

# Legal Review of Criminal Acts of Domestic Violence Based on Law Number 23 Of 2004

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**Abstract.** In a family or household, it's natural for husband and wife, as well as parents and children, to have tension and disagreement. There is no such thing as a conflict-free household, but conflict in the house hold is not something to be afraid of. Domestic violence is a dangerous crime which if not stopped from the start can escalate to murder. In theory, the cycle of domestic violence (n circle of domestic violence) can start from a husband who is angry with his wife and a husband rebukes his wife. Anger itself can be caused by external factors or internal factors. Externally, the husband may be scolded by his superiors at work, then his frustration is vented to his wife at home. Wives who receive violence from their husbands may vent their anger on their children, who are more helpless. This is because one of the causes of violence is the imbalance of power relations, superiors to subordinates, husbands to wives and wives to children. The passage of Domestic Violence Elimination Act of 2004 (Law No. 23 of 2004) Violence's political decision taken by women's legislatures and the community, which the Indonesian people should be grateful for.

**Keywords:** Domestic violence crimes; violence against women

## 1 Introduction

The family is the smallest social unit in the world society that has a very large role and influence on the social development and personality development of each family member. Family members consisting of father, mother, and children are a unit that has a very good relationship. This good relationship is characterized by harmony in the reciprocal relationship between all members/individuals in the family. A family is described as harmonious if all family members are pleased, as evidenced by the lack of conflict, tension, dissatisfaction, and satisfaction with the physical, mental, emotional, and social circumstances of all family members.

If the contrary occurs, the family is referred to as discord. Like the people of a developing country, Indonesian people are still very vulnerable to cultural influences from outside Indonesia, but also highly respect eastern rules, as a cultural origin that also affects the way of life of Indonesian people. One of the principles that until now has not developed in the perspective of the Indonesian people is the perspective on equal rights between women and men. This type of obstacle is manifested in the attitude of society which is still reluctant to accept equality between women and man. Because in practice women as domestic workers are housekeepers, while men are in the public area, Specifically, the household's chief and earner. In other words, placing women in a subordinate position to men.<sup>1</sup>

The unequal position and relationship between husband and wife or between family members and those involved in other relationships have become the main factors causing domestic violence. The most prominent problem is violence by husbands against wives, in addition to violence perpetrated against children by their parents. This opportunity for violence against women occurs because of cultural values and religious interpretations that indoctrinate women (wives) to be subordinate to men. This condition causes husbands to seem to have the "power" to commit violence against their partners. Which verse 34 of Surah An-Nisa in the Qur'an whose translation reads:<sup>2</sup>

"The males are the women's leaders because Allah has favored some of them (men) over others (women), and because part of their riches has been wasted by them (men). As a result, a devout woman suffers is one who obeys God and looks after herself when her husband is away. Because Allah has kept (them) alive. So, counsel them and segregate them in their beds, where they will be beaten. Then, if they obey you, stop looking for methods to annoy them. Allah is, without a doubt, the Highest and the Greatest. This interpretation in the Qur'an is often misunderstood by most people, which consequently legalizes domestic violence.

According to the husband's view, committing violence (be it slapping/beating) because he wants to educate his wife is too much, therefore husbands assume that the woman who becomes his wife is legally theirs through marriage, so they can do anything to the woman who becomes his wife. No one has the right to prohibit. This belief is also supported by people who turn a blind eye and seem to allow them to do so. This causes the absence of definite data on domestic abuse, and it is believed that many incidences of domestic violence are not reported.

Many factors cause the wife does not want to report what happened to her. There is shame from the victim because the victim considers this a family disgrace so that other people should not know, the fear of threats from the perpetrator are factors that make cases of domestic violence difficult detected, because there is still a view.

- a. Ministry of Law and Human Rights RI National Legal Development Agency "Kompedium Tentang Hak-Hak Perempuan", Jakarta : 2008, hlm. 1 24. Ministry of Law and Human Rights RI National Legal Development Agency "Kompedium on Women's Rights", Jakarta : 2008 2 Surah An-Nisa translation of the Qur'an, verse 34

- b. in society which says that it is a personal matter concerned, so that no one can interfere. Therefore, the community does not see that this problem is a shared responsibility, but is still positioned as a problem in the household.

