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# LEGAL PROTECTION FOR VICTIMS OF DOMESTIC VIOLENCE BASED ON THE VALUE OF JUSTICE

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## ABSTRACT

Law No. 23/2004 on the Eradication of Domestic Violence, hereinafter abbreviated as the PKDRT Law, is used as a legal umbrella in the prevention and resolution of cases of domestic violence. However, in fact, this legal breakthrough (PKDRT Law) still encounters many obstacles in its enforcement. There are many reasons and obstacles why domestic violence cases are not continued or resolved through legal channels, including because the victim does not want the case to be known to many people, the victim does not want to deal with the case for too long (complaint offense), the victim wants to get out of domestic violence as soon as possible, the victim is reluctant to deal with the police, and so on. Examining and proving domestic violence cases is also quite difficult because generally victims do not want to be witnesses and do not report the violence they experience. In Law Number 23 Year 2004 on the Elimination of Domestic Violence. Its determination as a crime with the threat of criminal law is strongly influenced by a situation where cases of domestic violence are increasingly strong and open to provoke strong public reactions. A perpetrator of physical violence in the household based on "the provisions of Article 44 paragraph (1) may be punished with imprisonment for a maximum of 5 (five) years or a maximum fine of Rp. 15,000,000.

**Keywords:** Domestic Violence, Crime, Law Enforcement.

## 1. INTRODUCTION

There are many things that cause domestic violence, opinions that marginalize women as second-class citizens, the mindset of society that wives must obey their husbands, and shame if household problems are publicly known. Marginalization of women results in women not having enough agency to act. It is not uncommon for marginalization to lead to criminal acts of violence against women, both physical and mental violence.<sup>1</sup>

Muladi said that violence against women is an obstacle to development because violence can have cumulative consequences that are not simple, such as reducing women's self-confidence, hampering women's ability to

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<sup>1</sup> Ristina Yudhanti, Perempuan dalam Pusaran Hukum, Thafa Media, Yogyakarta, 2014, hlm 70

participate, disrupting women's health, reducing autonomy in the economic, political, social and cultural fields.<sup>2</sup> Therefore, Widati Wulandari examines domestic violence as a special form of crime of violence.<sup>3</sup>

The dominant violence experienced by Indonesian women is domestic violence, such as abuse, rape, harassment or infidelity committed by their husbands.<sup>4</sup>

Law Number 23/2004 on the Eradication of Domestic Violence, hereinafter abbreviated as the PKDRT Law, is used as a legal umbrella in the prevention and resolution of cases of domestic violence. The PKDRT Law is considered as one of the regulations that made a legal breakthrough because there are several criminal law reforms that have never been regulated by previous laws. After the existence of Law No. 23/2004, parallel laws such as the Law on the Protection of Witnesses and Victims and the Law on the Elimination of Trafficking in Persons and so on followed. The legal breakthrough contained in the PKDRT Law is not only in the form of criminal acts, but also in the legal process which applies in proving that the victim becomes the main witness supported by one piece of clue evidence.<sup>5</sup>

But in fact, this legal breakthrough (UUPKDRT) still encounters many obstacles in its implementation. Not all domestic violence cases are resolved through legal channels, there are many reasons and obstacles why domestic violence cases are not continued or resolved through legal channels, including because the victim does not want the case to be known to many people, the victim does not want to deal with the case for too long, the victim wants to get out of domestic violence as soon as possible, the victim is reluctant to deal with the police, and so on.<sup>6</sup>

The examination and proof of domestic violence cases is also quite difficult because in general, victims do not want to become witnesses and do not report the violence they experience or withdraw their reports because they feel that domestic violence is a disgrace or a private family secret. Whereas the testimony of the victim is very necessary in an examination and proof of a criminal case because the victim directly sees, hears and experiences the criminal offense that occurred.

