



Deconstruction Of Legal Protection Efforts For Children Of Incest In Indonesia

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Abstract

The purpose of this study is to identify legal protection efforts guaranteed by positive law in Indonesia for children resulting from incest and explore the obstacles in their implementation. The method used is library research with a normative approach, analyzing existing regulations as well as several incest cases in Indonesia. The findings show that incest victims are often unaware that they are experiencing violence, which makes them keep this secret out of fear and shame, as well as a lack of understanding that they are victims. Pressure and intimidation by perpetrators make victims feel helpless and accept violence as part of everyday life, and therefore do not report it. This leads to children of incest often not receiving the legal protection they deserve. To date, there is no specific regulation for children of incest. Important steps to be taken include addressing social stigma, increasing awareness of reporting, community support, strengthening law enforcement, and providing adequate resources. Collaboration between stakeholders, comprehensive sexual education strategies, and increased public awareness are essential to create a safe environment and support the rights of children of incest in Indonesia without discrimination.

Keywords

Deconstruction; Legal Protection; the Incest Child

Introduction

Inbreeding is one of the most complex and sensitive social and legal issues in Indonesia.¹ Komnas Perempuan's 2023 Annual Report (CATAHU) recorded 14,719 cases of sexual harassment reported in Indonesia. Of these, around 75% or around 11,105 cases occurred in the private or personal domain. This domain includes cases where victims experience sexual abuse from family members or people who have close relationships, such as fathers, brothers, sisters, uncles, and even grandfathers. From a sociological perspective, incest is seen as a violation of fundamental social norms, disrupting the family structure and hierarchy in society². This

¹ Bagong Suyanto et al., "Incestuous Abuse of Indonesian Girls: An Exploratory Study of Media Coverage," *Children and Youth Services Review* 96 (January 1, 2019): 364–71, <https://doi.org/10.1016/j.childyouth.2018.11.034>.

² Siti Nur Wafiq Azizih and Hideo Douzat Wibowo, "ANALISIS VIKTIMOLOGI DALAM KEJAHATAN INSES," *Eksekusi: Jurnal Ilmu Hukum Dan Administrasi Negara* 1, no. 3 (July 14, 2023): 106–27, <https://doi.org/10.55606/eksekusi.v1i3.456>.

issue not only brings profound psychological and social impacts to victims, but also challenges the legal, social and religious systems in providing adequate protection. In Indonesia, despite the existence of regulations and policies governing child protection, incest cases are often hidden due to social stigma and family pressure, which hinders law enforcement and effective implementation of protection ³. Children resulting from inbreeding are in a very vulnerable position, both psychologically and socially.⁴ They often face discrimination, rejection and violence, which further worsens their condition. Every child has basic rights that are guaranteed by law. These rights include the right to life, the right to identity, the right to protection, education, and optimal development. Indonesia's Child Protection Law and various international conventions on children's rights, such as the Convention on the Rights of the Child, affirm that every child without exception is entitled to protection and fulfillment of these rights ⁵. One of the rights of children that is often denied is that of children born out of incest. These children often bear a heavy psychological and social burden due to the background of their birth. They have to face stigma and unfair discrimination from society and even from their biological father, who often treats them as if they are guilty of something beyond their control. More tragically, in many cases, their fundamental right to life is not recognized. For example, in some of the cases that the author will describe further, the biological father himself killed them and was assisted by the closest people in the family. In fact, according to the principles of human rights and state law, every child, regardless of origin, has the same right to be recognized and respected.

Children of incest in the context of this research refer to children born to someone who was abused by her biological father until she became pregnant and children born from intimate relationships between siblings. These children are in a highly vulnerable situation and require special attention from the legal and social systems. They face a range of pressures that are far more complex than children born out of wedlock from non-incestuous relationships. The stresses experienced by children of incest

³ Gina Wardayani and Widyastuti, "PERAN IBU DALAM MENGATASI KEKERASAN SEKSUAL YANG DIALAMI ANAK PEREMPUAN DI LINGKUNGAN KELUARGA," *Jurnal Ilmiah Psikologi Insani* 9, no. 1 (February 1, 2024), <https://jurnalhost.com/index.php/jipsi/article/view/625>.

⁴ Areta Edgina Apta Maharani, Agus Yudha Hernoko, and Erni Agustin, "Prinsip Kepentingan Terbaik Bagi Anak Akibat Pembatalan Perkawinan Orang Tua Sedarah.," *Media Iuris* 6, no. 1 (2023), <https://e-journal.unair.ac.id/MI/article/download/40106/24104>.

⁵ Raissa Lestari and Yuli Fachri, "Implementasi Konvensi Internasional Tentang Hak Anak (Convention On The Rights Of The Child) di Indonesia (Studi Kasus : Pelanggaran terhadap Hak Anak di Provinsi Kepulauan Riau 2010-2015)" (Journal:eArticle, Riau University, 2017), <https://www.neliti.com/publications/200146/>.

include social, psychological and medical dimensions.⁶ On the social side, they are often the object of heavier social stigma because their birth origins are considered taboo. Psychologically, they can be deeply traumatized by violent relationships within their own family. From a medical perspective, incestuous children are also at a higher risk of various health problems due to the close kinship between the two parents⁷. Incestuous relationships increase the likelihood of genetic disorders and congenital anomalies due to consanguinity, which is a higher percentage of recessive genes that have the potential to cause serious diseases⁸. These medical risks include birth defects, genetic disorders, developmental disorders and other health problems that can significantly affect the child's quality of life. In the case of children born out of wedlock, there is still the possibility that the biological father and mother can marry and jointly resume responsibility for the child.

However, for children born out of inbreeding, there is no possibility to optimally obtain responsibility from their biological father, because marriage between their biological father and mother is absolutely prohibited by religion and the state⁹. This situation further exacerbates the vulnerability of children of incest, making them more in need of protection and support from comprehensive and effective legal and social systems¹⁰.

This study aims to deconstruct the form of legal protection provided by positive law in Indonesia for children born of incest, including an assessment of relevant laws, regulations and policies, and the obstacles faced in implementing legal protection, including various psychosocial, cultural, economic and institutional factors that may hinder efforts to protect children born of incest. Through broader exploration, this research is expected to contribute significantly to our understanding of the rights of children born of incest and pave the way for further research in the future.

