

The Legal Protection for Victims of Domestic Violence

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Abstract. *Domestic violence (DV) is a serious social problem and requires special attention from the legal aspect in order to protect victims comprehensively. This journal discusses legal protection for victims of domestic violence with a focus on three main aspects, namely victims' rights, reporting mechanisms and temporary protection, and efforts to restore and assist victims. First, the rights of victims of domestic violence are guaranteed by Law No. 23 of 2004 concerning the Elimination of Domestic Violence, which includes the right to physical and psychological protection, health services, legal assistance, and guarantees of the confidentiality of the victim's identity. These rights aim to provide a sense of security and support the victim's recovery process comprehensively. Second, the reporting mechanism and temporary protection are crucial initial steps in handling cases of domestic violence. Victims or their attorneys can report violence to the police, who are required to provide temporary protection within 1x24 hours after the report is received, valid for seven days while waiting for the determination of protection from the court. This protection includes physical and psychological security so that victims are protected from threats from the perpetrator during the legal process. Third, efforts to restore and assist victims are an important part of the rehabilitation process for victims of domestic violence. Assistance includes psychological counseling, legal advocacy, and spiritual guidance carried out by professional staff and related institutions in an integrated manner. This approach aims to restore the physical and mental condition of the victim and ensure that their rights are optimally restored. This journal concludes that legal protection for victims of domestic violence must be comprehensive, covering aspects of protection, law enforcement, and recovery so that victims can obtain justice and a decent life after experiencing violence. Effective implementation requires synergy between law enforcement officers, social institutions, and the community.*

Keywords: *Domestic Violence; Legal Protection; Reporting; Victims' Rights; Victim Assistance.*

1. Introduction

Domestic Violence (DV) is a serious form of human rights violation and is a widespread social problem in various countries, including Indonesia. Domestic Violence not only causes physical, but also profound psychological, social, and economic impacts on victims, who are generally women and children. This phenomenon requires effective legal protection so that victims can obtain adequate justice, protection, and recovery. Therefore, a study of legal protection for victims of Domestic Violence is very important to ensure that victims' rights are optimally protected and that reporting and recovery mechanisms can run well. Legal protection for victims of Domestic Violence in Indonesia is specifically regulated in Law No. 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT). This law provides a strong legal basis to protect victims from all forms of violence that occur within the household. In addition, the PKDRT Law also regulates victims' rights, reporting mechanisms, temporary protection, and recovery and assistance efforts that must be provided to victims. Thus, legal protection does not only focus on taking action against the perpetrator, but also pays serious attention to the needs and rights of the victim.¹

The rights of victims of domestic violence are a fundamental aspect of legal protection that must be fulfilled by the state and law enforcement officers. The Domestic Violence Law explicitly stipulates that victims have the right to receive protection from various parties, such as family, police, prosecutors, courts, advocates, and social institutions. This protection includes physical and psychological protection, health services according to medical needs, and special treatment that maintains the confidentiality of the victim's identity in order to avoid stigma and social pressure. In addition, victims also have the right to receive legal and social assistance during the case handling process until the trial. The rights of victims are not only limited to protection, but also include the right to obtain compensation for the suffering experienced, guidance, rehabilitation, and restoration of property rights that may be seized or harmed due to violence. Protection from threats from perpetrators during the legal process is also an important part so that victims feel safe and dare to continue the legal process. With the guarantee of these rights, it is hoped that victims can obtain justice and complete recovery, both physically, psychologically, and socially.²

The reporting mechanism is a very crucial initial step in handling cases of Domestic Violence. The victim or their attorney can report the violence to the police at the scene or the victim's residence. Within 1x24 hours after receiving the report, the police are required to provide temporary protection to the victim for a maximum

¹Boying, Hasibuan. *"Perlindungan Korban Tindak Pidana Kekerasan Dalam Rumah Tangga Dalam Analisis Hukum Pidana Islam (Studi Kasus di Kota Medan)"*, (UIN Sumatera Utara Medan, 2020).

²Jumuslihan, *"Perlindungan Hukum Terhadap Istri Sebagai Korban Kekerasan dalam Rumah Tangga (Perspektif Hukum Islam and Hukum Positif)"*. (IAIN Palopo, 2019).

of seven days while waiting for the protection determination from the court. This temporary protection aims to protect the victim from threats or further violence that may be carried out by the perpetrator during the legal process. Furthermore, the court is required to issue a protection order within seven days of receiving the application. This letter can be extended as needed and includes various forms of protection, such as a prohibition on the perpetrator from approaching the victim, placing the victim in a safe house, and regulating the victim's rights during the legal process. This mechanism provides legal certainty and real protection for victims, so that they are not left in a vulnerable and threatened condition during the law enforcement process.³

