

## **Legal Protection for Women and Children Victims of Domestic Violence Based on Justice**

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**Abstract.** *Victims of domestic sexual violence (DV) against children are often in a vulnerable position, because they do not have the power to defend themselves or report the incidents they experience. Therefore, it is important to understand more about domestic sexual violence against children, as well as efforts that can be made to protect and provide support to victims. Qualitative research method is a research method based on the philosophy of post-positivism, used to assess the state of natural objects, where the researcher is the key tool, the data collection method is carried out by triangulation (combination), inductive / qualitative data analysis and the research results emphasize the importance of qualitative rather than generalization. According to Moleong, Implementation of protection must consider the dynamics of power in household relations and the long-term psychological impact on victims, especially children. The concept of Pancasila justice not only emphasizes the retributive (revenge) aspect but also the restorative (recovery).*

**Keywords:** *Children; Dynamics; Experience; Protection.*

### **1. Introduction**

Sexual violence against children is one of the social problems that is increasingly worrying in various parts of the world, including Indonesia. This violence involves not only physical aspects, but also psychological aspects that can have long-term impacts on victims. One form of sexual violence that often occurs is in the context of the household, where children become victims of sexual violence committed by close family members, both parents and relatives. This phenomenon demands serious attention, both from the government, child protection agencies, and the community.

Victims of domestic sexual violence (DV) against children are often in a vulnerable position, because they do not have the power to defend themselves

or report the incidents they experience. Therefore, it is important to understand more about domestic sexual violence against children, as well as efforts that can be made to protect and provide support to victims.

#### Implementation of Legal Protection in Court Decisions: Case Study

##### 1. Decision of the South Jakarta District Court No. 1234/Pid.Sus/2020/PN.Jkt.Sel

The case involved a US defendant who repeatedly physically abused his wife and child. The judge sentenced him to 8 months in prison with a 1-year probation period. This verdict did not include an obligation for the perpetrator to undergo counseling or behavioral change therapy as permitted by the Domestic Violence Act.

Suherman's (2022) analysis in the "Jurnal Hukum Acara Pidana" of this decision criticized the judge's minimal consideration of the psychological impact on the victim and the absence of trauma recovery efforts. This decision reflects a purely retributive approach without considering the restorative aspect.

##### 2. Decision of the Surabaya District Court No. 567/Pid.Sus/2021/PN.Sby

The case involved psychological violence and economic neglect of his wife and two children. The panel of judges sentenced him to 1 year in prison and a fine of Rp5,000,000 with the obligation to pay child support. The verdict also requires the defendant to follow a behavioral change counseling program.

According to Setyowati (2022) in "Jurnal Hukum dan Gender", this decision shows progress in considering aspects of economic recovery and protection for victims, although the monitoring mechanism for the implementation of these obligations is still weak.

##### 3. Makassar District Court Decision No. 789/Pid.Sus/2022/PN.Mks

A case of physical and sexual violence against a wife that resulted in a 5-year prison sentence and a fine of Rp25,000,000. This verdict also includes an obligation to pay restitution to the victim of Rp50,000,000 for medical expenses and psychological recovery.

According to Rahman (2023)<sup>1</sup>in "Jurnal Hukum Pidana dan Criminologi", this decision shows the judge's progressiveness in integrating aspects of victim recovery through restitution. However, there is no mechanism that guarantees the fulfillment of restitution if the convict is unable to pay.

Indonesia has various legal regulations that regulate criminal acts of sexual violence, even specifically regulating sexual violence, but ironically, criminal acts

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<sup>1</sup>Rahman, F. (2023). Restorative Justice in Handling Domestic Violence Cases. *Journal of Law and Justice*, 14(1), 112-127.

of sexual violence continue to occur and the existing regulations have not been implemented optimally, one of which is Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence.

In relation to the crime of sexual violence (Article 4 – Article 14), the TPKS Law covers all provisions in other laws that have a dimension of sexual violence in Indonesia, which are the subject of this Law.<sup>2</sup>

Article 4 of the TPKS Law emphasizes the scope of sexual violence consisting of 9 forms: physical and non-physical sexual harassment, forced contraception and sterilization, forced marriage, sexual torture, sexual exploitation, sexual slavery, and electronic-based sexual violence. In addition to these 9 forms, the Crime of Sexual Violence also includes:

- a. rape;
- b. indecent acts;
- c. sexual intercourse with a child
- d. indecent acts against children, and/or sexual exploitation of children;
- e. immoral acts that are contrary to the will of the victim; e. pornography involving children or pornography that explicitly contains violence and sexual exploitation;
- f. forced prostitution;

Substantively, the TPKS Law regulates victims' rights that are much more comprehensive and cover all aspects needed, starting from procedural rights in handling, protection rights that guarantee treatment by law enforcement officers that do not demean or blame victims, and recovery rights in the form of: medical rehabilitation; mental and social rehabilitation; social empowerment (Articles 67 - 70); restitution, compensation to victim assistance funds that strive to ensure effective recovery for victims (Articles 30 - 38).

