

## PROTECTION OF DOMESTIC VIOLENCE VICTIMS PURSUANT TO LAW NUMBER 23 OF 2004

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**Abstrak:** To realize this wholeness and harmony, it really depends on everyone in the household, especially the level of quality of behavior and self-control of everyone in the household. Integrity and harmony in the household can be disrupted if the quality and self-control cannot be controlled, which in turn can lead to domestic violence resulting in insecurity or injustice against people in the household environment. To prevent, protect victims, and take action against perpetrators of domestic violence, the State and society are obliged to carry out prevention, protection and prosecution of perpetrators in accordance with the philosophy of Pancasila and the 1945 Constitution. The state is of the view that all forms of violence, especially domestic violence, are violations of human rights. Humans and crimes against human dignity and respect as well as forms of discrimination. The problem approach used in writing this thesis uses a normative juridical approach, meaning that a scientific study conducted based on examining the law will reveal several legal aspects as well as the basic principles that develop in these provisions.

**Keywords:** Domestic Violence, Legal Protection, Victims

## I. INTRODUCTION

The Law Number 23 of 2004 governs the Law on the Elimination of Domestic Violence. The following factors were taken into account when creating the law or law on domestic violence<sup>1</sup>:

1. The Law Number 23 of 2004 governs the Law on the Elimination of Domestic Violence. The following factors were taken into account when creating the law or law on domestic violence:
2. According to Pancasila's philosophy and the Republic of Indonesia's 1945 Constitution, every citizen has the right to feel safe and free from all forms of violence; 2. All forms of violence, especially domestic violence, are violations of human rights (HAM), crimes against human dignity, and forms of discrimination that must be eliminated;
3. Considering that in order to prevent and be free from violence or threats of violence, torture, and other forms of domestic abuse, victims, who are typically women, must have protection from the State or society, or treatment that degrades human dignity;
4. Whereas in reality there are many cases of domestic violence, while in the Indonesia legal system does not guarantee protection for Victims of Domestic Violence.

Instead of elucidation of Law Number 23 of 2004 concerning the Elimination of Domestic Violence in general it is said "a happy, safe, secure, peaceful and harmonious household is the dream of everyone in the household". The Republic of Indonesia is a country based on Belief in the One and Only God guaranteed by article 29 of the 1945 Constitution of the Republic of Indonesia.

Thus, every person within the scope of the household in exercising their rights and obligations must be based on religion.

To create home integrity, this must be consistently improved. It actually depends on everyone in the family, especially their level of self-control and high-quality behavior, to achieve this wholeness and harmony. If the quality and self-control cannot be regulated, the integrity and harmony of the household may be disturbed, which may ultimately result in domestic violence that causes insecurity or injustice to those living in the home.

The state and society are required to carry out prevention, protection, and prosecution of perpetrators in accordance with the Pancasila doctrine and the 1945 Constitution in order to stop domestic violence, protect victims, and take action against offenders. The state considers all forms of violence, including domestic abuse, to be crimes against human dignity, violations of human rights, and instances of discrimination.

This view of the State is based on Article 28 of the 1945 Constitution of the Republic of Indonesia and its amendments to article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia <sup>2</sup>, stipulating that "Everyone has the right to protection of himself/herself, family, honor, dignity, and property under his control, and is entitled to a sense of security and protection from threats of fear to do or not do something which is a human right". Article 28 paragraph (2) of the 1945 Constitution of the Republic of Indonesia order that "everyone has right to receive convenience and special treatment to obtain equal opportunities and benefits in order to achieve equality and justice" <sup>3</sup>.

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<sup>1</sup> Nanda yusnisa, "UU No.23 TAHUN 2004 Tentang PENGHAPUSAN KEKERASAN DALAM RUMAH TANGGA", Permata Press, Jakarta, 2015.

<sup>2</sup> "UUD '45", Pustaka Baru Press, Yogyakarta, 2015.

<sup>3</sup> MT, LS, WB, SA, "Hukum Perlindungan Anak dan Penghapusan Kekerasan Dalam Rumah Tangga" Rineka Cipta, Jakarta, 2013, H.174.

Current research demonstrates that acts of physical, psychological, sexual, and neglect in the home do in fact occur, demonstrating the necessity for appropriate legal tools to end domestic violence. Due to the high frequency of violent crimes, particularly domestic abuse, legal change in favor of weak or oppressed groups, particularly women, is urgently needed.