Legal protection for victims of Domestic Violence does not stop at the aspect of law enforcement and physical protection alone, but also includes comprehensive recovery and assistance efforts. Victim recovery includes health services, psychological counseling, legal advocacy, and spiritual guidance carried out by professionals, social workers, and assistance institutions. This assistance is very important to help victims overcome the physical and psychological trauma they experience, as well as restore their social and economic conditions. An integrated and synergistic approach between institutions is needed so that victims receive comprehensive and sustainable services. In addition, assistance also functions as reinforcement for victims so that they can undergo the legal process with more confidence and obtain optimal justice. This recovery effort is an integral part of legal protection that ensures that victims are not only protected, but can also recover and live a dignified life.⁴

2. Research Methods

This study uses a normative legal method. The problem approach used is the legislative approach, the concept analysis approach and the case approach. Legal materials use primary legal materials and secondary legal materials. The technique of collecting legal materials through literature studies and qualitative legal material analysis.⁵

3. Results and Discussion

3.1. The Rights of Victims of Domestic Violence

Domestic Violence is a serious violation of human rights that causes physical, psychological, social, and economic impacts on victims. Therefore, legal protection for victims of Domestic Violence is very important to ensure their rights are fully

³Edwin Manumpahi, Shirley, & Hendrik W. Pongoh, Kajian Dalam Kekerasan Rumah Tangga Terhadap Psikologi Anak, *E-Jurnal "Acta Diurnal"*. Vol. V No. 1. 2016.

⁴Nur Hasyim, Pemulihan Bagi Anak Korban Kekerasan Rumah Tangga Di Indonesia, *Jurnal Psikoogi*, Vol. 9. No. 02. 2016.

⁵Soekanto S, Mamudji S. *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*. (Jakarta: Rajawali Pers; 2015).

protected. Law No. 23 of 2004 concerning the Elimination of Domestic Violence (UU P KDRT) expressly regulates the rights of victims as a form of state protection. Definition of Victim in Law No. 23 of 2004 concerning the "Elimination of Domestic Violence (PKDRT)" in Chapter 1 Article 1 reads:

*"A victim is a person who experiences violence and threats of violence within the scope of the household". The term victim also includes the immediate family or dependents of the victim who have suffered losses due to intervening to help the victim when experiencing difficulties or when preventing the victim from falling victim".*⁶

The victim has a role in the occurrence of a crime. A crime is an act that violates. A crime can also be interpreted as an act that is against the law, for which such act can be subject to criminal sanctions. Victims are those who experience suffering both physically and spiritually as a result of the actions of others (the perpetrators) who seek to fulfill their own or other people's interests that conflict with the interests and basic rights of the person experiencing the suffering.⁷

The Law on the Elimination of Domestic Violence in Article 10, provides victims of domestic violence with the right to receive:

- a) protection from the family, police, prosecutors, courts, advocates, social institutions or other parties, either temporarily or based on a protection order issued by the court;
- b) health services according to medical needs;
- c) special handling related to victim confidentiality;
- d) assistance by social workers and legal aid at every level of the examination process in accordance with the provisions of laws and regulations; and
- e) spiritual guidance services.

The process of investigation, prosecution, and examination in court in cases of Domestic Violence is carried out according to the provisions of the applicable criminal procedure law and uses Law No. 23 of 2004 concerning the Elimination of Violence. Handling of Domestic Violence cases through criminal law according to Law No. 23 of 2004 concerning the Elimination of Domestic Violence is called handling with an integrated criminal justice system. Integrated means that handling cases of Domestic Violence does not only try the suspect/perpetrator of the violence but also considers the rights of the victim and how to restore them.⁸

Therefore, Article 4 of Law No. 23 of 2004 concerning the Elimination of Domestic Violence regulates the objectives of eliminating Domestic Violence as follows:

- 1) Prevent all forms of Domestic Violence

⁶Law No. 23 of 2004 concerning the "Elimination of Domestic Violence (PKDRT) in Chapter 1 Article 1.

⁷Moerti Hadiati Soeroso, *Kekerasan Dalam Rumah Tangga dalam Perspektif Yuridis Viktimologis* (Jakarta: Sinar Grafika, 2010), p. 112.

⁸Article 10 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence.

- 2) Protecting victims of domestic violence
- 3) Take action against perpetrators of domestic violence
- 4) Maintaining the integrity of a harmonious and prosperous household.⁹

Based on the objective of eliminating Domestic Violence, the handling both in the investigation stage and in the trial, there must be a balance between the imposition of punishment sanctions on the perpetrator and the protection of the victim and the recovery of the victim. In the investigation and inquiry process, the following is stated:

- a) Victims have the right to directly report Domestic Violence to the police either at the victim's location or at the scene of the crime (Article 26 paragraph (1) of Law No. 23 of 2004). Victims can give power of attorney to family or other people to report Domestic Violence to the police either at the victim's location or at the scene of the crime (Article 26 paragraph (2) of Law No. 23 of 2004). In the case where the victim is a child, the report can be made by the parents, guardian, caregiver, or the child concerned which is carried out in accordance with the provisions of applicable laws and regulations. (Article 27 of Law No. 23 of 2004).¹⁰
- b) Within 1 x 24 (one times twenty-four hours) from the time of knowing or receiving a report of domestic violence, the police are required to immediately provide temporary protection to the victim. Temporary protection as referred to is provided no later than 7 (seven) days from the time the victim is received or handled (Article 16 paragraph (1) and (2) of Law No. 23 of 2004). Within 1 x 24 (one times twenty-four hours) from the time of providing protection as referred to, the police are required to request a letter of determination of a protection order from the Court (Article 16 paragraph (3) of Law No. 23 of 2004). In providing temporary protection, the police can work together with health workers, social workers, volunteer companions and/or spiritual guides to accompany the victim (Article 17 of Law No. 23 of 2004).¹¹
- c) The police are required to provide information to victims regarding the victim's rights to receive services and assistance (Article 18 of Law No. 23 of 2004).
- d) The police are required to immediately conduct an investigation after learning or receiving a report of Domestic Violence (Article 19 of Law No. 23 of 2004). The police must immediately inform the victim about: 1) the identity of the officer for introduction to the victim; 2) Domestic Violence is a crime against human dignity; and 3) the police's obligation to protect the victim (Article 20 of Law No. 23 of 2004).¹²
- e) The police may arrest and then detain without a warrant the perpetrator who is believed to have violated the protection order, even though the violation was not committed at the place where the police are on duty. The arrest and detention

⁹Article 4 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence regulates the objectives of eliminating domestic violence.

¹⁰Article 27 of Law No. 23 of 2004.

¹¹Article 17 of Law No. 23 of 2004.

¹²Article 20 of Law No. 23 of 2004.

as referred to must be accompanied by an arrest and detention warrant after 1 x 24 (one times twenty four) hours (Article 35 paragraph (1) and (2) of Law No. 23 of 2004). According to Article 35 paragraph (3) of Law No. 23 of 2004, the suspension of detention does not apply to the detention as referred to in Article 35 paragraph (1) and (2) of Law No. 23 of 2004 (Article 36 paragraph (1) and (2) of Law No. 23 of 2004).¹³

For that reason, investigators in conducting investigations do not work alone but in an integrated manner in collaboration with health workers/hospitals, victim companions, and clergy to seek the real truth in uncovering the reported Domestic Violence incident. If the investigation is complete and enters the investigation stage, the victim's attorney will accompany the victim in addition to the perpetrator's attorney accompanying the perpetrator. The first stage carried out is to Complete the Minutes while the mediation process is carried out by all parties. Mediation here is a consensus before investigators, prosecutors and/or judges to find common ground that benefits all parties in order to maintain the integrity of a harmonious and prosperous household. Although the criminal process continues according to the criminal procedure law regulated in the Criminal Procedure Code. At this stage, the police, in this case the police investigators, must have an understanding of the police women desk as well as professionalism and empathy for the victim, which has now been formed in the form of a Special Service Room in all provincial police in Indonesia which specifically handles investigations of Domestic Violence cases. That the Criminal Procedure Code is a guideline for the implementation of investigations of domestic violence crimes.

Article 26 Paragraph (1) of Law No. 23 of 2004 explicitly stipulates that the victim has the right to directly report Domestic Violence to the local police, either at the location or at the scene of the incident. Then in Article 26 Paragraph (2) of Law No. 23 of 2004, the victim can also give power of attorney to the family or other person to report Domestic Violence to the police, either at the victim's location or at the scene of the incident. Furthermore, Article 27 explains that if the victim is a child, the report can be made by the parents, guardian, or the child concerned which is carried out in accordance with applicable legal provisions.¹⁴

Furthermore, Article 28 of Law No. 23 of 2004 states that the Head of the District Court within a period of 7 (seven) days from the receipt of the application, is obliged to issue a letter of determination containing an order for protection for the victim and other family members, unless there is a clear reason and protection for victims of Domestic Violence is valid for a maximum of 1 (one) year and can be

¹³Article 36 paragraphs (1) and (2) Law no. 23 of 2004.

¹⁴Article 26 Paragraph (1) of Law Number 23 of 2004.

extended if there is information from the victim, health workers, social workers, volunteer companions or spiritual guides that the victim still needs protection.¹⁵

As an implementing regulation of Law No. 23 of 2004, the government has issued Government Regulation No. 4 of 2006 concerning the Implementation and Cooperation of Recovery for Victims of Domestic Violence. There is a clear difference between the Criminal Procedure Code and Law No. 23 of 2004 in terms of the investigation process. If the Criminal Procedure Code prioritizes the perpetrator to be processed immediately for investigation, then Law No. 23 of 2004 prioritizes victim services first to obtain legal protection as a victim of domestic violence.¹⁶

3.2. Legal Protection for Victims of Domestic Violence and Law Enforcement Efforts

The Law on the Elimination of Domestic Violence contains various reforms and breakthroughs in the protection of Human Rights (HAM) which prioritizes the prevention of domestic violence, rather than punitive actions (repressive) and broadens the concept of domestic violence, which not only includes psychological, physical and sexual violence. But also includes the act of 'neglecting the household' as an act of violence that can be punished. The Law on the Elimination of Domestic Violence is a law that regulates specific problems specifically, so it contains elements of *lex special*.