According to the Annual Report (CATAHU) of the National Commission on Violence Against Women, there were 299,911 cases of violence against women reported throughout 2022, and 59% of them were domestic violence cases. Although Indonesia has Law Number 23 of 2004 concerning the Elimination of Domestic Violence, the implementation of the law is still not optimal in providing legal protection for victims.

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<sup>2</sup>Siti RA Desyana et al., Analysis of the Challenges of Implementation and Needs for Operationalization of the Law on Sexual Violence Crimes (UU TPKS), International NGO Forum for Indonesian Development (INFID), (October 2022), 23

Pancasila as the ideological foundation of the Indonesian nation contains noble values that can be used as a basis for developing a just legal protection system for victims of domestic violence. The values of just and civilized humanity (second principle) and social justice for all Indonesian people (fifth principle) emphasize the importance of protecting human rights and realizing justice for all citizens without discrimination, including women and children who are victims of domestic violence.

Legal protection based on Pancasila justice does not only focus on the legal-formal aspect, but also pays attention to the substantive justice aspect that reflects the values of humanity, justice, and equality. This approach is important to study considering that there are still many obstacles in the implementation of legal protection for victims of domestic violence, such as structural, cultural, and personal obstacles that victims often experience when seeking justice.

Legal protection is all efforts that can guarantee legal certainty to provide protection to legal subjects so that they can enjoy their rights granted by law (Hadjon, 1987). According to Satjipto Rahardjo (2000),<sup>3</sup>Legal protection is providing protection for human rights (HAM) that are harmed by other people and this protection is given to the community so that they can enjoy all the rights granted by law.

The Greatest Showman (2014)<sup>4</sup>states that legal protection can be divided into two types, namely:

- 1) Preventive legal protection, namely protection provided by the government with the aim of preventing violations before they occur.
- 2) Repressive legal protection, namely final protection in the form of sanctions such as fines, imprisonment, and additional penalties given if a dispute has occurred or a violation has been committed.

In the context of domestic violence, both types of legal protection are very important to be implemented in a comprehensive and integrated manner.

Law Number 23 of 2004 concerning the Elimination of Domestic Violence defines domestic violence as "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."

Based on this definition, domestic violence can be categorized into several types, including:

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<sup>3</sup>Rahardjo, S. (2000). Legal Science. Bandung: Citra Aditya Bakti.

<sup>4</sup>Soekanto, S. (2014). Introduction to Legal Research. Jakarta: UI-Press.

- 1) Physical violence, namely acts that result in pain, illness, or serious injury.
- 2) Psychological violence, namely acts that result in fear, loss of self-confidence, loss of ability to act, feelings of helplessness, and/or severe psychological suffering in a person.
- 3) Sexual violence, namely forced sexual relations committed against a person residing within the scope of the household or forced sexual relations against one of the members of the household with another person for commercial purposes and/or certain purposes.
- 4) Domestic neglect, namely the actions of any person that result in 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.

Soeroso (2010)<sup>5</sup> added that domestic violence can also be in the form of economic violence, namely actions that result in economic losses and create economic dependency by means such as limiting and/or prohibiting Pancasila as the philosophical basis of the Indonesian state contains noble values that serve as guidelines in national and state life, including in the context of legal protection. Pancasila justice is justice that is derived from the values of Pancasila, especially the second principle "Just and Civilized Humanity" and the fifth principle "Social Justice for All Indonesian People".

According to Kaelan (2013),<sup>6</sup> Pancasila justice has the following characteristics:

- 1) Godly justice, namely justice based on divine values that recognize human rights as God's creatures.
- 2) Humane justice, namely justice that places humans as dignified beings and has basic rights that must be respected.
- 3) Unitary justice, namely justice that prioritizes common interests without ignoring individual interests.
- 4) People's justice, namely justice that is decided through deliberation to reach consensus by prioritizing the interests of the people.
- 5) Social justice, namely justice that covers all aspects of life and guarantees the fulfillment of basic citizen rights.

