Legal Status and Protection for Women Human Rights Defenders in Indonesia

Niken Savitri¹, Dyan Franciska Dumaris Sitanggang²

¹Universitas Katolik Parahyangan, Indonesia  
E-mail: niken@unpar.ac.id  
²Universitas Katolik Parahyangan, Indonesia  
E-mail: dyanfranciska@unpar.ac.id

Submitted: November 08, 2021; Reviewed: August 30, 2022; Accepted: September 27, 2022

Article Info

Abstract

The term Human Rights Defenders (Pembela HAM in Indonesia) stands for any people or group whose activities revolve around the defense and promotion of human rights and other basic freedoms. In the course of their work, human rights defenders often experience verbal threats, attacks and even physical acts of violence that seriously hamper their activities. Women human rights defenders are an important part of human rights activism. However, they are a vulnerable group because of their position and status as women. Being vulnerable, the bodies, sexuality and identity of women human rights defenders have been violently attacked through the exploitation of gender stereotypes biased against women. However, it is apparent that women human rights defenders in Indonesia are not adequately protected. This paper employs normative analytical descriptive research methods by looking at the specificity of women human rights defenders as a vulnerable group facing specific attacks and violence, as well as examining various norms of protection. The Government of Indonesia through the existing legal norms has an obligation to fulfil the protection of women human rights defender, considering the vulnerability of women human rights defenders.

Keywords:  
Legal Protection, Human Rights, Women Human Rights Defenders

DOI:  
10.25041/fiatjustisia.v16n4.2455
A. Introduction

The 1948 Universal Declaration of Human Rights (UDHR) as a document underpinning international human rights laws affirms that respect for inherent dignity and rights shared equally by all human beings as being inalienable to anyone forms the basis of freedom, justice, and peace in the world.1 Basically, human rights will come to the surface as an issue in a power relationship,2 namely the relationship between individuals and governments (or non-governmental entities with certain powers). Human rights limit the power of the government and demand that the government should take the necessary measures to ensure that everyone can enjoy these rights. The government is also responsible for protecting individuals from human rights violations committed not only by the government itself, but by third parties as well. This does not mean that individuals do not carry human rights responsibilities themselves, but guarantees in the form of regulations and policies, infrastructure and facilities, and law enforcement are made by the government.3

However, the promotion of human rights is now more actively conducted by individuals and groups or associations than by the state itself. This effort is made in various ways, both through efforts to establish and / or reform government institutions and state practices and policies, while some do so through advocacy and education both for the government as well as for the community, identification of human rights violations, and also through decisive action against human rights violations, either by means of demonstrations or legal channels.4 People who are active in the promotion of human rights by the United Nations (UN) and the international community are called 'human rights defenders'.

There is no specific definition of the latter, but in the Declaration on the Rights and Responsibilities of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental

---

Freedoms (HRD Declaration) adopted by the UN General Assembly on 9 December 1998 it is stated that:

"Acknowledging the important role of international cooperation for, and the valuable work of individuals, groups and associations in contributing to, the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals, including in relation to mass, flagrant or systematic violations such as those resulting from apartheid, all forms of racial discrimination, colonialism, foreign domination or occupation, aggression or threats to national sovereignty, national unity or territorial integrity and from the refusal to recognise the right of peoples to self-determination and the right of every people to exercise full sovereignty over its wealth and natural resources..."\(^5\)

The HRD Declaration underlies the recognition and protection of the rights of human rights defenders as well as the state's responsibility for them. This shows great concern for the importance of protecting human rights defenders to do their work in advancing, protecting and ensuring the fulfilment of human rights by the state. This instrument is evidence of a paradigm shift in efforts to promote human rights that is no longer state-centric, but it also emphasises the role of individuals, groups, and associations that contribute to the effective elimination of all human rights violations and fundamental freedoms of all people and how they are protected when carrying out such roles. However, does the state remain the main holder of responsibility for the fulfilment of human rights, considering the role of advancing and promoting human rights carried out by non-governmental parties as well?

In addition to the HRD Declaration, there are several international and regional instruments related to the protection of human rights defenders (both legally binding ones and in terms of soft-law measures and guidelines), including documents whose formation is facilitated by the United Nations such as the UDHR, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) along with general comments governing human rights, as well as UN Human Rights Council resolutions and a special rapporteur for human rights defenders to review documents appointed by the UN Human Rights Council; the Model Law for the Recognition and Protection of Human Rights Defenders published by the International Service for Human Rights.