⁶ Pamela M. Cole and Frank W. Putnam, "Effect of Incest on Self and Social Functioning: A Developmental Psychopathology Perspective," *Journal of Consulting and Clinical Psychology* 60, no. 2 (1992): 174–84, <https://doi.org/10.1037/0022-006X.60.2.174>.

⁷ Shafira Fatahaya and Rosalia Dika Agustanti, "LEGALITAS ABORSI YANG DILAKUKAN OLEH ANAK AKIBAT PERKOSAAN INSES," *JURNAL USM LAW REVIEW* 4, no. 2 (November 5, 2021): 504–24, <https://doi.org/10.26623/julr.v4i2.4041>.

⁸ Murdi Yanto and Tri Gutomo, "Penyebab, Dampak, Dan Pencegahan Inses Causes, Impact, And Prevention Of Inses," *Media Informasi Penelitian Kesejahteraan Sosial* 43, no. 1 (2019): 51–66, <https://doi.org/10.31105/mipks.v43i1.2201>.

⁹ Hasbi Umar, Husin Bafadhal, and Ika Rusmayanti, "KEDUDUKAN HUKUM ANAK LAHIR DILUAR NIKAH DARI HUBUNGAN SEDARAH (INCEST) MENURUT HUKUM ISLAM DAN HUKUM POSITIF," *ADHKI: JOURNAL OF ISLAMIC FAMILY LAW* 4, no. 1 (2022): 35–45, <https://doi.org/10.37876/adhki.v4i1.120>.

¹⁰ Elly Sudarti, Usman Usman, and Nys Arfa, "Perlindungan Hukum Anak Korban Perkosaan Inses Dalam Sistem Peradilan Pidana," *Wajah Hukum* 8, no. 1 (April 30, 2024): 430–43, <https://doi.org/10.33087/wjh.v8i1.1466>.

Method

This research uses a library research method with a normative approach. Data was collected from various legal documents, such as laws, government regulations, and policies related to child protection in Indonesia, including the Child Protection Law and regulations of the National Commission on Violence Against Women. In addition, incest case studies reported in mass media and academic journals were also analyzed to understand patterns and constraints in the implementation of legal protection. A normative approach was used to identify existing forms of legal protection and constraints in its implementation. The data that has been collected is analyzed through the interpretation of relevant regulations and legal doctrines. In addition, a comparative method was applied to analyze several incest cases, finding similarities and differences in legal handling as well as the social and psychological impacts on children of incest. This method helps identify best practices in the legal protection of children of incest. With this approach, the author hopes to provide an in-depth understanding of legal protection for children of incest in Indonesia and the challenges faced in its implementation.

Literature Review

Previous studies on legal protection for incest victims in Indonesia provide a crucial foundation for understanding the legal, social, and cultural context surrounding this issue. Research by Hidayatulloh and Nofita Nurul highlights the legality of abortion in incest rape cases, as stipulated in Article 75 Paragraph 2 of Law Number 36 of 2009 on Health. The study concludes that abortion in cases of rape-induced pregnancy is permissible under certain conditions, primarily to protect victims from psychological trauma. This emphasizes the importance of regulations supporting women's reproductive rights, particularly in incest cases.¹¹

Imamatus Shalihah, in her thesis, examined legal protection for incest victims from the perspective of Friedman's legal system theory. Her findings underline that, while legal protection efforts are conducted according to procedures, inadequate family support hinders the effectiveness of victim assistance provided by P2TP2A (Integrated Service Center for Women and Children Empowerment). This highlights the need for increased public awareness of the importance of reporting incest cases.¹²

Ningrum, Novita Sari focused on the legal protection process for incest victims and identified barriers such as victims' fear of giving testimony,

¹¹ Nofita Nurul Hidayatulloh, "Perlindungan Hukum Bagi Korban Perkosaan Sedarah Yang Melakukan Aborsi" (undergraduate, Universitas Muhammadiyah Surabaya, 2022), <https://repository.um-surabaya.ac.id/8714/>.

¹² Imamatus Sholihah, "Program Magister Al-Ahwal Al-Syakhshiyah Pascasarjana Universitas Islam Negeri Maulana Malik Ibrahim Malang 2019," 2019.

family pressure, and difficulty in presenting witnesses. Her study emphasizes the importance of public education and strict law enforcement to safeguard incest victims, especially minors.¹³

Wahdatun Nafiah and Reno Kuncoro explored the protection of human rights for children born from incestuous marriages based on various legal instruments in Indonesia, including Constitutional Court Decision Number 46/PUU-VIII/2010 and Law Number 35 of 2014 on Child Protection. Their research confirms that children from incestuous relationships have legally recognized rights, although social stigma remains a significant challenge.¹⁴

Yesa Titan Ramalia and Aisyah Putri Wahidah examined legal protection for children of incest from a victimological perspective, focusing on physical, psychological, and social rehabilitation for victims and imposing sanctions on perpetrators. Their study highlights challenges, including uncooperative societal attitudes and weaknesses in the existing legal framework.¹⁵

Research by Supadmi Wirayatni and colleagues emphasized the need for protection for disabled girls who are victims of incest. Their findings underline the importance of strict penalties for perpetrators to ensure justice for victims with physical and social vulnerabilities. Mega Suryaningati investigated the legal status of children born from incest under civil law, marriage law, and the Compilation of Islamic Law. Her findings indicate that such children possess fundamental rights that must be protected, despite facing legal discrimination in inheritance and lineage recognition.¹⁶

Dhoory Vinevera Sigiuro and team examined the role of the Women and Children Protection Unit in handling incest cases. Their research reveals that current legal regulations do not fully address consensual incest among adults and highlights the lack of synergy among relevant institutions as a major obstacle.¹⁷

¹³ Novita Sari Ningrum, "Proses Perlindungan Hukum Terhadap Korban Incest (Study Kasus)" (skripsi, Universitas Muhammadiyah Metro, 2020), <http://eprints.ummmetro.ac.id>.

¹⁴ Siti Nurul Wahdatun Nafiah and Reno Kuncoro, "Perlindungan Hak Asasi Anak Dari Perkawinan Sedarah (Incest) Dalam Tata Hukum Indonesia," *MAQASIDI: Jurnal Syariah Dan Hukum*, December 1, 2023, 82–94, <https://doi.org/10.47498/maqasidi.v3i2.2285>.