The reason for this legal reform was that the current laws were insufficient and no longer reflected social and legal advancements. Therefore, even if the Criminal Code (KUHP) has generally regulated abuse and decency and neglect of persons who need to be given a living and a life, domestic violence must be governed separately since it has its own features. The Law on the Elimination of Domestic Violence has a strong relationship with a number of other laws and rules already in place, including:

1. Law Number 1 of 1946 concerning the Criminal Code (KUHP) and its amendments;
2. Law Number 8 of 1981 concerning the Criminal Code Procedure (KUHAP);
3. Law Number 1 of 1974 concerning Marriage;
4. Law Number 7 of 1984 concerning Ratification of the Convention on the Elimination of all Forms of Discrimination Against Women;
5. Law Number 39 of 1999 concerning Human Rights.

In addition to regulating domestic violence prevention, protection, and victim recovery, this legislation also governs the specifics of domestic violence that has criminal aspects distinct from the criminal act of persecution as defined by the Indonesian Criminal Code. In addition, this law governs the responsibilities of law enforcement officers, health professionals, social workers, companion volunteers, and spiritual mentors to protect victims so that they are more receptive to household interests, which were originally focused on maintaining household harmony and integrity.

To prevent domestic violence, the Minister whose duties and responsibilities are in the field of women's empowerment carry out preventive measures, among others, organizing communication, information, and education about preventing domestic violence. Based on this idea, it is time to form a Law on the Elimination of Domestic Violence which is regulated in a comprehensive, clear and firm manner to protect and side with victims and at the same time provide education and awareness to the public and law enforcement officials that all acts of domestic violence are crimes. to human dignity.

## **II. RESEARCH METHODS**

This thesis' problem approach is normative juridical, which means that it will identify various legal aspects as well as the fundamental ideas that underlie these provisions in a scientific study based on legal research. This method is employed in an effort to address a variety of issues that may arise regarding the application of the law, its implementation in practice, and its development in the light of the creation of new laws.

## **III. RESULTS AND DISCUSSION**

### **Definition of Domestic Violence**

In the Big Indonesian Dictionary, "violence" is defined as a subject that is characterized by violence, someone's actions that cause injury or death to another person, or cause physical damage. Thus, violence is a more physical manifestation of actions that result in injury, disability, illness or even death. The word violence is equivalent to the word "*violence*" in English which is defined as an attack or invasion of one's physical or psychological integrity. Meanwhile, the word violence in Indonesian is generally understood to only involve physical attacks. Thus, if the notion of "*violence*" is the same as violence, then violence here refers to physical and psychological violence.

Whereas in Law Number 23 of 2004 article 1 states that domestic violence is any act against a person, especially women, which results in physical, sexual, psychological misery or suffering and/or neglect of the household including threats to commit acts of coercion against law and household scope. This law states that domestic violence cases are all types of violence (both physical and psychological) perpetrated by family members against other family members (which can be perpetrated by husbands against wives and children, or mothers against their children, or even vice versa). Nevertheless, the dominant victim is violence against the wife and children by the husband.

According to the Legal Dictionary, domestic violence is any act committed against a person, particularly a woman, that causes physical, sexual, psychological, or emotional suffering as well as neglect of the home, including threats to conduct actions, compulsion, or unlawful deprivation of liberty.<sup>4</sup>

According to the law, the notion of domestic violence is an act or attitude that is carried out with a specific purpose so that it can harm women, both physically and psychologically. According to the concept of domestic violence, only men can commit acts of violence against women, yet women can also fall under this category. One of the reasons for social unrest is domestic violence, particularly the mistreatment of spouses. Several community studies demonstrate that the suffering of the wife or kid is not the end of wife abuse. Beyond the confines of the home, a string of misery will taint the lives of society.<sup>5</sup>

Mansour Fakih asserts that violence is defined as an assault on, intrusion into, or violation of the physical and psychological integrity of a person's mental integrity. Even in big numbers, we frequently witness interpersonal violence, particularly against wives. Only a few instances of the widespread violence that took place can be appropriately resolved. This is due to society's ongoing development of the idea that intimacy within the home is improper or forbidden if it is brought to the surface and unfit for consumption by the general public.

From some of the definitions above, it can be concluded that all acts of violence in the household are violations of human rights that can be subject to criminal and civil sanctions.

