

# Optimization of Legal Protection for Women and Children Against Violence and Human Trafficking in Central Java

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**Abstract.** Violence against woman and children has reached public space, working institution and educational institution. Presidential Regulation No. 65 of 2020 on Ministry of Woman Empowerment and Child Protection was stipulated to optimize legal protection for children and woman in Indonesian law and reality through analysis of woman violence and children in Central Java. This article is based on sociolegal approach which focus in implementation of Presidential Regulation No. 65 of 2020 Ministry of Women Empowerment and Children Protection. Analysis is based on empirical data comparison about implementation of this regulation as well as quantitative (statistic) data as empirical result. This study is to identify problems with approaches such as statute approach, sample survey from multiple sources, ethnography observations, in-depth interviews, and case studies analysis. This research shows that Presidential Regulation No. 65 of 2020 as an effort to protect women and children against violence has not been optimum. This is due to limited access to legal aid/services, lack of legal knowledge, case/report collection. There remains high rate of crime against woman and children. According to the data of Commission for Child and Woman Protection, there are about 1.413 cases in 2019 and this number increase to 2.389 cases in 2020. Gender issues in development still show the gender gap, so efforts to optimize the protection of the law on the rights of women and children from various forms of violence and trafficking crimes are urgently needed.

**Keywords:** Protection for Child and Woman, Violence and Trafficking of Woman and Child, Violence Against Woman and Child in Central Java

## 1 Introduction

No one left behind is understood as equality principle in Sustainable Development Goals (SDGs). SDGs implementation is based on universality principle, integration and inclusivism to ascertain that no one left behind. The multi dimensional implementation of SDGs needs human development investment to increase his capability in maintaining sustainable civilization. According to Amartya Sen, the last purpose of human development is to guarantee the fulfillment of basic necessity for every person. It means human is center and purpose of development itself not only as instrument of development. One important idea in his justice and development concept is human agency freedom which means freedom of every one to choose and achieve meaningful thing, to pay attention social interaction among people and open up public participation [1].

The locomotive of Sustainable Development implementation is woman empowerment in every aspect of life. The development of Gender Empowerment Index in 2010-2019 show that woman has an active role in politic, decision making and economic. Data of human development based on Gender from Central Bureau of Statistic's in 2019 showed that there was more significant increase of woman role than in previous year but gender gap still exist. There are five presidential directions on Protection of Woman and Child Right namely increasing of woman role in business, increasing of mother and family in child education and nurturing, decreasing the number of child worker and prevention of child marriage. Those directions are in harmony with prupose of woman protection against violence.

Protection of woman and child right from violence threat is an absolute human right of child and woman. This is also guaranteed under Article 28B and 28G of Indonesian 1945 Constitution. It means, state has obligation and responsibility to give special protection over child and woman dignity from all kinds of violence.

In accordance with facility development, legal material is getting more sophisticated but not in line with moral increase, legal awareness in society and professionalism of law officer. This bring out prosperity and justice as legal purpose can not be actualized. Such a critical condition cause many over lapping legal materials and legal uncertainty of human protection and respect as a kind of human right. It can be seen from various violences of human roght such as discrimination and human traficking.

In Indonesian legal practice, eventhough article 27 (1) of Indonesian 1945 Constitution has clearly regulated that all Indonesian citizen deserves on equality before the law but in legal enforcement aspect, women are always marginalized in a lot of sectors namely economic, education, health, job and politic. In many perspectives, women and children are the most vulnerable parties for being victim of violence, discrimination and human traficking.

In 2020, legal Resource Center for Gender Equality and Human Rightin Centarl Java found that there are 83 violence against woman in this pandemic time. This number consists of 22 cases of domestic violence, violence in courting relationship, 47 sexual slavery cases, 4 rape cases and 9 sexual harrashments cases. The range of victim age namely sexual slavery victim is about 15 year and domestic violence victim is 32 until 40 year old in many cases, sexual harrashment victim. Those ranges of victim's age bring out special attention because not only in private sphere, sexual harrashment and it happens in all level.

