

The State's Responsibility in Protecting Children in Online Schools during the Covid-19 Pandemic

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ABSTRACT

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The number of violence against children seen increases during Covid-19 pandemic, which requires the students to carry out learning activities remotely. This condition causes children to feel burdened, often the parents feel the impact, while they have routine tasks and work. This condition causes parents abuse their children, both physically and psychologically. The purpose of this study is to analyze the recent Indonesian Government policy regarding the fulfillment of children's rights especially on the online learning process during the pandemic. This study used normative legal research with statute approach. The results shows that the state has an obligation to protect children from violence which set out through penal and non-penal policies. However, penal policies that imposed to the parents and teachers are inappropriate rather than implementing the preventing action (non-penal policies). Lastly, psychological counselling provided by the government and psychological consultant needs to be given regularly to the teachers and parents as a better solution to tackle the issues.

1. INTRODUCTION

School is a place for children to interact in a social environment. However, the interaction of children in the school environment has been transformed into the digital world since the Covid-19 pandemic. According to the UNESCO Institute for Statistics, more than 188 countries closed their educational centers at all levels during the pandemic as a measure to stop the virus' spread.¹ Indonesia is one of the countries that has implemented a school closure policy since the Covid-19 pandemic was announced nationally on March 23, 2020. In implementing online learning, the Minister of Education and Culture of the Republic of Indonesia (MoEC) makes policies as outlined in the Decree of MoEC Number 719/P/2020 concerning Guidelines for Curriculum Implementation in Education Units in Special Conditions. This online learning policy is carried out to break

¹ Esther Roca et al., "Schools That 'open Doors' to Prevent Child Abuse in Confinement by COVID-19," *Sustainability (Switzerland)* 12, no. 11 (2020), <https://doi.org/10.3390/su12114685>.

the Covid-19 chain by preventing schools as clusters of spreading the virus. Learning is done with various applications such as zoom, webex, google class room, google meet, as well as through learning videos. The government also cooperates with national television stations to provide broadcast lessons for students.

The condition of online schools faces various problems, which committed by an individual or by more than one person suffering to another party, namely physical violence that results in death, and psychological violence result in prolonged trauma to the victim.² Without going to schools, many children are trapped in the domestic violence without being detected by their teachers. Moreover, the online school an increased risk for early marriage, exploitation of children, especially girls, and teenage pregnancy.³ Children without optimal supervision from parents and teachers, have many opportunities to fall into promiscuity. Parents who lost their jobs, forced the children to quit school which leads to the consequences of early marriage.

The survey of the Indonesian Child Protection Commission to 14,169 parents in spread across 34 provinces in Indonesia shows the violence occur to the children such as pinching 29%, twisting 19.5%, hitting 10.6%. The perpetrators of pinching the child tend to be female (mother, 42.4%) compared to male (father 32.3%). The psychological violence to their children during the Covid-19 pandemic carried out mostly scolded 72.1%, glaring at 33.1%, shouting at 32.3%, comparing with other children 31.9%. Based on the results of statistical tests using the cross-tabulation test, it shows that gender has a correlation with psychological violence against children during the Covid-19 Pandemic (0.000). Perpetrators of psychological violence by scolding children tend to be women (Mother, 73%) compared to men (Father 69.6%).⁴

The data taken from the Religious Court Agency compiled by the National Commission on Violence Against Women, the dispensation of child marriage has increased threefold, from 23,126 cases in 2019 to a sharp increase of 64,211 cases in 2020 caused by the pandemic situation such as the intensity of the use of gadgets and family economic problems as well as the change in the Marriage Law raising the marriage age for woman to 19 years old. Child marriage creates new problems for large families because many parents are forced to help in taking care of their grandchildren. In the case of early age marriage with a partner who is not financially ready, it will depend on the burden on the extended family.⁵

² Elisabeth Christiana, "Identifikasi Bentuk Kekerasan Dan Penangannya Di Lingkungan Sekolah Dasar," *Child Education Journal* 1, no. 2 (2019): 58–64.

³ Kementerian Pendidikan dan Kebudayaan, "Penyesuaian Kebijakan Pembelajaran Di Masa Pandemi COVID-19" (kemdikbud.go.id, 2020).

⁴ Komisi Perlindungan Anak Indonesia (KPAI), "Hasil Survei Pemenuhan Hak Dan Perlindungan Anak Pada Masa Pandemi Covid-19" (bankdata.kpai.go.id, 2020).