(ISHR Model Law) in 2016; instruments of regional organisations such as the European Union, the Organisation of American States and the African Union on human rights defenders; and the Declaration on Expanding the Civic Space and Promoting and Protecting Human Rights Defenders, with a Specific Focus on Women: The Role of National Human Rights Institutions (known as the Marrakech Declaration). Some countries already have their own regulations regarding human rights defenders. Indonesia does not yet have regulations on the protection of human rights defenders including vulnerable groups. Currently available are Standards, Norms and Human Rights Defenders Arrangements compiled by the National Human Rights Commission of the Republic of Indonesia that can be used as law enforcement guidelines related to the protection of human rights defenders in general. The problem is that, as a standard, the document merely amounts to a guideline, so it does not have legally binding power.

Women human rights defenders are an important part of human rights activism. However, they are a vulnerable group because of their position and status as women. Being in this vulnerable position, women human rights defenders’ bodies, sexuality and identity are violently attacked by exploiting gender stereotypes biased against women. In addition to these special types of vulnerability and violence, women human rights defenders still have to face violence that is generally obtained by human rights defenders, such as physical violence, verbal violence or violence perpetrated through digital media, among other types of violence. The National Commission on Anti-Violence against Women (Komnas Perempuan) describes at least 10 specific types of vulnerability and violence experienced by women, namely: rape, sexual torture, sexual terror, sexual harassment, sexual stigmatisation, attacks on the role of mothers, wives and daughters, erosion of credibility by casting doubt on marital status, exclusion and rejection on the basis of morality, religion, customs, culture and family reputation, the dwarfing of women's capacities and issues, and the exploitation of women's identities.

Resistance, acts of violence and threats against women human rights defenders are layered, because in addition to experiencing acts of violence and threats specifically because of being women, they are on the receiving end of acts of violence and threats that are generally experienced by human rights defenders.

---

7 Komnas Perempuan, *Perempuan Pembela HAM Berjuang dalam Tekanan* (Juni 2007), 14-25.
defenders. The case example below is an example that shows the existence of violence and specific threats against women human rights defenders, simply because they are women:

“AV conducts legal assistance for women victims of violence in West Nusa Tenggara Province (NTB). Because of this activity, AV often experiences acts of violence that target her identity and sexuality as a woman, especially because of her status as a single parent. The violence was experienced either directly or indirectly. One of the acts of violence she was never to forget consisted of terror by way of blackmail describing her as a prostitute. At that time, she and her legal aid agencies had been vociferously criticising and advocating changes to the draft of the Anti-Immorality Regulations in West Nusa Tenggara Province (NTB). As a result, they were considered a pro-maksiat (supporting immorality) group. In the blackmail letter, AV was depicted stark naked, with her vagina bleeding, her breasts grotesquely large, and hugging men on her left and right sides. The blackmail letter obviously shocked AV and she felt truly besmirched.”

In such cases, women human rights defenders experience violence in the form of terror in connection with the defense of human rights against women victims of violence. But the terror is targeted at their reputation as women and violence against their bodies as women. This has surely never been experienced by male human rights defenders. Consequently, it becomes a question of the extent to which the state provides protection in the form of legislative products to be used as a legal basis and has binding power in fulfilling the obligation of protection, especially provided for women human rights defenders who often face attacks or threats in layers.

Indonesia already has several national regulations related to the protection of human rights defenders, but there is no one specific regulation governing the fulfilment of rights (including protection) of human rights defenders, and female ones (WHRDs) in particular. The glaring absence of comprehensive regulations governing the protection of human rights defenders which includes special protection of women human rights defenders effectively means that when this group experiences violence or threats, the rules that can protect them are merely regulations that are generally given to communities as victims of threats or acts of violence, where no distinction is drawn between the victim being a human rights defender or a specifically female one.

---

8 Ibid, 16.
Nonetheless, there are many international instruments that emphasise the importance of protecting human rights defenders, especially those in vulnerable groups, one of which is women human rights defenders. This paper will look into the reasons why special attention is needed for women human rights defenders and how the Indonesian government protects them through the existing national regulations.

Articles dealing with women human rights defenders were not found, but there was one article on "Women, Human Rights and Their Problems in Indonesia" by Louisa Yesami Krisnalita published in The Journal of Binamulia Hukum, Volume 7 Number 1, June 2018. It describes women's issues and human rights in general in Indonesia. In addition, there is a paper entitled "Human Rights Defenders on Natural Resources Issues in the South-Central Timor Regency of East Nusa Tenggara Province", by Firdaus in The Journal of Human Rights, Volume 8 Number 2, December 2017. The latter specifically highlights environmental human rights defenders in East Nusa Tenggara.