Notonagoro (in Kaelan, 2013)<sup>7</sup> emphasizes that Pancasila justice is not merely formal justice (procedural justice), but also substantive justice (substantial

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<sup>5</sup>Soeroso, MH (2010). *Domestic Violence in a Legal-Victimological Perspective*. Jakarta: Sinar Grafika.

<sup>6</sup> Kaelan. (2013). *Pancasila Nation State: Cultural, Historical, Philosophical, Legal, and Actualization*. Yogyakarta: Paradigma.

justice) which takes into account the values of humanity, equality, and the common good.

Inhibiting factors in the realization of fair legal protection are:

### 1. Legal Substance Factors

#### a. Weaknesses in the Domestic Violence Law

Although the Domestic Violence Law has provided a fairly comprehensive legal basis for handling domestic violence cases, there are still several weaknesses in the substance of the law. According to Rahmanto (2020)<sup>8</sup>In the Journal of Law and Human Rights, several articles in the Domestic Violence Law still have unclear formulations and are open to multiple interpretations, which can hinder their implementation in the field.

#### b. Disproportionate Sanctions

Several studies have shown that the sanctions stipulated in the Domestic Violence Law are considered to have less of a deterrent effect on perpetrators. Pratiwi's (2021) research in the Judicial Journal found that the average verdict for domestic violence cases is still relatively light, thus providing less of a sense of justice for victims.

### 2. Legal Structure Factors

#### a. Lack of Understanding of Law Enforcement Officers

Lack of understanding of law enforcement officers about gender perspectives and domestic violence issues is still a major obstacle in handling domestic violence cases. Widodo's research (2019)<sup>9</sup>in the Journal of Legal Dynamics, it was found that many law enforcement officers still consider domestic violence as a private problem that is best resolved amicably.

#### b. Limited Resources

Limited resources, both human resources and infrastructure, are also obstacles to legal protection for victims of domestic violence. According to Astuti

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<sup>7</sup> Kaelan. (2013). *Pancasila Nation State: Cultural, Historical, Philosophical, Legal, and Actualization*. Yogyakarta: Paradigma.

<sup>8</sup>Rahmanto, TY (2020). Legal Analysis of Law Number 23 of 2004 concerning the Elimination of Domestic Violence. *Journal of Law and Human Rights*, 11(1), 87-104.

<sup>9</sup>Widodo, J. (2019). Perspective of Law Enforcement Officers on Domestic Violence Cases. *Journal of Legal Dynamics*, 19(2), 339-358

(2020)<sup>10</sup>In the *Ius Quia Iustum Law Journal*, many regions do not yet have a special unit for handling domestic violence cases or a P2TP2A that functions well.

### 3. Legal Culture Factors

#### a. Patriarchal Culture

The patriarchal culture that is still strong in Indonesian society often becomes an obstacle in legal protection for victims of domestic violence. Nurhayati's research<sup>11</sup>(2021) in the *Women's Journal* found that patriarchal culture often positions women as the party who must give in and maintain the integrity of the household, even if they have to accept violence.

#### b. Social Stigma

Social stigma against victims of domestic violence and "problematic" families is also an obstacle to legal protection for victims. Sari's research (2020)<sup>12</sup>in the *Journal of Sociology* found that many victims of domestic violence choose not to report their cases because they are afraid of the social stigma they will have to face.

## 2. Research Methods

The methodology used in this study is to use a qualitative approach because the problem is related to people who mainly rely on observation. According to Sugiono,<sup>13</sup>Qualitative research method is a research method based on the philosophy of post-positivism, used to assess the state of natural objects, where the researcher is the key tool, the data collection method is carried out by triangulation (combination), inductive / qualitative data analysis and the research results emphasize the importance of qualitative rather than generalization. According to Moleong,<sup>14</sup>Qualitative research is research that aims to understand the phenomena experienced by researchers, such as behavior, perception, motivation, actions, etc., holistically and through descriptions of words and language, especially those in natural contexts and using different natural methods.

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<sup>10</sup>Astuti, P. (2020). Challenges in the Implementation of the Domestic Violence Law: Case Study in Province X. *Ius Quia Iustum Law Journal*, 27(2), 341-360.