¹⁵ Yesa Titan Ramalia and Aisyah Putri Wahidah, "Perlindungan Hukum Terhadap Anak Korban Incest Oleh Ayah Kandungnya Perspektif Viktimologi," *Media Hukum Indonesia (MHI)* 2, no. 4 (November 9, 2024): 150–57, <https://doi.org/10.5281/zenodo.14058605>.

¹⁶ Supadmi Wirayatni et al., "Perlindungan Anak Perempuan Penyandang Disabilitas Sebagai Korban Kekerasan Seksual Incest Di Kota Batam, Indonesia," *Jurnal Media Komunikasi Pendidikan Pancasila Dan Kewarganegaraan* 3, no. 1 (May 6, 2021): 14–21.

¹⁷ Dhoory Vinevera Sigiuro, Suhaidi Suhaidi, and Ibnu Affan, "Perlindungan Hukum Bagi Korban Hubungan Seksual Sedarah (Studi Pada Unit Perlindungan Perempuan Dan Anak SATReskrim Polrestabes Medan)," *Journal of*

Overall, this literature review reveals that while extensive research has been conducted, gaps remain in specialized regulations and the implementation of legal protections for incest victims. This study contributes to ongoing discourse by offering a more comprehensive analysis of the need for equitable and inclusive legal frameworks to protect incest victims, especially those in the most vulnerable situations.

Result

Incest is an act of sexual intercourse between two individuals who are related by blood.¹⁸ These acts can be consensual or involve force, which in this context is known as rape. Incest cases often come to light in society when rape, fraud and violence are discovered, such as an uncle raping his niece or a biological father sexually assaulting his daughter or between siblings. The CATAHU 2023 report recorded 289,111 cases of violence against women in 2023. This figure shows a decrease of 55,920 cases (around 12%) compared to 2022. Referring to the iceberg phenomenon synonymous with sexual violence cases, the data only reflects cases reported by victims, advocates, or families, while the number of unreported cases of violence against women is likely much greater. Behind these statistics, there are still many victims who struggle to get adequate protection and remedy, despite various policies to protect women from violence. CATAHU 2023 also shows that the characteristics of victims and perpetrators remain consistent, with victims generally being younger and having lower levels of education than perpetrators. Over the past three years, the number of perpetrators who are supposed to be role models, protectors and symbols of the state's presence increased by 9%, exceeding the 21-year average of CATAHU reports by 5%.¹⁹ Hal ini menegaskan bahwa akar masalah Violence against women stems from unequal power relations between perpetrators and victims. This inequality is further reinforced when the perpetrator has a power relationship with the victim, for example between a child and a father.²⁰

Therefore, it is understood that there is no data that can map the exact number of victims of sexual violence perpetrated by the next of kin and the number of births of incestuous children. One of the main challenges in collecting data on the births of incestuous children is the

Education, Humaniora and Social Sciences (JEHSS) 3, no. 1 (August 8, 2020): 200–212, <https://doi.org/10.34007/jehss.v3i1.261>.

¹⁸ Rohmat Rohmat et al., “Tinjauan Pelaksanaan Hukum Aborsi bagi Korban Pelecehan Seksual Sedarah dalam Perspektif Islam dan Kenegaraan,” *Pikukuh : Jurnal Hukum dan Kearifan Lokal* 1, no. 1 (April 1, 2024): 1–19, <https://jurnal.untirta.ac.id/index.php/pikukuh/article/view/22748>.

¹⁹ “Siaran Pers,” Komnas Perempuan | Komisi Nasional Anti Kekerasan Terhadap Perempuan, accessed May 28, 2024, <https://komnasperempuan.go.id/siaran-pers-detail/siaran-pers-komnas-perempuan-tentang-peluncuran-catatan-tahunan-kasus-kekerasan-terhadap-perempuan-tahun-2023>.

²⁰ Ani Purwanti, “Kekerasan Berbasis Gender,” 2020, <http://doc-pak.undip.ac.id/id/eprint/8087/1/Buku%20Kekerasan%20Berbasis%20Gender.pdf>.

social stigma and family pressure that often prevents the reporting and documentation of such cases. Many incest cases are not officially reported because they are considered shameful or a family disgrace²¹, which in turn hinders adequate protection and intervention efforts. Here are some incest cases that have gone viral in Indonesia:

First, an incest case involving the murder of seven babies who were the result of an incestuous relationship between a biological father and his 25-year-old daughter E in Purwokerto, Central Java. This incident began with the accidental discovery by two garden workers named Slamet and Purwanto, who found an object in the form of human bones on June 15, 2023, which after investigation turned out to be a baby skeleton. Rudi, a 57-year-old man was identified as the main perpetrator in this case. E first gave birth at the age of 13 and over the next 12-year period, she gave birth to six babies, some of which were buried on a plot of land in Tanjung Village, Purwokerto Subdistrict. After further investigation by the police, it was discovered that the murder and burial of the babies involved E's biological mother who participated in the burial due to threats from Rudi. E's mother did not report the incident for years because she received death threats from Rudi.²²

Second, in 2020, an incest case that caused widespread attention occurred in West Sumatra. This case stems from the discovery of the body of a baby who was only a few days old by residents of the Nagari Langsek Kodok area, South Rao District, Pasaman, West Sumatra on Sunday, February 16, 2020, then residents reported it to the police. A high school student with the initials SHF, 18, known to have had incestuous relations with her underage sister is the suspect in this case. Police investigations found that SHF had intercourse with her sister twice in July-August 2019. Her sister was 13 years old at the time and in grade 6. After becoming pregnant, SHF gave birth to her baby prematurely and decided to dump the baby in a ditch. It is known from local social services that the mother of the two is a palm oil laborer who often leaves the two of them alone at home to go to work, and the brother and sister live in a rural area that has not been touched by electricity.²³

Third, in 2017, a case of incest occurred in Musi Banyuasin Regency, South Sumatra. A father with the initials AR had sexual intercourse with his biological daughter AN, who was 15 years old at the

²¹ Saptosih Ismiati M.H S. H., *Menilik Kupasan Kasus-Kasus KDRT (Sebuah Kajian Yuridis Sosiologis)* (Deepublish, 2023).