### **Forms of Domestic Violence**

Domestic violence can take many different forms, including the ones listed below<sup>6</sup>:

a) Physical abuse

Physical aggression causes suffering, illness, or severe injuries. This violence may also include punching, slapping, biting, twisting hands, stabbing, choking, burning, kicking, threatening with an object or weapon, killing, and other violent acts that result in bodily harm, discomfort, or incapacitation that culminate in death.

b) Psychic Violence

Any act that causes someone to experience fear, loss of self-confidence, loss of their ability to act, helplessness, and/or significant psychological suffering is referred to as psychological violence. Verbal abuse (insulting, using coarse or obscene words), threats, imprisonment, and excessive guarding are actions that comprise psychic activities. Even if the victim believes they are suffering as a result of the act of violence, if it happens repeatedly, it will make them dependent on the offender. A person who frequently experiences psychological abuse will feel hurt and resentful.

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<sup>4</sup> RM,DB,YI,NA,op.cit.p.154

<sup>5</sup> Badriyah Khaled, "Penyelesaian Hukum KDRT", Pustaka Yustisia, Yogyakarta, 2015.

<sup>6</sup> Badriyah Khaled, op., cit. p.31

c) Sexual Violence

Sexual violence is the coercion of sexual relations committed against a person who is a member of the household and is done so for monetary gain and/or other specified goals. Coercion is inappropriate and/or disliked (compared to rape and treating women as objects of sex). This behavior can take place in a husband and wife relationship when the husband ignores the wife's needs and touches the victim inappropriately, making the victim feel uneasy. For victims of this type of assault, it is typically quite challenging to publicly discuss the issue.

d) Household Desertion

Household desertion is the act of someone who disregards their responsibility to support their household, care for others, or provide for their needs in accordance with applicable laws or contractual obligations. This abandonment also includes behaviors that lead to financial dependence by restricting and/or forbidding honest labor inside or outside the home, keeping the victim under that person's control.

Causes of Domestic Violence

The causes of Domestic Violence are as follows <sup>7</sup>:

a) Patriarchal Culture

A patriarchal culture is one that elevates men above women, according to the definition. This culture creates attitudes on how men and women should be treated differently in society that are standardized. The husband is the head of the household, the father is the backbone of the family's ability to make a living through jobs outside the home, men are preferred, for example in terms of education, and the father has the authority to make decisions and control over the family, including over his children and wife, are some of these viewpoints. The wife's duties as a housewife, however, are confined to taking care of the kitchen, bathrooms, and mattresses. She also has to submit to her husband's authority and follow his judgments. The wife's responsibilities fall beneath those of her husband. These views lead to a split of power that frequently results in gender inequality by favoring the masculine side. The workload, aggression, stereotyping, marginalization, and subordination are some of these manifestations of gender inequality. Such assumptions frequently cast a negative light on numerous types of violence, including physical, sexual, and domestic abuse.

b) A Male-Favoring Paradigm

The perspective that a person or group of people have toward reality is what is meant by the word paradigma. The following are some interpretations that support men's positions over women as a result of this thinking paradigm:

1) The wife must submit to the husband as the head of the household.

The paradigm at issue is the husband's role as the family's head and breadwinner, which is established in a patriarchal culture and automatically grants the husband ownership of the home and its contents on both a political and financial level. Therefore, the wife must submit to her husband. In this situation, the husband and wife have a master-servant relationship. Because the husband is viewed as a productive partner to meet the demands of the family economically, he serves as the host with the wife serving as the servant. In a similar vein, the husband has the right and authority to engage in any activity outside the home as long as it benefits his family. In this situation, the

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<sup>7</sup> Moerti HS, "KEKERASAN DALAM RUMAH TANGGA", Sinar Grafika, Jakarta, 2010

woman is at a disadvantage because she is only allowed to do domestic duties, which are not monetarily beneficial. The wife depends on her husband financially because she is not financially productive. The wife is open to abuse and violence because of her poor position toward her spouse. However, this interpretation even has an effect on husbands who are unemployed. The husband believes he is not a good provider for the family if he is unemployed or if the wife earns more money. Consequently, you end up a victim of patriarchal culture. He felt pressurized and dejected since he was unable to fulfill the expectations of the patriarchal culture.

