

**REVIEW OF LEGAL PROTECTION OF ACTS OF VIOLENCE AGAINST
CHILDREN IN BOARDING SCHOOLS ACCORDING TO POSITIVE LAW AND
ISLAMIC LAW**

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ABSTRACT

Children are a great trust that must be cared for and guarded from various forms of discrimination. The boarding school is the party that is responsible for providing this care shortly after the child's parents hand over their care, so that all forms of discrimination such as violence are very contrary to this noble task. Both positive law and Islamic law both view violence against children in boarding schools as a reprehensible act that violates the norm of nobility. This research aims to: 1) Know how the efforts of boarding school in preventing and handling cases of violence in pesantren; and 2) Know how the comparison of legal protection against cases of violence in boarding school according to positive law and Islamic law. Through normative juridical research with a statutory and comparative approach whose data is obtained through literature studies of primary, secondary, and tertiary legal materials, the author finds that legal protection of child victims of violence in Islamic boarding schools is urgent. Its implementation can be realized through penal and non-penal efforts. Islam also views such legal protection as mandatory because it is part of Islamic law. The conclusion that can be drawn is that the protection of child victims of violence in Islamic boarding schools is something that is upheld by positive law and Islamic law which requires active cooperation from various parties so that prosperous justice can be achieved by taking into account the best interests of the child.

Keywords: Boarding School; Legal Protection; Positive Law; Islamic Law

INTRODUCTION

The child is a mandate and a gift from God Almighty, who attaches to him or her the dignity and rights of a human being. Children's rights are human rights that have been included in the Constitution of the Republic of Indonesia 1945 and the United Nations Convention on the Rights of the Child. Children are the future of the nation and the next generation of national development ideals, so that every child has the right to survival, growth, and development,

creativity, participation, and the right to protection from violence and discrimination as well as civil rights and freedoms.(1)

Child protection in education is fundamental.(2) Education is all the efforts of adults in the association of children to achieve physical and spiritual development towards maturity to be useful for themselves and society.(3) Article 54 of Law Number 35 of 2014 on the Amendment to Law Number 23 of 2002 on Child Protection states that:

“(1) Children in and around schools must be protected from acts of violence committed by teachers, school managers or friends within the school concerned, or other educational institutions, (2) Protection as referred to in paragraph (1) is carried out by educators, education personnel, government officials, and or the community.”

Today, violence against children is not only limited to the scope of friendship or association, but has entered the realm of education, namely schools, which should be a place that provides comfort and safety for children.(4) The violence received by children also varies, whether it is physical violence such as beatings or psychological violence such as bullying.(5) In addition to threats from peers or schoolmates, violence experienced by children is often perpetrated by teachers.(6)

As we know, in Indonesia there are several levels of education in schools, each of which is inseparable from the potential for violence against children. Boarding School is one of the places that has a high potential for violence against children. This can happen considering that boarding school is thick with nuances of discipline so that it is very vulnerable to involving violence, be it small to large violence.(7)

Boarding school is an Islamic educational institution and special religious teaching, because the entire time of the students is spent in the boarding school. Starting from waking up to sleeping again.(8) For Indonesia in particular, boarding school cannot be separated from the face of Islamic education. In fact, boarding school produced to many scholars and teachers of the nation who became pillars for national awakening.(9) Currently in Indonesia, there are many boarding schools that offer a variety of interesting curricula. Islamic students (*Santri*) are human beings who have matured to live life with all the advantages and uniqueness of boarding schools, like other educational institutions, but that does not mean that boarding schools are perfect educational institutions and have no shortcomings.(10) Formal and non-formal education, which often presents rules that contain sanctions, in fact has a great potential for

violence against children.(11)

The application of sanctions and punishment techniques in the form of violence is commonplace in boarding schools, whether carried out by administrators or even teaching staff. This arises because of power on the basis of seniority disguised in the name of disciplining students.(12) Acts of violence can occur because there are students who feel they are greater, more powerful and have more authority. This difference is one of the factors triggering acts of violence in the educational environment. The impact of differences and lack of supervision is in the form of acts of violence such as hitting, mocking, taking things that are not their rights and this is done directly and continuously.

