

Legal Protection of Husband as A Victim of Domestic Violence

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Abstract

In this study, the victims of domestic violence were generally women, and the perpetrators were men. So that so far the laws that have been formed provide more legal protection for wives and the community considers that violence perpetrated by wives against their husbands is a natural thing, because it is part of the dynamics of married life that usually occurs. Domestic violence against men is related to domestic violence experienced by men or boys in intimate relationships such as marriage, living together, or within the family. Domestic violence is a social fact, because it can occur in the household regardless of culture, religion, ethnicity, and age of the perpetrator and the victim. The law on the elimination of domestic violence provides guarantees of protection. Where this form of protection may take the form; temporary protection and protection orders.

Keywords

legal protection; husband; violence



I. Introduction

Violence is an act that occurs in the relationship between humans with one another, both between individuals and individuals, individuals and groups or vice versa. Violence is considered an aggravating and unpleasant situation because it can make a person hurt both physically and psychologically. The impact caused by violence leads to suffering from minor injuries, serious physical and psychological injuries, to death. The impact of violence does not only occur in the public sphere, violence can also occur in the private sphere, especially in the household. Development is a systematic and continuous effort made to realize something that is aspired. Development is a change towards improvement. Changes towards improvement require the mobilization of all human resources and reason to realize what is aspired. In addition, development is also very dependent on the availability of natural resource wealth. The availability of natural resources is one of the keys to economic growth in an area. (Shah, M. et al. 2020)

Whereas basically the purpose of marriage is to form a happy and eternal family, in Article 1 point 1 of Law Number 1 of 1974 concerning Marriage, marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a family (household) which happy and eternal based on God Almighty. Based on this, it strengthens our belief that the household is a safe place for its members, because the family is built by husband and wife on the basis of inner and outer bonds between the two. The purpose of this law is that the lives of husband and wife can avoid disputes or physical acts (violence) that tend to hurt and endanger a person's life through the arrangement of the same rights and obligations between husband and wife in domestic life. Lately, violence in society seems to be increasing.

Domestic violence is a violation of human rights and a crime against human dignity as well as a form of discrimination that must be abolished, as stated in the 1945 Constitution of the Republic of Indonesia Article 28 letter G paragraph (1) which states that:

"Everyone has the right to the protection of oneself, one's family, honor, dignity and property under authority and entitled to a sense of security and protection from the threat of fear to do or not to do something which is a human right."

Victims of domestic violence can be experienced by all spheres in the household, both husband, wife and children. Generally, the victims in cases of domestic violence are experienced by wives and children. According to data released by Komnas Perempuan, cases of violence against women in 2020 amounted to 299,911 cases. Although based on these data, domestic violence often occurs against women, it is possible that domestic violence is also experienced by men as husbands.

Domestic violence is a crime that tends to be hidden (hidden crime) because it is known that problems in the household are taboo and are a disgrace in the family so that both the perpetrator and the victim try to cover it up and hide the deed. The reason for the emergence of reports of domestic violence actually occurs because the victim can no longer restrain and cover up the act. Another thing that can cause domestic violence is if there are relatives or witnesses of the victim who try to help by reporting the act.

The definition of Domestic Violence according to Law Number 23 of 2004 is formulated in Article 1, namely:

"Domestic Violence is any act against a person, especially a woman, which results in physical, sexual, psychological misery or suffering, and/or neglect of the home, including threats to commit acts, coercion, unlawful deprivation of liberty within the scope of the household." In general, men are impressed as actors (perpetrators) who commit the most violence in the household, but that does not mean that domestic violence is never perpetrated by women (wives) against other family members such as husbands. The community considers that violence by the wife against her husband is a natural thing where it is part of the dynamics of married life that usually occurs, and assumes that the man (husband) is able to resolve and overcome it.

So far, the laws that have been formed provide more legal protection for wives who are victims of domestic violence, even though it does not rule out the possibility that the victims of the violence are husbands, both psychologically and physically. The form of physical violence that can occur to the husband is in the form of bruises, or claw marks, while the psychological wounds experienced by the husband can be in the form of pressure from the wife. Based on this description, the authors are interested in conducting this research related to the Legal Protection of Husbands as Victims in the Household.

1.1 Problem Formulation

What are the forms of legal protection for husbands who are victims of domestic violence according to Law Number 23 of 2004 concerning the Elimination of Domestic Violence?