2) Concerning Pain and Forgiveness

This incorrect paradigm can also be seen in the idea that a wife must be ready to put up with unfair treatment from her husband and be willing to forgive.

c) Insufficient Economic Maturity

The degree to which a husband or wife's personality is mature enough to control their emotions can influence the likelihood of domestic violence. It will be challenging for someone with insufficient emotional development to restrain their negative emotions. Self-will, extreme disappointment, jealousy or envy, excessive rage, coercion of will, and an attitude of wanting to dominate others are some of the attitudes that people with emotional immaturity frequently deal with. Usually immature individuals will react quickly, sensitive and easily stressed. Emotional immaturity individuals will find it difficult to adapt to a new environment and also cannot control their inner turmoil.

d) Financial issues in families

Violence can happen in both families with established economic lives and those that are not yet financially stable. However, domestic violence is frequently brought on by the family's financial position. According to the idea that the husband serves as both the family's leader and breadwinner, he will get angry and sensitive if he is unable to support his family. The emotional upheaval that this existence has as a backdrop can cause minor irritations to enrage a husband, who may then treat you harshly especially if the wife is in a precarious position and is subject to her husband's authority. Frustration can be conveyed verbally or nonverbally.

- a. Still considered when determining economic factors, specifically when the wife becomes the family's main provider. If he cannot fulfill the responsibilities of being the head of the household, a spouse who does not work will feel anxious and inferior. If this emotion is not correctly expressed, it may cause conflict and may result in acts of Domestic Violence as a Private Matter.
- b. A social environment that still regards domestic abuse as a private issue. Low levels of social life, when violence is accepted as usual and not a public concern, might also contribute to domestic violence. Even though the victim inherently rejects violence, in such a societal setting everyone accepts violence without complaint, whether they are the violent offender or the victim. Domestic violence is recognized as a private affair between a husband and wife, removing the need for society to step in.

c. Poor Communications

The issue of domestic violence as a private problem is greatly influenced by and even made worse by ineffective communication between husband and wife or parents of children.

They won't comprehend one another and won't be aware of each other's personalities or the demands of each family member as a result of their bad communication. Last but not least, how family members are treated is merely dependent on personal judgments that may not be as accurate as expected by the individual in question. As a result, familial ties become shaky and distant, making people more prone to rudeness, indifference, and lack of concern for others' feelings. Because each family member does not comprehend and know the other, keeping their distance and refusing to share their feelings makes them particularly prone to violence.

### **Consequences of Domestic Violence**

Acts of domestic violence have a number of negative effects, such as the following.:

a. Against Wives and Women

Acts of Domestic Violence as a Private Matter.

has a damaging effect on both the victims of violence and the peaceful relationships that exist in the home. The victim may have experienced a physical injury, for instance, but psychological effects can include pain and discomfort, frustration and low self-esteem, a sense of helplessness and despair, a feeling of worthlessness and the propensity to place the blame for domestic violence on oneself. When used against women and children, this violence paralyzes their thoughts and emotions and obliterates their futures. This violence greatly affects the relationship between family members, including the strained relationship between husband and wife and also the relationship between parents and children, which becomes a relationship lived with fear.

b. Against Children

Domestic violence psychologically deprives children of the attention and love they require in their families. They believe that their home is no longer a safe haven. Because of the environment created by toxic relationships, home is not a place where people can develop and flourish. This will have an effect on kids abandoning the house, for instance, by consuming drugs and alcohol that are unlawful.

They have opportunity to continue the violence chain in their lives both during their childhood and later when they grow up. It is very likely that they will experience psychological and mental developmental disorders such as trauma, depression and anti-social behavior, disrespect for their parents and low self-confidence. The impacts above will further obscure the future of children as well as the future of society.

c. Against Family Wholeness

The effects of domestic violence disrupt the dynamics of the family. This results in a lack of respect between them and a less open connection. Affection and love are the foundations of the marriage between a husband and wife. And with time, the connection will deteriorate. A relationship that is centered on power and

characterized by violence is unhealthy. This discord has an effect on how distant the husband and wife relationship is and raises the possibility of divorce.

### **Forms of Legal Protection for Victims of Domestic Violence**

#### **1. Legal Protection for Children as Victims of Domestic Violence**

Children must be protected in order to have the best chance at developing properly, both spiritually and developmentally, as the younger generation that will carry on the nation's noble principles, as future leaders of the nation, and as a source of hope for earlier generations. social and physical. All tiers of society, acting in a variety of capacities and knowing how crucial children are to the present and future health of the country, work together to protect children. It is time to replace the previous generation once they have reached adulthood in terms of their physical, mental, and social development.<sup>8</sup>

According to Article 23 of Law Number 23 of 2002 addressing child protection:

A. Every child while in the care of parents, guardians or any other party responsible for care has the right to get protection from treatment:

- a. discrimination;
- b. exploitation both economic and social;
- c. neglect;
- d. cruelty, violence and persecution;
- e. injustice;
- f. mistreatment .

B. In the event that parents, guardians or caregivers of children carry out all forms of treatment as referred to in paragraph (1), then the perpetrators are subject to increased punishment.

