

# Juridical Review of Women and Children Protection as Victims of Domestic Violence

Hairul<sup>1</sup>, Riswadi<sup>2</sup>

Doctoral of Law, Universitas Borobudur Jakarta

{hairulunborrr@gmail.com<sup>1</sup>, riswadi@borobudur.ac.id<sup>2</sup>}

**Abstract.** Domestic violence has been a common thing that occurred in the daily life of Indonesian citizen. Domestic violation is not only a form of criminal code, but also a violation of human rights and a crime of human prestige, which also discrimination that should be eliminated. There are several forms of violence, namely in the form of physical, psychological, sexual violence, and household neglect, the victims of which are mostly women and children in the family. Many motives cause domestic violence. For that, we need constitutional legal protection for women and children victims of domestic violence. Law no. 23 of 2004 concerning the Elimination of Domestic Violence, which comprehensively, clearly, and decisively protects and sides with victims, as well as provides education and awareness to the public and officials that all acts of violence in a family are crimes against human dignity.

**Keywords:** Protection; Woman and Children; Domestic Violence

## 1 Introduction

Every citizen has the right to feel safe and free from all forms of violence under the philosophy of Pancasila and the 1945 Constitution of the Republic of Indonesia. All forms of violence, especially domestic violence, are a violation of human rights and crimes against human dignity and forms discrimination that must be eliminated. Victims of domestic violence, who are mostly women and children, must receive protection from the state and/or society to avoid and be free from violence or threats of violence, torture, or treatment that degrading the degree and dignity of humanity.

Until now, in general cases of domestic violence occur in Indonesia, so that legal protection is needed for women and children victims of domestic violence. Therefore, to prevent, protect victims, and take action against perpetrators of violence in the household, the state and society are obliged to carry out prevention, protection, and prosecution of perpetrators under the Pancasila philosophy and the 1945 Constitution of the Republic of Indonesia.

As a manifestation of the state's obligations and responsibilities in providing legal protection to its citizens, especially victims of domestic violence, in 2004, Law Number 23 of 2004 concerning the Elimination of Domestic Violence or hereinafter referred to as Law No. 23 of 2004 concerning the Elimination of Domestic Violence.

This law is closely related to several other prevailing laws and regulations, among others, Law Number 1 of 1946 concerning the Criminal Code, as well as amendments to it, Law Number 8 of 1981 concerning the Code of Law. Criminal Procedure, Law Number 1 of 1974 concerning Marriage, Law Number 1984 concerning *Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women*, and Law Number 39 of 1999 on Human Rights.

The definition of domestic violence is regulated in Law no. 23 of 2004 concerning the Elimination of Domestic Violence, Article 1 paragraph (1), which states that *"Domestic Violence is any action against someone, especially women, which results in physical, sexual, psychological, and/or domestic neglect, including threats to commit acts, coercion, or illegal deprivation of liberty within the scope of the household"*.

Previously, the United Nations (UN) had ratified the Declaration on the Elimination of Violence Against Women, at the 85th General Assembly on December 20, 1993, which emphasized that violence against women is a violation of Human Rights (HAM). Article 1 of the Declaration provides an understanding of violence against women as *"All forms of gender-based violence that cause or will cause pain or suffering to women physically, sexually, psychologically, including threats, restriction of freedom, coercion, whether that occurs in the public or domestic area"*.

However, the victims of domestic violence are not only women or wives, but children as family members are not free from acts of domestic violence. Therefore, legal protection is also needed for children other than their mothers who are also victims of domestic violence [1]. Because every child has the right to live, grow and develop, and has the right to protection from violence and discrimination. Besides, a child is a child, potential, and the younger generation who are the successors of the ideals of the nation's struggle to have a strategic role, characteristics, and special characteristics, so that it must be protected from all forms of inhuman treatment that result in human rights violations.

The violence that occurs in the household, especially against wives, is often found, not even a small number. However, of the many violence that occurred, only a few can be resolved fairly. This happens because in society there is still a growing view that domestic violence remains a secret or household disgrace which is very inappropriate if it is brought to the surface or is not suitable for public consumption.

Based on the description above, it is this protection of women and children victims of domestic violence that makes it very interesting to research more focused and in-depth from a legal perspective in the form of a juridical review of protection of women and children victims of domestic violence. Assessing how protection is from the point of view of the prevailing laws and regulations.