The sociological basis for the enactment of Law No. 23/2004 on the Elimination of Domestic Violence is due to the high level of domestic violence committed by perpetrators or husbands or wives, where criminal sanctions are very low, resulting in injustice for victims, especially wives. Meanwhile, the legal system in Indonesia does not yet guarantee protection for victims of domestic violence. (Legal Consideration letter d of Law Number 23/2004 on the Elimination of Domestic Violence).

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<sup>2</sup> Muladi, *Demokrasi, Hak Asasi Manusia, dan Reformasi Hukum di Indonesia*, The Habibie Center, Jakarta, 2002, Page. 40.

<sup>3</sup> Widati Wulandari dalam *Hukum Perlindungan Perempuan dan Anak*, diterbitkan atas kerjasama USAID, The Asia Foundation, dan Kemitraan Partnership, 2017, Hlm, 194

<sup>4</sup> Soeroso, *Kekerasan Dalam Rumah Tangga Dalam Perspektif Yuridis-Viktimologis*, Sinar Grafika, Jakarta, 2011, Page. 10

<sup>5</sup> Ratna Batara Munti. *Advokasi Kebijakan Pro Perempuan: Agenda Politik Untuk Demokrasi dan Kesetaraan*. PSKW UI – TIFA. Jakarta, 2008, hlm 87

<sup>6</sup> Roro Rina Antasari, *Substantive Policies Dan Procedural Policy Pada UU Nomor 23 Tahun 2004 Sebagai Suatu Kebijakan Publik*, Sol Justicia, Vol.4 No.1, Juni 2021, Page.13-25

## 2. RESEARCH METHODS

To answer the writing questions that have been formulated above, the authors will use the normative research method.<sup>7</sup> The research specifications used in this study used descriptive analytical.<sup>8</sup> Because the researcher wishes to describe or explain the subject and object of research, which then analyzes and finally draws conclusions from the results of the research.<sup>9</sup>

## 3. RESULTS AND DISCUSSION

### 3.1. Regulation of Criminal Acts of Domestic Violence According to Positive Law in Indonesia

Indonesia is a state of law. Law is a set of life instructions (commands and prohibitions) that regulate order in a society, and therefore should be obeyed by members of the society concerned.<sup>10</sup> The enactment of Law No. 23/2004 on the Elimination of Violence in the Family is expected to lead to the prevention and prosecution of those who always commit acts of domestic violence and become a legal umbrella for all family members themselves. Domestic violence is a violation of human rights and is a crime against human dignity and a form of discrimination that must be eliminated. Human beings have a right to life which compels every human

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<sup>7</sup> Bimo Bayu Aji Kiswanto, and Anis Mashdurohatun, The Legal Protection Against Children Through A Restorative Justice Approach, *Law Development Journal*, Volume 3 Issue 2, June 2021, Page 223-231. Maniah; Bin Bon, Abdul Talib; Hariadi, Andi Kahar; Gunarto; Mashdurohatun, Anis; et al. Mapping the Competencies and Training Needs of Human Resources to Improve Employee Performance in Indonesia After the Covid-19 Pandemic, *Quality - Access to Success*, 2023, 24(195), pp. 219–225

<sup>8</sup> Julizar Bimo Perdana Suka, Bambang Tri Bawono, and Andri Winjaya Laksana, The Implementation of Code of Conduct for Members of Police as Accurators of Murder, *Law Development Journal*, Vol 4 No 2, June 2022, Page 197-204. Hioe, J.K., Mashdurohatun, A., Gunarto, Tarigan, I.J. Reconstruction of pretrial institution function in supervising investigator authorization based on justice value with moderating role of supply chain management, *International Journal of Supply Chain Management*, 2020, 9(3), pp. 613–61, see too Anis Mashdurohatun, Kamaliya, N. Legal protection of consumer reviews in social media based on local wisdom values, *International Journal of Advanced Science and Technology*, 2020, 29(6), pp. 1511–1519, see too Gusti Ayu Ketut Rachmi Handayani, I., Gunarto, G., Mashdurohatun, A., Gusti Putu Diva Awatara, I., Najicha, F.U, Politic of legislation in Indonesia about forestry and the mining activity permit in the forest area of environmental justice *Journal of Engineering and Applied Sciences*, Volume 13, issue, 6, 2018, pp.1430-1435.

