of The Protection of Rights in Children with Disabilities Who Experience Physical Violence” describes the problem of physical violence against children with disabilities that continue to experience repetition every year. Moreover, this case of violence is more done by the closest party to the child such as the family environment. The existence of this case is increasingly alarming when the case that occurs can be in the form of counseling, torture to sexual violence that can at any time threaten the right to life and other things owned by children with disabilities. This is what causes cases of death experienced by children with disabilities due to the violence experienced. In this study, the research method used is a socio-legal legal research method. The final results of this study are a study on the regulation of the protection of the rights of children with disabilities who experience and become victims of physical violence, as well as the study of regulatory conditions and real conditions that occur, and the recommendation of optimization efforts on the enforcement and protection of rights for children with disabilities who experience physical violence.

**Keywords:** Children with Disabilities · Physical Violence · Fulfillment of Rights

## 1 Introduction

Children are individuals or legal subjects who have not yet reached the age of 18 years, including children who are still in the womb where the child is certainly under the authority or guidance of parents. This means that as long as the child is not yet an adult, parents certainly have an alimentation obligation, namely the obligation to maintain, educate, and provide a living until the child is an adult or is married. The womb causes the child to have rights and obligations that have been guaranteed by law. Guaranteeing children’s rights is considered the main thing because children are a weak and vulnerable group. Considering that children are state assets as the nation’s successors and determinants of the future of the country’s sustainability, they must be given maximum protection and services.

This is supported by Article 28B Article (2) of the 1945 Constitution of the Republic of Indonesia which states that “Every child has the right to survive, grow and develop and has the right to protection from violence and discrimination”. In addition to the

rights above, children have human rights that are innate from birth, and the rights of citizens have been regulated in laws and regulations. The definition of a child does not only include children in normal conditions but also includes children with disabilities or special needs. Where children with disabilities have a fairly large percentage in Indonesia. Fulfillment and protection of children's human rights in Indonesia still encounter obstacles and challenges even though it has been guaranteed by laws and regulations. As can be seen from year to year, the right of children to be free from acts of violence has not been absolute. According to data from the Central Statistics Agency (BPS) in 2017, the number of children with special needs in Indonesia reached 1.6 million [1]. Meanwhile, data from the Ministry of Education and Culture stated that the number of children with special needs was recorded attending special schools [1]. Reached 144,621 students in the 2020/2021 school year [2]. The total number of children with disabilities who receive special education has not been fully accommodated, and there are still more than one million children with disabilities who have not received an education. This shows that the percentage of children with disabilities in some cases is still not optimal. In addition, the percentage of children with disabilities is directly proportional to the increase in the level of violence against children. It is undeniable that children with disabilities certainly have limitations in terms of physical, mental, intellectual, and so on. Fulfillment and protection of the human rights of children with disabilities in Indonesia still encounter obstacles and challenges even though it has been guaranteed by legislation. As can be seen from year to year, the right of children to be free from acts of violence has not been absolute.

Data from the Central Statistics Agency through the Profile of Indonesian Children in 2020, it is known that there are 0.79% or 650,000 children with disabilities in Indonesia from 84.4 million Indonesian children. Furthermore, it is known that until March 30, 2021, there are as many as 110 children with disabilities out of a total of 1,355 child victims experiencing violence in Indonesia. Furthermore, WHO data states that children with disabilities are 3.7 times more likely to experience violence than normal children. WHO statistical data states that approximately 20% of women and 5–10% of men reported experiencing sexual abuse as children. Furthermore, 25–50% of children reported experiencing physical violence [3].

The data certainly shows that until now violence against children with disabilities is still happening and becomes a separate urgency about the protection of the rights of children with disabilities. Of course, children with disabilities are the weakest party due to their physical condition which is certainly not yet capable of resisting, they are still included as the support of their parents or guardians and their thoughts are not yet mature. Moreover, the violence received by children with disabilities can come from those closest to them such as parents, relatives, friends, and neighbors who are often encountered now. This is something that should receive special attention regarding the obligations of parents and the state to fulfill children's rights in terms of education, affection, health, and so on.

With the background that has been described as an introduction above, in writing this research will discuss the:

- a) What is the urgency and implementation of regulations regarding the protection of the rights of children with disabilities who experience physical violence in Indonesia?