²² Kompas Cyber Media, "Sosok R, Ayah yang Inses dengan Anaknya di Purwokerto, Lakukan Hubungan Terlarang sejak 2013," KOMPAS.com, June 26, 2023, <https://regional.kompas.com/read/2023/06/26/190900978/sosok-r-ayah-yang-inses-dengan-anaknya-di-purwokerto-lakukan-hubungan>.

²³ "8 Kasus Inses Yang Sempat Viral Di Indonesia Seperti Hubungan Bapak Anak Purwokerto - News Liputan6.Com," accessed May 28, 2024, <https://www.liputan6.com/news/read/5331123/8-kasus-inses-yang-sempat-viral-di-indonesia-seperti-hubungan-bapak-anak-purwokerto>.

time of the incident. AR committed this depraved act continuously until the victim became pregnant twice. The perpetrator threatened the victim physically and mentally on the pretext that he would divorce the victim's mother if AN did not comply with AR's wishes, because the perpetrator and the victim's mother had been separated for a long time. As a result of this illicit relationship, the victim gave birth to her first child. In order to avoid the spread of this case, AR and his family agreed to cover up and bring the baby from their illicit relationship outside Musi Banyuasin Regency. The incest case was discovered when AN became pregnant with her second child while tapping rubber in a local plantation. The owner was suspicious because while working the victim felt dizzy and vomited, after being interrogated the victim finally admitted that she was pregnant after being raped by her own biological father.²⁴

Fourth, in 2022, a case of child rape by a biological father occurred in Padang Lawas Regency, North Sumatra. A father with the initials DH 33 years old committed immoral acts against his two daughters aged 12 and 13 years. The depraved act was revealed after the victim told her neighbor, then the perpetrator was immediately secured and handed over to the Palas Police. Based on the examination, the victim was pregnant and the perpetrator admitted to raping both of them. DH committed his depraved acts after divorcing his wife in January 2022, and the two victims lived with him. His actions were repeated and alternated with his biological children accompanied by threats. If the victims did not obey his lust, he would hit them with a sharp weapon.²⁵

Fifth, A 39-year-old father in Padang, West Sumatra, was arrested by the police on January 28, 2024 for molesting his biological daughter. According to the confession of the perpetrator, the perpetrator did this because he was addicted to pornographic films. The perpetrator has been doing this since his daughter was 14 years old at his house in Lubuk Kilangan District, Padang City. Meanwhile, the victim is currently 17 years old. the perpetrator's actions were revealed after the victim reported the incident to her mother. Hearing this news, the victim's mother did not accept reporting her husband to the Padang Police.²⁶

The sixth case of incest between siblings occurred in Rejang Lebong Regency, Bengkulu. The perpetrator was KH, 21, who raped his sister R, 16. Based on police information, there are allegations that their parents knew about this incident and tried to hide it. This case became known to the public when R came to the village midwife because she had severe abdominal pain which turned out to be a miscarriage. Based on medical information, R's parents did not accept it and tried to provide information that it did not happen. However, the village head felt

²⁴ "8 Kasus Inses Yang Sempat Viral Di Indonesia Seperti Hubungan Bapak Anak Purwokerto - News Liputan6.Com."

²⁵ "Ayah Bejat Di Sumut, Cabuli 2 Anak Kandungnya Hingga Hamil | Kumparan.Com," accessed May 28, 2024, <https://kumparan.com/kumparannews/ayah-bejat-di-sumut-cabuli-2-anak-kandungnya-hingga-hamil-1zNcuTRBjMB>.

²⁶ "Bejat! Ayah Di Padang Cabuli Anak Kandung Berulang Kali," accessed May 28, 2024, <https://www.detik.com/sumut/hukum-dan-kriminal/d-7164948/bejat-ayah-di-padang-cabuli-anak-kandung-berulang-kali>.

suspicious and took the policy of conducting further examinations at the puskesmas. It was there that the victim admitted that she had been raped by her biological brother since 2021. When questioned herself, the victim admitted that she was threatened with death, but when her parents were present, the victim did not say anything about the threat. According to police analysis, this happened because their house only had one room, even without a partition. The family slept in the same room and changed clothes in the same room. In 2019, residents suspected the family's activities and made a report that the father had abused his daughter, but when it arrived at the police there was no strong evidence so it was not continued. By 2024, the victim had become pregnant three times, two of which were miscarriages. The victim has also given birth to a child in 2021 and is currently 2 years old. So far, incest cases are more common among girls, although it is possible for boys to be involved in the family.

Forms of Legal Protection Efforts for Incest Children in Indonesia

According to the United Nations (UN) in the Convention on the Rights of the Child Article 45, there are four fundamental rights that must be considered to ensure the welfare and development of every child regardless of the child's background. First, the right to survival, which includes the right of children to receive the best health services to prevent deadly infectious diseases. Second, the developmental right, which includes children's right to nutrition, education, and social and cultural support that enables them to grow into adults with identity and dignity. Third, the protection right, which ensures that children are protected from various forms of discrimination and violence, whether based on skin color, ideology, politics, religion, or physical condition. Fourth, the participation right, which gives children the right to participate in various decisions that concern their lives.²⁷ These fundamental rights must be recognized and protected because children are important assets for the nation who will continue the relay of leadership in the future.²⁸ Therefore, child protection efforts must be based on the fulfillment of these rights so that they can grow and develop naturally and optimally, and make a positive contribution to society and the nation.²⁹

Administratively according to Law No. 23 of 2002 concerning Child Protection, which has been amended by Law No. 35 of 2014, confirms that every child in the future is also entitled to obtain an identity and citizenship status legally in Indonesia the child still has the right to have official documents such as a Family Card (KK) and Identity Card (KTP).³⁰

²⁷ Felda Rizki Azalia, "Perlindungan Hukum Terhadap Anak Sebagai Korban Kekerasan Yang Terjadi Di Sekolah," *Wajah Hukum* 4, no. 1 (April 24, 2020): 169–83, <https://doi.org/10.33087/wjh.v4i1.76>.

²⁸ Wisnu Saputra, "PENDIDIKAN ANAK DALAM KELUARGA," *Tarbawy : Jurnal Pendidikan Islam* 8, no. 1 (August 29, 2021): 1–6, <https://doi.org/10.32923/tarbawy.v8i1.1609>.