This paper will use normative analytical descriptive research methods by reviewing the work of human rights defenders that differ from human rights defenders in general, woman human rights defenders as vulnerable groups facing special arracks and violence, and national legal normas that cajn protect women human rights defenders as vulnetable groups that defand these rights. Data will be collected mainly from international and national legal insturments, as well as scholarly books and articles. The novelty of this research lies in the emphasize on women human rights defenders, and how their vulnerabilities should be considered in the formulation of legal status and protection of women human rights defenders enacted within the national legal instrument.

B. Discussion
1. Women Defenders as a Vulnerable Group

Human rights are universal and applied equally to everyone regardless of the person's existence or status in various gender, ethnic, religious, national, and age groups. The main principle of human rights is non-discrimination against any such individual or group. But why then are there groups that are subsequently labelled as vulnerable groups worthy of special protection? 'Vulnerability' (or vulnerability in the context of human rights) is defined as follows:
"In the context of human rights (and particularly of the right to development), the terms ‘vulnerable’ or ‘vulnerability’ are often used to describe segments of the population that are or should be the recipients of extra care and attention." 9

Vulnerable groups are ones that require special attention and protection because of their position or status or circumstances and conditions. Several studies related to vulnerable groups yielded the conclusion that women are one of the vulnerable groups that meet the categories mentioned above. The United Nations Office of the High Commissioner for Human Rights (OHCHR) explicitly states that women and girls form one of the vulnerable groups that need special attention. 10

In relation to the protection and fulfilment of human rights, certain groups of people are included in vulnerable groups, mainly because the conditions and status they have are not the same as other groups. How this group is able to enjoy its human rights also differs from the way other groups can enjoy theirs. If people in general can enjoy human rights because of their nature as human beings, then surely vulnerable groups under certain conditions require special efforts or special measures to be able to enjoy theirs. For example, everyone has the right to work in both formal and informal fields to earn a living. But for women as a vulnerable group, there are restrictions made either formally by regulations (for example, local regulations that prohibit women from going out at night) or by the community (for example, the demands to care for one’s family and do domestic work). As a consequence, women cannot directly enjoy or gain access to basic human rights and freedoms as other groups can. The Icelandic Human Rights Centre states that:

“There are particular groups who, for various reasons, are weak and vulnerable or have traditionally been victims of violations and consequently require special protection for the equal and effective enjoyment of their human rights.” 11

---

9 Alexander H. E. Morawa, Vulnerability as a Concept of International Human Rights Laws (JIRD, 2003), 139.
Vulnerable groups need to receive support from the state to overcome their obstacles in enjoying human rights and basic freedoms. The OHCHR states that:

"States should pay particular attention to persons rendered vulnerable by conflict, including internally displaced, women, children, older persons and persons with disabilities, among others. States are required to address marginalisation arising from social, political and economic exclusion and discrimination."12

Vulnerable groups are often marginalised or excluded from human rights and therefore discriminated against due to social, political and economic factors. Bunch and Reilly assert that human rights are interdependent on one another, and when states neglect human rights obligations (including social rights and economic rights), women are often significantly affected:

“…where social and economic rights are denied and the state abdicates responsibility for assuring life and well-being (food, shelter, work, health, access to land and other economic recourses, welfare and education) women bear disproportionately the burden of sustaining life and livelihood."13

Thus, intervention from the state is needed to eliminate the factors that cause discrimination against these vulnerable groups. Therefore, in order to meet its obligations in the fulfilment of human rights, the state must ensure that these vulnerable groups can enjoy their basic human rights and freedoms, in the same way as the rights enjoyed by other groups. The guarantees of the state include and are not limited to the existence of special measures imposed on vulnerable groups, so that these groups can enjoy their basic human rights and needs.

As explained, based on the HRD Declaration, everyone who advances and fights for the fulfilment and protection of human rights and basic freedoms, both on a national and international scale, are defenders of human rights themselves. Each person can be categorised as a human rights defender if s/he alone or together with others carries out the activities referred to above. Furthermore, if ‘human rights defenders’ include all persons or groups who individually or together with others promote and fight for the protection and fulfilment of human rights and basic human freedoms, then who exactly are

---


meant by ‘women human rights defenders’? Amy Dwyer of the Centre for Women, Peace Security in "Women Human Rights Defenders: Left Behind in the Women, Peace and the Security Agenda" states that:

"WHRDs are understood as women or non-binary individuals engaging in the defense of all human rights, or people of all genders defending rights related to gender, sexuality and bodily autonomy."\(^{14}\)

Meanwhile, the OHCHR states:

"Women’s human rights defenders (WHRDs) [i.e. all defenders of women’s human rights irrespective of gender] are both female and any other human rights defenders who engage in promotion and protection of women’s rights and gender equality as well as all women working on any issue related to human rights and fundamental freedoms individually and in association with others in any region of the world."\(^{15}\)