#### **2. Legal Protection for Women as Victims of Domestic Violence**

It is necessary to secure the human right to protect women and children. Every citizen is equal to his or her status before the law and the government, and every citizen is required to uphold that law and government without exception, according to article 27 paragraph (1) of the 1945 Constitution. The article's thesis demonstrates that all citizens, including women, men, adults, and children, are afforded equal protection under the law and by the government.<sup>9</sup>

### **C. Criminal Process for Domestic Violence Perpetrators**

#### **1. Report to the Authorized Party (Police)**

- a. Can be reported by: victims or their proxies and witnesses;
- b. Report to the police station (Women and Children Service Unit) at the scene of the incident or where the victim is.
- c. Minutes of Examination (BAP) from the investigator will be submitted to the local Public Prosecutor's Office to submit charges and criminal charges against the perpetrators before the court session;
- d. Victims are entitled to protection 1 x 24 hours after the report;
- e. The police are required to provide information to victims regarding access to legal aid, assistance, and recovery services.

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<sup>8</sup> Maidin G, "*Perlindungan Hukum Terhadap Anak dan Perempuan*", Refika Aditama, Bandung, 2013

<sup>9</sup>Maidin G,op.cit.p.98



## 2. Criminal Charges and Charges By Public Prosecutor

- a. the prosecutor will indict the suspected perpetrator of Domestic Violence at a Court hearing by presenting witnesses and victims of domestic violence to hear their statements, accompanied by evidence based on the BAP made by the Investigator.
- b. Criminal charges were filed by the Public Prosecutor based on the threat of imprisonment and/or fines regulated in Law Number 23 of 2004.
- c. Victims can be accompanied by advocates and volunteer companions to monitor the trial process.

## 3. Decision of the Criminal Trial in Court

The judge who examines the criminal charges submitted by the Public Prosecutor may decide that the perpetrator shall be punished: imprisonment, fines of money and additional punishment (in the form of restrictions on rights, revocation of certain rights or requiring the perpetrator to take part in a counseling program to change his violent behavior in his household).

## 4. Application for Determination of Protection from the Court

- a. Applicant to court, namely the victim or his family, the police, friends of the victim, companion volunteers and spiritual guidance.
- b. The purpose of the petition is to protect the victim and his family from threats by the perpetrator after a criminal report.
- c. The court can issue a stipulation, protection, within 7 x 24 hours after receiving the request letter .
- d. Determination of protection in the form of special conditions such as limiting the movements of the perpetrator by prohibiting him from approaching the victim and his family within a certain distance, limiting the rights of the perpetrator in the household.

## 5. Victim Assistance and Recovery

- a. Legal assistance and assistance from reports to court decisions. This can be done by advocates and LBH.
- b. Treatment assistance and medical examinations by health workers and health units (PKT/PPT/Puskesmas).
- c. Counseling by counselors, psychologists and social workers.
- d. Shelter/safe housing assistance and assistance during the trial process, protection and recovery of victims by companion volunteers.
- e. Spiritual guidance by spiritual guides according to the religion and beliefs of each victim.

## **D. Analysis of Various Laws Related to Domestic Violence.**

### 1. Domestic Violence in the Criminal Code

First, it will be stated that Law Number 23 of 2004, like other special laws, has a close relationship with the Criminal Code (KUHP). This relationship lies in book I of the Criminal Code on general rules, which consists of articles 1 to 103 of the Criminal Code. Which reads article 103 of the Criminal Code as follows: "The provisions in Chapters I to Chapter 8 of this

book also apply to acts which are punishable by other legal provisions, unless otherwise determined by law."<sup>10</sup>

Law Number 23 of 2004 stipulates criminal sanctions for anyone who violates it. Therefore, therefore, the provisions contained in chapter 1 of the Criminal Code also apply to Law Number 23 of 2004. For example, article 1 paragraph (1) of the Criminal Code which reads: that existed before the deed was committed.

Article 1 paragraph (1) of the Criminal Code contains the meaning that an act can only be punished with a criminal sentence, after there is a law that regulates it first. Means that in imposing a sentence must be guided by the written law. This is clarified in Article 1 which adheres to the principle of *legality*, namely the principle which stipulates that every criminal act must be determined as such by statutory rules. In Latin *Nullum Delictum, nulla poena sine praevia lege poenali* (no offense, no crime without prior criminal provisions being held).