²⁹ Ratri Novita Erdianti and Sholahudin M. Fatih, "Mewujudkan Desa Layak Anak Sebagai Bentuk Perlindungan Hukum Terhadap Anak Di Indonesia," *Justitia Jurnal Hukum* 3, no. 2 (October 29, 2019), <https://doi.org/10.30651/justitia.v3i2.3648>.

³⁰ Amanda Zubaidah Aljarofi, "Kategori Perkawinan Belum Tercatat Dalam Blangko Kartu Keluarga Perspektif Yuridis," *AL-HUKAMA: The Indonesian Journal of Islamic Family Law* 9, no. 2 (March 17, 2019): 296–324, <https://doi.org/10.15642/alhukama.2019.9.2.296-324>.

These rights are protected by law, and government agencies are responsible for ensuring that every child, regardless of the origin of his or her birth, has a valid identity document. Although incestuous relationships may cause social problems, from an administrative point of view, the child is still entitled to be registered. This is in line with Indonesian positive law which affirms that every child has the right to identity and legal status, regardless of the origin of their birth. According to Law No. 23/2006 on Population Administration, as amended by Law No. 24/2013, every child born in Indonesia has the right to be registered immediately after birth, and to obtain legal documents such as a birth certificate. This registration obligation is the responsibility of the parents and the local government. Although incest is considered an act that violates social and legal norms (regulated in the Criminal Code), the child's right to obtain a legal identity is still guaranteed.

Almost all major religions in the world prohibit the practice of incest. This prohibition is rooted in theological foundations that regard incest as an immoral act and a grave sin.³¹ Even the most liberal countries such as Germany strongly condemn the practice of incest, as explained by the German Criminal Code Article 173 prohibits sexual relations between siblings.³² The maximum penalty is two years in prison or a fine. Consensual sex between siblings is a criminal offense in most Council of Europe states, including the UK. The Catholic Church does not condone incestuous marriages because they are, by their very existence, invalid marriages.³³ Although there are stories in the mythology of Hindu beliefs that depict incestual relationships between deities, in social and legal practice Hinduism has traditionally prohibited incest, applying very complex and strict kinship rules.³⁴ In terms of *jarimah hudud*, there is no specific regulation on incest because in principle, Islam strictly prohibits marriage or relationships based on blood kinship, which can also be terminated or canceled in accordance with the law.³⁵ According to Islamic law, a child born from an illegitimate relationship (outside of marriage), whether it is incestuous or not, the biological father cannot be the *nasab* guardian (guardian of the lineage) in marriage.³⁶ If the child wishes to marry, a guardian hakim (a guardian appointed by a court or religious

³¹ Sarip Hidayat et al., "Perlindungan Anak Korban Tindak Pidana Inses Dalam Qanun Aceh Nomor 6 Tahun 2014 Tentang Hukum Jinayat," *Mahkamah: Jurnal Kajian Hukum Islam* 8, no. 1 (May 16, 2023): 21–29, <https://doi.org/10.24235/mahkamah.v8i1.13308>.

³² Rosalind Angel Fanggi, "Kebijakan Kriminalisasi Pengguguran Kandungan Dalam Kajian Perbandingan Hukum Berbagai Negara Serta Dampaknya Bagi Kesehatan Ibu Dan Anak (KIA)," *Timorese Journal of Public Health* 2, no. 1 (September 21, 2020): 14–28, <https://doi.org/10.35508/tjph.v2i1.2190>.

³³ Hironimus Resi and Yohanes Wilson B. Lena Meo, "Perkawinan Inses Dalam Perspektif Hukum Katolik Dan Dampaknya Terhadap Anak," *Sapa: Jurnal Kateketik Dan Pastoral* 8, no. 2 (November 20, 2023): 130–46, <https://doi.org/10.53544/sapa.v8i2.446>.

³⁴ Vifi Swarianata, Bambang Sugiri, and Nurini Aprilianda, "Kriminalisasi Inses (Hubungan Seksual Sedarah) Dalam Perspektif Pembaharuan Hukum Pidana," n.d.

³⁵ Muhammad Yusril Irza, "Penerapan Pertanggungjawaban Pidana Terhadap Pelaku Inses Anak Kandung," *Wijayakusuma Law Review* 5, no. 2 (December 10, 2023), <https://doi.org/10.51921/wlr.v5i2.259>.

³⁶ Muh Jufri Ahmad and Fahmi Nabil, "HAK KEPERDATAAN ANAK HASIL PERKAWINAN INCEST," *COURT REVIEW: Jurnal Penelitian Hukum (e-ISSN: 2776-1916)* 2, no. 01 (February 22, 2022): 57–75, <https://aksiologi.org/index.php/courtreview/article/view/311>.

official) will marry the child. Islamically, the child will also not inherit from the biological father because his status is equated with illegitimate child.³⁷ Here are some of the policies of the Indonesian state and institutions towards children's rights, including for children resulting from incest, such as:

Constitutional Court Decision Number 46/PUU-VIII/2010 where this case was filed by Machica Mochtar who challenged the provisions in Article 2 paragraph (2) and Article 43 paragraph (1) of Law Number 1 Year 1974 concerning Marriage. Article 2 paragraph (2) states that marriage is valid if it is conducted according to the laws of religion and belief, and must be recorded in accordance with the provisions of the applicable legislation. Article 43 paragraph (1) states that children born outside of marriage only have a civil relationship with their mother and their mother's family. In its decision, the Constitutional Court decided that children born outside of marriage have a civil relationship with their biological father, not only with their mother and their mother's family, if it can be proven based on science and technology or other valid evidence. This decision changed the previous legal view that only recognized the civil relationship of an out-of-wedlock child with the mother and the mother's family. Out-of-wedlock children now have the right to claim inheritance from their biological father. Out-of-wedlock children are entitled to more complete identity recognition, including the father's name on the birth certificate, if a biological relationship can be proven.³⁸