As citizens, not only men can actively act as human rights defenders, women can also actively fight for the fulfilment of human rights for themselves, communities, nations, and other human beings. The National Commission on Anti-Violence Against Women (Komnas Perempuan) mentioned that women are an integral part of the human rights advocacy community.\(^{16}\) Working women from grassroots communities, who voice and advocate the rights of their specific communities, are an integral part of human rights enforcement efforts themselves. Without being granted official status, they are women’s human rights defenders of the female gender.\(^{17}\) Grassroots activism from diverse communities plays a role in human rights promotion efforts, including transitional justice, with a bottom-up approach.\(^{18}\) These grassroots actors fight for human rights that are owned through efforts to limit government arbitrariness or through efforts that ensure that justice can be enjoyed widely, including by those who are generally marginalised, such as women and children.\(^{19}\)


\(^{16}\) *Perempuan Pembela HAM, Berjuang dalam Tekanan*, op.cit., 8.

\(^{17}\) *Ibid*.


\(^{19}\) *Ibid*, 8.
The Special Rapporteur of the Human Rights Council in 2019 said that women are involved in a variety of contexts of human rights activism, including but not limited to issues of gender equality, land and environmental rights, rights for other minority groups (such as women in the hinterland/rural areas, migrants, refugees, persons with disabilities), protection from violence, independence of the body, rights related to technology, and others, and by way of various professions (lawyers, journalists, teachers, members of non-profit organisations, and others):

“Women of diverse backgrounds promote and protect rights in very different contexts. There are, for instance, women calling for gender equality, indigenous women fighting for land and environmental rights, women in rural areas pressing for socio-economic rights, girls campaigning on social issues, trans women speaking up against discrimination, lesbians calling for equality, migrant and refugee women advocating for their rights and security, homeless women demanding the right to housing and shelter, women fighting for justice for the disappeared, gender non-conforming persons resisting gender-based violence, women promoting choice and bodily autonomy, women expanding digital rights, women with disabilities fighting for independent living and women involved in peace processes. They include women human rights lawyers representing victims in court, women journalists exposing issues of interest to the public, women union leaders calling for labour rights, women politicians and parliamentarians debating public issues, women judges upholding rights though the law, women in the police and the military protecting populations, women in academia teaching and researching human rights, women leading communities, non-profit organizations and social movements for transformative change, women in intergovernmental organizations working with States to fulfil rights obligations, and women humanitarian workers, development workers and health workers providing access to essential service.”

In line with this, Komnas Perempuan provides several illustrations of the uniqueness of the work of women human rights defenders, among others:

“… indigenous women who fight for community access to their natural resources taken over by entrepreneurs; teachers who resist the intervention of the powers that be in order to teach the truth to their

---

students; religious figures who face intimidation from conservative/fundamentalist forces for voicing teachings that free women from violence and injustice of young women who do not stop breaking silence about past human rights violations despite having to endure expulsions by their own parents; the wife of a victim of human rights violations who holds the state accountable on behalf of herself and other victims' communities; NGO activists accompanying victims to stop impunity for perpetrators of domestic violence.”

The uniqueness of the identity of women human rights defenders is due to the position and status of women, both in the family and in society. But despite doing work in the defense and progress of human rights and as an integral part of the human rights defender community, often the existence of women human rights defenders is not recognised.

In addition, women human rights defenders are vulnerable to violence or attacks or threats of a special nature experienced by women human rights defenders, related to the vulnerability of women as one of the vulnerable groups, namely violence related to sexuality, the status of women as mothers, wives and daughters in the family, the views of women in society, as well as patriarchal culture.

The types of violence or threats against women human rights defenders as noted by Komnas Perempuan comprise rape, sexual torture, sexual terror, sexual harassment, sexual stigmatisation, attacks as mothers, wives and daughters, erosion of credibility by casting doubt on marital status, exclusion and rejection on the basis of morality, religion, customs, culture, and family reputation, dwarfing of women's capacities and issues, and exploitation of women's identity.

In addition to violence of a special nature, women human rights defenders experience and suffer from violence, attacks and common threats that are usually faced by other human rights defenders. Komnas Perempuan’s 2020 Annual Record reported 36 cases of violence against women human rights defenders.