<sup>11</sup>Nurhayati, S. (2021). Patriarchal Culture and Domestic Violence against Women. *Jurnal Perempuan*, 26(1), 77-92.

<sup>12</sup>Sari, DP (2020). Social Stigma and Reluctance to Report Domestic Violence Victims. *Journal of Sociology*, 25(2), 215-232.

<sup>13</sup>Sugiono. *Quantitative, Qualitative, and R&D Research Methods*. Bandung: Alfabeta, 2018,. p. 9

<sup>14</sup>Moleong J. Lexy. *Qualitative Research Methods*, revised edition, Bandung: PT. Remaja Rosdakarya, 2011, p. 56

### **3. Results and Discussion**

#### **3.1. Philosophy of Women's Protection Policy from Physical Violence**

Violence against women is one of the most fundamental and widespread violations of human rights worldwide. This paper analyzes the philosophical basis for the formation of policies to protect women from physical violence, focusing on human rights, feminism, and social justice approaches.

This study uses a descriptive analysis method on various academic literature to understand the evolution of philosophical thinking underlying the formulation of women's protection policies. The results of the analysis show that the policy of protecting women from physical violence is based on three main philosophical pillars: the principle of human dignity, gender equality, and state responsibility in protecting citizens. Effective policy implementation requires integration between preventive, protective, and transformative approaches based on a comprehensive understanding of the structural roots of gender-based violence.

Violence against women has become a pressing global concern in recent decades. According to the World Health Organization (WHO), around 35% of women worldwide have experienced physical or sexual violence from an intimate partner or sexual violence from a non-partner. This phenomenon not only harms the individual who is the victim, but also has a broad impact on the social, economic and cultural structures of society.

In the context of Indonesia, the National Commission on Violence Against Women noted that cases of violence against women continue to increase every year. Data shows that domestic violence (KDRT) dominates cases of violence against women, with physical violence being the most common form. This reality demands a comprehensive policy response based on a strong philosophical foundation.

The policy of protecting women from physical violence cannot be viewed merely as an administrative technical instrument, but must be understood as a manifestation of the fundamental values adopted by a society. Therefore, an analysis of the philosophical dimension in the formulation of the policy is important to understand not only what is done, but also why and how the policy should be formulated and implemented.

Historically, women's protection policies have started from a protectionist approach that views women as a vulnerable group in need of special protection. This approach, while intended to protect, often perpetuates gender stereotypes and limits women's agency.

The evolution of thinking towards a rights-based approach marks a significant paradigm shift. This approach recognizes women as legal subjects who have the



same rights as men, including the right to live free from violence. The Vienna Declaration and Programme of Action (1993) affirms that "women's rights are human rights" and that violence against women is a violation of human rights.

The concept of human dignity is a fundamental philosophical foundation in women's protection policies. Dignity refers to the intrinsic value that every human being possesses regardless of specific characteristics or achievements. In the context of violence against women, this principle affirms that every woman has the right to be treated with respect and should not be degraded or harmed.

Implementing the dignity principle in policy requires an approach that focuses not only on punishing the perpetrator, but also on restoring the dignity of the victim. This includes providing quality services, respecting the privacy and choices of victims, and ensuring that the legal process does not lead to secondary victimization.

The principle of equality in policy philosophy requires that all individuals be treated equally before the law and have equal access to state protection. In the context of violence against women, this means that the state must provide equal protection to all women without discrimination on the basis of social, economic, racial, religious or other characteristics.

Implementing the principle of equality requires special attention to groups of women who face multiple forms of discrimination, such as women with disabilities, women from minority groups, or women in poverty. Policies must be designed to ensure that all women can access protection services easily and effectively.

The philosophy of participation emphasizes that women as the group most affected by violence must have a voice in the formulation of policies that affect them. The principle of "nothing about us, without us" becomes relevant in this context, where women's protection policies must involve women in the entire decision-making process.

Empowerment as a philosophical policy goal means not only providing services to women victims of violence, but also building their capacity to take control of their own lives. This includes education, skills training, economic support, and strengthening social networks.

One of the main challenges in implementing the philosophy of women's protection policy is the tension between universal human rights values and local cultural contexts. Some cultural practices that are considered traditional may conflict with the principles of protecting women from violence.

A culturally sensitive approach requires a constructive dialogue between universal values and local wisdom. This does not mean accepting practices that

are detrimental to women in the name of culture, but finding ways to integrate women's protection values in a way that is acceptable and sustainable in the local context.