⁵ Elga Andina, "Meningkatnya Angka Perkawinan Anak Saat Pandemi Covid-19," *INFO Singkat* 13, no. 4 (2021): 13–18.

The occurrence of symbolic violence in learning is marked by the actions of educators who suppress students with orders, prohibitions, or other actions that aim to control the actions of students in certain directions without giving allowance to the students to choose.⁶ By this condition, children will ask their parents for help to do their school assignments. Parents who are burdened with homework and work from home systems tend to do physical and verbal violence against children. According to the Centers for Disease Control and Prevention, one of the risk factors influencing the case of violence in children by parents is parenting stress. Several studies have shown that there is an association between parenting stress and the potential for child abuse and extreme variations in maladaptive parenting behavior.⁷

In another hand work pressure, economic conditions parents express their emotions to their children, so that in this case the child is in the position of a victim. Journal of the Ministry of Education and Culture's Policy Research Center in 2020 explained that four out of nine parents saw changes in their children. About 17% of parents have difficulty in controlling their emotions. About 8% more forcing their children, and another 4% committing violence against their children. From the available data, 1 in 5 parents had negative parenting, 16% of parents or children stated that the violence has occurred. The fact that psychosocial problems arising in students is also reinforced by many research results that report the influence of learning is far from the psychological and emotional state of the students. There are attitudes of defiance or negativism, aggression, and selfishness.⁸

The children have the right to be protected from various kinds of violence the response to the importance of the child protection can be seen in the Convention on the Rights of the Child. The International Convention, was ratified by Indonesia through Presidential Decree No. 36 of 1990 on September 25, 1990. In the preamble of the Convention on the Rights of the Child, it is stated "Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity." State parties have a legal obligation to respect, protect and fulfill children's rights as part of human rights.⁹

The Convention of the Rights of the Child provides the highest international levels of protection and assistance for minors. The Convention is considered as a guiding tool in most strategies of child protection due to its near universal acceptance and high levels

⁶ St. Mislikhah, "Kekerasan Di Balik Pembelajaran Daring" (radarjember.jawapos.com, 2021).

⁷ Laeli Maghfiroh and Fiki Wijayanti, "Parenting Stress Dengan Kekerasan Verbal Pada Anak Usia Sekolah Di Masa Pandemi Covid-19," *Jurnal Kesehatan Kusuma Husada* 1, no. 1 (2021): 187–93.

⁸ Riset dan Teknologi Direktorat Sekolah Dasar Kemeterian Pendidikan, Kebudayaan, "Peserta Didik Perlu Pendampingan Psikososial Di Masa Pandemi Covid-19" (ditpsd.kemdikbud.go.id, 2021).

⁹ Prameswari and Zendy Wulan Ayu Widhi, "Ratifikasi Konvensi Tentang Hak-Hak Anak Dalam Sistem Peraturan Perundang-Undangan Di Indonesia," *Yuridika* 32, no. 1 (2017): 167–88.

of children protection. The Convention states four basic principles, namely non-discrimination, the best interests of the child, the child's right to life, survival and growth and respect for the opinion of the child, the government is realize and responsible in protecting the children through the policies, programs and activities to fulfill children's rights for optimal life, growth, development, and participation.¹⁰ The objective of this study is to analyze the recent Indonesian Government policy regarding the fulfillment children's right especially on the online learning process during the pandemic.

2. RESEARCH METHOD

This research is normative juridical research examining the principles of child protection and the state's responsibility to protect the children from violence during the Covid-19 pandemic. This study used statute approach with the legal materials consist of primary legal materials, namely the Convention on the Rights of the Child, The Law Number 39 of 1999 concerning Human Rights, The Law Number 23 of 2002 concerning Child Protection, The Law Number 23 of 2004 concerning Elimination of Domestic Violence, The Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection and The Presidential Decree Number 36 of 1990 on September 25, 1990). The secondary legal materials consist of books, scientific journals and electronic articles downloaded from the official website. The collection of legal materials is done by doing literature study by identifying and taking an inventory of the legal materials to be used.¹¹ The analysis was carried out qualitatively and analyzed by presenting legal arguments that are relevant to the problems studied.