From the list of violence experienced by women human rights defenders above it can be concluded that the violence or threat of violence experienced is very specific regarding women's status and the status and position of women in society. This violence is typical because it is not experienced by other (i.e. male) human rights defenders. As Morganne Barrett states:

21 Perempuan Pembela HAM, Berjuang dalam Tekanan, loc.cit.
22 Ibid.
23 Ibid.
"Because of their gender and the long-held gender stereotypes dictating women's societal roles and expectations, women human rights defenders face unique risks, including gender-based violence".25

According to Barrett, the perpetrators of violence experienced by women human rights defenders can be carried out either by the state or non-state actors, including rape, verbal abuse and through online messages, threats of defamation or dignity, and other activities that disseminate the degrading of one's reputation.26 The OHCHR also states that:

“Women’s human rights defenders face all of the challenges generally experienced by human rights defenders. These challenges include threats, death threats, killings, arrests, detentions, judicial harassment, threat of criminal prosecution and other forms of criminalization, threats of committal to psychiatric hospitals and eviction, threats of violence against family members, stigmatization, break-ins at the homes of defenders, rape and other forms of sexual violence. However, female defenders require particular attention as they are under different pressures from those confronted by men and often face gender-specific threats and violence more than their male counterparts, such as rape and sexual violence.”27

One example of violence against female women’s human rights defenders that is not experienced by male human rights defenders can be seen in the example below:

“BO works in a legal aid agency that specifically provides services for female victims of violence. As a victim’s companion, she must deal with threats from the perpetrators of the violence of the case she accompanied. These threats are often directed at children and families as a tool of terror. As a mother, she was also daunted that her children were threatened due to the choice of activities she was involved in. BO has received insults from her neighbours as well. She was once considered an irresponsible mother and wife because she often left her three young children at home. In order to pay more attention to the family, BO decided not to handle cases at night and not to bring work home. This decision has been regretted by colleagues and clients because there are many women victims who need assistance, while the

26 Ibid, 461.
27 Women’s Human Rights Defenders, loc.cit.
HR capacity of the institution is limited. This disappointment was expressed by mocking BO as 'having no high degree of commitment and being insufficiently feminist.'

Another similar case happened in the regions of Pati and Rembang where since 2006 PT Semen Gresik (now Semen Indonesia) and its subsidiaries had been planning on projects to build factories, which threatened the livelihood of the locals. The local communities were then represented by women in their campaigns against the injustice. However, these women were attacked, not by open gunfire, but gradually through verbal attacks, attacks on their status, and sexual abuse.

As human rights defenders, who are also mothers and wives or daughters, women human rights defenders often get attacked because of their status, even though their work is needed as a companion of victims who are partly women and children as a vulnerable group. It is undeniable that the work of women human rights defenders is very close to other vulnerable groups. Although women human rights defenders are involved in human rights issues in general related to civil, political, economic, social and cultural rights, they are also involved in specific human rights issues such as some special sectors or communities that focus on women's rights. In addition, women human rights defenders are more at risk of experiencing certain forms of violence due to their gender or gender-based violence, prejudice, seclusion, denial, sexual harassment, stereotypical gender, and perceived violations of custom. Often violations found against women human rights defenders actually come from the community, nuclear family, or the relatives where they come from. The Special Rapporteur’s report mentioned that women engaged in activism against domestic violence and other forms of violence against women are instead pressurised by families or threatened by perpetrators to discontinue this human rights activism.

Women are often seen from the point of view of their traditional role in their community. Women's involvement in the defense of human rights is opposed,

---

28 Perempuan Pembela HAM, Berjuang dalam Tekanan, op.cit., 20.
30 Women’s Human Rights Defenders, loc.cit.
restricted, or blamed when subjected to attacks.\textsuperscript{33} The OHCHR refers to this as the 'particular situation'\textsuperscript{34} faced by women human rights defenders in their human rights activism, because in various parts of the world, women are considered integral to the culture of society or considered as an extension of the community. This situation makes it difficult for women human rights defenders to question and fight against common aspects or features in their traditions and cultures that are actually human rights violations. When women become victims of rape as a result of human rights activism, the person concerned may even be considered to have brought shame on their families and communities, so that in addition to the trauma of rape, women have to bear the negative views of the surrounding community vis-à-vis their human rights work. Even when women human rights defenders are not victims of rape or other attacks, WHRDs still have to deal with anger from families and communities that consider their work a danger to honour and culture.\textsuperscript{35}

The Format of the Experience of Vulnerability and Violence against Women Human Rights Defenders published by Komnas Perempuan, states that:

"Vulnerability is caused by the factors that make women human rights defenders easily disturbed or hampered in doing their work, including being easily targeted by violence. Vulnerability is present mainly due to gender construction that is deeply rooted in the culture of the society in which women human rights defenders live and work. Discrimination against women, therefore, is a major element of vulnerability. For example, discrimination in the form of restrictions on women's wiggle room or freedom to act is conveyed through verbal prohibition and moreover, in the form of legal products. Rejection of these restrictions can result in exclusion, and criminalisation of women human rights defenders."\textsuperscript{36}