Second, Law No. 35/2014 on Child Protection. Law No. 35/2014 is a revision of Law No. 23/2002 that aims to strengthen child protection in Indonesia. This law defines a child as an individual who is not yet 18 years old, including children who are still in the womb. The rights of children stipulated in this law include the right to life, growth and development; the right to identity; the right to health; the right to education; and the right to protection from all forms of violence and discrimination. Parents are responsible for caring, educating and protecting children, while the government is responsible for ensuring the fulfillment of children's rights and providing adequate facilities. The law also increases sanctions for perpetrators of violence against children, including harsher prison sentences and fines. Perpetrators of child abuse can be sentenced to imprisonment of up to 15 years and a fine of up to Rp300 million. Additional penalties can be given to perpetrators who are related, guardians, caregivers, or other relationships for which the child is responsible. Law No. 35/2014 strengthens legal protection for children in special situations, such as children in conflict with the law, children victims of disasters, and children with disabilities. The law also encourages increased public awareness about the importance of child protection and children's rights, as well as active community participation in protecting

³⁷ Annisa Ullathifah, "Studi Komparatif Status Hak Waris Anak Hasil Incest Perspektif Kompilasi Hukum Islam Dan Hukum Positif" (Thesis, Universitas Islam Indonesia, 2023), <https://dspace.uui.ac.id/handle/123456789/46341>.

³⁸ Yazid Bustomi, "Politik Hukum Putusan MK No. 46/PUU-VIII/2010 Sebagai Upaya Pembangunan Hukum Nasional," *Jurnal Ilmiah Hukum Dan Hak Asasi Manusia* 3, no. 1 (July 5, 2023): 9–20, <https://doi.org/10.35912/jihham.v3i1.1795>.

children in their neighborhoods.³⁹

Third, the Civil Code Article 306. Article 306 of the Civil Code states that parents have an obligation to provide care, education, and moral guidance to their children. This includes the physical, mental, and social aspects of the child's growth, with the aim of ensuring that children can develop optimally and become responsible members of society. In addition, Article 306 also provides for the right of parents to seek legal recourse if any third party prevents them from carrying out their responsibilities towards the child. This provides legal protection to parents to carry out their obligations without unauthorized interference or interference from outside parties.⁴⁰

Fourth, MUI Fatwa Decree No. 11/2012. Decree of the Indonesian Ulema Council (MUI) Fatwa No. 11/2012 issued a fatwa on child protection. This fatwa emphasizes that every child, regardless of their birth status, has rights that must be guaranteed and protected in accordance with Islamic teachings. This fatwa confirms that children born outside of marriage (adulterous children) still have the right to be recognized, cared for, and protected. Parents, both biological mothers and fathers, are responsible for the care and education of their children. The fatwa emphasizes that this responsibility includes providing proper sustenance, care and education. Even if the parents' marriage relationship is not valid according to sharia, the child should not bear the sins of the parents and should be treated fairly. The background to the issuance of this fatwa by MUI is in response to various cases of violence and discrimination faced by children, especially children born outside of marriage or from illegitimate relationships. This fatwa emphasizes that every child has the right to protection from violence, neglect, exploitation, and discrimination. This protection should be provided by the family, community and state. Every child has the right to proper access to education and health without discrimination.⁴¹

Constraints in the Implementation of Legal Protection of Incest Children in Indonesia

Children who are victims of incest often do not realize that what they are experiencing is an act of violence, so they tend to close themselves off and not tell others. The lack of understanding that they are victims makes it difficult for these children (biological mothers of incestuous children) to trust others, so they keep the incidents of sexual violence a secret. The fear of reporting also affects the mothers of incestuous children, as they feel their lives are at risk and worry that they

³⁹ Tri Rizky Analiya and Ridwan Arifin, "PERLINDUNGAN HUKUM BAGI ANAK DALAM KASUS BULLYING MENURUT UNDANG-UNDANG NOMOR 35 TAHUN 2014 TENTANG PERLINDUNGAN ANAK DI INDONESIA," *Journal of Gender and Social Inclusion in Muslim Societies* 3, no. 1 (July 4, 2022): 36–54, <https://doi.org/10.30829/jgsims.v3i1.10950>.

⁴⁰ Nur Zakiah, "KEKUASAAN ORANG TUA MENURUT KUHP DAN UNDANG-UNDANG PERKAWINAN," *Ash-Shahabah : Jurnal Pendidikan Dan Studi Islam* 7, no. 1 (2021): 25–30, <https://doi.org/10.59638/ash.v7i1.399>.

⁴¹ Fitriyah, Budi Parnomo, and Rahmatul Hidayati, "Putusan MK No. 46/PUU-VIII/2010 Tentang Status Anak Di Luar Nikah Dan Fatwa MUI No. 11 Tahun 2012 Dalam Perspektif Maqashid Syari'ah Al-Khamsah," *JURNAL MERCATORIA* 16, no. 1 (June 25, 2023): 51–62, <https://doi.org/10.31289/mercatoria.v16i1.8929>.

will face worse consequences if they report. In addition, feelings of shame make them reluctant to tell about the sexual violence they experienced, because they think that the violence occurred due to their own mistakes. The sexual violence also makes them feel that if disclosed, the family name will be tainted. As a result, many cases of sexual violence are not revealed due to the denial and shame of the victims to admit the violence.

The case of incest that occurred between the children of a mother who worked in the Nagari Langsek Kodok area, South Rao Sub-district Pasaman West Sumatra as a palm oil laborer and often left them unattended at home, a number of factors exacerbated the situation. Both children live in a remote area with no access to electricity. The isolated geography means that interaction between residents is very limited, and contact with people outside the area is almost non-existent. The remoteness of this area contributes as one of the main triggering factors for incestuous violence.

The victim's inability to resist is not a sign of submission, but the result of various pressures, intimidation, persuasion, and high trust that the victim has in the perpetrator. This is evident in the case of an incestuous father who killed 7 incestuous children in Purwokerto, Central Java, where the victim's mother, who is also the wife of the perpetrator, did not report the immoral acts committed by the biological father against her daughter for years because she received death threats from the perpetrator. Similarly, a case of incest occurred in Padang Lawas Regency, North Sumatra, where a father with the initials DH, threatened to beat the victim with a sharp machete if his barbaric lust was not fulfilled. This situation illustrates how victims are under strong pressure and intimidation, preventing them from fighting back or reporting the case. The various pressures faced by victims of incest violence also push them to be forced to adapt to violence as part of their lives. For victims, this behavior is considered the safest strategy to avoid more extreme escalation of violence. Economic dependence and strong emotional ties between the victim and the perpetrator, especially if the perpetrator is their father, limit the options available to the victim to respond by reporting to the authorities.