## **Research Problem**

Based on the background that has been explained above, the research problem formulated as below: How is the Juridical review of women and children protection as victims of Domestic violence?

## **2 Literature Review**

### **2.1 Legal Protection**

Legal protection is to protect human rights that have been harmed by others and the protection of the community so that they can experience all the rights provided by law. Legal protection is a variety of legal measures that must be provided by law enforcement officials to supply a sense of security, both physically and mentally from harassment and various threats from any party [2]. Legal protection is a protection provided to legal subjects in the form of legal instruments, both preventive and repressive in nature, both written and unwritten. In other words, legal protection is a description of the function of law, namely the concept in which the law can provide justice, order, certainty, benefit, and peace [3].

## **2.2 Concept of Violation**

Violence implies persecution, torture, or mistreatment. Violence can be defined as a violation or act of a person or group of people that causes injury or death of another person and causes physical harm to others [4]. In general, violence is a negative action by a person. Violence is a term that is full of meanings and meanings of "suffering", whether studied from a psychological or legal perspective, that it contains human behavior (a person/group of people) that can cause suffering to others (individuals/groups) [5]. Barker defines violence as inappropriate behavior that causes physical, psychological, or financial harm or harm to both individuals and groups [6].

## **2.3 Domestic Violation**

According to Herkutanto, domestic violence (*KDRT*) is an act or attitude that is carried out to cause harm to women, both physically and psychologically [7]. Violence in the household/family (domestic violence) is various forms of violence in which the perpetrator and the victim have other families / close ties, including on the side of abuse against the wife and other family members [8].

Domestic violence can take the form of violence against women and children. The United Nations defines domestic violence, especially women as an act or act of gender-based violence that produces, or may result in, physical, psychological, mental, and harm to women, including threats, such as coercion, arbitrary deprivation of rights authority [9]. Meanwhile, violence against children or child abuse is an act that deliberately causes harm or harm to children physically or emotionally. The term child abuse covers various forms of behavior, from direct physical threats by parents or other adults to neglect of children's basic needs.

Law No. 35 of 2014 concerning Child Protection, Article 1, states that violence is "*any action against a child that results in physical, psychological, sexual suffering or suffering, and/or neglect, including threats to commit acts, coercion or deprivation of liberty against law*".

## **3 Research Method**

The method used in this research is normative legal research, namely research that describes the existing problems, which is then discussed with a study of legal theories and then linked to the applicable laws and regulations in legal practice [10]. Because it uses normative research, the data source is secondary data sources in the form of legal materials, both primary and secondary legal materials [11].

#### 4 Result and Discussion

The state is of the view that all forms of violence, especially domestic violence, are violations of human rights and crimes against human dignity, as well as forms of discrimination. This view of the state is based on the provisions of the 1945 Constitution of the Republic of Indonesia, Article 28G paragraph (1), which stipulates that *"Everyone has the right to protection of personal, family, honor, dignity and property under his control, and the right to feel safe and protected from the threat of fear to do or not do something which is a human right"*. Furthermore, Article 28H paragraph (2), which stipulates that *"Everyone has the right to get special facilities and treatment to get the same opportunities and benefits to achieve equality and justice"*.

Based on the provisions in the constitution, the importance of legal protection, because in essence the law is made to protect the interests of every citizen. The law has strict sanctions, therefore every citizen in acting must comply with the existing rules. The purpose of making the law is to prevent arbitrary action by one particular party.

For this reason, legal protection is needed for women and children as victims of domestic violence. Protection here is all efforts aimed at providing a sense of security to the victim by the family, advocates, social institutions, police, prosecutors, courts, or other parties either temporarily or based on court decisions [12]. In this context, protection for all persons who belong to the household scope includes husband, wife and children; people who have family relations with a husband, wife or child due to blood relations, marriage, breastfeeding, care and guardianship, who live in the household; and/or people who work to help the household and live in the household [13].

Especially for children who are included in the family sphere, legal protection for children can be interpreted as an effort to protect the law against various freedoms and children's rights (*fundamental rights and freedoms of children*) [14]. Child protection is all activities to guarantee and protect children and their rights to live, grow, develop and participate optimally following human dignity, and receive protection from violence and discrimination [15].