Therefore, special attention from the state is needed by women human rights defenders in carrying out human rights defense work, to at least minimise the vulnerability that exists in women human rights defenders and ensure women human rights defenders can do their work without restrictions. Furthermore, the Guide Book on Women Human Rights Defenders states why there should be special attention devoted to women human rights defenders:

\begin{flushright}
\textsuperscript{34} \textit{Ibid}, 21.
\textsuperscript{35} \textit{Ibid}.
\textsuperscript{36} Dokumentasi Pengalaman Kerentanan Perempuan Pembela HAM, \textit{op.cit.}, 14.
\end{flushright}
“… they face risks that are specific to their gender and additional to those faced by men. Frequently, the violence or threat against them is sexual in nature, or they face restrictions in their work on account of their gender. Furthermore, prejudice, exclusion and public repudiation by both state forces and social actors weigh heavily in their lives.”

The book also mentions several factors that generally affect the work of women as human rights defenders, which are not faced by other human rights groups, namely patriarchal cultural factors, hetero-normativity factors, militarisation factors, and globalisation factors. Of the four factors that have an impact on women human rights defenders mentioned above, the most relevant one to be discussed in this paper is the patriarchal factor. Patriarchy is a term used to describe the oppressive and exploitative relationships that women experience as a result of the privilege of male power in society. It is implemented by limiting women's autonomy – especially their sexual autonomy – and considering violence against women to be natural. As a result of patriarchal culture, women are considered to lack the autonomy and independence to act or decide for themselves. They are treated only as an extension of their husband, brother, father or male partner, despite being at the forefront of the defense of civil, political, economic, social, and cultural rights. As a result, they rarely receive the protection that is given to human rights defenders in general.

Rapporteurs for Violence Against Women, Radhika Coomaraswamy and Yakin Erturk explain that when patriarchy intersects with other oppressive factors such as class, race, and ethnicity, discrimination becomes more and more viscous, forcing most of the world's women into multiple situations of discrimination. The existence of this patriarchal factor should be one of the considerations of the state in paying special attention to women human rights defenders. The victims of patriarchy are mostly women and children. As a result, women human rights defenders as figures who struggle to accompany the victims must first be given a guarantee of protection so that the work that has been finished can bring results in the fulfilment of victims' human rights. In other words, if we want the protection and fulfilment of victims of human rights violations in vulnerable groups (women and children), then the state as

39 Ibid.
40 Ibid.
41 Ibid, 24.
a stakeholder must ensure the fulfilment of human rights to women human rights defenders in their work, especially accompanying victims from vulnerable groups and from other groups. However, the existing norms are found to be inadequate and have’ny accommodated the needs of women human rights defenders as vulnerable group.

2. Legal Status and Protection of Women Human Rights Defenders

Human rights defenders are entities that have been known to be critical of the government with their efforts to ensure the State takes the necessary actions for the fulfilment of human rights. Their movements are critical and often out of step with the government's agenda, making human rights defenders regarded not as pillars in democracy and human rights fulfilment, but as enemies of national security that need to be removed. This causes vulnerability in the work of human rights defenders because of their activities that have a sufficiently large space to come up with ideas, ideas and publish findings that are regarded as important for changes in a more qualified system of government in the interests of the general public.

In relation to women human rights defenders, as a group that does work in helping the government to fulfil the human rights of its citizens and defend human rights against victims of human rights violations, the work of women human rights defenders who have a very broad scope is often considered an activity that disrupts the stability of government work or even interferes with the interests of certain groups of people. This makes women human rights defenders a group that needs guarantees of legal protection, and even more so when the attacks experienced come not only from outside but also from within (family, community). Perpetrators of various forms of attacks and efforts to marginalised women human rights defenders include state officials, human rights abusers, thugs known as preman, professional communities, citizens, their own families, and even fellow activists. It can be concluded that 'community' and 'culture' that are in the private sphere of a person's life also form a major challenge for women human rights defenders, so it becomes important for the state to provide protection that includes such internal threats.