The ideal policy model for protecting women from physical violence should integrate three main dimensions: preventive, protective, and transformative. The preventive dimension focuses on preventing violence from occurring through changing social norms, education, and strengthening protective factors in society.

The protective dimension provides immediate responses to violence, including crisis services, legal protection, and recovery support for victims. The transformative dimension works at the structural level to change the conditions that perpetuate gender-based violence.

Effective policies must be based on empirical evidence about what works in preventing and responding to violence against women. This requires robust monitoring and evaluation systems, as well as ongoing research to understand the dynamics of violence and the effectiveness of interventions.

An evidence-based approach also requires a comprehensive and reliable data system. Data is not only important for policy planning, but also for organizational accountability and learning.

The ideal policy model requires effective coordination between different sectors and levels of government. This includes the establishment of clear coordination mechanisms, clear division of roles and responsibilities, and effective communication systems.

Multisectoral coordination must also involve non-governmental actors, including civil society organizations, the private sector, and local communities. A whole-of-society approach is needed to create sustainable change.

Based on philosophical and empirical analysis, several recommendations can be formulated for the development of more effective women's protection policies:

First, policies must be based on a comprehensive understanding of the structural roots of gender-based violence, not just focusing on responses to individual cases. Second, women's participation in the entire policy cycle must be ensured through systematic and sustainable mechanisms.

Third, investments in prevention should be prioritized, including gender education, public awareness campaigns, and women's economic empowerment programs. Fourth, data and monitoring systems should be strengthened to enable evaluation of policy effectiveness and continuous learning.

Developing a philosophy of women's protection policy requires ongoing research in a variety of areas. Research on the effectiveness of different intervention models, the long-term impact of protection policies, and the factors influencing changes in social norms are important priorities.

Interdisciplinary research that integrates legal, sociological, psychological, and economic perspectives is needed to develop a more comprehensive understanding of violence against women and effective ways to address it.

It appears that violence refers to behavior that must first be contrary to the law, not distinguished in its types specifically, either in the form of threats alone or a real action that results in damage to property, physical, or causes death to someone. Then the action can be categorized as violence, as is the case in material crimes. Violence in English means violence, greatness, cruelty. Etymologically, the word "violence" is a combination of the word "vis" which means power or strength and "latus" which comes from the word "ferre" which means to carry.

So, violence is an action that carries the power to carry out coercion or pressure, either physical or non-physical.<sup>15</sup>, or can also be interpreted as a physical attack or invasion or someone's psychological mental integrity. As stated by Elizabeth Kandel Englander quoted by Rika Saraswati, that<sup>16</sup>; "In general, violence is aggressive behavior with the intent to cause harm (physical or psychological). The word intent is central; physical or psychological harm that occurs by accident, in the absence of intent, is not violence."

Meanwhile, the definition of violent crime given by B. Mardjono Reksodiputro as quoted by Sagung Putri, it can be seen that in the definition of violent crime there are two determining factors, namely:<sup>17</sup>: There is use of violence, and there is a goal to achieve personal goals that conflict with others.

Based on the United Nations (UN) Declaration on Violence Against Women (1993), violence is defined as:<sup>18</sup>"Any act that results in or is likely to result in physical, sexual or psychological harm or suffering, including threats, coercion, arbitrary deprivation of liberty, whether occurring in public or in private life."

The legal definition of violence can be seen in Article 89 of the Criminal Code

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<sup>15</sup>Romli Atmasasmita, *Theory and Selected Chapters of Criminology*, Eresco, Bandung, 2006, p.80.

<sup>16</sup>Rika Saraswati, *Women and the Resolution of Domestic Violence*, PT. Citra Aditya Bakti, Bandung, 2006, p.13.

<sup>17</sup>Sagung Putri, M.E.Purwani, *Criminal Victimization of Women*, in *Kerta Patrika*, Vol. 33 No. 1, January 2008, p.3.

<sup>18</sup>UI Center for Women and Gender Studies, *Women's Human Rights: Legal Instruments to Realize Gender Justice*, Yayasan Obor Indonesia, Jakarta, 2004, p.66.

(KUHP), namely: "Making someone unconscious or helpless is the same as using violence." Fainting is defined as losing memory or being unconscious of oneself, then what is meant by helpless can be defined as having no strength or energy at all so that one is unable to put up any resistance at all, but a helpless person can still know what is happening to him. Such an understanding will certainly make the objectives of Law No. 23 of 2004 concerning the Elimination of Domestic Violence not achieved, if used as an interpretation of the word violence in the Domestic Violence Law. Acts of violence as mentioned above can be said to be abuse.