Violence against women and children has reached public sphere, working and educational institution. From perpetrator aspect, people with strong relationship are also found as perpetrator such as familiy member and friend. Law as instrument in achieving justice for victim as well as perpetrator has not been attained because legal discourse on violence and sexual harrashment is only limited toward perpetrator analysis and not from victim mental and psychological recovery or victim rehabilitation. Even in socio cultural space, there is negative stigma toward victim of sexual harrashment. In conscience perspective, they are victims who deserve on support for mental and psychological recovery. Meanwhile, gender discrepancy and bias need extra effort to be solved because it cause a lot of effects in this pandemic time. One of related phenomenon is many women are unlisted as social aid recipient.

Based on Kompas, August 4, 2020, some of women who took role as family head stem from poor family who didn't have access over social aid and public service which are provided by government. They are unlisted because of living with parent or relatives. Another issue was number of women as head of family was different among institutions. Central Bureau fo Statistic showed that number of family which were lead by women reached 15.17%. It is different form Integrated Data of Social Prosperity which is number of family with women as head reach 19%. Meanwhile, Ministry of Village, Development of Disadvantaged Regions and Transmigration

showed higher number of women as family leader who accept temporary unconditional transfer is about 31%. The difference of data among authorized institution bring out confusion, uncertainty and shows another phenomenon namely there a lot of family under woman leadership which are not listed as social service recipient. This also be a sharp critical for Ministry of Woman Empowerment and Child Protection because this aspect is tightly related to their task as stated under Article 3 point f of Presidential Regulation Number 65 of 2020 to maintain gender and child data.

The issue of women as family head who are unlisted as social aid recipient is not only caused by administration process but also there is no clear, certain and strict regulation on such a woman in Indonesian Law. This is impact of Article 31 and 34 of Law No. 1 of 1974 on Marriage which only recognize man as family head and woman as housewife. This condition make women as family head can not access a lot of facilities and not considered in many aspect. The role of woman as family head brings out multi burdens and a lot of difficulties. Besides, state also has not paid attention and recognize such a woman as subject who deserve on recognition and protection. More over, they also get negative stigma related to their existence in society. The socio cultural perspective of society on women is trapped on motherhood mindset which finally crystallize woman stigma. Such a mindset put woman as vulnerable and disadvantaged party. Another impact is there are many women who work as farmer, sailor and etc., don't get recognition over their profession and choose to write down their profession in identity card as housewife (Kompas, 3 Agustus 2020).

Research result shows that discrepancy between household which is led by man and woman. The household under man leadership has higher level of prosperity than under woman leadership. Based on Kompas data, August 5, 2021, Indonesian woman profile 2019 stated that number of literate men is 97% than woman rate 93%. The average of salary for male is 3.9 million higher than woman's salary (2.39 million). The household which are lead by woman has fewer transportation asset, household asset and other assets such as computer, laptop, gold and land. Based on UN DESA analysis, in some states lead by women include single mom, it tends more vulnerable to fall in poverty than in a complete parents. Previous explanation shows that the government program is important to reach woman as family leader in social program to increase their prosperity.

Related to the issue of human trafficking, in 2018, Woman Empowerment, Child Protection, Citizen Control and Family Plan Service Office in Central Java found that there were 48 cases of human trafficking. This number increase twice or about 196% than in 2017 which only 17 cases (solopos.com). This has been a matter whether law enforcement has reached and protects child and woman human right. In this pandemic time, at the midst of economic crisis and high unemployment number in Central Java Province as one of the province whose most migrant worker. In 2019, Central Java sent 60.432 migrant worker and in 2021, this province has sent about 26.419 migrant worker (Kompas). The problem behind this issue is most of them work as unskilled worker such as maid, gardener, driver. Such kind of worker is very vulnerable on violence, exploitation and discrimination. The high number of migrant worker has been a matter for Indonesia Migrant Protection Board. More over, inaccuracy and difference of data related to Indonesian migrant worker happen among Ministry for Foreign Affair, Ministry of Labor and World Bank. The migrant worker is also always able to escape from authorized party supervision because of strong network. Besides, Indonesian rule has not made a strict and heavy sanction for human trafficking perpetrator. Article 297 of Indonesian penal code has not been just enough for human trafficking victim because of very mild threat of punishment namely 6 years in jail. In another hand, prevention over this crime is hard to be executed because of limited regulation and minimum awarness of the perpetrator and law officer.