- b) How to optimize what can be applied in fulfilling the protection of the rights of children with disabilities who experience physical violence in Indonesia?

## 2 Research Methods

Wheeler and Thomas state that socio-legal studies are an alternative approach aimed at examining doctrinal studies of law. This is what causes a researcher who uses the socio-legal method to use social theory as the purpose of analysis, the researchers do not have the aim of paying special attention to sociology or other social sciences, but only to the law and legal studies [4]. The socio-legal research approach is a combination of approaches that focus on the social sciences, such as political science, economics, cultural science, history, anthropology, communication science, and several other sciences, which are then combined with the approach used in legal science, such as learning about principles, doctrines and the hierarchy of legislation that includes it [5]. Furthermore, socio-legal research methods have two characteristics, namely: (a) socio-legal studies conducting textual studies through articles on laws and regulations, policies, and studies of judges' decisions can be critically analyzed and explained their meaning and implications for legal subjects [6]. Second, socio-legal studies develop various "new" methods resulting from the marriage between legal methods and social sciences, such as socio-legal qualitative research and ethnography of science socio-legal [7].

This method is used by the author to determine the suitability and effectiveness of existing legal regulations with the reality (sociological) of society, in which the development of life and patterns of behavior of the community certainly requires legal adjustments to accommodate various problems that occur. This socio-legal method also aims to find recommendations and suggestions on regulations (Das sollen) and the implementation (Das sein) of these regulations based on juridical, philosophical, and sociological considerations. This research method is used to obtain data regarding the existence of cases of physical violence against children with disabilities in the community, the problems that cause it, and the implementation of legal regulations regarding the protection of physical violence in the community.

## 3 Discussion

### 3.1 The Urgency and Implementation of Regulations Regarding the Protection of the Rights of Children with Disabilities Who Experience Physical Violence in Indonesia

Violence means ill-treatment, torture, or ill-treatment. Violence can be defined as a violent matter or act of a person or group of people that causes injury or death to another person and causes physical damage to others [8]. Furthermore, physical violence is a category of violence in the form of kicking, beating/slapping, strangling, pushing, biting, banging, threatening to use sharp objects, and so on. Furthermore, the form of physical violence carried out can also be in the form of eliminating a person's health or normal abilities of the body, and can also lead to the loss of a person's life. Article 89 of the Criminal Code also explains physical violence that violence can be carried out by using

no small amount of force or physical strength illegally, such as beating people with hands or using various types of weapons, kicking, kicking and other acts of violence that can make people faint or helpless.

Children are individuals or legal subjects who have not yet reached the age of 18 years, including children who are still in the womb where the child is under parental control. This means that as long as the child is not yet an adult, parents have an alimention obligation, namely the obligation to maintain, educate, and provide for the child until the child is an adult or is married [9]. This guardianship provides the basis that children are one of the weak and vulnerable groups who requires special protection and attention, especially regarding the rights that must be obtained. The condition of these children is increasingly vulnerable when faced with cases of physical and psychological limitations carried by children. Children with Disabilities are children who have privileges that children, in general, have never had [10]. More broadly, Law No. 8 of 2016 provides a definition of persons with disabilities that each individual has physical, intellectual, and social limitations. A mental and or sensory experience for a long period when interacting with the environment can be difficult and an impediment to participating and being effective with other residents based on equal rights. The existence of legal subjects and creatures of God certainly provides accommodation for the protection of rights that are inborn and rights that must be fulfilled by the state, where this is directly related to the possibility and greater risk of violations and disturbances to the rights they have.

In its development, these violations and disturbances are certainly caused by the diversion of their physical and psychological conditions, where the community environment tends to see this distinction as one of the most vulnerable gaps if it escapes accommodation. Moreover, currently, the number of children with disabilities in Indonesia also high number, where data from the Central Statistics Agency (BPS) in 2020 states that there are 31.6% of the Indonesian population categorized as children or equivalent to 84.4 million people in the total population. In Indonesia, from which there are 650,000 children with disabilities, or around 0.79%. Cases of violations and neglect related to the rights of persons with disabilities, especially children with disabilities, are currently increasing. In general, the incidence of cases of violence against children in Indonesia is currently increasing. This can be seen from the data on complaints from the Indonesian Child Protection Commission until August 2020, which shows that the number of children in conflict with the law has been in the highest rank in the last 10 years, namely 13,071 cases [11]. Furthermore, based on BPS data from the Profile of Indonesian Children in 2020, it is known that there are around 0.79% or 650,000 children with disabilities out of 84.4 million children in Indonesia. Furthermore, until March 30, 2021, it is known that there are 110 children with disabilities out of a total of 1,355 child victims who have experienced and received acts of violence. Furthermore, data on physical violence against children with disabilities can also be found in the East Kalimantan region, where the Population Service for Women's Empowerment and Child Protection (DKP3A) stated that the symphony data from the Ministry of PPPA until August 2019 contained 715 cases of reporting children with disabilities as victims of violence [12].