Abuse in the Criminal Code is classified into two, namely: serious abuse regulated in Article 354 of the Criminal Code and minor abuse in Article 352 of the Criminal Code. The definition of serious abuse is when the act results in serious injury, as regulated in Article 90 of the Criminal Code, serious injury is defined as falling ill or getting an injury that does not give hope of healing or that causes danger of death, being unable to continue to carry out job duties or work, losing one of the five senses, getting a serious disability, suffering from paralysis, impaired thinking for four weeks, miscarriage/death of a woman's pregnancy.

Violence against women that is regulated in the Criminal Code only covers physical violence and does not include violence in other forms. In addition to limiting it to physical violence, the Criminal Code also limits sexual violence against women to only being committed outside of marriage. So that sexual violence committed against women involved in marriage is not criminalized as a crime in the Criminal Code unless the woman in question is not old enough to marry, as regulated in Article 288 paragraph (1) below: Whoever has sexual intercourse with a woman in marriage, who is known or should be suspected of being before she is capable of marriage, is threatened, if the act results in injury, with a maximum prison sentence of four years.

If this Article is reviewed by referring to Article 89 where the consequences are causing the victim to faint or become weak, Article 352 and Article 354, then Article 288 should also be used as the legal basis for domestic sexual violence even though the act of "having sex" with a wife who is still a minor is carried out with the wife's consent without coercion considering the imposition of increased criminal penalties if the act of abuse is carried out against the mother, father, wife, or child as regulated in Article 356 of the Criminal Code.

On the other hand, a wife must be aware of her nature to always be ready to serve her husband even when not ready. This means that a wife is obliged to serve her husband even when forced to. The provisions of this article only apply to a husband if it is done to his underage wife. This is different from the marriage law which does not clearly state what is meant by violence. The marriage law, namely Law No. 1 of 1974 concerning marriage in its explanation of Article 39 paragraph (2) and Article 19 of Government Regulation No. 9 of 1975 concerning

the Implementation of the Marriage Law, states that the reasons used as the basis for divorce include forms of violence.

Article 1 number 11 of Law No. 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking defines violence as: Any unlawful act, with or without using means against the physical and psychological that causes danger to life, body, or results in the deprivation of a person's freedom. This provision defines violence broadly in all forms or ways and to anyone without limitation.

According to Article 1 of the Declaration on the Elimination of Violence against Women, violence against women is defined as: Any act based on gender differences that results in or is likely to result in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.<sup>19</sup>.

Regarding the limitations of violence against women contained in Article 1 of the Declaration, it is not explicitly stated regarding domestic violence but at the end of the sentence it is stated "or in private life". Private life can be interpreted as life in the household. The General Recommendation of the Women's Convention Number 19 emphasizes the importance of eliminating gender-based violence by stating: "that gender-based violence is a form of discrimination that constitutes a serious obstacle to the ability of women to enjoy their rights and freedoms on a basis of equality with men"<sup>195</sup>.

The Recommendation also formally expands the prohibition or discrimination based on gender and defines gender-based violence as: "Any act of violence that is directed against a woman because of her sex or that disproportionately affects women. It includes acts that result in physical, mental or sexual harm or suffering, threats of such acts, coercion and other forms of deprivation of liberty.

According to R. Soesilo, committing violence means using physical strength or power that is not small in an illegal manner, for example hitting with the hand or with any kind of weapon, kicking, lunging, and so on.<sup>196</sup>

This understanding is closer to the intention of the creator of Law No. 23 of 2004 concerning Domestic Violence, because this law has qualified the act in such a way that it reaches several levels. In the Domestic Violence Law, the violence is regulated in levels, starting from violence without requiring any consequences, to acts that cause serious injury or even result in the death of the victim.

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<sup>19</sup>Niken Savitri, *Women's Human Rights, Critique of Feminist Legal Theory on the Criminal Code*, Refika Aditama, Bandung, 2008, p. 47

### **3.2. The Ideal Pancasila Justice-Based Legal Protection Model to Protect Women and Children Victims of Domestic Violence (KDRT)**

Pancasila as the foundation of the Indonesian state contains universal values that serve as guidelines in national and state life. The concept of justice in Pancasila cannot be separated from the other four principles, forming a whole and interrelated unity.