3. RESULT AND DISCUSSION

3.1. The Basis for the Legitimacy of the State's Responsibility in Child Protection

The provision of the children's protection can be found under the 1945 constitution (UUD 1945) Article 28 B paragraph 2 mentioned the legal protection for children. It by means, children must be protected from various kinds of violence. The Human Rights Reference states that children are a vulnerable group other than refugees, internally displaced persons (IDPs), minorities, migrant workers, indigenous people, and women. Vulnerable groups are more likely to become victims of crime due to unequal

¹⁰ Erdianti, Ratri Novita, and Al-Fatih Sholahuddin, "Children Friendly School as the Legal Protection for Children in Indonesia," *Varia Justicia* 16, no. 2 (2020): 137–55.

¹¹ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif* (Jakarta: Raja Grafindo Persada, 2006).

power relations.¹² According to Singgih Gunarso classifies a person's age related to his mental development into five criteria, namely:¹³

- a. Child (under 12 years old)
- b. Early adolescence (age 12-15 years old)
- c. Adolescent (age between 15-18 years old)
- d. Teenagers (age between 18-21 years old)
- e. Adult (over 21 years old)

The Law of the Republic of Indonesia Number 20 of 2003 concerning on the National Education System divides the education into three levels, namely basic, secondary, and higher education. Basic education includes education at the Elementary School, *Madrasah Ibtidaiyah*, Junior High School, *Madrasah Tsanawiyah* and other equivalent forms. While, the secondary education can be in the form of Senior High School, *Madrasah Aliyah*, Vocational High School, and Vocational *Madrasah Aliyah*, or other equivalent forms. Lastly, higher education includes bachelor, master, specialist, and doctoral education programs organized by higher education institutions.

Normatively, Article 1 Number 1 of the Child Protection Act (2014) states that "A child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb." Thus, in this study, it will refer to the juridical limit regarding children aged before 18 (eighteen) years in the highest education level up to high school and its equivalent form.

Accountability in international law has two legal terms, namely liability and responsibility. Liability is a broad legal term designating almost any character of risk or responsibility. This term refers to all the characteristics of actual or potential rights and obligations such as crimes, losses, threats, costs or conditions creating a duty to carry out the law. Responsibility means things that can be accounted for an obligation. This term also refers to decisions, skills, and abilities as well as the obligation to be responsible for the laws implemented. Thus, the term liability refers to legal responsibility, accountability because of mistakes made by legal subjects, while the term responsibility refers to the political responsibility.¹⁴ The discussion of state responsibilities is very important considering that the state is a subject of international law bound by international conventions. The state also has sovereignty in the administration of the state, both in the preparation of the rule of law, as well as in the application of the rule of law.

According to Elizabeth A. Martin, the responsibility of the state is "The obligation of a state to make reparation arising from failure to comply with a legal obligation under

¹² Hana Hanifah, Meilanny Budiarti Santoso, and Dessy Hasanah Siti Asiah, "Anak Sebagai Kelompok Rentan Yang Terdampak Konflik Bersenjata Dan Situasi Kekerasan Lainnya," *Focus: Jurnal Pekerjaan Sosial* 2, no. 1 (2019): 97–108.

¹³ Kusno Adi, *Kebijakan Kriminal Dalam Penanggulangan Tindak Pidana Narkotika Oleh Anak* (Malang: UMM Press, 2009).

¹⁴ Ridwan H.R, *Hukum Administrasi Negara* (Jakarta: Raja Grafindo Persada, 2006).

international law."¹⁵ The principle of state responsibility lays down legal obligations for the state. Malcolm Shaw as quoted by Danwood Mzikenge explains that the principle of state responsibility stems from the nature of the international legal system, which relies on states as tools to formulate and implement its rules, and arises from the twin doctrines of state sovereignty and state equality.¹⁶ While, according to the statement above, the child abuse continues to be one of the primary threats to the emotional and social well-being of the child globally.¹⁷ Violence against children is an indicator designed in international legal instruments in assessing the implementation of child protection in a country.

The state has a responsibility in protecting children and providing education. The responsibility of the state will legitimize the state to formulate policies towards children, both at the level of penal and non-penal policies. The issue of child protection is a global problem; therefore, various policies are agreed upon by countries at the international level. Global policy is formed from the state responsibility and raises the responsibility of the state to implement the policy. The indicator of the theory of state responsibility in child protection is that the state is a tool used to formulate and implement regulations. Responsibility in the penal policy framework is carried out by:

- a. In the material criminal law point of view, the state has an obligation to harmonize the laws in its country in accordance with the rules of international law as long as it does not contradict with national values.
- b. In formal criminal law point of view, the state has an obligation to carry out global commitments through agreed programs and policy frameworks.