The following is an analysis of the obstacles to the implementation of legal protection that has been provided by the state to children resulting from incest: First, the Constitutional Court Decision Number 46/PUU-VIII/2010. Children of incest often face stronger stigma and discrimination when compared to other children in general. Cases such as those in Purwokerto, West Sumatra, Musi Banyuasin and other cases that are not covered by data show how this stigma can lead to extreme actions such as infanticide to the neglect of children's rights, so here their right to life has been directly removed. Furthermore, although the Constitutional Court ruling provides civil rights for out-of-wedlock children, including the right to claim inheritance from the biological father, social stigma makes implementing these rights difficult. Proving the biological relationship between the child and the father often requires DNA testing, to which access is limited, especially in remote areas such as the case sites in West Sumatra and Musi Banyuasin. This makes it difficult to apply the civil

rights granted by the Constitutional Court's decision

Second, Law No. 35/2014 on Child Protection. The Child Protection Law guarantees the rights of every child without discrimination. However, social stigma and perpetrators themselves against incestuous children often lead to violations of these rights. For example, in the Purwokerto case, stigma and discrimination against incestuous children were factors that led to the family's infanticide.

Third, the Civil Code Article 306. The social stigma against children of incest can prevent parents from fulfilling their obligations to provide care, education and moral guidance as stipulated in Article 306 of the Civil Code. Cases in Purwokerto and Musi Banyuasin show how this stigma can cause families to ignore or even hide the existence of incest children. Interference from third parties, such as extended family or the community, can hinder parents in carrying out their responsibilities. In the Purwokerto case, threats from the perpetrator's father against the victim's mother demonstrate how this interference can affect the performance of parental obligations. Parents of incestuous children often lack access to the legal assistance necessary to protect their rights and those of their children.

Fourth, MUI Fatwa Decree No. 11 of 2012. MUI's fatwa emphasizes that every child should be treated fairly regardless of their birth status. However, in incest cases such as in Purwokerto, social stigma remains a major obstacle that prevents children of incest from getting proper recognition and protection. The lack of public understanding of the content and implications of this fatwa makes its implementation ineffective. People may be uninformed and unaware that children of incest deserve the same protection and treatment as other children. Looking at the cases in Musi Banyuasin and Purwokerto, cultural norms and external patriarchal power in the family influence how children of incest are treated, even though the fatwa emphasizes protection and justice for every child. The author highlights the importance of specific regulations to protect children from incestuous relationships. Children born from incestuous relationships often face intense and serious challenges, both in terms of health, psychological, and social. Therefore, stronger regulations are needed to provide special protection for them. Here are some reasons why specific regulations are necessary: First, protection from stigma and discrimination. Children born from incestuous relationships often face severe stigma and discrimination compared to children with other birth causes. According to Becker's labeling theory,⁴² Children born from incestuous relationships are often negatively labeled by society. This label causes them to experience severe stigma and discrimination. In this study, it was found that this negative label not only impacts the psychological well-being of the child, but also hinders their access to social services and education. Lemert (1951) also stated that negative labels can reinforce the cycle of marginalization and hinder these children's efforts to reach their full potential. According to Merton (1968), individuals who feel pressured

⁴² Nancy J. Herman and Nancy J. Herman-Kinney, *Deviance: A Symbolic Interactionist Approach* (Rowman & Littlefield, 1995).

by the inability to meet social expectations or face the consequences of their actions may choose deviant outlets, such as murder. In this context, incest perpetrators may feel that killing the resulting child is the only way to eliminate evidence and overcome the pressure they feel from society and the law. Agnew (2006) also emphasizes that extreme pressure can drive individuals to commit severe criminal acts as a form of adaptation to situations they cannot control. Therefore, it is important to develop protection policies that explicitly address stigma and discrimination against these children. Specialized regulations are expected to provide more specific legal protection guarantees to address this discrimination.

With clear rules in place, these children can be guaranteed the right to health care, education and social protection on par with other children. Second, attention to genetic health risks. Children who are already born from incestuous relationships will face higher genetic health risks. Specific regulations can include provisions for routine health screening, more frequent health assessments, and necessary medical interventions to address associated health conditions. This is important to ensure that they receive optimal health care from an early age.

Third, Psychological and Social support. Social factors play an important role in people's lives because humans cannot live alone without the help of others.⁴³ Therefore, cooperation between individuals is necessary. The clash of psychological and social problems due to their origins as they grow will become more complex. Special regulations can include support programs designed to help them overcome these problems. This support can take the form of psychological counseling, support groups, and other social services designed to address the specific issues they face. Fourth, case management with sensitivity and expertise. The criminal justice and child protection systems must be able to handle these cases with the necessary sensitivity and expertise. Specific regulations can ensure that the professionals involved get the right training and guidance to properly manage these situations, so that the children can feel safe and protected. Fifth, public education and awareness. Specialized regulations can also serve as an educational tool to increase public awareness and understanding of the issues faced by these children. By raising awareness at all levels of society, it is hoped that stigma and discrimination can be reduced, creating a more inclusive and supportive environment for them. Thus, it is understood that stronger and more specific regulations are needed to protect children born from incestuous relationships. Such regulations will not only provide the necessary legal protection, but also ensure that they get the attention and support they deserve in various

⁴³ Defi Rahmi Fadhilah et al., "Jurimetrics Implementation of Determining Wife's Rights in Divorce in Talu Religious Court," *Jurnal Ilmiah Al-Syir'ah* 21, no. 2 (2023): 242–60, <http://journal.iain-manado.ac.id/index.php/JIS/article/view/2498>.

aspects of their lives.

Incest cases, especially in rural areas such as Pasaman, show the urgency to provide more in-depth and comprehensive education. Here are some steps that can be taken to prevent similar incidents such as early sexual and moral education. Children need to be given comprehensive sexual education from an early age. This education not only includes information about the anatomy and physiology of the human body, but also about moral and ethical values related to appropriate and inappropriate sexual behavior, both with oneself and others. Emphasis on moral values is important to help children understand the boundaries that exist in interacting with others. This includes education on consent, personal boundaries, and respect for others. Given that rural areas may lack adequate information, the government needs to conduct intensive and thorough socialization to remote areas. This includes education campaigns involving community leaders, teachers and parents. Utilizing local media, such as community radio and community meetings, can be an effective way to disseminate information and education that is important in remote areas where technology such as internet and electricity are not common.