Pancasila justice has special characteristics that distinguish it from the concept of justice in other philosophical traditions. First, divine justice, which recognizes that the highest justice comes from God Almighty. Second, humane justice, which upholds the dignity of humans as God's creatures. Third, unifying justice, which does not divide but unites in diversity. Fourth, democratic justice, which involves people's participation in decision-making. Fifth, social justice that is equal for all Indonesian people.

In the context of protecting victims of domestic violence, Pancasila justice demands a holistic and comprehensive approach. Justice is not only understood as formal law enforcement, but also as an effort to restore the dignity of victims and prevent the recurrence of violence.

Violence in the private sphere, particularly in domestic and personal relationships, is one of the most common forms of coercion. The remaining categories of violent incidents involving ex-husbands, ex-boyfriends, domestic workers, and intimate partner violence (KTI) totaled 3,221 cases (49%). Violence in relationships reached 1,309 cases (20%), while violence against girls reached 954 cases (14%). In addition, attempted rape and other forms of sexual violence contributed the remaining 962 cases of violence in the public or community sphere (55 percent). Among them, rape (229 cases) and sexual harassment (181 cases) were

of other forms of sexual violence. Sexual harassment numbered 166 cases, while sexual harassment numbered 5 cases. The cases were reported in the domain of state actors, according to Catahu 2021.<sup>20</sup>

Philipus M. Hadjon defines legal protection as an effort that includes the recognition and protection of the dignity and rights and interests of legal subjects from actions that may be detrimental based on applicable legal provisions.<sup>13</sup> Legal protection has an important role in maintaining balance and justice in society.

In order to create balance in society, a medium is needed in its

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<sup>20</sup> HukumOnline. (2022). Legal Protection Theories According to Experts. Available at: <https://www.hukumonline.com/berita/a/teori-perlindungan-hukum-menurut-para-ahli-lt63366cd94dcbc>. [Accessed on 18 May 2025]

implementation which is known as a means of legal protection.<sup>21</sup>

Meanwhile, legal protection facilities are divided into preventive legal protection facilities and repressive legal protection facilities. Preventive legal protection aims to prevent violations of the law, such as providing legal subjects with the opportunity to file objections or opinions before a government decision takes a definitive form. On the other hand, repressive legal protection focuses on taking action against violations of the law that have occurred, where this type of protection is based on the concept of recognition and protection of human rights.

Related to the concept of legal protection in order to ensure the realization of recognition and protection of legal subjects, such things can also be found in the practice of protecting women and children who are victims of violent crimes in resolving a criminal case. The real purpose of victim protection is to instill a sense of confidence in victims, especially when disclosing information during the criminal justice process, to inspire and motivate victims to face the criminal justice system without fear, to restore victims' confidence in social interactions, and to instill a sense of justice that not only includes victims and their families, but also society as a whole.<sup>22</sup>

As stated by Rena Yulia in her book entitled *Victimology of Legal Protection for Crime Victims*, legal protection for witnesses and victims can be explained through two main models, namely the Procedural Rights Model and the Service Model. The procedural rights model is a type of legal protection model for witnesses and victims that emphasizes the procedural rights held by witnesses and victims in the justice system.

This model focuses on legal processes that involve the active participation of witnesses and victims, such as providing opportunities to provide information, involving them in the investigation process, and ensuring procedural justice.<sup>16</sup> Furthermore, the service model is a legal protection model that determines the standard of service to victims carried out by the police, prosecutors, and judges. The service model also emphasizes various efforts made to ensure the implementation of services to victims in the form of health services, assistance, compensation and restitution.

The ideal protection model should include three main components that are integrated with each other. The preventive component aims to prevent domestic violence through community education, strengthening family institutions, and

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<sup>22</sup> Zennia Almaida and Moch. Najib Imanullah. (2021). «Preventive and Repressive Legal Protection for Electronic Money Users in Conducting Non-Cash Toll Transactions». *Private Law Journal*, 9 (1), p. 222.



empowering women. This component includes programs to socialize gender equality, anti-violence education, and women's economic empowerment.

The repressive component aims to provide a firm legal response to perpetrators of domestic violence. However, the repressive approach in the ideal model does not only focus on punishment, but also on efforts to rehabilitate the perpetrator and restore the victim. The justice system must adopt a restorative justice approach that emphasizes recovery and reconciliation.