In another ways, the state responsibility also includes non-penal policies, namely the state obligation to implement regulations and develop policies to prevent violence against children as stated in various international agreements. The theory of state responsibility is used to reformulate the provisions on child protection in accordance with the international legal principles that are in accordance with national values and implement global commitments in implementing these regulations.

Theoretically, these obligations, among others, stem from international law and constitutional mandates. In this regard, the United Nations Office on Drugs and Crime states that international law is increasingly recognizing that children have the right to special protection.¹⁸ Several international legal instruments require states to take action

¹⁵ Elizabeth A. Martin, *A Dictionary of Law*, 5th ed. (Oxford: Oxford University Press, 2003).

¹⁶ Danwood Mzikenge, "Chirwa The Doctrine of State Responsibility as A Potential Means of Holding Private Actors Accountable for Human Rights," *Melbourne Journal of International Law* 5, no. 1 (2004): 5.

¹⁷ Banbetlin Hynniewta, Tessa Treasa Jose, and K. G. Anjali, "Knowledge and Attitude on Child Abuse among School Teachers, in Selected Urban English Medium Schools of Udipi District," *Manipal Journal of Nursing and Health Sciences (MJNHS)* 3, no. 1 (2017): 32–36.

¹⁸ United Nations Office on Drugs and Crime, *Study on the Effects of New Information Technologies on the Abuse and Exploitation of Children*, 4th ed. (New York: United Nations, 2015).

in protecting children from abuse and exploitation, and to participate in international cooperation in the investigation and prosecution of crimes of child abuse and exploitation. The state also compiles standardization of the fulfillment of children's rights and provides institutions in child protection. The law views child protection as an important matter, therefore, provisions regarding child protection are specifically regulated in a special law. Heavy sentences were also imposed for perpetrators who committed crimes against children. This can be traced in various existing laws and regulations.

International agreements raise to state responsibility for things that have been agreed upon and applied globally. The state has an obligation to harmonize the provisions of international agreements into the state law. The formulation of the rules of international law into national criminal law by states is carried out in several ways:¹⁹

- a. Through ratification followed by enforcement (ratification and promulgation) and transformation into national criminal legislation.
- b. Through adoption. Countries that do not or have not ratified an international convention recognize an international crime, if based on certain considerations do not intend to ratify it, it can take other ways to make the substance of the international agreement part of its national criminal law or code.
- c. Through the decision of the national dispute resolution body.
- d. Through customary international law.

Indonesia ratified the Convention on the Rights of the Child; therefore, Indonesia has the obligation to regulate child protection problems in its national law and take the suitable action to make sure the optimal child protection. The responsibility lies in overcoming all kinds of violations of children's rights. In the context of the state's responsibility to provide child protection, Maidin Gultom states that there are three basic implementations of child protection, namely:²⁰

- a. Philosophical basis. Pancasila is a guide in the life of society, nation and state. The logical consequence of this is that Pancasila is the basic philosophy of child protection.
- b. Ethical basis. To avoid abuse of authority and prevent violations of children's rights, professional ethics is the basis for implementing child protection.
- c. Juridical basis. The juridical basis refers to the provisions of the legislation, both in the form of the 1945 Constitution and its derivative rules.

There are mass closures of child care facilities and schools because of the Covid 19 pandemic. While these measures are need to be done to slow the transmission of the

¹⁹ I Wayan Parthiana, *Ekstradisi Dalam Hukum Internasional Dan Hukum Nasional Indonesia* (Bandung: CV Mandar Maju, 1990).

²⁰ Maidin Gultom, *Perlindungan Hukum Terhadap Anak Dalam Sistem Peradilan Pidana Anak Di Indonesia* (Bandung: Refika Aditama, 2014).

virus, little is known regarding the other health consequences of social distancing.²¹ Social isolation is known as a risk factor for child abuse. It has been analyzed and found that all forms of child abuse become more common during school holidays and natural disasters (disease outbreaks and hurricanes). Women and the children are more vulnerable to domestic violence and abuse when they and the other family members spend more time in close contact together and when the families have to cope with additional stress, financial problems, and unemployment.²² Children are the most inferior position in a system. In the school environment, teachers are in a superior position. In the household environment, parents are in a superior position. Adults experiencing stress will delegate their negative emotions to those under their control. This condition makes children vulnerable to be the victims of violence.