Another reason is that the legal apparatus seems to turn a blind eye to this issue. Legal instruments have not been able to provide an appropriate solution to this problem. In fact, sometimes the law is felt to legitimize differences in status, rights and obligations. For example "The husband is the head of the family and the wife is a housewife," according to Article 31 paragraph 3 of the Basic Marriage Law According to Article 34 paragraph 1 and paragraph 2 of the Basic Marriage Law Number 1 of 1974, "the husband is expected to protect his wife and provide all of the necessities of domestic life to the best of his ability," while "the wife is expected to run the house as efficiently as possible." 1 and 2 of the Fundamental Marriage Law No. 1 of 19 The division of roles as legitimized by this law makes whatever a husband does to his wife is justified. The patriarchal system that develops in society greatly affects the social, cultural, economic, employment and opportunities that women have both in the family and in the community. The difference in roles and functions causes the condition of women to be very vulnerable to acts of violence.

It is understandable that the development of patriarchal culture places men as superior beings and women as inferior beings. With this belief, men are then justified to dominate and control women. The basis of the formation of the Act relates to the aim of maintaining the integrity of a harmonious and prosperous household. Which is seen as an important element in the nation's and state's life. The motto of a strong family as the pillar of the state is the main basis for the formation of a nation that has character and upholds noble moral values so far, household problems are often seen as a very personal domestic area. The growth in domestic violence cases demonstrates that resolving problems in the home requires increasing aggression, whether family neglect, as well as physical, psychological, or sexual coercion eventually becoming a private area that is difficult to find by the parties who helped resolve the problem.<sup>3</sup>

Even though the issue of domestic violence has a legal umbrella with the birth of Law Number 23 of 2004, in its implementation there are still various obstacles related to various perceptions that cannot be separated from cultural backgrounds and narrow religious interpretations. The passage of the Domestic Violence Elimination Act does not mean that all domestic violence issues have been resolved.

The socialization of this law must also be directed to community and religious leaders who have a social base in the community so that they can participate in using the instruments of Law Number 23 of 2004 to prevent all forms of domestic violence and to better respect human rights. which should not be distinguished because of gender, gender, social status, religion, and so on.

#### **The ask of the research**

- a. What are the factors that cause criminal acts of domestic violence?
- b. How effective is Law Number 23 of 2004 in reviewing and minimizing every form? of domestic violence?

## **2 Research Methods**

The research used is This normative juridical research is based on research gathered from library materials.

#### **Definition of Elimination of Domestic Violence**

Resolution 48/1 04 of the On December 20, 1999, the United Nations General Assembly adopted a resolution on the abolition of female-on-female violence.

### **Article 1**

Any act of gender-based violence that inflicts or is likely to inflict bodily, sexual, or psychological pain or suffering on women, including threats of such actions, coercion, or arbitrary denial of liberty, whether in public or private life, is referred to as "violence against women."

### **Article 2**

The following are the following are some examples of violence against women, however they are by no means exhaustive:

- a. Domestic violence, including battering, sexual abuse of female household children, dowry-related violence, marital rape, and female genital mutilation; and
- b. other traditional practices harmful to women, non-spousal violence, and violence related to exploitation; and
- c. public violence, including rape, sexual abuse, and sexual harassment; and
- d. other traditional practices harmful to women, non-spousal violence, and violence related to exploitation; and

### **According to Law Number 23 of 2004**

The definition of Domestic Violence according to The following is the text of Article 1 paragraph Domestic Violence Elimination Act of 2004 (Law No. 23) (1).

Domestic violence encompasses threats of violence, coercion, or denial of liberty in the home, as well as any act against a person, usually a woman, that causes physical, psychological, or financial neglect of the home.

In addition, according to the Indonesian Dictionary, the meaning is: Domestic violence is abuse carried out by someone who is in a family against other family members. Violence in general can be defined as an act, which aims to injure someone or damage goods, while according to Article 89 of the Indonesian Criminal Code, violence is meant to make people faint or helpless.

In simple terms from the above understandings of domestic violence, especially women who are victims of violence That violence against Women can be found In public places, at work, at home (in the home), and elsewhere in other settings. Anyone (parents, siblings, or strangers) can do it, and it can happen at any time (day or night).

