

## Legal Protection for Victims of Domestic Violence Reviewed from The Legal System in Indonesia

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**Abstract.** *Domestic violence is a problem within the household that is private and taboo if brought to the public. Domestic violence is generally experienced by women by men or their husbands. Domestic violence is a problem that cannot be resolved by the Criminal Code, so it is regulated in more depth in Law Number 23 of 2004 concerning the Elimination of Domestic Violence. There are several factors that trigger domestic violence. The forms of violence experienced by victims are generally in addition to physical violence, also verbal violence and sexual violence. Many settlements of domestic violence cases do not fulfill a sense of justice, especially for victims whose rights are not fulfilled. Law enforcement in the implementation of protection for victims of domestic violence according to Law Number 23 of 2004 concerning the Elimination of Domestic Violence is urgently needed. This research is juridical-normative, which means that several legal sources such as legislation and also the opinions of several legal experts regarding cases of domestic violence that occur in Indonesia are reviewed, this aims to find out how the legal protection process is given to victims of domestic violence.*

**Keywords:** *Domestic; Violence; Victims; Protection.*

### 1. Introduction

The family is the smallest unit in social life in a country. The family is not exempt from the regulations established by the government in a statutory regulation. This regulation aims to provide legal certainty and protection for victims who feel their rights have been forcibly taken away. The law referred to here is a norm that functions to regulate human behavior in social life. In this case, the laws governing the family include Law Number 1 of 1974 concerning Marriage, Law Number 23 of 2004 concerning Child Protection and Law Number 24 of 2003 concerning the Elimination of Domestic Violence.

In Law Number 1 of 1974 concerning Marriage, Article 1 states that "a household is formed because it is based on a legal marriage and marriage according to this law is: "Marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Almighty God."<sup>1</sup>

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<sup>1</sup>Article 1 of Law Number 1 of 1974 concerning Marriage.

Meanwhile, domestic violence is a form of global violence which is a crime or not, depending on the positive law of a country, both in terms of its form and formulation, so that perceptions can differ from era to era or between one country and another.<sup>2</sup>

According to Muladi<sup>3</sup>, violence against women in domestic violence cases<sup>4</sup> is an obstacle to development because violence can cause cumulative effects that are not simple, such as reducing women's self-confidence, inhibiting women's ability to participate, disrupting women's health, reducing autonomy in the economic, political, social, and cultural fields. Domestic violence is a problem that is quite interesting to study considering that the number of reported domestic violence shows an increase from year to year.

In the effort to handle domestic violence cases, there are also several obstacles in the handling process. The Law on the Elimination of Domestic Violence has guaranteed that victims of domestic violence have the right to receive protection to avoid and be free from violence or threats of violence, torture, or treatment that degrades human dignity and status. This situation is certainly no longer in accordance with the principles contained in the Law on the Elimination of Domestic Violence which states that the elimination of domestic violence is carried out based on the principles of respect for human rights, justice and gender equality, non-discrimination, and protection of victims. However, in its implementation, the Law on the Elimination of Domestic Violence seems to be unable to provide maximum protection for victims of domestic violence.

## **2. Research Methods**

This research is juridical-normative, namely this research is based on the laws and regulations in force in Indonesia such as Law Number 23 of 2004 concerning the Elimination of Domestic Violence, Law Number 1 of 1974 concerning Marriage, and refers to the opinions of several legal experts on legal protection for victims of domestic violence that occur in Indonesia. As well as some materials obtained from books and journals accessed online via the internet.

## **3. Result and Discussion**

### **3.1. Legal Protection for Victims of Domestic Violence**

What is meant by domestic violence is: "Domestic violence is any act against a person, especially women, which results in physical, sexual, psychological misery or suffering, and/or neglect of the household, including threats to commit acts, coercion, or unlawful deprivation of liberty within the scope of the household."<sup>5</sup>

With the emergence of Law Number 23 of 2004 concerning the Elimination of Domestic Violence, it is a criminal law effort carried out by the government to overcome cases of domestic violence that continue to occur in Indonesia. However, this law still focuses on the blame placed on the perpetrators of domestic violence. In the perspective of criminal law, domestic violence is one of the complaint offenses that if there is a report, then it can be

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<sup>2</sup>Sutiawati & Mappaselleng, 2020

<sup>3</sup>Muladi, Democracy, Human Rights, and Legal Reform in Indonesia, The Habibie Center, Jakarta, 2002, p. 40.

<sup>4</sup>Article 1 of the Declaration on the Elimination of Violence against Women.

<sup>5</sup>Article 1 paragraph 1 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence.

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processed legally. So it is often still considered less beneficial for the victim because it is too complicated so that many prefer to resolve it amicably.

The birth of Law Number 23 of 2004 is based on various considerations, including that every citizen has the right to feel safe and free from all forms of violence. Thus, all forms of violence, especially domestic violence, are violations of human rights.