<sup>11</sup>

Furthermore, it is determined that anyone who commits a criminal act is subject to criminal sanctions. However, not everyone who commits these criminal acts must be punished. Because to impose a sentence on someone, known as the principle that reads: "not convicted without any fault". So in this case it is first proven whether or not someone's fault was. This is related to the problem of someone being accountable for the actions that have been done. There are two forms of error, namely gap and negligence. "Intentional" is carried out on the basis of "intention" to commit a criminal act, whereas in "negligence" there is no such element of "intention". For example, in cases of domestic violence, it must first be proven that the perpetrator was guilty, namely intentional or negligent. Because this is also related to the issue of accountability and the ability to be responsible for the perpetrator.

This article related to domestic violence is article 10 of the Criminal Code concerning the types of crimes. Article 10 of the Criminal Code is still relevant in cases of domestic violence.

The punishment imposed on perpetrators of domestic violence is imprisonment or a fine, while additional punishment is different from Article 10 of the Criminal Code. In Article 50 of Law Number 23 of 2004 it is stated that the additional sentences for perpetrators of domestic violence are as follows:

1. restrictions on the movement of the perpetrators, both those aimed at keeping the victim away from the victim within a certain distance and at a certain time, as well as limiting certain rights of the perpetrators.
2. Determination of perpetrators to follow a counseling program under the supervision of a particular institution.

Restrictions on the movement of the perpetrators apart from aiming to keep the perpetrators away from the victims, also aim to protect the victims, because in several cases that have occurred, perpetrators often terrorize victims. The form of terror is via telephone, letter or sms. Another effort to keep the perpetrator away from the victim is to place the victim in a "safe house" somewhere the perpetrator doesn't know.

As for the determination of the perpetrator to take part in the counseling program, it is an attempt to change the attitude or behavior of the perpetrator, so that he does not commit acts of violence again. The success of this effort also depends in part on the character and family background of the perpetrators.

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<sup>10</sup> Moerti HS, op., cit. p. 154

<sup>11</sup> Moeljatno. "KUHP", Yogyakarta, 1976.

Next, several other articles from the Criminal Code (KUHP) will be explained, but it is necessary to explain more about the meaning of "violence" contained in article 89 of the Criminal Code which reads:

"Leaving someone unconscious or disabled is equivalent to using violence."

However, furthermore it is not explained how to make these helpless people. Because in reality, making people helpless can be done in 2 ways, namely physically, for example by being beaten and non-physically, for example, drugged. Crimes that can occur within the scope of the household are generally acts of violence against women. This act, for example, can be in the form of: the crime of rape (article 285 of the Criminal Code), because this crime is always committed with violence. The types of criminal acts of rape are acts of rape of women who are unconscious (Article 286 of the Criminal Code), rape of underage wives (Article 288 of the Criminal Code), acts of sexual obscenity/harassment (Article 294 of the Criminal Code), crimes of murder (Article 338 of the Criminal Code) and acts of persecution crimes (articles 351, 353, 354, 355 and 356 of the Criminal Code). According to the provisions of Law Number 23 of 2004, according to the provisions of Law Number 23 of 2004, the criminal acts constitute physical violence. Article 6 of Law no. 23 of 2004 states that, physical violence is an act that causes pain, falls ill or is seriously injured.

Furthermore, it is necessary to state here Article 285 of the Criminal Code as follows:

"Anyone who, by force or fear of force, compels a woman to engage in sexual relations with him outside of marriage, is threatened with rape and is subject to a maximum 12-year sentence."

From the sound of the article, the elements of Article 285 of the Criminal Code regarding rape can be described, as follows:

1. Whoever, meaning that the perpetrators are all people, men, of all ages, not limited in terms of rank and social position.
2. With violence or threats of violence, it is not mentioned here how it was done, while threats of violence can be categorized into non-physical acts.
3. The use of force in an act against a woman indicates that the act was carried out against the woman rather than the guy.
4. Engaging in sexual activity outside of marriage indicates that the perpetrator's ultimate purpose is to engage in sexual activity outside of marriage..

So, in this case the act of rape cannot be committed in a marriage. In other words, the Criminal Code is not familiar with the criminal act of rape in marriage, so that in order to be called a criminal act of rape, the act must be committed outside of marriage.

Article 8 point e of Law Number 23 of 2004 only states "forced sexual relations committed against people who live within the scope of the household". Likewise article 46 of Law Number 23 of 2004, does not explain to whom the sexual violence was committed.

## **2. Domestic Violence in Law Number 1 of 1974 concerning Marriage.**

The following is an analysis of Law Number 1 of 1974. According to article 1 of Law Number 1 of 1974 which reads: "Marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family based on Godhead. the Almighty."