<sup>9</sup> Anis Mashdurohatun, Gunarto & Oktavianto Setyo Nugroho Concept Of Appraisal Institutions In Assessing The Valuation Of Intangible Assets On Small Medium Enterprises Intellectual Property As Object, Volume 8, Issue 3, 2021. See too Mukti Fajar ND dan Yulianto Achmad, *Dualisme Penelitian Hukum Normatif dan Empiris*, Pustaka Pelajar, Yogyakarta, 2010, Page. 183. Anis Mashdurohatun, .Ali Mansyur, M. Product capabilities dynamic on industrial design carved wood in small and medium enterprises (SMES) jepara furniture in promoting the protection of intellectual property rights, *International Journal of Applied Engineering Research*, 2017, 12(19), pp. 8217–8226.

<sup>10</sup> Wahyu Beny Mukti Setiyawan and Hadi Mahmud, “Menggagas Model Restorative Justice Terhadap Tindakan Pidana Marital Rape Dalam Membentuk Perlindungan Terhadap Perempuan Yang Sesuai Dengan Norma Hukum Di Indonesia,” *Jurnal Ius Constituendum* 3, no. 1 (2018): Page. 68–82.

being to respect it and which obliges every human being to defend it. No one is authorized to end his life or leave his body and soul unprotected. Whoever does so does something that is contrary to humanity.<sup>11</sup>

Article 1 of the PKDRT Law defines domestic violence as, ... acts against a person, especially women, which result in physical, sexual, psychological, and/or domestic neglect, including threats to commit acts, coercion, or unlawful deprivation of independence within the scope of the household.

A perpetrator of physical violence in the household based on the "provisions of Article 44 paragraph (1) can be punished with imprisonment for a maximum of 5 (five) years or a maximum fine of Rp. 15 million rupiah, if this physical violence results in the victim getting sick or seriously injured then Article 44 paragraph (2) determines the perpetrator can be punished with imprisonment for a maximum of 10 (ten) years or a maximum fine of Rp. 30 million rupiah.

Criminal sanctions for perpetrators of physical violence will be aggravated in Article 44 paragraph (3) if it results in the death of the victim with a maximum imprisonment of 15 (fifteen) years or a maximum fine of Rp. 45 million rupiah. Sanctions for perpetrators of physical violence can be alleviated as stipulated in Article 44 paragraph (4) if the physical violence committed by the husband against his wife does not cause illness or hindrance to carry out the work of position or livelihood or daily activities with a sanction of imprisonment for a maximum of 4 (four) months or a maximum fine of Rp. 5 million.

For perpetrators of psychological violence based on the provisions of Article 45 paragraph (1), every person who commits acts of psychological violence within the scope of the household as referred to in Article 5 letter b shall be punished with a maximum imprisonment of 3 (three) years or a maximum fine of Rp. 9 million rupiah and in Article 45 paragraph (2) states that in the event that the acts referred to in paragraph (1) are committed by the husband against the wife or vice versa which does not cause illness or an obstacle to carrying out the work of office or livelihood or daily activities, shall be punished with a maximum imprisonment of 4 (four) months or a maximum fine of Rp.3 million rupiah."

Sanctions for perpetrators of sexual domestic violence are imprisonment for a maximum of 12 years or a maximum fine of IDR 36 million. (Article 46 of Law No. 23/2004 on Domestic Violence). If the perpetrator forces a person to stay in the household to have sexual intercourse, the perpetrator can be imprisoned for a minimum of 4 years and a maximum of 15 years or a fine of at least Rp 12 million or a maximum of Rp 300 million. (Article 47 of Law No. 23/2004 on Domestic Violence). If the victim suffers an injury that does not give hope of recovery, the perpetrator can be imprisoned for a minimum of 5 years and a maximum of 20 years or a fine of at least Rp 25 million and a maximum of Rp 500 million.