The following individuals are included in the household's scope:

- a. Husband, wife, and children, including adopted children and stepson;
- b. People with family ties to their husbands and wives who live permanently in the household, such as sons in law, daughters-in-law, and in-law parents; and
- c. People who work in the household and stay at that home, such as maids, nannies, and private drivers.

The domestic abuse, as defined by Law No. 23 of 2004 on the Elimination of Domestic Violence, which includes:

- a. Physical abuse

Any act of physical aggression that causes pain, illness, or significant harm is considered physical violence. This type of physical aggression in the home is known as domestic violence if further described also includes actions in the form of: hitting, slapping, grabbing, kicking, dragging, banging the head against a wall/floor, twisting hands, throwing things at the victim's body, injuring with a tool. /Weapon, kill, etc.

- b. Psychological violence

Psychological violence is defined as an act that generates dread, a loss of self-confidence, or a sense of helplessness in a person inaction, powerlessness, and/or substantial

psychological harm suffering. Acts of domestic violence are included. violence with this form of psychological violence if interpreted further also includes acts of shouting, swearing, threatening, degrading human dignity (such as: prostitutes, stupid, stupid, tacky and so on).

c. Sexual violence

Psychological violence is defined as an act that generates dread, a lack of self-confidence, or a sense of helplessness in a person, inaction, helplessness, and/or significant psychological distress. For a specific purpose, domestic violence is highlighted. This act of domestic abuse in the form of sexual violence can be further described also includes acts of forced sexual intercourse when the wife (victim) is in an impossible condition, such as menstruation (menstruation), illness, weak physical condition due to all day work, and forcing deviant sexual relations or in inappropriate places, namely sexual intercourse through: anus, mouth, and forcing sexual intercourse after abuse, committing abuse during sex, using tools/drugs in sexual intercourse to increase husband's stamina thus making the wife persecuted, forcing the wife to become a prostitute, and also forcing the wife to have sex with other people for certain reasons such as business interests, politics and so on.

d. Domestic neglect

Abandonment of a family is any act that neglects a person in his family, despite the fact that He is bound to supply that individual with life, care, or support under Because of a contract or agreement, he is subject to the legislation that applies to him. Economic violence refers to the abandonment of a family's house. Domestic abuse is being perpetrated through economic violence includes actions in the form of a husband who does not provide for his wife, controlling and supervising the smallest expenditure of money taking money (the victim's income), withholding or not meeting the economic needs of the victim and forcing the wife (the victim) to looking for money while the husband does not work and only controls from the wife.

e. Social violence

This social violence is not regulated in No. 23 of 2004 is a law that was enacted in 2004. However, this social violence frequently takes place in the home. can also be called arbitrary deprivation of liberty are all acts that cause the isolation of a person from his social environment.

### 3 Discussion

Criminal Sanctions Against Criminal Acts Based on The Prevention of Domestic Violence Act, known as Law Number 23 of 2004, was passed. In countries that have specific laws on domestic violence such as the Minnesota USA Domestic Violence Act 1 997, New Zealand Domestic Violence Act 1 995, the Republic of the Philippines Law Number 8353 on Rape, the Turkish Law on Protection Against Family Violence and the Act 521 Malaysia on Domestic Violence 1 994. Acts of violence that occur in these countries the perpetrators can be brought to justice and those who are victims are facilitated in the legal process to then carry out prosecutions in the form of: compensation, recovery and self-protection of the victim.

Based on the description above, domestic violence is no longer just a low-level problem at the domestic level but is a serious social problem that is categorized as a crime. Because the issue of domestic violence is a criminal act, this issue should be resolved by taking legal action and until now the law in Indonesia has specifically regulated and has even recognized the term domestic violence. To be able to ensnare Domestic abuse perpetrators should use the provisions of They can take use Domestic Violence Elimination Act of 2004 (Law No. 23). Article 44 of

Law no. 23 of 2004 concerning the The following is a quote from the United Nations Convention on the Elimination of Domestic Violence:

- a. A maximum penalty of 5 (five) years in jail or a maximum fine of Rp. 15,000,000 awaits anybody who commits acts of physical aggression in the home, as defined in Article 5 letter a. (Rupiah 15,000,000.00)
- b. If the offender is found guilty, The criminal faces a maximum sentence of ten (ten) years in prison or a fine of Rp. 30,000,000 if the act in paragraph (1) causes the victim to become ill or suffer serious harm. (thirty million rupiah)
- c. If the act described in paragraph (2) results in the victim's death, the maximum penalty is 15 (fifteen) years in prison or a Rp. 45,000,000 fine (forty five million rupiah).
- d. If the husband's conduct He faces a maximum penalty of 4 (four) months in prison or a fine of Rp. 5,000,000 if his actions against his wife or vice versa do not cause disease or create obstacles to the husband's official employment, livelihood, or ordinary activities (five million rupiah).

#### **Article 45**

1. 1 Those who perpetrate acts of psychological abuse within the family, as defined in Article 5 letter b, are subject to a maximum prison sentence of Rp. 9,000,000 (nine million rupiah).
2. If a husband does the conduct referred to in paragraph (1) against his wife or vice versa, he must be sentenced to a maximum of 4 (four) years in prison or a fine of Rp. 3,000,000 if the crime does not result in illness or an impairment to his official employment, livelihood, or ordinary activities (three million rupiah).

#### **Article 46**

"Anyone who engages in criminal activity According to Article 8 letter, the maximum penalty for sexual aggression is 12 (twelve) years in prison or a fine of Rp. 36,000,000 (thirty-six million rupiah)."

Article 47 of Law No. 23/2004 Concerning the Elimination of Domestic Violence reads as follows:

"Whoever violates Article 8 letter b by receiving a minimum penalty of 4 years and a maximum sentence of 15 years, or a minimum fine of Rp. 12,000,000 (twelve million rupiah) and a maximum punishment of Rp. 300,000,000 (three hundred million rupiah), or both."

Article 48 of Law no. 23/2004 reads:

"In the event that an injured victim suffers from a For at least 4 (four) years in a row or 1 (one) year in a row, you must have had a mental or mental disorder as a result of the acts referred to in Articles 46 and 47,

Participation, abortion, or the death of a fetus in the womb, or the failure of the reproductive organs, is punishable by a minimum of 5 (five) years in prison and a maximum of 20 (twenty) years in prison, or a fine of Rp. 25,000,000.00 (twenty five million rupiah) and a maximum fine of Rp. 50,000,000.00. (Rupiah 50,000,000)

Article 49 reads:

"Every individual who: receives a maximum sentence of 3 (three) years in prison or a fine of Rp. 15,000,000 is punished" (fifteen million rupiah),

- a. Abandoning other people in their home, as specified in paragraph 1 of Article 9 (one).
- b. Article 9 paragraph 2 refers to abandoning others.

### **Article 50**

"In addition to the punishments outlined in this chapter, the judge has the authority to impose other penalties, such as:

- a. Travel restrictions, both to keep the perpetrator away from the victim for a set period of time and to limit the perpetrator's rights;  
Determination of perpetrators to participate in therapy programs under the supervision of particular institutions.
- b. The law has defined the rights that can be utilized to prosecute domestic violence perpetrators, including:
  - 1) from a family member, police officer, prosecutor, court, advocate, social institution, or other third party, as well as a protective order issued by a court;
  - 2) Health services tailored to the victim's medical needs;
  - 3) Specialized handling of the victim's confidentially;
  - 4) Social worker and legal support; and
  - 5) Spiritual guiding services.
  - 6) Domestic abuse victims are also entitled to recovery aid from medical professionals, social workers, volunteer assistants, and/or spiritual mentors.

## **4 Conclusion**

- a. Domestic violence is no longer just a low-level problem at the domestic level but is a serious social problem that is categorized as a crime. So this problem should be resolved by taking legal action
- b. Articles 44, 45, 46, 47, 48, 49, and 50 Domestic violence offenders can be apprehended under the provisions of Domestic Abuse Prevention Act of 2004 (Law No. 23 of 2004).

### **Suggestion**

- a. Socializing this Law (Domestic Violence Elimination) to the entire community with the goal of.
- b. preventing domestic violence in all of its forms and so that it can respecting human rights that cannot be distinguished between: gender, gender, social status, religion and so on.

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