So the purpose of marriage is to form a happy and eternal family. For this reason, husband and wife need to help and complement each other, so that each can develop their personality to help and achieve spiritual and material well-being<sup>12</sup>.

The rights and position of the wife are the same as the rights and position of the husband, both in domestic life and in society. Thus, everything in the family can be negotiated and decided jointly by the husband and wife.

This act of violence is contrary to the provisions contained in chapter IV concerning the Rights and Obligations of husband and wife, articles 30 to 34 of Law Number 1 of 1974. Article 30 of Law Number 1 of 1974 which reads as follows:

"Husband and wife bear a noble obligation to uphold the household which is the basis of the foundation of society".

The wording of the article implies that a household which is formed through a marriage is part of and forms the basis of the structure of society. Because the smallest form of society is the family. Thus, husband and wife have an obligation that is not light, because they have to maintain harmony and sustainability of the household.

Furthermore, in Article 30 of Law Number 1 of 1974 it states that:

1. The rights and position of the wife are in balance with the rights and position of the husband in domestic life and social life together in society.
2. Each party has the right to take legal action.
3. The husband is the head of the family and the wife is the housewife.

Article 31 provides more affirmation of the wife's position in household life and in society, so that no one is more dominant over one another. That is, husband and wife have the same and balanced position.

In fact, if examined carefully, Law Number 1 of 1974 shows an ambiguous attitude, on the one hand women (wives), but on the other hand, women and men rigidly strengthen the role of women in the private sector and the role of men in the public sector. . Not only that, the law in (articles 3 and 4) also gives the husband the right to practice polygamy, although it must be with the permission of the court and the wife's approval for reasons that are definitively determined in the law.

If we examine it more deeply, we can see that there is an ambiguous attitude, because in the elucidation of Law Number 1 of 1974, it is explicitly stated that this Law adheres to the principle of monogamy. However, it is added: only if the person concerned wants it, a husband can have more than one wife. Obviously, this statement creates confusion and harms women (wives).

Then in article 32 of Law Number 1 of 1974 it is stated that a husband and wife must have a permanent place of residence and must be determined by the husband together with the wife. With this provision it can be obtained that the marriage law is not half-hearted in regulating the problems of husband and wife relations and their needs. A marriage is regulated as a whole, until the place of residence is regulated.

In addition to the matters stated in the Marriage Law, Law number 1 of 1974 also contains, among others:

1. arrangements regarding marriage in article 29;
2. regarding marital assets in articles 35 to 37;
3. regarding the position of children in articles 42 to 44;
4. regarding rights and obligations between parents and children in articles 45 to 49;

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<sup>12</sup>Moerti HS,OP.,CIT.H.161

5. and regarding guardianship in articles 50 to 54, and so on.

All of these rules are determined for the realization of the goal of marriage, which is to form a happy and eternal family.

Furthermore, in Article 33 of Law Number 1 of 1974 it is explained that a husband and wife must love each other, respect, be loyal and give each other physical and spiritual assistance. Therefore, besides having to love his wife, a husband is also obliged to protect his wife and provide all the necessities for married life, according to his ability. In this case the wife is obliged to manage household affairs as well as possible (article 34 paragraph (1) and paragraph (2) of Law Number 1 of 1974).

What was stated above is one of the many cases of violence that befell women. Acts of violence against women illustrate the domination of men over women. Apart from that, it is also a violation of human rights and a crime against human dignity as well as a form of discrimination against women.

### **3. Domestic Violence in Law Number 39 of 1999 concerning Human Rights.**

Human rights are basic rights that are naturally inherent in humans, are universal and lasting. Therefore, it must be protected, respected, maintained and cannot be neglected, diminished or seized by anyone. In article 3 of Law Number 39 of 1999 it is stated that:

1. equal and equal human dignity and worth and is endowed with reason and conscience to live in society, as a nation and as a state in a spirit of brotherhood.
2. Everyone has the right to recognition, guarantees, protection and fair legal treatment and to receive legal certainty and equal treatment before the law.
3. Everyone has the right to protection of human rights and basic human freedoms, without discrimination.

Then this is clarified in article 4, which reads: "The right to life, the right not to be tortured, the right to personal freedom, mind and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person and equality before the law and the right to being prosecuted on the basis of retroactively applicable law is a human right that cannot be reduced under any circumstances and by anyone".<sup>13</sup>

Article 4 of Law Number 39 of 1999 explicitly states that torture and discrimination against fellow individuals is not justified. Because the rationale for forming this law, among other things, is to protect, maintain and enhance human dignity, it is necessary to respect and protect human rights. Without this, humans will lose their dignity, so that it can encourage humans to become wolves for other humans. Therefore, acts of violence that occur within the household are acts that do not respect the human rights of others.