3.2. Penal and Non-penal Policies in Protecting Children from Violence

The implementation of online learning is correlated with violence against children as previously described. Protection of children from violence is carried out with a penal policy and a non-penal policy. The penal policy is carried out by establishing, implementing and enforcing the law, while the non-penal policy is carried out by preventing and changing public views through the mass media. The child protection's policy is based on the philosophy of Pancasila as the legal source of various laws and regulations regarding child protection. In Pancasila, there are precepts that are imbued with the spirit of protecting human dignity.

Pancasila is the base of every implementation of human life in various aspects. In the context of the formation of laws and regulations, Pancasila is the source of national law. It is also the source of the Child Protection Act (2014) as stated in Article 2. Thus, child protection is a comprehensive effort that must be carried out by the state, law, and all parties comprehensively. The precepts in Pancasila require the fair and civilized protection for children. The government has a juridical basis in protecting children from violence during online schooling. Article 21 of the Child Protection Act (2014) states The State, Government and Regional Governments are obliged and responsible for respecting the fulfillment and guaranteeing the fulfillment of the Rights of the Child without distinction of ethnicity, religion, race, class, gender, ethnicity, culture and language, legal status, birth order, physical and mental. In relation to state responsibilities, the Government is obliged and responsible for formulating and implementing policies in the field of implementing Child Protection. This government obligation is handed down to

²¹ Mark L. Kovler et al., "Increased Proportion of Physical Child Abuse Injuries at a Level I Pediatric Trauma Center during the Covid-19 Pandemic," *Child Abuse & Neglect* 116, no. 1 (2021), <https://doi.org/10.1016/j.chiabu.2020.104756>.

²² Fiorella Caron et al., "Was Child Abuse Underdetected during the COVID-19 Lockdown?," *Archives de Pédiatrie* 27, no. 7 (2020): 399, <https://doi.org/10.1016/j.arcped.2020.07.010>.

local governments to implement child protection policies through local efforts to build child-friendly both of districts and cities.

The meaning of protection of Indonesian children is protecting the potential of human resources and building Indonesian people as a whole, towards a just and prosperous society, both materially and spiritually based on the state foundation, Pancasila and the 1945 Constitution.²³ Connected to the concept of the welfare state, the policy of criminal law in overcoming violence against children is in accordance with the goals of the state as stated in the Preamble to the 1945 Constitution, specifically to protect the whole Indonesian nation and homeland of Indonesia and to promote public welfare, educate the nation's life, and participate in carrying out the world order based on freedom, lasting peace and social justice. Criminal law policy is directed at the movement of protecting society in order to create prosperity for mankind. As a country that adheres to the welfare state, the implementation of a child protection system is carried out by reflecting the rights of children as the right of citizenship on the one hand and the obligations of the state on the other. The state has an obligation to both create a legal framework that is able to optimally protect children, create networks, carry out institutional coordination to solve various problems of violence against children to the root.

In national law, the issue of child protection is regulated in the Child Protection Act 2002 and Child Protection Act 2014. In Article 1 Number 1 of the Child Protection Law 2014, it is stated "Child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop, and participate optimally in accordance with human honor and dignity, and receive protection from violence and discrimination." Article 2 of the Child Protection Act 2002 states that the implementation of child protection in Indonesia is carried out based on statutory regulations. Pancasila and the 1945 Constitution are pillars of child protection. Child protection is also based on the basic principles contained in the Convention on the Rights of the Child, namely non-discrimination; the best interests of the child; the right to life, survival and development; and respect the opinion of the child. Related to this definition, the child becomes central in determining the policies taken in order to maintain their dignity as human beings. The focus of child protection is not only children, but also families and communities as a social environment where children grow and develop both physically and mentally.

In the elucidation of Article 2 it is explained that the principle of child protection is in line with the main principles contained in the Convention on the Rights of the Child. The principle of the best interests of children is that their best interests must be the primary consideration in all actions involving them carried out by the government,

²³ Nashriana, *Perlindungan Hukum Pidana Bagi Anak Di Indonesia* (Jakarta: Grafindo Persada, 2012).

society, legislative bodies, and judicial bodies. The most basic human right for children is the principle of the right to life, survival, and development which is protected by the state, government, community, family, and parents. The respect for their rights to participate and express their opinions in decision making, especially when it comes to matters that affect their lives is the meaning of the principle of respect for the children's opinions.²⁴ The current pattern of interaction no longer places children as someone who must obey the orders of adults. Children are now more critical in analyzing a problem. This cannot be separated from the improvement of children's nutrition, the interactive pattern of children's learning and the ease with which children can access information. This has implications for increasing children's intellectuality in asking questions, giving opinions, and even making decisions. Therefore, children's opinions should be listened to and considered, especially in relation to their future.