Scope of domestic violence:<sup>6</sup>

Article 2

(1) The scope of household in this law includes:

- a. Husband, wife, and children;
- b. People who have family relationships with people as referred to in letter a due to blood relations, marriage, breastfeeding, fostering and guardianship, who reside in the household; and/or
- c. People who work to help with the household and live in the household.

(2) People who work as referred to in letter c are considered family members for the period of time they are in the household concerned.

According to Article 5 of the Law on the Elimination of Domestic Violence, it includes:

- a. Physical violence;
- b. Psychological Violence;
- c. Sexual Violence;
- d. Domestic Neglect.<sup>7</sup>

Domestic violence according to the law consists of various forms, including:

1. Physical violence

Is an action that results in pain, falling ill, or serious injury.

2. Psychological Violence

It is an act that causes fear, loss of self-confidence, loss of ability to act, lack of self-confidence, and/or severe psychological suffering in a person.

3. Sexual violence

Includes:

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<sup>6</sup>Article 2 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence.

<sup>7</sup>Article 5 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence.

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- a. Forced sexual intercourse committed against a person residing within the household.
- b. Forced sexual intercourse with one person within the household for commercial purposes or a specific purpose.

#### 4. Domestic neglect

Includes:

- a. Every person is prohibited from neglecting a person within his household, even though according to the law applicable to him or because of an agreement or contract he is obliged to provide life, care or maintenance to that person.
- b. The search as referred to in paragraph 1 also applies to any person who causes economic dependency by limiting and/or prohibiting proper work inside or outside the home so that the victim is under the control of that person.

The need to provide adequate legal protection to victims of crime is not only a national issue, but also an international one. Therefore, this issue needs to receive serious attention. The importance of protecting victims of crime receives serious attention.

Protection according to Law Number 13 of 2006 concerning Protection of Witnesses and Victims is all efforts to fulfill rights and provide assistance to provide a sense of security to victims which must be implemented by the Witness and Victim Protection Agency (LPSK) or other institutions in accordance with the provisions.<sup>8</sup>

Legal protection for the community is very important because the community, both groups and individuals, can become victims or even Where in Law Number 23 of 2004 concerning the Elimination of Domestic Violence, attention is paid to the rights of oppressed victims such as:<sup>9</sup>

- a. Requesting protection from individuals, groups or institutions, both private and state, at the local, national and international levels.
- b. Taking legal action through courts and other institutions at local, national and international levels.
- c. Get free emergency services and other services taking into account the victim's condition.
- d. Get confidential treatment (identity confidentiality).
- e. Get information and be involved in every decision-making process related to case assistance and handling.
- f. Get guarantees for their rights related to their status (such as spouse, parent, child, domestic worker). Especially regarding the status as a spouse in marriage, related to the division of joint property must be decided based on the real contribution of each party.

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<sup>8</sup>Article 1 number 6 of Law Number 13 of 2006 concerning Protection of Witnesses and Victims.

<sup>9</sup> [www.lbhakik.or.id](http://www.lbhakik.or.id).

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g. Receive psychological and legal assistance from medical workers and lawyers at every level of examination and during the trial process, where lawyers for victims of domestic violence can appear in court.

h. Get compensation for the losses suffered.

i. Obtain dispensation from the workplace for case management.

Article 10 of the Law on the Elimination of Domestic Violence states that the protection provided to victims is in the form of:

Victims are entitled to:

a. Protection from the family, police, prosecutors, courts, advocates, social institutions, or other parties, either temporarily or based on government decisions; protection from the courts;

b. Health services according to medical needs;

c. The handling is specifically concerned with victim confidentiality;

d. Assistance by social workers and legal assistance at every level of the examination process in accordance with the provisions of laws and regulations; and

e. Spiritual guidance services.

The enactment of Law Number 23 of 2004 concerning the Elimination of Domestic Violence, which was enacted on September 22, 2004, is a legal basis for the elimination and prevention of acts of violence, in addition to the protection of victims and action against perpetrators of violence which need to be socialized again in order to achieve the elimination of acts of discrimination and acts of domestic violence as perpetrators of crimes.

#### **4. Conclusion**

Although a regulation governing Domestic Violence has been established, namely Law Number 23 of 2004 concerning the Elimination of Domestic Violence, this Law is often considered ineffective because cases of domestic violence continue to occur and increase rapidly in Indonesia. In resolving criminal cases, the law often prioritizes the rights of the suspect or defendant, while the rights of the victim are ignored. Many victims of crime are found to have received inadequate legal protection, both immaterial and material protection. Victims of crime are placed as evidence that provides information, namely only as witnesses, so that the possibility for victims to obtain freedom in fighting for their rights is small. So that victims feel that their position in this legislation is merely as a means of imposing sanctions on the perpetrator by law enforcement officers, without taking into account any aspects of the losses experienced by the victim. So that not infrequently many victims feel it is better to resolve this case in a family way.

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