Protection of women and children victims of domestic violence is stated in Law no. 23 of 2004 concerning the Elimination of Domestic Violence, Article 5, which states that *"everyone is prohibited from committing domestic violence against people within the scope of their household, by: a. physical abuse; b. psychic violence; c. sexual violence; d. neglect of the household"*. Domestic violence is one of the various criminal acts that have been identified in society. Domestic violence that is very often committed is violence by husbands against their wives and children.

The factors that cause domestic violence are: first, it occurs in the scope of household life which is understood as a matter of privacy, where other people cannot interfere (intervention). The second factor, the victim (wife/child) is the party who is structurally weak and has dependence, especially economically with the perpetrator (husband) [16]. Besides, the occurrence of domestic violence is also greatly influenced by socio-economic factors. Household economic status, marital instability, and verbal conflict between husbands and wives related to domestic violence, poverty, and the inability to find solutions to overcome poverty often result in emotional destabilization of husband and wife, making them vulnerable to violence [17].

The violence that occurs in the household, especially against wives and children, is often found as victims, namely *"people who experience violence and/or threats of violence in the*

*household sphere*" [18]. Meanwhile, according to Arif Gosita, the crime victims are "*Those who suffer physically and mentally as a result of the actions of other people who seek fulfillment themselves or others that are contrary to the interests and rights of those who suffer*" [19]. Here the definition of a victim is a person who feels suffering both outside and inside as a result of an act that violates the law.

In this case, women are more vulnerable to becoming victims of violence. This is due to differences in biology or sex. Nurture theory sees these differences as the result of cultural and societal constructs that placed men superior to women [20]. The weakness of the biological structure of women places them in a marginal position in society. Women are considered to have no physical strength, are weak, emotional, so they only have the right to do subtle work, such as housework, child care, and so on. Social relations are fulfilled based on male size. Women have no right to have this relationship. With such inequalities, women are always left behind in their roles and contributions in family, social, national, and state life. Social construction places women and men in different social values. Gender construction in this society has been built over the centuries to form a culture that has been passed down from one generation to the next, causing it difficult to get rid of it.

In domestic violence committed by husbands, women (wives) and children are direct victims, namely victims who directly experience and feel suffering due to criminal acts [21]. Most women and children as victims of domestic violence do not only suffer physical violence but also suffer psychological violence. Physical violence is an act that causes pain, falls ill, or is seriously injured [22]. Meanwhile, psychological violence referred to is an act that causes fear and loss of self-confidence [23].

Violence against women and children does not only affect physical but also psychological conditions. The child who gets the act Domestic violence tends to have a closed attitude filled with fear. According to Zakariah Idris, violence is a matter that is characterized or is violent and or the actions of a person or group of people that cause injury or death of others or cause physical damage or other people's property [24]. Meanwhile, according to the Criminal Code (KUHP), violence is regulated in Article 89, namely "*What is equated with committing violence, making people faint or helpless*", or in other words constitutes persecution.

For the suffering suffered by women and children as a result of this violence, based on Law no. 23 of 2004 concerning the Elimination of Domestic Violence Article 10, victims are entitled to protection from the family, police, prosecutors, courts, advocates, social institutions, or other parties either temporarily or based on the stipulation of a protection order from the court. Apart from receiving protection for women and children victims of domestic violence, they are also entitled to health services according to medical needs, special handling related to the confidentiality of victims, assistance by social workers, and legal assistance at every level of the examination process under the provisions of laws and regulations, and spiritual guidance services. Criminal provisions against perpetrators of domestic violence who commit physical violence are regulated in Law no. 23 of 2004 concerning the Elimination of Domestic Violence, Article 44, which states:

- a. Every person who commits an act of physical violence within the scope of the household as referred to in Article 5 letter a, shall be sentenced to imprisonment for a maximum of 5 (five) years or a maximum fine of Rp. 15,000,000.00 (fifteen million rupiah).
- b. In case the act as intended in paragraph (1) results in the victim getting sick or seriously injured, the punishment shall be imprisonment for a maximum of 10 (ten) years or a maximum fine of Rp.30,000,000.00 (thirty million rupiahs).