The right to protection must be had by every child. Protection can be defined as all attempts intended to prevent, rehabilitate and empower children experiencing acts of child abuse, exploitation and neglect, to ensure the survival and growth of children in natural, physical, mental and social way.²⁵ Parenting and education for children are things that must be considered carefully because wrong treatment of children will have long-term impacts. The policy of protecting children from violence during online schooling consists of a penal and non-penal policy. Likewise, crime prevention policies can be carried out through two approaches, namely the penal approach (application of criminal law) and the non-penal approach (the approach outside the criminal law). The integration of these two approaches is hinted at in the proposed United Nations Congress on the Prevention of Crime and the Treatment of Offenders. This is motivated by the fact that crime is a social and humanitarian problem.²⁶ Violence against children is a crime regulated in the field of criminal law as one of the fields of public law. However, the application of criminal law should be subjected as an *ultimum remedium*. Other approaches should be prioritized, especially those based on prevention efforts.

Criminal law policies are intended and carried out to provide children protection. The children protection is required to prevent mistreatment. Theoretically, mistreatment occurs due to social learning focusing on the absorption of experience and reinforcement is proposed by William G. Doerner, and Steven P. Lab on social learning theory. The policies of child protection should deal with the aspect human rights in the framework of prevention, beside the aspect of punishment.²⁷ The government has the authority to protect children from violence in connection with the implementation of online schools.

²⁴ Setyorini et al., "Konsep Keadilan Restoratif Bagi Anak Yang Berkonflik Dengan Hukum Dalam Sistem Peradilan Pidana Anak," *DiH: Jurnal Ilmu Hukum* 16, no. 2 (2020): 149–59.

²⁵ Arif Gosita, *Masalah Perlindungan Anak* (Jakarta: Akademia Persindo, 2001).

²⁶ Beby Suryani Fithri, "Pendekatan Integral Penal Policy Dan Non Penal Policy Dalam Penanggulangan Kejahatan Anak," *Doktrina: Journal of Law* 1, no. 2 (2018): 69–89.

²⁷ William G. Doerner and Steven P. Lab, *Victimology* (Burlington: Elsevier, 2012).

The tendency of violence against children by teachers and parents during online schools has become a concern for the government. The campaign to build public awareness of this vulnerability has been widely discussed through the mass media and webinars.

Martins-Filho, et.al. in his research stated that school closure policies and reduced operating hours of services for the protection of children, were associated with an increased risk of physical abuse. This risk is especially true for those living in low-income households in dense settlements.²⁸ In families with low incomes, parents will certainly experience economic pressure and will be more focused on efforts to meet the basic needs of the family. Parents do not have much time to accompany their children to study. Even parents will feel burdened by the need for gadgets and internet quota fees to participate in online learning. As a result, children cannot attend online schools because of minimal facilities. Parents who do not see their children directly go to school, have the view that their children are not studying. Parents even invite their children to help with work. Children taking online learning are just a formality to join the applications provided in online learning, so they can work to help parents while turning off the video and sound. Dense settlements are not a conducive place for children to learn. Children find it difficult to concentrate in a noisy environment.

The child protection perspective is a way of looking at all issues by placing the child's position first and foremost.²⁹ In this regard, the adult's will may not necessarily appropriate for the child interest. In policy making, the disclosure between parents and child become a prioritize in advance. The penal policy in tackling violence against children during online schooling is carried out by implementing criminal provisions in Law Number 23 of 2002, Law Number 23 of 2004, and Law Number 35 of 2014.

Specifically, violence against children within the scope of domestic violence regulated under the Law Number 23 of 2004 on the Elimination of Domestic Violence. Article 44 paragraph (1) stated that everyone who commits acts of physical violence within the scope of the household is threatened with a maximum imprisonment of five years or a maximum fine of IDR. 15.000.000, -. Moreover, Article 45 paragraph (1) stated that the violence is committed against the psyche of the child, the parents are threatened with a maximum imprisonment of three years or a maximum fine of IDR. 9.000.000, -. The regulation of criminal sanctions in cases of domestic violence is intended to provide a safe place for children in their closest social environment. Parents have an affective function, namely giving affection to children, so it should be parents who are obliged to protect children from various forms of violence.