The elements of *lex special* consist of:

- a. Corrective elements against the perpetrator. The Law on the Elimination of Domestic Violence regulates alternative sanctions to the Criminal Code which only regulates imprisonment and fines, namely in the form of social work and intervention programs imposed on the perpetrator. This is intended so that the perpetrator does not commit acts of violence again.
- b. Preventive elements towards society. The existence of the Law on the Elimination of Domestic Violence is intended to prevent acts of violence that occur in the household, because so far the problem of domestic violence has been considered a private problem so that the violence that occurs is not easily intervened.
- c. Protective Elements for Victims. The Law on the Elimination of Domestic Violence contains articles that provide protection for victims of violence that occurs in domestic relationships, especially for subordinated parties (vulnerable groups).¹⁷

¹⁵Article 28 of Law Number 23 of 2004.

¹⁶Articles 16 to 38 of Law Number 23 of 2004.

¹⁷Yulia, R. (2019). *Perlindungan Hukum Terhadap Korban Kekerasan Dalam Rumah Tangga. Jurisprudentie Jurusan Ilmu Hukum Fakultas Syariah Dan Hukum.* 6(2). 49. <https://doi.org/10.24252/jurisprudentie.v6ia.10302>.

Domestic violence has various levels of violence, this can be seen from the impact of violence on victims which also varies, so it is appropriate to apply different sanctions. The imprisonment contained and regulated in the Criminal Code often creates a dilemma for victims, because of economic and social dependence on the perpetrator, so that in the end the victim tends not to report the violent crime they experienced. Victims of violence can come from various backgrounds of age, education, socio-economic level, religion, and ethnicity. What is meant by a victim according to Law No. 23 of 2004 concerning the Elimination of Domestic Violence is a person who experiences violence and/or threats of violence in the household. The Criminal Code and Criminal Procedure Code have so far proven unable to provide protection for victims of domestic violence (KDRT). Because both regulations are still very general, they do not consider the difficulties of victims in accessing legal protection, especially because of their gender. The Criminal Code and Criminal Procedure Code do not at all consider the context of patriarchal and feudal culture and the differences in class/social status that create inequality in social relations, especially in domestic relations. These rules assume that everyone is equally capable and empowered to obtain legal justice.¹⁸

In the Law on the Elimination of Domestic Violence, the rights of victims are regulated, namely in Article 10, including receiving protection, health services, special treatment and assistance by social workers, according to Arif Gosita²⁴ victims have the following rights:

- a. Get compensation for his suffering.
- b. Refusing restitution for the benefit of the perpetrator (not wanting to be given restitution because they do not need it)
- c. Obtain restitution/compensation for heirs if the victim dies due to the act.
- d. Receive coaching and rehabilitation
- e. Get your property rights back
- f. Get protection from threats from the perpetrator if you report and become a witness.
- g. Obtaining assistance from legal counsel h. Using legal remedies¹⁹

With the existence of articles containing the rights of victims, it is hoped that victims of domestic violence will receive protection from the state and/or society so that it does not result in prolonged traumatic impacts. In accordance with the considerations of the Law on the Elimination of Domestic Violence, victims of domestic violence, most of whom are women, must receive protection from the state and/or society to avoid and be free from violence or threats of violence,

¹⁸Sutiawati, Mappaselleng, & Fadhilah, N. (2020). Penanggulangan tindak pidana Kekerasan dalam Rumah Tangga di Kota Makassar. *Jurnal Wawasan Yuridika*, 4(1), p. 17-30. <http://dx.doi.org/10.25072/jwy.v4i1.315>.

¹⁹Viezna Leana Furi & Rosalia Indriyati Saptatiningsih, Peran UPTD Perlindungan Perempuan and Anak Dalam Pendampingan Perempuan Korban Kekerasan. *Jurnal Kewarganegaraan* Vol. 4 No. 2 December 2020.

torture, or treatment that degrades human dignity and status. In addition to regulating the rights of victims, the Law on the Elimination of Domestic Violence also regulates protection for victims of violence provided by the police in collaboration with health workers, social workers, volunteer companions, and/or spiritual guides to accompany victims (Article 17).²⁰

The protection request can be submitted either verbally or in writing. The protection order issued by the Head of the District Court can be given within a maximum of 1 (one) year and can be extended by a court decision. Thus, regarding the protection of victims of domestic violence, it has been normatively fulfilled, but further implementation of the provisions is needed, both in the form of policies and actions. Regarding government efforts in preventing domestic violence, it is regulated in Article 12 of the Law on the Elimination of Domestic Violence, namely:

- a. formulate policies on the elimination of domestic violence;
- b. organizing communication, information, and education about domestic violence;
- c. organizing socialization and advocacy on domestic violence; and
- d. organizing gender-sensitive education and training on domestic violence issues and establishing gender-sensitive service standards and accreditation.²¹

It must be admitted, with the existence of regulations or laws governing Domestic Violence is a progressive breakthrough in criminal law, however in the implementation of the criminal law system still focuses on the perpetrator. If this happens to the husband, the victim will feel or think twice about continuing the lawsuit because of the relationship or family relationship between them. In general, law enforcement officers also view Domestic Violence as a complaint offense, where in general the resolution of this case is resolved amicably. The articles related to the provisions of the legislation on Domestic Violence have made it possible as a means or effort for law enforcement officers to be used as a reference for law enforcement officers' actions for perpetrators of domestic violence. In addition, legal assistance provided by the government, the community is also encouraged to provide legal assistance through legal institutions whose numbers and activities are increasing in providing legal assistance to victims.²²

²⁰Didi Sukardi, R. Agus Abikusna, & Rani Sri Imayati Rahayu, Pendampingan Hukum Terhadap Korban Marital Rape. Reviewed from Law No. 23 of 2004 concerning the Elimination of Domestic Violence, Mahkamah: *Jurnal Kajian Hukum Islam* Vol. 4, No. 1, June 2019.

²¹Rosma Alimi and Nunung Nurwati, Faktor Penyebab Terjadinya Kekerasan Dalam Rumah Tangga Terhadap Perempuan. *Jurnal Pengabdian and Penelitian Kepada Masyarakat (JPPM)* Vol. 2 No.1 April 2021.

²²Laurika Andrew Lionel, Perlindungan Hukum Terhadap Korban Tindak Pidana Kekerasan Dalam Rumah Tangga. *Jurnal Ilmu Hukum*, Volume V, February 2, 2016.

Enforcement of criminal sanctions is part of law enforcement that needs to be applied firmly so that cases of Domestic Violence can be further reduced and even eliminated as intended by the implementation of Law No. 23 of 2004 concerning the Elimination of Domestic Violence". Law enforcement needs to be continuously pursued so that by overcoming obstacles that become obstacles so that the resolution of Domestic Violence cases can be resolved and can provide justice for the victims who have suffered and been harmed by the actions of the perpetrators of the violence. A perpetrator of physical violence in the household based on "the provisions of Article 44 paragraph (1) can be punished with a maximum imprisonment of 5 (five) years or a maximum fine of IDR 15,000,000,- (fifteen million rupiah), if this physical violence results in the victim getting sick or seriously injured, then Article 44 paragraph (2) determines that the perpetrator can be punished with a maximum imprisonment of 10 (ten) years or a maximum fine of IDR 30,000,000,- (thirty million rupiah). The criminal sanctions for perpetrators of physical violence will be increased in Article 44 paragraph (3) if it results in the death of the victim with a maximum prison sentence of 15 (fifteen) years or a maximum fine of IDR 45,000,000 (forty-five million rupiah). The sanctions for perpetrators of physical violence can be reduced as regulated in Article 44 paragraph (4) if the act of physical violence committed by the husband against the wife does not cause illness or obstacles to carrying out work or livelihood or daily activities with a maximum prison sentence of 4 (four) months or a maximum fine of IDR 5,000,000 (five million rupiah).²³

For perpetrators of psychological violence based on the provisions of Article 45 paragraph (1) 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 punished with a maximum imprisonment of 3 (three) years or a maximum fine of IDR 9,000,000,- (Nine million rupiah) and Article 45 paragraph (2) states that in the case of acts as referred to in paragraph (1) committed by a husband against a wife or vice versa which does not cause illness or obstacles to carrying out work or livelihood or daily activities, shall be punished with a maximum imprisonment of 4 (four) months or a maximum fine of IDR 3,000,000.00,- (three million rupiah)." The birth of Law No. 23 of 2004, it is hoped that there will be awareness of victims to report to the authorities or law enforcement officers if an act of domestic violence occurs. According to the law, victims are socially weak victims,"²⁴namely those who have a weak social position or status, which makes someone a victim, especially women and children.

²³Mansur, Dikdik M.Arief and Elisatris Gultom (2007). *Urgensi Perlindungan Korban Kejahatan Antara Norma and Realita*. (Edisi 1, Cet.I; Jakarta: PT Raja Grafindo Persada).

²⁴Suryono Ekotama, ST. Harum Pudjianto, and G.Wiratana, (2001). *Abortus Provocatus Bagi Korban Pemerkosaan Perspektif Viktimologi, Kriminologi dan Hukum Pidana*. (Cet. I; Yogyakarta: Universitas Atmajaya), p. 176-177.