1.2 Research Objectives

To find out the form of legal protection for husbands who are victims of domestic violence according to Law Number 23 of 2004 concerning the Elimination of Domestic Violence.

II. Research Method

The type of research that will be used is normative legal research. The nature of the research conducted is prescriptive. The research approach used by the author in this study is a statutory approach, meaning that researchers use specifically national legal instruments, namely Law Number 23 of 2004 concerning the Elimination of Domestic Violence, which is related to legal protection for husbands who are victims. In this legal research, the author will use secondary data types. Data collection techniques in the study were carried out by literature study.

III. Result and Discussion

3.1 Definition of Legal Protection

In Article 1 point 4 of Law Number 23 of 2004, the definition of protection is all efforts aimed at providing a sense of security to victims carried out by families, advocates, social institutions, police, prosecutors, courts, or other parties either temporarily or based on a court order. The addition of the word law so that the term becomes "Legal Protection" implies that the existing protection is regulated and has been recognized according to law. Therefore, the definition of "legal protection" in this study is all efforts according to the rule of law aimed at providing a sense of security to victims by families, advocates, social institutions, police, prosecutors, courts.

Legal protection is divided into 2 forms, namely preventive legal protection and repressive legal protection. Preventive legal protection is focused on prevention efforts. Meanwhile, repressive legal protection is focused on settlement efforts.

In relation to the definition of "Legal Protection" it is not limited to the efforts made in order to prevent acts of violence against husbands in the household but also to examine efforts to settle the law when it has become an act of domestic violence as regulated in the law.

The term "male" etymologically means:

1. Male or male is a term for the human sex which is equivalent to male for animals.
2. Men have reproductive organs such as penis and testes.
3. Husband

In Law Number 23 of 2004, the scope of Domestic Violence includes;

1. Husband, wife, children
2. People who have family relationships with people as referred to in letter a because of blood relations, marriage, breastfeeding, care, and guardianship who live in the household and/or
3. people who work to help the household and stay in the household.

Referring to the definition of men and households above, what is meant by men as regulated in Law Number 23 of 2004 includes husbands, sons, men who have family relationships, breastfeeding, and guardianship that stay in the household. However, in order to limit the meaning and scope of the term male (male) which is the object of this research. Therefore, other men, whether in the position of children, children or other men as referred to in the provisions of Article 2 paragraph (1) letters b and c of Law Number 23 of 2004, are not included in the meaning of men in this study.

The benchmarks in determining the forms of violence are regulated in Article 5 such as physical violence, psychological violence, sexual violence and neglect of the household, as regulated in Law Number 23 of 2004. Physical violence is an act that causes pain, falls ill, or serious injury. Psychological violence is an act that causes fear, loss of self-

confidence, loss of ability to act, feeling helpless, and/or severe psychological suffering on a person. Sexual violence is forcing sexual relations carried out against people who live within the scope of the household; coercion of sexual intercourse against one person within the scope of his household with another person for commercial purposes and/or certain purposes. Article 9 household neglect in question is;

1. Everyone is prohibited from abandoning people within the scope of his household, even though according to the law that applies to him or because of an agreement or agreement he is obliged to provide life, care, or maintenance for that person.
2. The neglect as referred to in paragraph (1) also applies to anyone who causes economic dependence by limiting and/or prohibiting proper work inside or outside the home so that the victim is under the control of that person.

The definition of victim according to several legal regulations in force in Indonesia are as follows:

1. According to Article 1 paragraph (3) of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning the Protection of Witnesses and Victims. That "Victim is a person who suffers from physical, mental, and/or economic loss caused by a criminal act".
2. According to Article 1 point 3 of Law Number 23 of 2004 concerning the Elimination of

Domestic Violence. Whereas "Victim" is a person who has experienced violence and/or threats of violence within the scope of the household.

The existence of domestic violence creates the right for victims of such violence to report directly or to give power of attorney to family or other people, violence that occurs in the household to the police, both where the victim is and at the scene of the case. According to Article 10 of Law Number 23 of 2004, victims of domestic violence also have the right to:

1. Protection from the family, police, prosecutors, courts, advocates, social institutions or other parties, either temporarily or based on an order for protection.
2. Health services according to medical needs.
3. The handling is specifically related to the confidentiality of the victim.
4. Assistance by social workers and legal assistance at every level of the examination process in accordance with the provisions of the legislation.
5. Spiritual guidance services.