Based on the facts that have occurred in boarding schools in various regions, of course this has gone out of the rules of child protection that have been stated in the law so that it creates a view where violence against children in boarding schools has become commonplace and commonplace. Whereas a child is never entitled to violence in any type and form. A number of cases of violence that occurred in boarding schools have in fact recorded a dark history that is difficult to stop. Some examples of cases of violence in boarding schools reported in the mass media include the death of RA (18), a student from the Nurul Ikhlas Islamic Boarding School, Tanah Datar, West Sumatra, which was caused by being beaten by fellow students.(13) The case of sexual violence committed by Bechi, who is the son of the Kyai of the Shiddiqiyah Islamic Boarding School.(14) The death of 14-year-old Bintang Balqis Maulana was suspected to be the result of mistreatment at the Al Hanifiyyah Tartilul Quran Islamic Boarding School (PPTQ), Kediri Regency, East Java.(15)

Violence against children both inside and in the boarding school environment is very contrary to Islamic teachings. Whereas Rasulullah SAW once said in one of his hadiths which gave good news in the form of the characteristics of a good believer.

لَا يُؤْمِنُ أَحَدُكُمْ حَتَّىٰ يُحِبَّ لِأَخِيهِ مَا يُحِبُّ لِنَفْسِهِ

“One of you does not believe until he loves his brother as he loves himself.” (HR. Bukhari and Muslim)

Islam never positions a person because of his social strata, skin color, ethnicity, seniority. Islam explicitly states that humans were created from different ethnic groups to get to know each other and do good to each other. This principle is clearly mentioned in the words of Allah SWT.

يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ لِتَعَارَفُوا

“O you who believe! Indeed We have made you from among men and women and We have made you into nations and tribes so that you may know one another.” (Q.S. al-Hujurât/49:13).(16)

In light of the aforementioned background, this research project is centered on the legal protection of children who are victims of violence within the context of Islamic boarding schools. This research addresses two key issues: firstly, how modern and Salafist Islamic boarding schools can be encouraged to take action to prevent and respond to violence; and secondly, how victims of violence can be protected through legal means, with reference to both positive and Islamic law. It is hoped that this research will make a valuable contribution to the field of knowledge, providing a basis for further research and development in this area.

RESEARCH METHOD

This research is normative juridical research compiled using the statutory and comparative approach method between positive law and Islamic law. This research is a literature study whose data is obtained through primary legal materials such as laws and regulations, then secondary legal materials obtained through books, journals, articles, and other literature relevant to the problem under study, then supplemented with limited legal materials. All data is then processed using descriptive analysis methods in order to produce writings that can be accounted for.

RESULTS AND DISCUSSION

How The Prevention and Control Efforts of Modern And Salaf Islamic Boarding Schools In Violent Crimes In The Boarding School Environment

Islamic boarding schools are not only a place to gain knowledge, but also a place where Islamic values and Islamic culture are deeply embedded in every aspect of life. The students become part of a large family that supports and strengthens each other in their journey towards a deeper religious direction.(17) Islamic boarding schools offer religious instruction and curriculum for all ages, from children to adults.(18) The age and background differentiation between students in the boarding schools environment is often one of the factors that has the potential to create challenges, especially in terms of causing violence problems.(19)

Islamic boarding schools in Indonesia offer a unique teaching system. Generally, boarding schools in Indonesia are divided into 2 (two), namely modern boarding schools and salaf boarding schools. Modern boarding schools are boarding schools that run the curriculum by integrating the development of modern technology and contemporary traditions, while salaf boarding schools are boarding schools that still maintain the values of the predecessor scholars by still adopting the traditional curriculum. Violence in boarding schools, both modern and salaf boarding school, can appear in various forms that harm both verbally and non-verbally. In addition, there is also psychological violence that causes psychological pressure on victims, such as threats or emotional manipulation.(20) There is also sexual violence, which includes any form of sexual act without consent or with threats, coercion, whether physical or verbal.(21)