In the concept of legal protection for victims of crime, there are also several legal principles that require attention. This is because in the context of criminal law, legal principles must color both material criminal law and formal criminal law. The principles in question are:

First, the principle of benefit. Protection of victims is not only aimed at achieving benefits (both material and spiritual) for victims of crime, but also the benefit of society at large, especially in efforts to reduce the number of criminal acts and create public order. Second, the principle of justice. The application of the principle of justice in efforts to protect victims of crime is not absolute, because this is also limited by a sense of justice that must also be given to perpetrators of crime. Third, the principle of balance. The purpose of law, in addition to providing certainty and protection for human interests, is also to restore the balance of the disturbed social order to its original state (*restitutio in integrum*), the principle of balance has an important place in efforts to restore victims' rights. Fourth, the principle of legal certainty. This principle can provide a strong legal basis for law enforcement officers when carrying out their duties in efforts to provide legal protection to victims of crime.²⁵

But in reality, the victim is always the most disadvantaged party. Because in addition to the victim having suffered losses due to the crime that befell him, both materially, physically and psychologically, the victim must also bear double suffering because without realizing it, he is often treated only as a means to realize legal certainty. The victim suffers because he is required to restate, remember and even repeat (reconstruct) the crime he experienced while undergoing the examination process, both at the investigation level and after the case is examined in court. The legal bias towards the victim which seems unequal when compared to the suspect or defendant, can be seen from the existence of several laws and regulations that give "special rights" to the suspect or defendant compared to the victim. When someone is suspected of committing a crime, from the time the person is asked for information until the verdict is handed down by the judge, legal protection for the suspect (defendant) is always attached. When the person is arrested, it must be accompanied by an arrest warrant and state what crime is accused of, when in the investigation process, the suspect is allowed to be accompanied by a legal advisor. Likewise, when the suspect is detained, the detention period is limited to a certain period of time. In fact, after the defendant has been sentenced by the judge, he is still given the opportunity to file other legal remedies, such as an appeal and judicial review.²⁶ The condition is very different from the victim. When asked for information as a witness at the investigation or court level, it is often found that the victim must come alone without receiving adequate security or escort from the security forces. This condition does not only

²⁵Partana Mandala, Perlindungan Hukum Terhadap Korban Kekerasan Dalam Rumah Tangga Sebagai Implementasi Hak-Hak Korban. *Jurnal Analisis Hukum* Volume 2, Nomor 1, April 2019.

²⁶Dikdik M.Arief Mansur and Alisatris Gultom, *Urgensi Perlindungan*, p. 164.

occur in "small cases," but also in "big cases" (cases that attract public attention), such as murder, terrorism, crimes/human rights violations, victims often have to come alone to court.

Meanwhile, the potential for violence against witnesses (victims) is very high, especially if the perpetrator is sentenced to the maximum sentence by the court,¹⁷ for example, being given a 12-year prison sentence, or a life sentence, or the death penalty. When the victim is asked for information in court, it seems that the victim is only being used as a tool to strengthen what is being charged by the Public Prosecutor (JPU). After the victim gives his testimony, there is no effort to protect the victim as a witness, and the victim is allowed to go home without receiving protection from law enforcement officers. In some cases, the form of legal protection given to the victim is often limited to material aspects only, for example, the victim is given the right to sue the perpetrator for damages. The hope is that after the damages are given, the suffering experienced by the victim will end. Meanwhile, the consequences suffered by the victim as a result of the crime (violence) that befell him are very complex, not only material losses, but also physical and psychological, such as Siti Nur Jazilah who suffered burns on her face due to being splashed with 'acid' by her husband. From this description, it can be stated that the basic principles of protecting victims of crime or violence are:

- (a) functional principles/benefits of protection for both individual victims and society in general;
- (b) the principle of criminal responsibility for actions committed by the suspect or defendant against the victim, and
- (c) the principle of compensation or fines for losses experienced by the victim/his family.

Law No. 23 of 2004 concerning the Elimination of Domestic Violence.

Article 1 number 3: Victims are people who experience violence and/or threats of violence within the household.

Article 1 number 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 decision.

Article 1 number 5: Temporary Protection is protection provided directly by the police and/or social institutions or other parties, before a protection order is issued by the court.

Article 1 number 6: A Protection Order is a decision issued by the Court to provide protection to the victim.

Law No. 23 of 2004 concerning the Elimination of Domestic Violence, states that the rights of victims are protected, as regulated in Article 10: Victims have the right to:

- a. Protection from the family, police, courts, prosecutors, social institutions, advocates, or other parties, either temporarily or based on a protection order from the court;
- b. Medical needs that are in accordance with health services with;
- c. Special handling related to victim confidentiality;
- d. Assistance by legal aid and social workers at every level of the examination process in accordance with the provisions of laws and regulations; and
- e. Spiritual guidance services.²⁷

Law No. 23 of 2004 concerning the Elimination of Domestic Violence, states that protection, as regulated in Article 16: victims receive protection:

(1) Within 1 x 24 hours (one times twenty-four) hours from the time of learning about or receiving a report of domestic violence, the police are obliged to immediately provide temporary protection to the victim.

(2) Temporary protection as referred to in paragraph (1) is provided for a maximum of 7 (seven) days from when the victim is received or handled.