The violence against children with disabilities that occurred above included physical violence and sexual violence that occurred directly, where cases of this violence also occurred globally. It is estimated that 150 million children aged 0–18 years live with

disabilities, most of whom live in low- and middle-income countries [13]. The World Health Organization states that children with disabilities are 3.7 times more likely than non-disabled children to become victims of all forms of violence; 3.6 times more likely to be victims of physical violence; and about 2.9 times more likely to be victims of sexual violence. Children with disabilities associated with mental illness or intellectual disability appear to be among the most vulnerable, with 4.6 times the risk of sexual violence compared to other children who are not disabled [14].

Furthermore, some examples of cases of physical violence against children with disabilities that occurred include physical violence perpetrated by a married couple who are caretakers for children with special needs in Yogyakarta on October 5, 2021, where the treatment received by the victim every night was handcuffed by the perpetrator on October 5, 2021. The front pole and then doused using hot water. In addition, the perpetrators also beat them with sticks and lit the victim's body with fire. Furthermore, a similar case also occurred in Musi Banyuasin, South Sumatra, where parents abused their biological child who had autism for one week to death. The violence carried out was the victim's father assaulting the victim by hitting the victim using a 135 cm long plastic tube twice on the victim's back, while the victim's mother abused her son by kicking his genitals several times and hitting him with a scoop [15].

In addition, cases of physical violence that often occur are shackled children with disabilities, where some cases that occur are the shackles of an autistic child in Tangerang Regency for 10 years by his family. Furthermore, a case of shackling also occurred in a 10-year-old child in Kulon Progo, Yogyakarta Special Region who was shackled and abused in a goat cage behind the house by his biological parents until the victim had a terrible condition with bruises all over his body. Furthermore, about cases of sexual violence against children with disabilities, of course, this is also a case with a high level, where based on the percentage of available data, deaf girls are more victims of sexual harassment with a percentage of 50% compared to their peers with a percentage of 25%. Likewise with deaf boys (54%) compared to boys in general (10%) [16].

The data above certainly shows that the development of the number of physical violence against children with disabilities continues to increase, especially driven by various other factors such as economic conditions, family conditions the inability of parents to take care of children with disabilities, and both material and psychological conditions of parents. With the repetition of similar cases throughout Indonesia, of course, it is urgent to immediately accommodate this problem. Where children with disabilities certainly have talents, abilities, and other things that can be maximized to encourage self-development in children with disabilities as a form of one of the efforts to protect and accommodate children with disabilities.

Forms of legal protection are divided into 2, namely preventive and repressive legal protection as follows:

- i. Preventive Legal Protection

Legal protection is provided by the government to prevent violations before they occur. Included in laws and regulations with the meaning of avoiding criminal acts against individuals, especially children with disabilities. Legal subjects are allowed to express their opinions before the government's decision gets definitive way. This

is contained in laws and regulations to prevent a violation and provide signs or limitations in carrying out an obligation.

ii. Repressive Legal Protection

Repressive legal protection is the final protection in the form of punishment in the form of imprisonment, fines, and additional penalties which are submitted after a dispute has occurred or has occurred. The subject that underlies legal protection for government actions is the principle of the rule of law. Equated with the protection and recognition of human rights, the protection and recognition of human rights takes the first position and can be equalized with the objectives of the rule of law. The handling of legal protection from the General Court and Administrative Court in Indonesia is listed in the types of legal protection.