The restorative component aims to restore the condition of domestic violence victims through comprehensive services. These services include medical assistance, psychological counseling, legal assistance, physical protection, and economic empowerment. Victim recovery must be seen as a long-term process that requires ongoing assistance.

The ideal model requires an effective coordination mechanism between various institutions involved in protecting victims of domestic violence. Coordination must be carried out at three levels: national, regional, and local. At the national level, a coordinating institution is needed that has the authority to synergize policies and programs for protecting victims of domestic violence.

At the regional and local levels, an integrated team consisting of elements from the police, prosecutors, courts, social services, health services, and civil society organizations needs to be formed. This team is tasked with handling domestic violence cases in a coordinated and sustainable manner, starting from the reporting stage to the victim's recovery. An integrated information system is also an important component in the coordination mechanism. The database of domestic violence victims must be accessible to all institutions involved to ensure continuity of services and prevent repeated victimization.

The ideal model should integrate a community-based approach that involves the active participation of all components of society. The community is not only the object of socialization, but also an active subject in the prevention and handling of domestic violence. Community empowerment programs should include training for community leaders, development cadres, and volunteers for the protection of domestic violence victims.

Traditional and religious institutions should be strategic partners in implementing the protection model. Positive local values can be integrated with the principles of domestic violence victim protection to create a contextual and socially acceptable approach.

Community education programs must be carried out systematically and continuously through various media and forums. Anti-domestic violence campaigns must use language and approaches that are easy for the public to understand, and involve influential figures in society.



The ideal model should be equipped with a comprehensive monitoring and evaluation system to ensure the effectiveness of implementation. This system should include clear and measurable performance indicators, both in terms of process and results. Monitoring should be carried out periodically to identify obstacles and challenges in implementation.

Program impact evaluations should also be conducted to measure the extent to which the protection model has succeeded in preventing domestic violence and restoring the condition of victims. The results of the evaluation should be the basis for continuous improvement and refinement of the protection model.

Participation of victims and communities in the monitoring and evaluation process is an important component to ensure the accountability and responsiveness of the protection system. Feedback and complaint mechanisms must be available to allow victims and communities to provide input on the quality of protection services.

Women's protection policies include laws, government regulations, and government programs aimed at preventing violence and providing protection to victims. Law No. 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT) is one of the important regulations in Indonesia.

Violence against women is defined by the Declaration on the Elimination of Violence Against Women (1993) as any act of gender-based violence that results in or is likely to result in physical, sexual or psychological harm to women. This concept encompasses various forms of violence, from domestic violence to structural violence.

Walby (2013) in his study identified violence against women as a manifestation of a patriarchal system that is rooted in the social structure. This approach emphasizes the importance of understanding violence not only as an individual act, but as a product of an unjust system.

John Rawls (1971)<sup>23</sup>In "A Theory of Justice" he put forward two principles of justice: first, everyone has an equal right to basic liberties; second, social and economic inequalities should be arranged so as to give the greatest benefit to the least advantaged.

In the context of women's protection, Nurhayati, S., et al. (2020)<sup>24</sup> developed a tridimensional concept of justice that includes redistribution (redistributive justice), recognition (recognition), and representation (representation). This

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<sup>23</sup>Rawls, J. (1971). *A Theory of Justice*. Harvard University Press.

<sup>24</sup>Nurhayati, S., et al. (2020). "Policy for the Protection of Women Victims of Physical Violence in Indonesia", *Journal of Law and Development*, Vol. 50, No. 2, pp. 123-135.

framework is very relevant to understanding the complexity of the issue of violence against women.

#### 4. Conclusion

The conclusion of the formulation of the problem of implementing legal protection for women and children victims of domestic violence from the perspective of Pancasila justice is that the implementation of legal protection for victims of domestic violence in Indonesia has had an adequate legal basis through Law Number 23 of 2004 concerning the Elimination of Domestic Violence, which was then strengthened by various derivative regulations. However, the effectiveness of implementation still faces significant challenges at the practical level, especially in terms of victim accessibility to protection services and consistent law enforcement. In cases of domestic violence shows that women and children face multiple vulnerabilities that require a gender-sensitive and child-friendly protection approach. Implementation of protection must consider the dynamics of power in household relations and the long-term psychological impact on victims, especially children. The concept of Pancasila justice not only emphasizes the retributive (revenge) aspect but also the restorative (recovery). In the context of domestic violence, a restorative approach can be in the form of family mediation, counseling, and perpetrator rehabilitation programs, as long as it does not ignore the safety and best interests of the victim.

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