Sanctions for perpetrators of domestic violence domestic neglect are: Imprisonment for a maximum of 3 years or a maximum fine of Rp 15 million. (Article 49 of Law No. 23/2004 on Domestic Violence).

The enactment of Law No. 23/2004 is expected to raise awareness among victims to report to the authorities or law enforcement in the event of domestic violence. According to the law, victims are socially weak victims,<sup>12</sup> those who have a weak social position or status, which makes someone a victim, especially women and children.

### **3.2. Legal Protection for Victims of Domestic Violence Based on the Value of Justice**

In Indonesia, legal protection for victims of domestic violence is based on the domestic violence law itself and other laws and regulations such as the 1945 Constitution and the Law on Human Rights. Law Number 23 of 2004 concerning PKDRT. Satijipto Raharjo states that legal protection is to provide protection for human

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<sup>11</sup> Djoko Prakoso, *Kedudukan Justisiabel Di Dalam KUHAP* (Jakarta: Ghalia Indonesia, 2006), Page. 14.

<sup>12</sup> Suryono Ekotama, ST. Harum Pudjianto, dan G.Wiratana, *Abortus Provocatus Bagi Korban Pemerkosaan Perspektif Viktimologi, Kriminologi dan Hukum Pidana* (Cet. I; Yogyakarta: Universitas Atmajaya) 2001, Page. 176-177.

rights <sup>13</sup>(HAM) that are harmed by others and that protection is given to the community so that they can enjoy all the rights granted by law. Legal protection can be divided into two, namely:<sup>14</sup>

- a. Preventive Legal Protection, Protection provided by the government with the aim of preventing violations before they occur by providing warnings in terms of limits that should not be violated in carrying out an obligation.
- b. Repressive Legal Protection, Legal protection by imposing sanctions such as fines, imprisonment, or additional penalties if there has been a dispute before.

Law No. 23/2004 on the Elimination of Domestic Violence, Article 1 point 4: Protection is any effort aimed at providing a sense of security to victims carried out by the family, advocates, social institutions, police, prosecutors, courts, or other parties either temporarily or based on a court order.<sup>15</sup>

Article 1 point 5: Temporary Protection is protection that is immediately provided by the police and/or social institutions or other parties, prior to the issuance of a protection order from the court. Article 1 point 3: A victim is a person who experiences violence and/or threats of violence within the scope of the household.<sup>16</sup>

Regarding the procedure for reporting domestic violence incidents, victims of domestic violence can report domestic violence directly to the police either where the victim is located or at the scene of the crime or can also authorize family or other people to report the violence they experience.

After the crime of domestic violence is reported to the authorities, within 1 x 24 (one time twenty-four) hours from knowing or receiving a report of domestic violence, the police are obliged to immediately provide temporary protection to the victim. This protection is provided for a maximum of 7 days from the time the victim is received or handled and the police are required to request a protection order from the court.<sup>17</sup>

The president of the court within 7 (seven) days from the receipt of the request shall issue a determination letter containing a protection order for the victim and other family members, unless there is a proper reason. An application for a protection order may be submitted by:

- a. the victim or the victim's family;
- b. friends of the victim;
- c. the police;
- d. volunteer companion; or
- e. spiritual counselor.