The prevention and control of violence in boarding school, both in modern and salaf boarding schools, has similarities with the prevention and control of other criminal acts, namely through penal and non-penal efforts. Penal efforts emphasize the concept of criminal law enforcement through the courts, while non-penal efforts focus more on out-of-court settlements. Non-penal efforts are a very important foundation in efforts to prevent and overcome criminal acts, especially in dealing with cases of violence in boarding schools. Non-penal measures lead to a more preventive and rehabilitative approach, aiming to prevent violence before it happens, as well as strengthening support and protection systems for victims. Non-penal efforts in cases of violence in boarding school can be realized through various proactive measures aimed at preventing violence and creating a safe and supportive environment for students. These steps can be in the form of:(22)

1. Education and Training;
2. Guidance and Counseling
3. Character and Ethics Development;
4. Positive Leadership Strengthening;
5. Community Building;
6. Cooperation with External Parties;

However, when non-penal efforts are unable to solve existing violence problems, then penal efforts through legal channels can be the next step. This involves enforcing the law

against perpetrators of violence in accordance with applicable legal provisions.(23) These punitive measures are crucial for ensuring justice for victims, deterring perpetrators, and reinforcing the enforcement of social norms. When implementing legal sanctions in cases of violence within the context of boarding school, it is essential to consider various factors, including the identity of the victims and perpetrators, as well as the nature of the violence in question.

If the perpetrators and victims of violence are minors, then law enforcement must be based on Law No. 35/2014 on Child Protection and Law No. 11/2012 on Juvenile Justice. According to this law, a minor is a child who has reached the age of 12 years and has not yet reached the age of 18 years. In principle, children who commit criminal offenses can be sentenced to punishment in the form of punishment or action for children over 14 years old and under 18 years old; only action if the child is still under 14 years old.

A person who commits child abuse according to the Child Protection Law No. 35 of 2014 Article 80 (1) jo. Article 76 c then I is punishable by a maximum imprisonment of 3 years and 6 months and/or a fine of up to IDR 72 million. If it results in serious injury, the sentence can reach 5 years imprisonment and / or a fine of up to Rp100 million, while the resolution of criminal cases involving children as perpetrators before finally resolved using punishment, the approach with restorative justice through diversion must be prioritized. The application of restorative principles in criminal cases involving child perpetrators is an approach that emphasizes recovery and reconciliation between perpetrators, victims, and the community, rather than only emphasizing punishment.(24)

The application of restorative justice in handling criminal cases, especially violence by child perpetrators, is expected to create a more inclusive, fair process, and repair damaged relationships, while still considering the interests and needs of children as a top priority.(25) The imposition of criminal penalties is placed last by prioritizing a comprehensive settlement involving all relevant parties.(26) When cases of violence involve a child as a victim and an adult as a perpetrator, law enforcement is based on Law No. 35/2014 on Child Protection. This law provides a clear legal foundation to protect children's rights and uphold justice in cases of violence involving children. It also sets out the procedures to be followed in handling cases of violence against children, including investigation, providing assistance and protection to victims, and enforcing the law against perpetrators. Law No. 35/2014 places emphasis on the

rehabilitation and reintegration of perpetrators into society.

Penal and Non-Penal Legal Protection In Cases Of Criminal Acts Of Violence Against Children In A Boarding School Environment According To Positive Law And Islamic Law

Violence in Islamic boarding schools is not an action that can be agreed upon, especially if the victims are minors who should get their rights to adequate protection. Legal protection for children who are victims of violence needs to be given with great care. This matter has been regulated in Law Number 35 of 2014 concerning Child Protection.