On the other hand, children should be taught to use social media wisely. Parents and teachers need to monitor children's activities on social media and provide education on the negative impact of inappropriate content supported by the cultivation of positive family values so as to help children distinguish between negative and positive influences from their surroundings. Then, a crucial supporting factor is the need to encourage people to report incest cases without fear or embarrassment, especially if the closest person also knows about it, in order to avoid the development of a worse situation. If there is no report or the report is not processed, it will be a big question and obstacle how legal protection can be provided to incest victims and children who have been born from this situation.

Education on the importance of reporting incest cases should be conducted, so that victims are protected and perpetrators can be dealt with appropriately. The government and authorized institutions need to provide a child-friendly and easily accessible reporting system, so that children and families feel safe to report the incident. Not everyone knows how to report cases of abuse or where to report. In remote areas or for less informed communities, this becomes a significant barrier. Concerns about privacy, social stigma and legal repercussions often discourage victims or witnesses from reporting. Systems that cannot guarantee the anonymity and safety of victims and complainants add to the complexity of reporting. The community needs to be made aware that reporting and addressing incest is the right thing to do and should not be considered a disgrace. Providing

psychological and social support to victims and their families is crucial to help them recover from the trauma and stigma they face. In conclusion, a comprehensive approach is needed, including early sexual education, in-depth socialization, monitoring social media use, and efforts to remove stigma and shame in reporting cases. These measures are important to protect children and ensure that they grow up in a safe and supportive environment and that legal protection for children born from incest cases can be realized without discrimination.

The development of specific regulations for children born from incestuous relationships in Indonesia is an important step towards ensuring the protection and support they need. This process must also be thorough and require careful consideration and collaboration between various stakeholders in order to achieve a sense of justice in the regulation. Justice must be realized through right thinking, fair action, and responsibility for every action. The enforcement of a sense of justice and law must be based on positive law, with the aim of creating a safe and peaceful society in accordance with social reality.⁴⁴ Here are some notes that need to be considered in the development of these special regulations: First, the regulation must ensure that the identity and personal details of children born from incestuous relationships are strictly protected to avoid stigma and discrimination. Include policies on the confidentiality of medical information and identity in civil records. Procedures for handling sensitive data should be clearly set out, including who has the right to access such data and how it is stored and protected. Regulations should ensure that these children have access to health services that do not discriminate against them. Health services should be inclusive and sensitive to their situation, including the provision of routine health screening and necessary medical interventions. To support this, medical personnel need to be trained to handle cases involving children from incestuous relationships with sensitivity and professionalism, ensuring that they receive appropriate care.

Children of incest can be particularly vulnerable to various forms of exploitation. Regulations should include strong protection mechanisms to prevent sexual, economic and other forms of exploitation. Specific regulations should also ensure that schools and other educational institutions have specific guidelines to support these children in a safe and supportive environment with sanctions. This includes anti-bullying policies and psychosocial support programs. Children born from incestuous

⁴⁴ A. Salma, A. Elfia, and Afifah Djalal, "Perlindungan Hukum Bagi Perempuan Dan Anak (Analisis Putusan Hakim Tentang Nafkah Madhiyah Pada Pengadilan Agama Di Sumatera Barat)," *Istinbath* 16, no. 1 (2017): 106–208, <https://istinbath.or.id/index.php/ijhi/article/download/77/28>.

relationships require strong psychosocial support. Programs designed to support them should include counseling and therapy to help them cope with trauma and build resilience. For this special regulation to work as intended, a strong monitoring mechanism is needed to assess the effectiveness of the protection and support provided to children of incest, essential to ensure that the regulation functions as intended. Specialized regulations should include periodic evaluations to identify shortcomings and improve existing policies based on findings from the field. After considering the above points, specific regulations can be developed to provide comprehensive protection and support for children born from incestuous relationships in Indonesia. Collaboration between the government, health institutions, educational institutions, victims and the community is essential to ensure the successful implementation of this regulation.

Discussion

This study employs a normative library research method to examine legal protection for children born from incestuous relationships, focusing on Indonesia's legislative and social frameworks. Data collection involved analyzing legal documents, laws, and case studies, including the Child Protection Law and various related regulations. The methodological approach combines the interpretation of legal doctrines with a comparative analysis of real-life cases to identify gaps and best practices in protecting incest victims.

The findings underscore the severe vulnerabilities faced by children born of incest, who endure compounded stigma, discrimination, and systemic neglect. These challenges highlight the inadequacy of current legal protections and the necessity for specialized regulations addressing their unique needs. Such regulations should ensure anonymity and confidentiality to prevent societal stigma, guarantee access to health and education, and establish comprehensive psychosocial support systems. Public education campaigns are also vital to dismantle harmful cultural norms and encourage reporting of incest cases.

From a broader perspective, the implications of this study extend to improving child protection policies and advocating for reforms that align with both legal mandates and societal values. It emphasizes the need for collaboration between stakeholders, including governments, communities, and legal institutions, to create a safer and more inclusive environment for all children.

The contribution of this research to the field of law and social studies lies in its deconstruction of existing frameworks, offering a foundation for developing child protection laws that are sensitive to the realities of incest cases. It also adds to the discourse on integrating legal systems with

cultural and ethical considerations, setting a precedent for addressing complex social issues through interdisciplinary approaches.

Conclusion

A person who is a victim of incest is often unaware that they are experiencing violence, leading them to keep this secret out of fear and shame, as well as a lack of understanding that they are a victim. Pressure, intimidation and manipulation by the perpetrator often make them feel helpless and end up accepting violence as part of their daily lives. Because of this, they do not report, which is one of the main reasons why children born out of incest often do not get the legal protection they deserve. So far there is no regulation that specifically targets children born from incest. They need special regulations because the pressure they will face is greater when compared to children born from different backgrounds both socially, psychologically and medically. Addressing social stigma, increasing awareness of reporting and community support, strengthening law enforcement, and providing adequate resources are important steps to take. Collaboration between stakeholders, comprehensive sexual education strategies, and increased public awareness will go a long way in creating a safer environment that supports the rights of incest children in Indonesia without discrimination.

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