Presidential Regulation No. 65 of 2020 on Ministry of Woman Empowerment and Child Protection is made to optimize child and woman protection. However, this regulation has not brought benefit for society because in reality there are many social facts which prove that woman and child rights have not been fulfilled and discriminated.

## **2 Research Method**

This article use socio-legal method because of necessity to determine the implication of regulations for society in empirical context [2]. This article focus on Presidential Regulation No. 65 of 2020 on Ministry of Women Empowerment and Child Protection. This regulation is analysed and compared with empirical data related to implementation of this rule. This article used quantitative data as empirical result.

## **3 Result and Analysis**

### **3.1 Woman in Legal Order**

Gender equality is an important indicator of human development. Some studies show the importance of gender equality as a kind of human right and prerequisite of human development. Meanwhile, an effort to increase woman status in society to be equal with man is obstructed by patriarchal system in our law and social system [3]. So that, fulfillment of woman and child protection is task that must be solved in all situation and condition include in Pandemic Covid-19 time.

The implementation of legal protection toward woman has not been ideal. Law is human creation contains human behavior norm. It is the mirror of human intention about how people must be guided and directed. So that, law must contain idea, morality, custom and consent of society in which law is created. This idea is related to justice [4].

Based on data, women are in need of justice. Law is tightly related to society as social basis. In such a condition, law must pay attention and serve people need and interest. Relationship between need and service create a system. The idea of legal value in Radbruch perspective consist of justice, utility and legal certainty in society [5]. The concept of law and justice not only exist for legal certainty but also utility within. So that, implementation of justice surpass the truth. Justice is just behaviour and treatment. Justice also can be understood as equal/equilibrium, hold the truth and not arbitrary [6]. So that, realization of legal protection for woman must give utility at the midst of social change include in woman environment

Law enforcement to the society is interactional relationship between law and society. Society is place the law stem. Law stems and developes in line with change in human society. It is predistined that society always developes the same as law. In formal, law is static but it also can be very active because this regulates society. Society with all human behaviour within must be responded well by law [7]. In social change of woman, law must also respond it in a good manner.

**Table 1.** Relation between Legal Problem and Social Problem

No.	Legal Problem	Social Problem
1	Administration of Justice which is Quick, Cheap and Fast	Inaccordance between citizen's necessity and court facility
2	The formation of civil service arbitration tribunal	The government role, job and intervention is bigger and need ne way in handling the case
3	Provide legal aid	The cause of social discrepancy os difference public economic
4	Development of economic law	Economical development bring out more intensive interaction between individual and public life. It makes the tension continously increase

Source: Rahardjo [8].

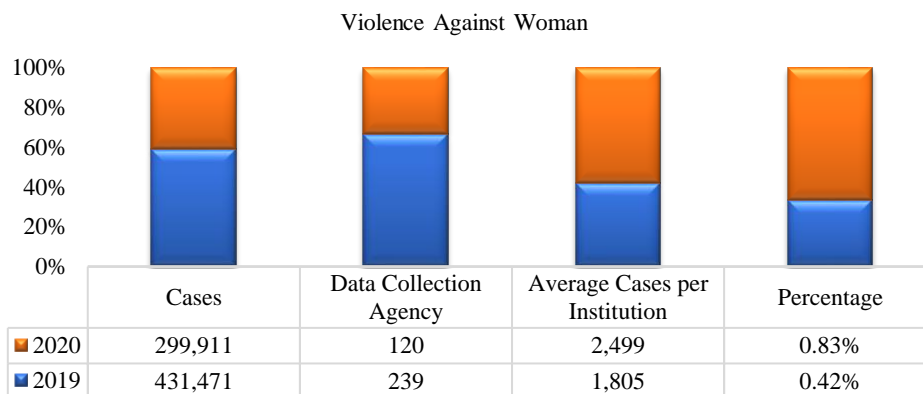
In progress toward woman protection, law face social change in woman sphere namely legal problem. Legal problem at the midst of society paradigmatic transition about woman, formal administration in woman cases, inoptimum legal aid for woman and interaction between law and woman which make intention between both of those.