---

43 Ibid.
44 Ibid.
45 Perempuan Pembela HAM, Berjuang dalam Tekanan, op.cit., 13.
Due to the diverse sources of threats to women human rights defenders, a multi-dimensional and community-based protection system is needed, in addition to those based on the principle of state responsibility. A comprehensive protection system that responds to all the vulnerabilities of women human rights defenders needs to include: the creation of space and strengthening solidarity networks among women human rights defenders (sisterhood); public campaigns for the recognition of women human rights defenders and disseminating discourse on the rights of human rights defenders to protection; information systems and rapid movement mechanisms to provide protection in emergencies through a solid local-national network; strategic cooperation with those who have the capacity to provide protection; a gender-sensitive code of ethics of activists/human rights defenders; strengthening the economic base, welfare and recovery for human rights defenders; and the formulation of laws and regulations to ensure legal protection for human rights defenders.

Thus, it becomes important to understand that protection not only focuses on the vulnerability of women human rights defenders, but also features strengthening measures (empowerment) culminating in the hope that there can be changes in the representation of women in general, including women human rights defenders, so as not to perpetuate stereotypes of women's positions in power relations that are considered weak and can slowly move to equality. In this paper, the focus will be the direction of legislation that ensures protection for women human rights defenders.

The protection of human rights defenders can include several elements, namely: first, legal protection: this protection is not only related to the existence of laws that guarantee the protection of human rights defenders, but also to the negation of laws that could potentially threaten human rights defenders. Second, the assurance and support of human rights defenders' activities: this is related to the effectiveness of human rights defenders in their defense, such as the right to information, communication either with the government or non-governmental entities or parties. Third, the recognition of the defense by human rights defenders, including guarantees of human rights

47 Perempuan Pembela HAM, Berjuang dalam Tekanan, op.cit., 13.
48 Ibid.
defenders' immunity to defense activities carried out. For the first point of the aspect of protection of human rights defenders, the state has several national legal norms that provide guarantees for the protection of the work of human rights defenders.

The Indonesian government has several general arrangements related to the protection of human rights defenders and the protection of vulnerable groups. The regulations are among the following:

1. The Constitution of the Republic of Indonesia of 1945, in particular Article 28C paragraph (2), affirms that: "Everyone has the right to advance himself in fighting for his or her collective right to build his or her society, nation, and country."

2. Law No. 39 of 1999 concerning Human Rights Law, Section of Community Participation, Article 100 – Article 103 which basically gives the right to everyone, organisation, institution to participate in the protection, enforcement and promotion of human rights.

3. Law No. 40 of 1999 concerning the Press, which provides recognition and protection to human rights defenders with the background of the press profession.

4. Law No. 21 of 2000 concerning Trade Unions / Trade Unions that provides guarantees of protection to human rights defenders who are members of the Trade Union / Trade Union to defend and fight for the rights of its members.

5. Law No. 18 of 2003 concerning Lawyers who provide protection to human rights defenders with professional backgrounds as lawyers.

6. Law No. 32 of 2009 concerning Environmental Protection and Management, which provides protection to human rights defenders who fight for the right to a good and healthy environment.

7. Law No. 16 of 2011 concerning Legal Aid provides protection to human rights defenders who play a role in providing legal assistance.


These regulations have provided legal policies to the state to provide protection to human rights defenders. But nothing can be used as a basis to provide special protection to women human rights defenders with the special

---

50 Prospek Perlindungan Pembela HAM – Tifa Foundation, op.cit., 11.
threats and attacks they face. Meanwhile, the protection of vulnerable groups is stipulated in the Human Rights Law, Article 5 paragraph (3), namely: "Everyone who belongs to vulnerable groups of people is entitled to more treatment and protection with respect to their specificity." The last rule mentioned is one that guarantees protection based on the law to vulnerable groups, including women human rights defenders. Special protection of women human rights defenders is considered crucial, not only for considering women as vulnerable groups, but also by looking at the factual conditions of threats and attacks against women human rights defenders of a special nature.

For example, the state is considered to have failed to protect a woman human rights defender in Aceh in the following case:

“AN is a legal advisor for women victims of violence in Aceh. On February 18, 2006 in Banda Aceh, AN and two friends were detained by Wilayatul Hisbah /WH (Islamic Sharia Service) officers on charges of violating local regulations concerning the Islamic dress code known as qanun. At that time, she was staying at a hotel where activities were held by a women's organisation. At the time of the raid, she and several other female participants were chatting in front of their room. They were not wearing their customary headdress until they were arrested. They were violently marched out of the hotel, and paraded in an officer's car all the way to the town hall office. In the car there were several other women who had been arrested for not wearing Muslim clothing. During the examination process, the authorities used harsh words and harassed women, especially for those arrested at the hotel. They were only allowed to go home if they signed a letter of guilt and were picked up by their father, husband, or brother. Feeling innocent, AN refused to sign the letter. Officers attributed the denial to AN's activities as a female activist. AN briefly argued with the officer despite eventually signing the letter. Since AN came from out of town, no muhrim (close male relative) could pick AN up. When officers found out he was picked up by a male activist colleague, the officer again detained AN, accusing the male activist's colleague of being a pimp, and AN as a sex worker. AN reported WH's treatment of her to the police. Instead of being taken seriously, AN was asked to withdraw her report because it was considered against Islamic Sharia. AN was unwilling and asked the police to investigate her case. The investigation file was forwarded to the prosecutor's office, which halted further legal proceedings on the
grounds that there was insufficient evidence. AN is still fighting for a higher level of judicial proceedings for her case.\textsuperscript{51}