²⁸ Paulo R. Martins-Filho et al., "Decrease in Child Abuse Notifications during COVID-19 Outbreak: A Reason for Worry or Celebration?," *Journal of Paediatrics and Child Health* 56, no. 12 (2020): 1980–81, <https://doi.org/10.1111/jpc.15213>.

²⁹ Nasir Djamil, *Anak Bukan Untuk Dihukum: Catatan Pembahasan UU Sistem Peradilan Anak (UU-SSPA)* (Jakarta: Sinar Grafika, 2013).

Article 54 paragraph (1) of the Law of the Republic of Indonesia Number 35 of 2014 places a legal obligation for schools to provide child protection. In schools, children are required to receive protection from acts of physical and psychological violence, sexual crimes, and other crimes committed by educators, education staff, fellow students, and other parties. The penal policy in protecting children from violence in online learning can be found in the provisions of Article 76C of the Law of the Republic of Indonesia Number 35 of 2014 which regulates criminal threats for anyone who places, allows, commit, order to do, or participate in committing violence against children. Such acts are punishable by a maximum imprisonment of three years and six months or a maximum fine of IDR. 72.000.000, -.

The application of criminal penalties for parents and teachers of violence against children is actually less effective in tackling violence against children during the online school period. The application of these sanctions can raise a new problem such as the need of children was neglected. Likewise, the sanction is imposed on teachers. Protection of children from violence is actually more oriented towards prevention policies. Violence against children is a violation of personal rights. Whereas personal protection is a human right that has to be recognized, protected and fulfilled. Article 12 of the Universal Declaration of Human Rights states “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.”

Personal protection of children as a constitutional right is regulated in Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia mandate "Everyone has the right to protection of his personal self, family, honor, dignity, and property under his control, and has the right to a sense of security and protection from the threat of fear to do or not do something which is a human right." Law Number 39 of 1999 concerning Human Rights (hereinafter referred to as the Human Rights Law) also regulates the protection of personal rights. Article 12 of the Human Rights Law states Everyone has the right to have the right to develop themselves, be protected, receive education in order to improve their quality of life in accordance with human rights. Article 13 of the Human Rights Law states in order to improve the welfare of himself, humanity and in the life of the nation and state, everyone has the right to develop and utilize the science, technology, art and culture of his choice in accordance with human dignity. Article 14 of the Human Rights Law states in an effort to develop their personal and social environment, everyone has the right to communicate and seek information by using various available accesses. This information can be sought, obtained, owned, stored, processed, and even delivered in the context of self-development.

Furthermore, Article 52 paragraph (1) of the Human Rights Law, it is stated "Every child has the right to protection by parents, family, society, and the state. Article

58 paragraph (1) of the Human Rights Law then states "Every child has the right to obtain legal protection from all forms of physical or mental violence, neglect, ill-treatment, and sexual harassment while in the care of their parents or guardians, or any other party responsible for the upbringing of the child." Child protection is a human right. The government is obliged to ensure that children can obtain education, information, and services regarding adolescent health so that they are able to live healthy and responsibly both physically and mentally in accordance with considerations of morals, values, religion, and based on the provisions of laws and regulations.

The non-penal policy towards children discusses violence against children within the framework of the non-penal policy as outlined in the laws and regulations in Indonesia. The government has a non-penal policy in overcoming violence against children in online schools. The policy is contained in the Ministerial Regulation on the Prevention and Overcoming of Violence in the Education Unit Environment 2015 stating "Actions of violence are behaviors that are carried out physically, psychologically, sexually, online, or through textbooks that reflect aggressive actions and attacks that occurs in the educational unit environment and results in fear, trauma, damage to property, injury, disability, and/or death." This Ministerial Regulation is a technical policy serves as a guidance in the preparation of various policies in the education system.