Various regulations and policies that are currently being carried out by the government certainly become the basis and material for joint evaluations regarding their progress to date. The regulations governing the protection of children with disabilities include:

a) Law No. 39 of 1999

The law on human rights is a general law that underlies the protection of the rights of persons with disabilities. Of course, this law applies in general and applies to all people without exception as a form of a gift from God Almighty. About the right to be free from torture, it is stated in Article 33 paragraph (1) that everyone certainly has the right to be free from all forms of torture, cruel and inhuman punishment or treatment, a person's degree and human dignity are demeaned as well as Article (2) which emphasizes that they have the right to be free from all forms of enforced disappearances and the life of a person. Furthermore, the special rights of children have also been accommodated in the tenth part of this law, where children's rights are human rights that are devoted to the interests of the rights possessed by children which must be recognized and protected by law from the time they are in the womb. Furthermore, article 54 it is emphasized that every child who experiences or has physical and or mental disabilities has the right to obtain forms of care, fulfillment of education, receive training, as well as special assistance at the expense of the state. About physical violence, Article 58 paragraphs (1) and (2) provide accommodation that every child has the right to obtain legal protection against various forms of physical violence as well as acts of neglect, ill-treatment, and sexual harassment while in the care of someone else. Parents/guardians and other parties. Furthermore, if in certain cases it causes parents, guardians, and caregivers to carry out various forms of abuse, both physically and mentally, or to the murder of children who should be protected, then they must be subject to a heavier sentence. It is this accommodation that encourages each party that human rights are part of each that also needs to be protected from one another and be sustainable.

### **3.2 Optimization Applied in Fulfilling the Protection of Rights for Children with Disabilities Who Experience Physical Violence in Indonesia**

Law No. 8 of 2016 regulates the Rights of Children with Disabilities with the following details:

- a) Obtain special protection from discrimination, neglect, harassment, exploitation, sexual violence, and crime;
- b) Obtaining care and care for a substitute family or family for optimal growth and development;
- c) Protected its interests in decision-making;
- d) Humane treatment of children by the dignity and rights of the child;
- e) Fulfillment of special needs;
- f) Equal treatment with other children to achieve social integration and individual development; and
- g) Get social assistance.

With the increase in cases of physical violence against children with disabilities in Indonesia and the existence of similar cases that keep on repeating, it shows that the enforcement of the protection of the rights of children with disabilities has not run optimally. Children with disabilities are classified as vulnerable groups because, in the process of fulfilling their rights, they have limited abilities, and opportunities and are vulnerable to unfair treatment from other parties. Protecting the rights of persons with disabilities and educating the entire community not to violate the rights of others. One of the things that the government has currently done, namely the creation of the National Commission for Disabilities on December 1, 2021, by Joko Widodo. Furthermore, KND is divided into four sub-tasks, including monitoring sub-tasks, analysis and evaluation sub-tasks, empowerment sub-tasks, and inter-institutional coordination sub-tasks. From Chapter VI of Law No. 8 of 2016 concerning persons with disabilities. The creation of a national disability commission is one way for the government to accommodate the protection of persons with disabilities. However, in the manufacture and validation, some problems accompany it. There are three points of error in the Government's perspective in the preparation of the Presidential Regulation of the National Commission for Disabilities, namely the placement of KND which is currently financially attached to the Ministry of Social Affairs, placing the KND secretariat on par with echelon III, and dividing the categories for filling the KND leadership positions between persons with disabilities and non-disabled people [17]. This additional problem makes the formation and ease of file management for persons with disabilities still not run optimally and optimally. As for the existence of this matter, the government must provide protection and optimization efforts, including:

#### **3.2.1 Optimization of the Ministry of Women's Empowerment and Child Protection**

As is known, together with Kemenppa, it is the ministry in charge of issues, cases, and efforts to realize the empowerment and protection of children. Furthermore, based on

Presidential Decree No. 65 of 2020, the Ministry of PPPA has several tasks related to the eradication of violence such as the task of implementing coordination in handling the protection of women's rights and special protection for children, providing services for children that require coordination both on a national and international scale, and implementation of policies in the field of the fulfillment of children's rights and special protection of children. The end of violence against women and children is one of the flagship programs that will be set at this institution. This certainly confirms that Kemenppa has a full role to encourage child protection, especially for children with disabilities. This special role will certainly be maximized if in its implementation it is supported by accommodating other things that can support the implementation of protection for children with disabilities.