This case shows that the country that is obliged to protect women human rights defenders has acted to ignore law enforcement against the perpetrators of attacks on women human rights defenders. In addition to being an actor carrying out obligations that directly violate the guarantee of the protection of women human rights defenders, the state can also act as a direct actor that has an impact on the protection of women human rights defenders remaining unfulfilled. States can act indirectly by allowing regulations that still discriminate against women, both at the local and central levels, through legislation. By allowing discriminatory regulations against women to take effect, the state has indirectly weakened the work of women human rights defenders. This is because attacks and violence directed at women human rights defenders are heavily influenced by the discriminatory views that develop in society towards women.

In addition to acting indirectly through discriminatory regulations, the state warned against violence committed by the community against women human rights defenders as can be seen in the following example:

"BI is a women's rights activist who is a member of the Indonesian Women's Coalition in the Tangerang region. On April 19, 2006, BI along with about 100 mothers of KPI members in Tangerang region protested against the anti-immorality (anti-maksiat) regulation in front of the Tangerang Mayor's office. The law is considered discriminatory against women because it restricts women's wiggle room or freedom to act on moral grounds. Suddenly they were visited by a pro-regional group with a larger mass. The mob then beat up the mothers who were taking action. The beating left a number of mothers injured and bleeding. Some of them were chased and also pulled around their hijab headdress. At that time, there were a number of security forces on guard. The officers remained silent witnessing the attacks and violence carried out by pro-perda (supporting local regulations) groups.\textsuperscript{52}

From the two examples above, it appears that the state despite having regulated in the norms of national law on human rights defenders, in its implementation the state has failed to realise the protection of human rights defenders, especially women human rights defenders who face attacks specifically because of their character as women. By looking at the

\textsuperscript{51} Perempuan Pembela HAM, Berjuang dalam Tekanan, \textit{op.cit.}, 24.
\textsuperscript{52} \textit{Ibid}, 27.
vulnerability of women and the attacks and threats they face specifically, the state should provide special protection to women human rights defenders. This particular protection, in order to be implemented properly, must be explicitly stated in the form of regulations so that it can be used as a legal basis in its implementation. Special legal norms are required due to the specificity of women human rights defenders.

But in addition to ensuring the existence of special legal norms related to the protection of women human rights defenders, the state needs to ensure that the legal norms are implemented in cases related to women human rights defenders. States as the main entities carrying out obligations in the protection of human rights defenders are actors who have full authority to ensure that existing legal norms can be carried out optimally for the protection of women human rights defenders. In addition, as an actor, the state has the task of making special norms needed by women human rights defenders, as a form of state protection against vulnerable groups.

C. Conclusion

Protection for women human rights defenders with a gender-specific approach in Indonesia is very important in order to see the existence of unequal inter-gender power relations, patriarchal culture, extremism as well as discrimination and women's marginalisation as a result of the social construction of gender in Indonesian society. In their human rights work, women human rights defenders experience threats and attacks not only because of what they do, but also because of gender identity (who they are), so that threats and attacks experienced in addition to their general nature are also ones that will only occur to women. The right to defend human rights itself is a human right and thus, as a form of implementation of state responsibility for protecting such rights, in addition to recognition of the rights of human rights defenders, it is necessary to provide measures to protect these rights in the form of legislation that specifically accommodates the vulnerability of women human rights defenders in the form of preventive and reactive measures, as well as efforts to strengthen women both in general and specifically intended for women human rights defenders.
References


UN General Assembly. “Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect
Universally Recognized Human Rights and Fundamental Freedoms.”

UN General Assembly. “Universal Declaration of Human Rights.”
A/RES/217(III), (1948).


UN General Assembly. “Report of the Special Rapporteur on the Situation of

UN General Assembly. “Report of the Special Rapporteur on the Situation of
Human Rights Defenders: Situations of Women Human Rights


UN High Commissioner on Human Rights, “Protection of Economic, Social

UN High Commissioner on Human Rights, Non-discrimination: Groups in Vulnerable Situations,

UN High Commissioner on Human Rights, Women’s Human Rights Defenders,