The 2015 Ministerial Regulation on the Prevention and Overcoming of Violence in the Education Unit Environment is a prevention instrument used by the government to prevent violence against children in the educational environment. Article 6 of the Ministerial Regulation concerning the Prevention and Overcoming of Violence in the Education Unit Environment determines the types of acts of violence in the education unit environment, among others:

- a. Harassment is an act of physical, psychological or online violence;
- b. Bullying is an act of being annoying, persistent, or bothersome;
- c. Persecution is an arbitrary act such as torture and oppression;
- d. Fighting is an action accompanied by a fight of words or a fight of energy;
- e. Hazing is an act of recognizing and appreciating a new environmental situation by precipitating a previously held mindset;
- f. Extortion is an act, subject, method, act of extorting;
- g. Obscenity is an act, process, method, act that is vile and dirty, indecent, violates decency;
- h. Rape is an act, process, deed, a way of subjugating with violence, forcing with violence, and/or overpowering;
- i. Acts of violence on the basis of discrimination against ethnicity, religion, race, and intergroup are all forms of, exclusion, distinction, restriction, or election based on discrimination that result in the revocation or reduction of recognition, acquisition, or enforcement of human rights and freedoms basis in equality;

j. Other acts of violence as regulated in the laws and regulations.

In relation to violent behavior towards children during this online school, the Ministerial Regulation on the Prevention and Overcoming of Violence in the Education Unit Environment has stipulated that the targets in efforts to prevent and overcome acts of violence within the education unit are students; educator; education personnel; parents or guardians; school Committee; public; local government; and the Government according to Article 4 of the Ministerial Regulation concerning the Prevention and Overcoming of Violence in the Education Unit Environment. The scope of the Ministerial Regulation concerning the Prevention and Overcoming of Violence in the Education Unit includes:

- a. Prevention; Prevention is an action, method, or process carried out so that a person or group of people does not commit acts of violence in the educational unit environment.
- b. Countermeasures; Countermeasures are actions, methods, or processes to deal with acts of violence within the educational unit in a systemic and comprehensive manner.
- c. Penalty.

As an implementation of the Ministerial Regulation on the Prevention and Combating of Violence in Education Units, the Ministry of Education and Culture has launched anti-violence safe schools.³⁰ Policy derivation to the level of education services is very necessary and should be accompanied by periodic policy evaluations. The policy on the prohibition of violence against children can also be found in the provisions in the Regulation of the Minister of Women's Empowerment and Child Protection of the Republic of Indonesia Number 12 of 2019 concerning Guidelines for Community Media Participation in the Prevention of Violence Against Children (hereinafter referred to as Ministerial Regulation 2019). Article 4 of the Ministerial Regulation 2019 stipulates as follows:

“Community Media in an attempt to prevent violence against children takes the following steps:

- a. Mapping areas that are vulnerable or have a lot of violence against children;
- b. Preparing human resources who can understand and have the ability to deliver useful information and educational materials on the prevention of violence against children; and
- c. Preparing information materials and educational materials for the prevention of violence against children that are packaged in an attractive, quality, and adapted to community condition.”

The non-penal policy that can be done to prevent violence against children during the Covid-19 pandemic is to apply face-to-face learning in stages. Monitoring child

³⁰ Muhammad Kurniant, “Menteri Anies Luncurkan Sekolah Aman Anti-Kekerasan” (Tempo.com, 2021).

welfare is a significant educational aspect and can be modified for a distance-learning model. They must also be prepared to child-friendly schools by having a reporting mechanism for problems experienced by children.³¹ Learning policies in schools will reduce stressors for teachers and parents.

The teachers or parents need to realized that the violence against children during the online schooling is prone to occur. Therefore, psychological counselling provided by the government and psychological consultant needs to be given regularly to the teachers and parents. Parenting during the Covid-19 pandemic is certainly very necessary to create the best parenting method for children. A stressful life is indeed correlated with an increase in the number of violence both in quality and quantity, but these problems must be resolved in order to ensure the protection of children from violence. The active role of the government is certainly needed to make a series of policies that facilitate access to online learning.

4. CONCLUSION

The online learning policy has implications for increasing violence against children by the teacher and parents. Once, the given task needs the assistance from the parents. It leads the complexity and parenting stress. This condition causes parents abuse their children, both physically and psychologically. In other hand, the state has an obligation to protect children from violence. Within the framework of legal policy, the state has made a number of laws and regulations to impose criminal penalties on perpetrators of violence against children. However, penal policies that imposed to the parents and teachers are inappropriate rather than implementing the preventing action (non-penal policies). Lastly, psychological counselling provided by the government and psychological consultant needs to be given regularly to the teachers and parents as a better solution to tackle the issues.

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³¹ Elizabeth York Thomas et al., "Spotlight on Child Abuse and Neglect Response in the Time of COVID-19," *The Lancet Public Health* 5, no. 7 (2020): e371, [https://doi.org/10.1016/S2468-2667\(20\)30143-2](https://doi.org/10.1016/S2468-2667(20)30143-2).

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