Similar to prevention and control efforts, legal protection can be realized through penal and non-penal channels. Preventive legal protection efforts are more important if the crime has not yet occurred, but if violence has already claimed victims, then repressive legal protection should be prioritized. This protection has been regulated in Article 59 of the Child Protection Law where Article 59 paragraph (1) and paragraph (2) letters i and j of Law 35/2014 stipulate that the government, local governments and other state institutions are obliged and responsible for providing special protection to children, one of which is given to child victims of physical and/or psychological violence to sexual crimes.

In general, children will receive special legal protection in the form of:

- a. prompt treatment, including physical, psychological, and social treatment and/or rehabilitation, as well as prevention of disease and other health problems;
- b. psychosocial assistance during treatment until recovery;
- c. provision of social assistance for children who come from poor families; and
- d. provision of protection and assistance in every judicial process.

For child victims of physical and psychological abuse, they receive special protection in the form of:

- a. dissemination and socialization of the provisions of laws and regulations that protect child victims of violence; and
- b. monitoring, reporting, and sanctioning.

As for child victims of sexual crimes, they get special protection in the form of:

- a. education on reproductive health, religious values, and moral values;

- b. social rehabilitation;
- c. psychosocial assistance during treatment until recovery; and
- d. provision of protection and assistance at every level of examination from investigation, prosecution, to examination in court.

In addition to the special protection above, children who are victims of sexual violence are blessed with an adequate recovery process both before, during, and after the judicial process which includes legal assistance and psychological assistance. Children are also entitled to medical and social rehabilitation and are entitled to restitution for the losses they have suffered as a result of the violence that occurred. It is important to understand that children who are victims of violence in boarding school have the same rights to comprehensive legal protection as other individuals.

The law should provide physical and psychological protection to victims and ensure that they get the medical care and psychosocial support they need. In addition, the legal process must also ensure that perpetrators of violence are prosecuted in accordance with the law and given appropriate sanctions as a form of justice for victims. Legal protection also involves preventive measures to prevent similar violence from happening in the future. This could be through stricter enforcement of regulations, education on children's rights and the importance of a safe environment for their growth, as well as the development of strong support systems for victims of violence. All of these efforts should be done with the best interests of children in mind and by ensuring that they feel heard, protected and respected in the legal process.(27)

According to Islam, as a religion that views life from a comprehensive perspective, it pays great attention to all aspects of human life, even from the early stages of its existence as a fetus in the womb. Islam asserts that the fetus has rights that must be guaranteed by its parents. This shows that Islam not only pays attention to human life after birth, but also from the pre-birth period. These fetal rights are considered obligations that must be fulfilled by the parents. This concept of rights and obligations is an integral part of Islamic teachings. The rights of children are recognized in Islam as obligations for their parents.

Legal protection is part of protection for children. In classical Islamic legal literature, there is no term that specifically refers to child protection. Some literature uses the term "*hadhānah*" which includes the meaning of child protection. Al-Jurjani and Muhammad al-

Syarbini al-Khathib interpret *hadhānah* as *tarbiyat al-walad*, which involves nurturing and care. The term *tarbiyah* includes guarding, nurturing and protecting the child. Some scholars compare *hadhānah* with *kafālah*, although al-Mawardi distinguishes between the two based on the age and developmental phases of the child. These include the phases of *radhā'* (breastfeeding), *hadhānah* (nurturing and maintenance), *kafālah* (care and protection), and *kifāyah* (provision).

When considered from the perspective of child protection rights that include the fulfillment of children's needs, the concept of "*hadhānah*" (in the sense of child care and maintenance) can be considered as a form of child protection. This child protection is based on the stages of child development, as described by al-Mawardi and al-Zuhaili. While most scholars use the term *hadhānah* in a broad sense that includes meeting the physical and non-physical needs of children who are not yet able to be independent, either due to age or physical or mental conditions. Then some contemporary Islamic legal scholars, such as al-Hafnawi, proposed the term "*al-wilāyah*" with a meaning comparable to the previously described child protection. Al-Wilāyah is divided into two, namely guardianship over self and guardianship over property.(29)

Based on the above explanation, the more appropriate term to refer to the concept of child protection in Islamic law is *al-wilāyah*, because child protection covers all aspects related to the welfare of children, both physically, mentally, and spiritually, as well as both personal and property. It can be concluded that the right to child protection in Islamic law is to ensure the fulfillment of children's rights and protect them from everything that can harm themselves, their souls and their property, which includes physical, mental, spiritual and social aspects of children, in other words, legal protection is a special form of protection that must be fulfilled to children.