- c. If the act as referred to in paragraph (2) results in the death of the victim, the punishment shall be maximum imprisonment of 15 (fifteen) years or a maximum fine of Rp. 45,000,000.00 (forty-five million rupiah).
- d. If the act as referred to in paragraph (1) is committed by the husband against the wife or vice versa which does not cause disease or obstruction to carry out occupational work or livelihood or daily activities, the punishment shall be maximum imprisonment of 4 (four) months or a maximum fine of Rp. 5,000,000.00 (five million rupiah).

Meanwhile, the criminal provisions against psychological violence are regulated in Article 45, which states:

- a. Every person who commits an act of psychological violence within the scope of the household as referred to in Article 5 letter b shall be sentenced to imprisonment for a maximum of 3 (three) years or a maximum fine of Rp. 9,000,000.00 (nine million rupiah).
- b. If the act as referred to in paragraph (1) is committed by the husband against the wife or vice versa which does not cause disease or obstruction to carry out occupational work or livelihood or daily activities, shall be punished with imprisonment for a maximum of 4 (four) months or a maximum fine of Rp. 3,000,000.00 (three million rupiah).

In addition to the criminal provisions as referred to above, in this case, the Judge may impose additional penalties in the form of restriction of the perpetrator's movement, both aimed at keeping the perpetrator away from the victim within a certain distance and time, as well as limiting certain rights of the perpetrator. Another additional punishment is in the form of determining the perpetrator to take part in a counseling program under the supervision of a certain institution [25]. The criminal act of physical and psychological violence as referred to in Article 44 is a complaint offense [26].

It should be noted that even though a special law has been made as a provision that protects women and children from domestic violence, in reality, it is often constrained by the implementation of criminal sanctions for domestic violence. This is because it is still difficult for victims of violence to have mental courage, which is the courage to take legal action to report the violence experienced to the authorities. Victims of domestic violence find it difficult to report the suffering they have experienced to law enforcers, because of the strong view that husbands abuse their wives as part of a private incident (household affairs) [27].

Besides, several reasons make victims reluctant to take legal action when violence occurs, including that the act of violence experienced is commonplace, even considered as an educational process carried out by husbands against wives, or parents against children. This assumption is associated with the belief that the husband is the leader of the family so that he has the right to regulate (if necessary, by force) his family members.

Other reasons are economic dependence, for the sake of children, feelings of weakness and insecurity, and low support from family and friends. Apart from that, society's negative stereotypes towards widowed women make women victims of violence maintain their marriages, and make it difficult for families to provide support as a result of this stigma. Finally, the reason is due to environmental pressure to stay in the relationship and the assumption that the violence was the result of her fault.

Also, the existence of assumptions that live in the culture of Indonesian society regarding the division of the roles of women and men, one of the factors that also legitimizes violence against women is the misinterpretation of religious understanding, such as the understanding that wives may be harassed if they are not according to and so on.

## **5 Conclusion and Suggestion**

### **5.1 Conclusion**

Domestic violence is a phenomenon that often occurs in everyday households in Indonesia. Women and children are often victims of domestic violence. Violence committed is in the form of physical, psychological, sexual violence as well as household neglect. Domestic violence is a violation of human rights and crimes against human dignity, as well as a form of discrimination. For this reason, a special law was made as a provision that protects women and children from domestic violence, namely Law no. 23 of 2004 concerning the Elimination of Domestic Violence. This Law which clearly and expressly protects and takes sides with victims, as well as provides education and awareness to the public and officials that all acts of violence in the household are crimes against human dignity.

### **5.2 Suggestion**

There is a need for more effective and popular socialization regarding the legal protection of the rights of victims of domestic violence so that victims do not need to feel afraid or pressured to report acts of domestic violence they have experienced. Besides, there is a need for a change in community culture, namely the point of view that views domestic violence as a common thing and it is a family disgrace if it must continue into the realm of law.