In addition to the rights above, in the context of recovering victims of domestic violence, obtain services from:

1. Health workers, these workers are provided by the Government and Regional Governments as one of the services to victims. The health worker in question is every person who devotes himself to the health sector and has knowledge and/or skills through education in the health sector which for certain types requires the authority to carry out health efforts.
2. A social worker is a person who has professional competence in social work obtained through formal education or practical experience in the field of social work/social welfare which is officially recognized by the government and carries out the professional duties of social work. In providing services to victims, social workers must:
 - a. Conduct counseling to strengthen and provide a sense of security for victims.
 - b. Provide information on the rights of victims to obtain protection from the police and the determination of protection orders from the court.
 - c. Transport the victim to a safe house or alternative residence.

- d. Carry out integrated coordination in providing services to victims with the police, social services, social institutions needed by victims.
3. Companion Volunteers are people who have the expertise to conduct counseling, therapy, and advocacy for strengthening and self-recovery of victims of violence. In providing services, companion volunteers can:
 - a. Inform victims of their right to have one or more companions.
 - b. Assist the victim at the investigation, prosecution or court examination level by guiding the victim to objectively and completely describe the victims of domestic violence they experience.
 - c. Empathically listen to all the narratives of the victim so that the victim feels safe accompanied by a companion.
 - d. Actively provide psychological and physical reinforcement to victims
4. Spiritual mentors provide explanations about rights, obligations and provide faith and piety reinforcement to victims.

Furthermore, referring to the provisions of Article 11 of Law number 23 of 2004, it is known that the government is responsible for efforts to prevent domestic violence. In order to implement these prevention efforts, the government through the minister in the field of women's empowerment takes the following actions:

1. Formulating policies on eliminating domestic violence
2. Organizing communication, information, and education on domestic violence
3. Organizing socialization and advocacy on domestic violence
4. Organizing gender sensitive education and training and domestic violence issues and setting accreditation standards gender sensitive services.

In addition to having the responsibility to make efforts to prevent domestic violence, the government also has the responsibility to provide services to victims, in accordance with their respective functions and duties, which include efforts:

1. Provision of special service rooms at the police station
2. Provision of officers, health workers, employment social and spiritual guidance
3. Establishment and development of systems and mechanisms for cooperation in service programs involving parties that are easily accessible to victims.
4. Provide protection for companions, witnesses, families, and friends of victims.

This responsibility is not only attached to the central government but local governments, in accordance with their respective functions and duties. In the implementation level above, the central government and local governments can cooperate with the community or other social institutions. The existence of this form of cooperation is a form of community participation. Therefore, in Article 15 of Law Number 23 of 2004, everyone who hears, sees, or knows of the occurrence of domestic violence, is obliged to make efforts within the limits of his ability to:

1. Prevent the occurrence of criminal acts.
2. Provide witness and victim protection.
3. Provide emergency assistance.
4. Assist in the application process for the determination of protection.

Forms of Legal Protection for Husbands as Victims of Domestic Violence in terms of Law Number 23 of 2004 concerning the Elimination of Domestic Violence

As previously described, traced from Law Number 23 of 2004 concerning the Elimination of Domestic Violence. For people/victims who experience violence and/or threats of violence within the scope of the household, the PKDRT Law is given a guarantee to get protection. Where this protection can take the form of:

- a. Temporary protection, namely protection that is directly provided by the police and/or social institutions or other parties, prior to the issuance of a protection order from the court (article 1 point 5 of the PKDRT Law).
- b. Protection orders are stipulations issued by the court to provide protection to victims (Article 1 point 6 of the PKDRT Law).

The procedure for providing temporary protection and protection orders is as follows:

1. In the event of a criminal act of domestic violence (physical violence, psychological violence, sexual violence, and neglect of the household), the victim and everyone who hears, sees, or knows of the occurrence of violence in the household can report it to the police.
 - a. Victims have the right to directly report domestic violence to the police, both at the place where the victim is and at the scene of the case (Article 26 paragraph (1) of the PKDRT Law).
 - b. Victims who give authority to their family or other people to get domestic violence to the police, both at the victim's place and at the scene of the case (Article 26 paragraph (2) of the PKDRT Law).
 - c. In the event that the victim is a child, the report can be made by the parent, guardian, caregiver, or the child concerned which is carried out in accordance with the provisions of the applicable laws and regulations (article 27 of the PKDRT Law).
2. After knowing or receiving a report about the existence of domestic violence, the police are obliged to:
 - a. Provide information to the victim about the victim's right to receive services and assistance (Article 18 of the PKDRT Law).
 - b. Immediately conduct an investigation (article 19 of the PKDRT Law).
 - c. Tell the victim about;
 - Identity of officers for introduction to victims;
 - Domestic violence is a crime against human dignity;
 - The obligation of the police to protect victims (article 20 of the PKDRT Law).
3. If after being notified of their rights by the police and or if the victim feels afraid and is threatened with life and safety by the perpetrator. So victims and people who hear, see, or know about the occurrence of domestic violence can apply for temporary protection to the police and or social institutions or other parties (Article 1 point 5 of the PKDRT Law).
4. In the event that the request for temporary protection is received by the police, within 1 x 24 (one time twenty four) hours from the time of knowing or receiving the report of domestic violence, the police must immediately provide temporary protection to the victim (Article 16 paragraph (1) of the PKDRT Law).
5. In providing temporary protection, the police can work together with health workers, social workers, companion volunteers, and/or spiritual mentors to accompany victims (article 17 of the PKDRT Law).
6. Temporary protection by the police is given to the victim no later than 7 days after the victim is received or handled (article 16 paragraph (2) of the PKDRT Law).
7. The police within 1 x 24 (one time twenty four) hours as of the provision of temporary protection are required to request a letter of determination of protection order from the court (article 16 paragraph (3) of the PKDRT Law).
8. The application for a protection order is submitted in oral or written form to the court, in the event that the application is submitted orally, the clerk of the local district court must record the application (article 30 paragraphs (1) and (2) of the PKDRT Law).

9. The court examines the formal requirements of the application for a protection order, namely, if the request for a protection order is submitted by the victim's family, friends, police, companion volunteers, or spiritual guide, the victim's consent must be obtained.
10. The application for a protection order that meets the formal requirements is submitted to the court.
11. The chairman of the court within a period of 7 (seven) days from the receipt of the application, must issue a letter of determination (article 28 of the PKDRT Law).
12. The protection determination letter contains a protection order for the victim and other family members called a protection order, namely a decision issued by the court to provide protection to the victim (Article 1 point 6 of the PKDRT Law).
 - a. The court may declare one or more additional protection orders. where in providing additional protection orders, the court is obliged to consider information from victims, health workers, social workers, companion volunteers, and/or spiritual mentors.
 - b. Based on consideration of the dangers that may arise, the court may state one or more additional conditions in the protection order. In the provision of additional conditions in the protection order, the court is obliged to consider information from victims, health workers, social workers, companion volunteers and/or spiritual mentors.
 - c. At the request of the victim or his attorney, the court may consider:
 - Establishing a special condition.
 - Modify or cancel a special condition of the protection order. Special conditions are restrictions on the movement of the perpetrator, prohibition of entering the common residence, prohibition of following, monitoring, or intimidating the victim. The considerations as referred to above can be submitted together with the process of filing cases of domestic violence.
13. Protection orders can be given for a maximum period of 1 (one) year, and can be extended upon a court order (article 32 paragraphs (1 and 2) of the PKDRT Law).
14. The application for the extension of the protection order is submitted 7 (seven) days before the expiration of its validity period (article 32 paragraph (3) of the PKDRT Law).

Parties Related to the Protection of Victims of Domestic Violence

Referring to Law Number 23 of 2004 concerning the Elimination of Domestic Violence, it is known that several institutions and institutions have an important role in providing legal protection to victims, namely;

1. The Police
 - a. Police can arrest and subsequently make arrests without a warrant against perpetrators who are believed to have violated a protection order, even if the offense was not committed at the place where the police officer was assigned.
 - b. The arrest and detention as intended must be given an arrest and detention order after 1 x 24 (one time twenty four) hours.
 - c. The suspension of detention does not apply to detention as intended (article 35 of the PKDRT Law).
 - d. To provide protection to victims, the police can arrest perpetrators with sufficient preliminary evidence for violating the protection order.
 - e. The arrest as referred to in paragraph (1) can be continued with detention accompanied by a warrant within 1 x 24 hours (article 36 of the PKDRT Law).
2. The
 - a. Victim's Court, the police or companion volunteers can submit a written report regarding the alleged violation of the protection order.

- b. In the event that protection obtains a written report as intended, the perpetrator is ordered to appear within 3 x 24 hours for examination.
- c. The examination referred to is carried out by the court at the place where the perpetrator had lived with the victim at the time the violation was alleged to have occurred.
- d. If the court finds out that the perpetrator has violated the protection order and is suspected of committing further violations, the court may require the perpetrator to make a written statement containing the ability to comply with the protection order.
- e. If the perpetrator still does not heed the written statement, the court can detain the perpetrator for a maximum of 30 days.
- f. The detention was accompanied by a detention order (article 38 of the PKDRT Law).