Islam has established definitively and firmly in the Qur'an regarding the protection of children in the form of fulfilling children's rights. Rights related to legal protection include:(30)

a. Right to Life

Islam views human life as a gift that is so precious and has a high value before religion. This is evidenced by Allah's words in al-An'am verse 151 which prohibits humans from killing human souls, which includes killing children.

وَأَيُّهَا نَزَرُكُمْ نَحْنُ إِمْلَاقٍ مِّنْ أَوْلَادِكُمْ تَقْتُلُوا وَلَا

“... And do not kill your children for fear of poverty. We will provide for you and for them...”

b. Right to Education and Teaching

A child is entitled to proper education and teaching for his or her growth and development. In one history it is said:

“Honor your children, and improve their education”

Boarding school is an extension of parents. When parents have delivered their children to the boarding school, this indicates that they have fully handed over the mandate of education and teaching to the boarding school so that the boarding school is obliged to fulfill this child's right as well as possible. Education and teaching must be carried out properly as desired by the Sharia. If the education involves violence, then we should be aware that there has been an act of injustice against the child.

c. Right to Fair Treatment

A child is entitled to fair treatment from his or her parents. But this does not mean limiting this fair treatment to the child alone but also to children in general considering that each child has the same rights.

In a narration it is said:

“Be just among your children, be just among your children.”

This fairness is not limited to material things but also includes biological things through attention and affection. Legal protection can be categorized as part of this right because the law has the aim of creating justice, so that if a child is a victim of violence, then he must get legal protection through the comprehensive fulfillment of rights.

Based on the explanation above, it can be emphasized that Islam places a strong emphasis on the legal protection of children who are victims of violence in boarding school. Legal protection in cases of violence in boarding school teaches the importance of respecting and protecting individual rights, including the rights of children to live in a safe environment and be protected from all forms of violence. Child welfare and protection are considered a shared responsibility of society, including religious institutions such as boarding school. Islam views legal protection of child victims of violence in boarding school as not only a moral obligation, but also an integral part of religious principles. Efforts to ensure comprehensive

legal protection for child victims of violence in boarding school are part of the implementation of Islamic values that encourage the creation of a just, safe, and empathetic society.

CONCLUSION

Islamic boarding schools are not just a place to obtain religious education, but also an environment where Islamic values and Islamic culture permeate every aspect of life. Islamic boarding schools are communities that embody the values of simplicity, togetherness, and obedience to Islamic teachings. However, challenges related to violence in boarding schools remain, especially related to the differences in age and background between students that can create social and power gaps. Efforts to prevent and overcome violence in Islamic boarding schools can be done through penal and non-penal approaches. Non-penal efforts involve education, guidance, character building, strengthening positive leadership, establishing a safe community, and cooperation with external parties.

Legal protection for children who are victims of violence in boarding school is the main focus in two perspectives, namely positive law and Islamic law. The child protection law is an important foundation to guarantee their rights. Through this law, children who are victims of violence in boarding school have comprehensive protection, ranging from preventive to repressive handling. In addition, special protection aspects such as rapid handling, psychosocial assistance, and protection in the judicial process are prioritized in providing fair protection for children victims of violence. On the other hand, Islamic law provides a strong moral and religious basis for the protection of children, emphasizing the values of compassion, justice, and respect for life. Children's rights, such as the right to life, the right to education, and the right to be treated fairly, are guaranteed in Islam as an integral part of religious principles. The combination of positive law and Islamic law provides comprehensive and fair legal protection for child victims of violence in boarding school. Both complement each other in an effort to ensure that children get proper protection and feel heard, protected, and respected in the legal process.

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