(3) Within 1 x 24 hours (one times twenty-four) hours from the time the protection is provided as referred to in paragraph (1), the police are required to request a protection order determination letter from the court. Law No. 23 of 2004 concerning the Elimination of Domestic Violence Article 17 states that "in providing temporary protection, the police can work together with health workers, social workers, volunteer companions, and/or spiritual guides to accompany the victim" and Article 18 states that the police are required to provide information to the victim regarding the victim's right to receive services and assistance.²⁸

3.3. Victim Recovery and Assistance Efforts

Legal protection for victims of Domestic Violence does not stop at the aspect of law enforcement and physical protection, but also includes comprehensive recovery and assistance efforts. Victim recovery is all efforts to strengthen victims physically and psychologically so that they can regain their power and live a normal life. The implementation of recovery includes services and assistance carried out by health workers, social workers, volunteer companions, and spiritual guides in a systematic and integrated manner. This assistance is in the form of psychological counseling, therapy, legal advocacy, and spiritual guidance aimed at overcoming trauma and strengthening the victim's mentality in facing the legal process and life after violence.²⁹ Cooperation between institutions is the key to successful victim recovery, where various agencies and social organizations must collaborate to

²⁷Law No. 23 of 2004 concerning the Elimination of Domestic Violence.

²⁸Article 16 of Law No. 23 of 2004 concerning the Elimination of Domestic Violence.

²⁹Mansur DMA, Gultom E. *Urgensi Perlindungan Korban Kejahatan Antara Norma and Realita*. (Jakarta: Raja Grafindo Persada; 2007).

provide holistic and sustainable services. These recovery services not only help victims in psychological aspects, but also support social and economic recovery, so that victims can be independent and not become victims of violence again. Legal assistance provided to victims is also very important to ensure that victims understand their rights and receive maximum legal protection during the investigation and trial process. With assistance, victims can feel supported and more confident in facing the legal process which is often complicated and causes psychological stress.³⁰

3.3.1. Role and Function of Legal Assistance

In Law No. 23 of 2004 concerning the Elimination of Domestic Violence, the role and function of advocates in accompanying victims of Domestic Violence (KDRT) in court proceedings are regulated. Article 25 of the Domestic Violence Law states that in providing protection and services, advocates are required to:

- a. provide legal consultations that include information regarding victims' rights and the judicial process;
- b. accompany the victim at the investigation, prosecution and examination levels in court hearings and help the victim to fully describe the Domestic Violence they experienced; or
- c. coordinate with fellow law enforcers, volunteer companions, and social workers so that the judicial process runs as it should.³¹

Also related to cases involving children under 18 (eighteen) years as regulated in Article 18 of Law No. 23 of 2002 concerning Child Protection, it is regulated that every child who is a victim or perpetrator of a crime has the right to receive legal aid and other assistance. In terms of providing legal aid, this certainly involves advocates to provide legal aid for child victims or perpetrators of crimes.

The victim has the right to receive compensation as regulated in Article 39 of Law No. 23 of 2004 and in more detail in its implementing regulations, namely Government Regulation Number 4 of 2006, which clearly states that:

- 1) Victim recovery is all efforts to strengthen victims of Domestic Violence to become more empowered, both physically and psychologically.
- 2) The provision of recovery is all actions that include services and assistance to victims of domestic violence.
- 3) Assistance is all actions in the form of counseling, psychological therapy, advocacy and spiritual guidance, to strengthen the victims of Domestic Violence to resolve the problems they face.
- 4) Cooperation is a systematic and integrated way between recovery providers in providing services to restore victims of domestic violence.

³⁰Saraswati R. *Perempuan and Penyelesaian Kekerasan dalam Rumah Tangga*. (Bandung: Citra Aditya Bakti; 2006).

³¹Law No. 23 of 2004 concerning the Elimination of Domestic Violence.

5) Recovery officers are health workers, social workers, volunteer companions and/or spiritual guides.

Furthermore, the implementation of recovery for victims of Domestic Violence is carried out by government agencies (in this case the Ministry of Women's Empowerment and Children) and Regional Governments and Social Institutions in accordance with their respective duties and functions, including the provision of facilities needed for the recovery of victims.³²

Furthermore, regarding victim assistance, we can find the regulations in Law No. 13 of 2006 concerning Protection of Witnesses and Victims (PSK Law), namely:

- a. obtain protection for the security of his person, family and property, and be free from threats relating to the testimony he will, is giving, or has given;
- b. participate in the process of selecting and determining the form of security protection and support;
- c. provide information without pressure;
- d. get a translator;
- e. free from ensnaring questions;
- f. obtain information regarding case developments;
- g. obtain information regarding court decisions;
- h. knowing in the event that the convict is released;
- i. get a new identity; j. get a new residence;
- k. obtain reimbursement for transportation costs according to needs;
- l. obtain legal advice; and/or
- m. receive temporary living cost assistance until the protection period ends.³³

In conclusion, basically the role and function of an advocate who accompanies the victim during the court hearing is to ensure that the victim's rights are fulfilled in accordance with existing laws and regulations as mentioned above.