Family

According to the PKDRT Law, what is meant by family is people who are bound by blood relations, marriage, breastfeeding, care, guardianship, and who work to help the household and stay in the household who have the obligation to assist the process of submitting a request for protection determination (Article 15 of the PKDRT Law) in the form of assisting the application to obtain a protection order (article 29 of the PKDRT Law).

4. Advocate

Advocate is a person whose profession is to provide legal services, in the form of consulting, legal assistance, exercising power of attorney, representing, accompanying, taking other legal actions for the legal interest of clients, both inside and outside the court that meet the requirements based on the provisions of the legislation. In terms of providing protection and services to victims, Article 25 of the PKDRT Law provides an advocate with the following obligations:

- a. To provide legal consultation which includes information regarding the rights of victims in the judicial process.
- b. Accompany victims at the level of investigation, prosecution, and examination in court hearings and assist victims to fully describe the domestic violence they experience.
- c. Coordinate with law enforcement, companion volunteers, and workers so that the judicial process runs as it should.

5. Social

Institutions are social institutions or organizations that care about problems of domestic violence, for example legal aid institutions (article 10 letter a of the PKDRT Law). Social institutions have an obligation to provide protection:

- a. To provide direct protection to victims of domestic violence before the issuance of a protection order from the court (Article 1 point 5 of the PKDRT Law).
- b. If requested by the police, they can work together to provide temporary protection (Article 17 of the PKDRT Law).

6. Health

Health workers are every person who devotes himself to the health sector and has knowledge and/or skills through education in the health sector which for certain types requires the authority to carry out health efforts, as referred to in Law Number 23 of 2004. Health workers have obligations health workers in providing protection:

- a. Cooperating with the police in providing temporary protection in the form of accompanying victims.
- b. Provide information to assist the court in making additional protection orders.
- c. Provide information to assist the court in making additional conditions in the protection order (article 34 paragraph (2) of the PKDRT Law).

7. Social

Workers Social workers have the following obligations:

- a. Cooperating with the police in providing temporary protection in the form of accompanying victims (article 17 of the PKDRT Law).
 - b. Provide information on the rights of victims to obtain protection from the police and the determination of protection orders from the court.
 - c. Send the victim to a safe house or alternative residence (Article 22 letter c of the PKDRT Law).
8. Companion

Volunteer Companion volunteers are people who have the expertise to provide counseling, therapy, and advocacy to strengthen and recover victims of violence. Companion volunteers have an obligation to provide protection, namely:

- a. Cooperating with the police to provide temporary protection in the form of accompanying victims.
- b. Submit an application for a protection warrant application.
- c. Requesting the victim's consent in the application for a protection order.
- d. Provide information to assist the court in making additional provision of conditions in the protection order.
- e. Submit a written report to the court regarding the alleged violation of a protection order (article 37 paragraph (1) of the PKDRT Law).

9. Spiritual Advisors Spiritual

mentors have the following obligations:

- a. Cooperate with the police in providing temporary protection in the form of temporary protection in the form of accompanying victims (Article 17 of the PKDRT Law).
- b. Submit an application to obtain a protection warrant.
- c. Provide information to assist the court in making additional protection orders (article 33 paragraph (2) of the PKDRT Law).
- d. Provide information to assist the court in making additional provisions in the protection order (article 34 paragraph (2) of the PKDRT Law).

IV. Conclusion

As has been described, and traced from Law Number 23 of 2004 concerning the Elimination of Domestic Violence. acts of violence experienced by men (husbands) are a form of human rights violations. The PKDRT Law provides a guarantee for protection. Where this protection can take the form of:

- a. Temporary protection, namely protection that is directly provided by the police and/or social institutions or other parties, prior to the issuance of a protection order from the court (article 1 point 5 of the PKDRT Law).
- b. Protection orders are stipulations issued by the court to provide protection to victims (Article 1 point 6 of the PKDRT Law).

Victims of domestic violence also have the right to:

- a. Protection.
- b. Health services according to medical needs.
- c. The handling is specifically related to the confidentiality of the victim.
- d. Assistance by social workers and legal assistance at every level of the examination process in accordance with the provisions of the legislation.
- e. Spiritual guidance services.

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