### 3.2 The Importance of Woman Protection

Definition of protection can be found in many literatures namely dictionary, regulations and expert's definition. In Indonesian Language Dictionary, protection is pace to protect, protect. Meanwhile, In Law No. 23 of 2004 on Eradication Violence Against Woman define protection as all efforts to provide safety for victim which is done by family, advoate, social institution, police, prosecutor, court or other parties in temporary or through judge stipulation [9].

CEDAW Convention considers Universal Declaration of Human Right that confirm non discrimination principle and all of the people are born in equal freedom as well as dignity. Every one deserves on right and freedom within without difference include gender difference. Because woman discrimination is violence against equal right and human dignity. This can obstacle development of people prosperity and bring out more difficulties for woman development to serve the state and human being. CEDAW convention explain that there must be change in man traditional role as well as woman role in society to achieve the same protection without any discrimination [10].

CEDAW Convention is made and validated to attain legal protection for woman based on equality with man and this must be guaranteed under competent national court and other governmental institution, effective protection for woman from any kinds of discrimination. Article 6 of CEDAW regulate that member parties must make good and precise regulation to eradicate all kinds of woman trafficking and exploitation for prostitution interest [10]. This article means that member states which have ratified this convention must make regulation to eradicate woman trafficking and exploitation for prostitution interest. Indonesia as one of member state must eradicate all kinds of human trafficking and violence to Indonesian women and protect their right as a kind of human right.



**Fig. 1.** Data on Violence Against Woman  
(Source: Indonesian National Commission For Woman)

Data above shows that 299.913 violence cases against women have happened in 2020. This number decrease about 31% from previous year. In 2019, the number of violence against woman is about 431.471 cases. The decrease of cases number significantly in 2021 is not good news but must be analysed and paid attention because the decrease is caused by the worse of data collection. The number of spreaded questionnaire decrease about 100% from previous year. In 2020, there were 239 agencies which involved in data collection but in 2021 there were only 120 agencies. The most important to be analysed is 34% of those agencies stated that there was increase of woman violence report in this pandemic era. Report data of National Commission For Woman show dractical increase about 60% from 1.413 cases in 2019 to 2.389 cases in 2020 (Kompas 10/14/2020).

Besides woman, child is vulnerable party over violence. In pandemic era, child has very big potency over domestic violence. The change of life stylem economical pressure and lack of knowledge about child nurturing make violence against children increase.

Online Information System of Woman and Child Protection from January 1 until September 23 show that violence against children in Indonesia is about 5.697 cases with 6.315 victims. Based on information, some violences against children in pandemic era are caused by boredom of parent in guiding their child in online learning at home, economical pressure and less knowledge about nurturing. In 2016, based on Online Information System of Woman and Child Protection, there are 94 cases and there are 78 cases in 2017. 90% of those cases are sexual harrashment against children and others are domestic violence. In 2018, there were 39 violence cases. Eventhough those data tends to decrease but in realities there are more cases because just a few people are brave to report his case.

Regulation related to child protection has been clearly mentioned under Article 28B verse 2 of Indonesian Constitution 1945 which state that every child deserve to live, grow and develope as well as deserve on protection against violence and discrimination. Based on that article, child has constitutional right to get protection ever their right and this must be regulated under other regulations to guide and protect child physical and psychological development.

Woman and child trafficking also be serious discourse because the increasing of human trafficking number. Witness and Victim Protection Agency found that number of report continously increase from year to year. In 2015, there are 46 reports and in 2017 increase until

177 reports, in 2019 this number increase until 176 reports. Meanwhile, this number increase until 120 reports

Child in human trafficking is protected by regulation such as Law No. 35 of 2014 on Convention of Child Right which state that child is future generation that must be protected from any kinds of crime and discrimination.

In central Java, from 2016 until 2019, Citizen Control, Family Planning, Woman Empowerment and Child Protection Office stated that such violence happen to little and adult girl. The most cases are sexual harrashmentnamely 3.140 cases. Other cases are psychological violence 1.336 cases and physical violence 1.166 cases. High number of violence cases toward women and children means law awareness is high enough. However, it is ironic because many government policies have not given deterrent effect for public. This data also means that commitment government to woman and child protection has not been maximum.