Such as optimizing the role of socialization and education of the Ministry of Agriculture for the wider community, where the role of socialization and education is flexible to be carried out directly in the community, such as creating an open space for discussion in the community. Besides that, seminars, advertisements, pamphlets, posters, or other media can also be made that can be used as a means of increasing public understanding and awareness of the importance of protecting children with disabilities as well as knowledge about advocacy and efforts that can be taken by the community in the event of violence against disabilities. In addition, what also needs to be optimized is the existence of a special task force and institutions at the village level as the first stakeholders who are at the forefront of reporting and taking action in the event of physical violence against children with disabilities. This becomes a special urgency. When the level of physical violence against children with disabilities increases, however, field data shows that there are still many cases that are not seen by the government. So that with the involvement of government institutions at the lowest level, namely villages and neighborhood units, it is necessary to be directly involved to ensure that there are no repeated cases of similar violence in the field.

### **3.2.2 Accommodating State Agencies for Cases of Shackled Children with Disabilities**

The existence of cases of children with mental disabilities is an important matter to be accommodated further, where this is directly related to the rise of cases of shackles carried out by families of children with disabilities on the pretext of not acting out of bounds or disturbing others. However, this act is not justified if the shackles are carried out for a very long period and are accompanied by other actions that are more appropriate if they are referred to as torture. This is what encourages the need for a state agency that accommodates children with physical disabilities to be given space to be able to obtain education and understanding so that they can be easily directed. In addition, it is also necessary to have a state agency that can accommodate children with disabilities who are currently in shackles to be rescued and given treatment so that cases of violence and torture are not repeated. Synchronization and synergy between Kemenppa, the national disability commission, social services, and mental hospitals are certainly important to jointly undertake mitigation efforts if children with disabilities are found in shackles. The problem that currently underlies the existence of families who carry out shackles is the economic limitations to carry out personal care and treatment for children with



disabilities. Of course, the role of the state is full obligation to accommodate through the provision of treatment rooms and guidance to children with disabilities who are victims of shackles as well as legal guarantees relating to the accommodation of children's rights.

### **3.2.3 There Are Rehabilitation Efforts and an Increasing Understanding of Children with Disabilities**

Rehabilitation efforts are important for the existence of child victims with disabilities who experience physical violence. This rehabilitation certainly aims to restore the ability to socialize, think and eliminate the trauma experienced. This rehabilitation effort also aims to encourage self-development in children with disabilities so that they can stimulate children with disabilities to develop themselves both in terms of talents and other abilities they have. This accommodation and development can later become an optimization effort related to the abilities of children with disabilities that can encourage the creation of achievements and abilities in children with disabilities. In addition, efforts to increase understanding of children with disabilities, both knowledge about sex education and understanding of self-management are important. Where this is directly related to the existence of repeated cases of sexual violence where one of the problems faced is the limited understanding of children with disabilities related to sex education so that children with disabilities do not understand things that must be done and distinguish a person's actions including sexual violence or not. This is what underlies state agencies to play an active role in providing rehabilitation and education efforts to children with disabilities related to their understanding and things that must be done by them. Therefore, it is of special urgency to optimize child protection considering the increasing incidence rate and the huge impact that will threaten children as the nation's next generation. Children become future milestones in every area of life.

## **4 Conclusion**

Cases of violations and neglect related to the rights of persons with disabilities, especially children with disabilities, are currently increasing. The violence experienced by children with disabilities includes physical violence, shackles, and sexual violence. In general, the accommodation of legal protection in the current regulations is appropriate and sustainable in Law No. 39 of 1999, ministerial regulation of women's empowerment and child protection no. 4 of 2017, and Law No. 8 of 2016. Current problems keep repeating, that is because the implementation and enforcement of protection in the field are still not running optimally. This gap between regulation (*das sollen*) and implementation (*das Sein*) must, of course, be eliminated and overcome as much as possible, considering that children are the nation's successors. As for the things that can be done to optimize the implementation of legal protection for children with disabilities who are victims of physical violence, including the optimization of the Ministry Of Women's Empowerment And Child Protection Of The Republic Of Indonesia, accommodating state agencies in cases of deprivation of children with disabilities, as well as rehabilitation efforts and increasing understanding of children with disabilities. There needs to be cooperation and active roles from the community, families, schools, and state agencies such as the

Ministry of Education and Culture, and the National Commission for Disabilities and Social Services in realizing the protection of the rights of children with disabilities and minimizing the occurrence of repeated cases of physical violence that occur in children with disabilities.

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