3.3.2. Objectives of Legal Assistance

This legal assistance is also in line with the purpose of legal assistance. The purpose of legal assistance is also intended as the purpose of legal assistance itself. In this context, legal assistance is a legal assistance process that aims to accompany cases to clients/victims who need legal and judicial assistance or support in dealing with cases of violence they are experiencing in order to obtain justice and motivation and support for the problems they are experiencing in order to make the right decision and so that victims/clients can return to their social roles in society after the case of violence they experienced. Legal assistance in cases of Women Victims of Domestic Violence is carried out as follows:

1. Legal consultation.
2. Accompany victims in the legal process they face.

³²Government Regulation Number 4 of 2006.

³³Law No.13 of 2006 concerning Protection of Witnesses and Victims.

3. Coordinate with legal aid institutions or legal advisors.
4. Mediation, which is an effort to resolve conflict involving the parties involved in a case of violence against women.
5. Conduct outreach and home visits if necessary. In a home visit, the legal counselor together with the psychological counselor visits the victim's home, the home visit is conducted to find out the victim's condition.³⁴

Referring to the description above, it can be seen that legal assistance has an important purpose for victims, in addition to being a medium for victims to understand the legal process they are experiencing, it also provides convenience to victims in fulfilling their rights fairly.

4. Conclusion

Legal protection for victims of Domestic Violence is a crucial aspect in efforts to enforce human rights and social justice. Based on the discussion in this journal, legal protection for victims of Domestic Violence can be seen from three main aspects, namely the rights of victims, reporting mechanisms and temporary protection, and efforts to restore and assist victims. First, the rights of victims of Domestic Violence have been clearly regulated in Law No. 23 of 2004 concerning the Elimination of Domestic Violence (UUP Domestic Violence). Victims have the right to legal protection which includes physical and psychological protection, health services, legal assistance, and guarantees of confidentiality of identity. These rights are not only legal in nature, but also include social, health, and educational protection. This protection aims to provide a sense of security and support the victim's recovery process as a whole, considering that victims of Domestic Violence are often socially and economically weak parties, such as women and children. In addition, victims also have the right to receive compensation for the suffering experienced, guidance, rehabilitation, and protection from threats from the perpetrator during the legal process. Second, reporting mechanisms and temporary protection are very important initial steps in handling cases of Domestic Violence. Victims or their attorneys can report violence to the police at the scene or the victim's residence. After the report is received, the police are required to provide temporary protection within 1x24 hours which is valid for a maximum of seven days while waiting for the protection determination from the court. The court is then required to issue a protection order within seven days of the application being received. This protection includes physical and psychological security for the victim to avoid threats from the perpetrator during the legal process. This mechanism ensures that the victim is not left in a vulnerable condition during the legal process and provides space for the victim to feel safe and protected. Third, efforts to restore and assist victims are an integral part of legal protection that does not stop at the aspect of law

³⁴Viezna Leana Furi & Rosalia Indriyati Saptatiningsih. *Peran UPTD Perlindungan Perempuan and Anak Dalam Pendampingan Perempuan Korban Kekerasan*. Vol 4 No. 2 December 2020. Accessed from <https://journal.upy.ac.id/article/pdf>. accessed on october 4, 2022.

enforcement. Victim recovery includes health services, psychological counseling, legal advocacy, and spiritual guidance carried out by professionals, social workers, and support institutions. This assistance aims to restore the victim's physical and mental condition and ensure that their rights can be restored optimally. An integrated and synergistic approach between institutions is needed so that victims receive comprehensive and sustainable services. This is important considering the trauma and psychological impact experienced by victims of Domestic Violence often require long-term treatment for full recovery. Although normatively legal protection for victims of Domestic Violence has been well regulated, its implementation still faces various obstacles. Some of the main obstacles include the victim's shame and fear of reporting, the victim's desire to resolve the problem amicably, and the lack of sensitivity and professionalism of law enforcement officers in handling cases of Domestic Violence. Economic factors are also an obstacle, where victims feel dependent on the perpetrator as the backbone of the family so they are afraid to report the violence they experience. Therefore, in addition to strengthening regulations, it is necessary to increase public awareness, train gender-sensitive law enforcement officers, and develop easily accessible and trusted assistance services. Overall, legal protection for victims of Domestic Violence must be comprehensive, covering aspects of protection, law enforcement, and recovery. Effective implementation requires synergy between law enforcement officers, social institutions, health workers, and the wider community. Thus, victims of Domestic Violence can obtain justice, a sense of security, and the opportunity to recover physically and psychologically, so that they can live a decent and dignified life. This effort also contributes to the creation of harmonious families and a society free from domestic violence. This effort also contributes to the creation of harmonious families and a society free from domestic violence. This effort also contributes to the creation of harmonious families and a society free from domestic violence.

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