## **References**

- [1] Undang-Undang Republik Indonesia Nomor 23 Tahun 2004 tentang Penghapusan Kekerasan Dalam Rumah Tangga.
- [2] Rahardjo, Satjipto.: Ilmu Hukum. PT. Citra Aditya Bakti, Bandung (2000).
- [3] Royen, Uti Ilmu.: Perlindungan Hukum Umat Manusia. Rajawali Pers, Jakarta (2009).
- [4] Poerwadarminta, W.J.S.: Kamus Umum Bahasa Indonesia. P.N Balai Pustaka, Jakarta (1990).
- [5] Pasalbessy, John D.: Dampak Tindak Kekerasan Terhadap Perempuan Dan Anak Serta Solusinya. Jurnal Sasi, Vol. 16, No. 3, Juli-September (2010).
- [6] Huraerah, Abu.: Kekerasan Terhadap Anak. Nuansa Cendikia, Bandung (2012).
- [7] Akhdhiat, Hendra.: Psikologi Hukum. CV Pustaka Setia, Bandung (2011).
- [8] Sulaiman, Munandar dan Siti Homzah.: Kekerasan Terhadap Perempuan. Refika Aditama, Bandung (2010).
- [9] Setyaningrum, Ayu dan Ridwan Arifin.: Analisis Upaya Perlindungan dan Pemulihan Terhadap Korban Kekerasan Dalam Rumah Tangga (KDRT) Khususnya Anak-Anak dan Perempuan. Jurnal Ilmiah Muqoddimah. Volume 3, No. 1 (2019).
- [10] Soekanto, Soerjono dan Sri Mamudji.: Penelitian Hukum Normatif Suatu Tinjauan Singkat. Edisi I, Cetakan V. Raja Grafindo Persada, Jakarta (2001).
- [11] Amirudin dan H Zainal Asikin.: Pengantar Metode Penelitian Hukum. Raja Grafindo Persada, Jakarta (2003).
- [12] Undang-Undang Republik Indonesia Nomor 23 Tahun 2004 tentang Penghapusan Kekerasan Dalam Rumah Tangga.

- [13] Undang-Undang Republik Indonesia Nomor 23 Tahun 2004 tentang Penghapusan Kekerasan Dalam Rumah Tangga.
- [14] Waluyadi.: Hukum Perlindungan Anak. Maju Mundur, Bandung (2009).
- [15] Waluyadi.: Hukum Perlindungan Anak. Maju Mundur, Bandung (2009).
- [16] Wulandari, Lely.: Kebijakan Penanganan Kekerasan dalam Rumah Tangga Melalui Mediasi Penal. LAW REFORM 4. No. 1, pp. 1-19 (2008).
- [17] Sukmawati, Bhennita.: Hubungan Tingkat Kepuasan Pernikahan Istri dan Coping Strategy dengan Kekerasan dalam Rumah Tangga. Jurnal Sains dan Praktik Psikologi 2, No. 3 (2014).
- [18] Undang-Undang Republik Indonesia Nomor 23 Tahun 2004 tentang Penghapusan Kekerasan Dalam Rumah Tangga.
- [19] Waluyo, Bambang.: Viktimologi Perlindungan Korban Dan Saksi. Sinar Harapan, Jakarta (2011).
- [20] Budiman, Arief.: Pembagian Kerja Secara Seksual: Sebuah Pembahasan Sosiologis Tentang Peran Wanita Di Dalam Masyarakat. Gramedia, Jakarta (1981).
- [21] Indah, Maya.: Perlindungan Korban Suatu Prespektif Viktimologi dan Kriminologi. Kencana Prenada Media Group, Jakarta (2014).
- [22] Undang-Undang Republik Indonesia Nomor 23 Tahun 2004 tentang Penghapusan Kekerasan Dalam Rumah Tangga.
- [23] Undang-Undang Republik Indonesia Nomor 23 Tahun 2004 tentang Penghapusan Kekerasan Dalam Rumah Tangga.
- [24] Idris, Zakaria.: Kamus Besar Bahasa Indonesia. Departemen Pendidikan dan Kebudayaan RI, Jakarta (1988).
- [25] Undang-Undang Republik Indonesia Nomor 23 Tahun 2004 tentang Penghapusan Kekerasan Dalam Rumah Tangga.
- [26] Undang-Undang Republik Indonesia Nomor 23 Tahun 2004 tentang Penghapusan Kekerasan Dalam Rumah Tangga.
- [27] La Jamaa.: Perlindungan Korban Kekerasan dalam Rumah Tangga dalam Hukum Pidana Indonesia. Jurnal Cita Hukum II, No. 2, 249-272 (2014).