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<sup>13</sup> Sacıpto, R., Prasetyo, T., Mashdurohatun, A., Ciptono, Analysis of the implementation regulations for police actions as law enforcement of corruption cases constitutional court, *International Journal of Psychosocial Rehabilitation*, 2020, 24(3), pp. 2447–2458

<sup>14</sup> Sinaulan, Jh. *Perlindungan Hukum Terhadap Warga Masyarakat*. Ideas: Jurnal Pendidikan, Sosial, dan Budaya, [S.l.], Vol. 4, No. 1, Feb. 2018, Page 79-85

<sup>15</sup> Anis Mashdurohatun, Gunarto, Jati, R.H.H. . A policy handling domestic violence against women in Indonesia based on justice, *International Journal of Innovation, Creativity and Change*, 2020, 13(4), pp. 196–208

<sup>16</sup> Andrew Lionel Laurika, *Perlindungan Hukum Terhadap Korban Tindak Pidana Kekerasan Dalam Rumah Tangga*, *Lex Crimen* Vol. V No. 2 Feb 2016, Page 30-37

<sup>17</sup> Puspitasari, *Perlindungan Hukum Terhadap Korban Tindak Pidana Kekerasan Dalam Rumah Tangga*, *Lex Lata Jurnal Ilmiah Hukum* Vol 1, No 3 (2019), Page 222-231

The request for protection may be submitted either orally or in writing. A protection order issued by the president of the District Court may be granted for a maximum period of 1 (one) year and may be extended by court order. Thus, regarding the protection of victims of domestic violence, normatively it has been fulfilled, but it needs further implementation of these provisions in the form of policies and actions.

The legal protection of victims of domestic violence has normatively been fulfilled in Law No. 23/2004 on the Elimination of Domestic Violence, but further implementation of these provisions is needed in the form of policies and actions. This law is expected to provide legal protection to victims of domestic violence and restore the rights of victims of domestic violence.

However, the Law on the Elimination of Domestic Violence formulates an alternative sanction system, where perpetrators of domestic violence may be subject to imprisonment or fines. Thus in its implementation it will provide injustice to victims of domestic violence itself, with the existence of alternative sanctions the perpetrators of domestic violence can choose to pay a fine rather than carry out imprisonment. Furthermore, efforts to prevent and eradicate domestic violence as law enforcement of the Law on the Elimination of Domestic Violence must be pursued jointly between the government and the community as well as victims of violence themselves. This is because domestic violence, whether in the form of physical, psychological, or sexual, is a complaint offense.<sup>18</sup> So that good cooperation between all parties is needed.

Domestic violence (KDRT), which was once considered a myth and a private matter, is now a fact and reality in domestic life. With the enactment of Law No. 23 of 2004 concerning the Elimination of Domestic Violence. Most victims of domestic violence are women and the perpetrators are husbands, although there are also victims on the contrary, or people who are subordinated in the household. Perpetrators or victims of Domestic Violence are people who are related by blood, marriage, breastfeeding, care, guardianship to the husband, and children and even domestic servants, living in this house. Ironically, cases of domestic violence are often covered up by the victim because they are linked to cultural structures, religion and a legal system that is not yet understood. Whereas protection by the state and society aims to provide security for victims and take action against the perpetrators of domestic violence.

The regulation of domestic violence must be able to provide legal guarantees for the achievement of justice, and this guarantee is given to the parties involved in cases of domestic violence, whether committed by husbands or wives. In order to fulfill the principle of justice, the handling of domestic violence cases must apply a pattern of organization that is organized in general and evenly. This means that all perpetrators and victims of domestic violence, both husbands and wives, have the same rights and obligations without any gender differences.

#### **4. CONCLUSION**

Law No. 23/2004 on the Elimination of Violence in the Family is expected to be able to cause prevention and prosecution of those who always commit acts of domestic violence and become a legal umbrella for all family members themselves. Domestic violence is a violation of human rights and is a crime against human dignity and a form of discrimination that must be eliminated. Legal protection for victims of domestic violence has normatively been fulfilled in Law Number 23 of 2004 concerning the Elimination of Domestic Violence, but further implementation of these provisions is needed, both in the form of policies and actions.

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<sup>18</sup> Chidir Ali, *Responsi Hukum Pidana*, Armico, Bandung, 1985, Page. 39.

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