

## CHAPTER ONE

### INTRODUCTION

#### A. Background

Violence against women in the last four years has increased as proven from the report of *Komnas Perempuan*, in 2016 there were 259 cases, in 2017 348 cases, 2018 up to 14%, namely 406 cases, and lastly in 2019 with 431 cases.<sup>1</sup> It is really not a small number for the occurrence of violence. In Article 5 of Law no. 23 of 2004 concerning the Elimination of Domestic Violence, it is stated that violence can be divided into four categories, namely physical, psychological, sexual, and household neglected violence. The research is focused on sexual violence which occurs in domestic on pre marriage period. Pre-marriage according to the Big Indonesian Dictionary (KBBI) is divided into two words, the first is "Pre" which means before and "marriage" which means a marriage bond (contract) carried out in accordance with legal provisions and religious teachings. There is no regulation which regulates the limit of pre marriage period. So, in this case the research used systematic interpretation. Systematic interpretation is connecting and comparing one regulation or regulation with another regulation or regulation.<sup>2</sup> In this interpretation, the research used two regulation, Law No. 35 of 2014

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<sup>1</sup>Komnas Perempuan, *Catatan Kekerasan Terhadap Perempuan*, taken from <https://www.komnasperempuan.go.id/read-news-siaran-pers-dan-lembar-fakta-komnas-perempuan-catatan-tahunan-kekerasan-terhadap-perempuan-2020> accessed on November 4<sup>th</sup>, 2020 at 9.44 a.m.

<sup>2</sup>Afif Khalid, 2014, "Penafsiran Hukum oleh Hakim dalam Sistem Peradilan di Indonesia", *Al' Adl Journal*, Vol 6 No 11, page 17.

concerning Child Protection and Law No. 1 of 1974 concerning Marriage Law. In law of Child Protection can be said to be an adult when they have reached the age of 18, while in Marriage Law a women is allowed to marry when she reached the age of 16. The conclusion is the pre marriage period is before they married until they are adult which 18 years old.

In the last 5 years has unstable as in 2016 there were 34%, in 2017 31%, in 2018 14%, in 2019 decreased 25%, and lastly in 2020 up to 30%.<sup>3</sup> Sexual violence which occurs in domestic first is forced sexual intercourse against people who live within the scope of the house the ladder. Second, coercion of sexual intercourse against one within in the scope of his household with other people for commercial purposes and or certain purposes. As stated in Article 8 Law No. 23 of 2004 concerning Elimination of Domestic Violence. In other words, the domestic sexual violence is a coercive behaviour against one's body related to sexual desire that occurs in the household.<sup>4</sup> People who experience domestic sexual violence are family members. Family is the smallest unit in society the member of family is husband and wife, or husband, or father and child, or mother and child as state in Law No. 52 of 2009 concerning Population and Family Development.

In Indonesia, there are two types of domains of violence against women, namely the public sphere and the sphere of household or personal relations. Violence in the sphere of household or personal relations is divided

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<sup>3</sup>*Ibid*, Komnas Perempuan "Catatan Kekerasan Terhadap Perempuan".

<sup>4</sup>MaPPI FHUI, 2018, *Apasih perbedaan Kekerasan Seksual&Pelecehan Seksual?*, taken from <http://mappifhui.org/wp-content/uploads/2018/10/MaPPI-FHUI-kekerasan-seksual.pdf> accessed on June 7<sup>th</sup>, 2021 at 7.27 a.m.

into three groups, namely violence against wives, violence against girls, and violence in dating or in the pre-marriage period.<sup>5</sup> The domestic sexual violence here is the violence against women especially the daughters.

Domestic sexual violence that occurs to women is an act of illegal action. Actions against the law here are actions that are against the law in the field of one's civilization. It is said that Acts against the Law in the civil sector are due to the fact that these actions are contrary to the rights of others whose existence is recognized by law. The rights in question include personal rights (*person lijkheidsrechten*), property rights (*vermogensrecht*), freedom rights, and rights to honour and good name.<sup>6</sup> Violence against (sexual) women can be categorized into acts against the law in terms of personal rights. The sexuality of a women is a personal right that must be guarded and protected by anyone.

John Locke, Montesquieu, and J.J. Rousseau also argued that human rights are inseparable from oneself including self-independence right of the women.<sup>7</sup> The right to self-independence means that women have the right to themselves both physically and psychologically, so that the pre-marriage period is not an alibi for a potential partner to be able to interfere with the right to self-independence until there is a valid marriage.

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<sup>5</sup>Ayusrih Dyah, 2018, *Pendidikan Pranikah Dalam Membangun Kesiapan Menikah Dan Membentuk Keluarga Sakinah*, taken from <http://eprints.umpo.ac.id/4508/2/BAB%20II.pdf> accessed on November 4<sup>th</sup>, 2020 at 10.26 a.m.

<sup>6</sup>Munir Fuady, 2017, "*Perbuatan Melawan Hukum Pendekatan Kontemporer*", Jakarta: PT. Citra Aditya Bakti, page 6.

<sup>7</sup>FirdausArifin, 2019, "*Hak Asasi Manusia Teori, Perkembangan, dan Pengaturan*", Yogyakarta: Thafa Media, page 48.

When domestic sexual violence against women rights occurs, they have to defend. As stated in Article 10 of Law No. 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT) that they are entitled to obtain four rights below;

- a. Protection from the family, police, prosecutors, courts, advocates, social institutions, or other parties either temporarily or based on the stipulation of a protection order from the court;*
- b. Health services according to medical needs;*
- c. Special handling related to the confidentiality of the victim;*
- d. Assistance by social workers and legal aid at every level of the examination process in accordance with the provisions of laws and regulations; and*
- e. Spiritual guidance services.*

Until now not many victims of sexual violence occurred in the domestic have received protection from their family or parents. In other words, there has been an ignorance from the parents on their responsibilities or obligations to protect their daughters' rights. Therefore, the researcher is very interested in studying the responsibility and obligation of the family as well as the implementation of the law related to domestic sexual violence during pre-marriage in Indonesia.

## **B. Problem Formulation**

In this research, the problem formulations are as follows:

1. How is the legal protection for women by parents and families in the occurrence of domestic sexual violence on pre marriage period in Indonesia?
2. What are the legal consequences for parents who do not carry out their obligations in providing legal protection to their daughters due to domestic sexual violence on pre marriage period in Indonesia?

### **C. Objectives of Research**

The research objectives are as follows:

1. To find out legal protection for women by parents and families in the occurrence of domestic sexual violence on pre marriage period in Indonesia.
2. To find out legal consequences for parents who do not carry out their obligations in providing legal protection to their daughters due to domestic sexual violence on pre marriage period in Indonesia.
3. Propose suggestions for better policies and parents responsibility for the protection of women in the future.

### **D. Benefits of Research**

Among research benefits areas follows:

#### **1. Theoretical Benefits**

This research provides benefits for the development of science, especially in laws related to the protection of women's rights in Indonesia.

## **2. Practical Benefits**

This research provides a better understanding of how the law and family responsibility related to their daughters / women in the case of protecting from domestic sexual violence in Indonesia. This better understanding is beneficial for the government, family, lecturers, students, and other related parties.