The increasing of violence against child and woman in Central Java is a real proof in violation of woman and child right. It must be government attention in increasing protection toward child and woman, to provide safety for woman and child. Presidential Regulation No. 65 of 2020 on Ministry of Woman Empowerment and Child Protection is an effort to optimize woman and child protection under special bureau in Ministry. However, there are remain several problems, unclear coordination between institutions and many regulations have not paid attention child and woman right, those regulations also have not been maximum in operationalisation.

Indonesian constitution regulate equality before the law. Article 27 verse 1 Indonesian 1945 Constitution state that all citizens have equal position before the law. This article emphasize that human dignity must be respected and fight against all kinds of discrimination include race, religion and gender. John Rawls explain that to embody justice as legal basis and only formal-administrative is still important. Because, based on formal administrative, law must give minimum guarantee that every one must be treated equal.

In Article 15 Law No. 35 of 2014 on Child Convention, it is regulated that child deseves on protection from any kinds of involvement in violence. Article 1 CEDAW state that every discrimination, exclusion, limitation which influence, diminish or eliminate recognition, enjoyment, the use of human rights and freedom in politic, economic, social, culture or every thing, by woman through their marriage status, on behalf of equality between man and woman.

State obligation is to provide guarantee for child and woman right through policy making and its implementation. It means such recognition and implementation is not only limited on de jure but also de facto. It is caused, woman always become object of discrimination eventhough woman and child is a kind of human right violation. The government step to to protect woman and child right namely create a competent national court to uphold the law.

To accomodate protection of woman and child right over violence as stated under Presidential Regulation No. 65 of 2020 is an effort to guarantee effectiveness of protection to child and woman. However, law exist to create prosperity and guarantee the security. So that, there must be a lot of efforts to optimize the attainment of purpose in such regulation and this must reach all people.

### **3.3 Kinds of Legal Protection for Woman**

Analysis on construction of woman and child right has a wide sphere include written law or regulation but unwritten law in society, patriarchy culture which has ingrained in society culture that must be diminished through out the time by education, gender education pattern and

child right in a family as well as good regulations in family. This also must be supported by good regulation to provide guarantee on right protection in educational context.

Woman as part of recognized citizen under Indonesian law deserves on equal right, recognition on its existence in social structure as stated under Article 28D of Indonesia Constitution that every one deserves on recognition, guarantee, protection and legal certainty based on justice and equal treatment

Many social facts namely unlisted woman as family head, gender and child violence, human trafficking are proofs of law enforcement ineffectiveness which has not reached the purpose. The formation Ministry of Woman Empowerment and Child Protection as regulated under Presidential Regulation No. 65 of 2020 has been milestone of protection itself.

Any kinds of protection to woman must be actualized in society especially for woman and child as well as effective regulation in government to comprehensively reach necessity of woman include health, education, economy, social, politic and protection against discrimination.

### **3.4 Findings**

Based on research, it can be found that :

- a. Inoptimum implementation of law enforcement on woman empowerment and child protection bring out high crimes on woman and child. The implementation of legal protection can be interpreted as protection by legislation and data collection in detail but this is constrained because of the limitations of human resources, the efficacy of the pendaataan, the limitation of understanding filling in the data collection format, inadequate documentation facilities, and the reluctance of victims to be recorded/reported cases.
- b. Inoptimum work of institution related to child empowerment and protection cause data that can not provide clear description on existing condition. Crime against woman and child is an iceberg phenomenon that's hard to be accomplished.
- c. There are a lot of regulations on child and woman protection that can not reach woman and child right in entirety.

## **4 Conclusion**

The increasing of violence against woman and child in Central Java is real finding that government effort has been inoptimum to protect woman and child right. Act as a kind of legal certainty must be milestone of law enforcement to attain prosperity for all people as the purpose. However, data and cases that have been found must be discourses on how regulation can represent and protect the right and obligation of every people include woman and child in the midst of social problems. This substance of Presidential Regulation No. 65 of 2020 has been inoptimum to empower woman and protect child which cause many women and children right are violated. In the future, this presidential regulation must be reviewed for people prosperity. It is important to optimize and represent all people necessity. This also can answer social problem on gender and child.



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