In chapter II of this Law it is stated that human rights and basic human freedoms are:

1. Right to life, first.
2. The right to continue living and to start a family.
3. The right to personal growth.
4. The ability to pursue justice.
5. The right to individual liberty.
6. The privilege of safety.
7. The welfare right.
8. The right to take part in political life.

Then in article 51 of Law Number 39 of 1999 it is expressly determined that:

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<sup>13</sup>Moerti HS,op.,cit.p.167

1. A wife while in a marriage bond has the same rights and responsibilities as her husband for all matters relating to her married life, relationship with her children and the right to own and manage joint assets.
2. After the breakup of a marriage, a woman has the same rights and responsibilities as her ex-husband in all matters relating to her children, taking into account the best interests of the children.
3. After the breakup of the marriage, a woman has the same rights as her ex-husband, over all matters relating to joint property without prejudice to children's rights, in accordance with the provisions of the constitutional regulations.

Furthermore, in the elucidation of the Law on human rights, it is stated that every human being with his mind and conscience has the freedom to decide his own behavior or actions. To balance this freedom, humans have the ability to be responsible for all actions taken. Freedom and basic rights are what are called human rights, which are inherent in humans by nature, as a gift from God Almighty.

Therefore, the freedom of each person is limited by the rights of others. This means that everyone is obliged to recognize and respect the human rights of others. Thus, the arbitrary treatment of husbands by committing acts of violence clearly violates the rights of wives (women).

#### **4. The Law No. 7 of 1984 Concerning Ratification of the Convention Concerning the Elimination of All Forms of Discrimination Against Women mentions domestic violence.**

It has been stated earlier that domestic violence is not only a violation of human rights, but also discrimination against women. In fact, on July 9, 1980, Indonesia had signed the Convention on the Elimination of All Forms of Discrimination Against Women. Basically, the contents of the convention are in accordance with the 1945 Constitution, which stipulates that all citizens have the same position before law and government.<sup>14</sup>

The terms of this convention shall not affect the principles and provisions of national legal regulations, which contain the principle of equal rights for men and women as an expression of the Indonesian legal system, which we deem to be good or better and appropriate, harmonious, and consistent with the aspirations of the Indonesian people. The convention's rules must be implemented while taking into account the community's way of life, which includes the cultural norms, customs, and religious beliefs that are still relevant and extensively practiced among Indonesians.

Pancasila as the nation's way of life and the 1945 Constitution as a source of national law provide confidence and guarantees that the implementation of the provisions of the convention is in line with the order of life desired by the Indonesian nation. Therefore, in the context of socio-political-economic policies, the Indonesian government in 1984 ratified the Convention on the Elimination of All Forms of Discrimination against Women with Law Number 7 of 1984.

In article 15 of Law Number 7 of 1984, it states:

1. States parties are required to grant women the same legal protections as males.
2. States Parties are required to offer women the same legal standing as males in civil affairs and the same chance to exercise that status, including by granting them the

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<sup>14</sup>Moerti HS,OP.,CIT.H.169

same rights to enter into contracts and manage their property and treating them equally at all stages of judicial proceedings.

3. The Contracting States agree that all contracts and all legally binding documents which limit the legal capacity of women shall be deemed null and void.
4. same legal rights relating to the mobility of persons and the freedom to choose their place of residence and domicile.

Article 15 shows that the State has an obligation to recognize and respect the role of women in the public domestic sphere. Therefore, if there is a document or contract that has legal force, is intended to limit women's capabilities, it must be canceled or no longer valid.

Then it regulates the obligations of the State towards women in relation to discrimination, which are listed in Article 16 paragraph (1) of Law Number 7 of 1984 as follows:

“States Parties shall adopt appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations on an equal basis between men and women and will in particular ensure:

1. the same freedom to climb the marriage ladder;
2. the same freedom to pick one's husband freely and only marry with that man's free and informed agreement;
3. the same duties and obligations afterwards separation from a marriage as they are during it;
4. the same rights and obligations as parents in areas involving their children, regardless of their marital status. The interests of the children must always come first in all situations;
5. The same right to determine freely and responsibly the number and spacing of their children and to receive information, education and facilities to enable them to exercise these rights;
6. the same rights and responsibilities with regard to guardianship, care, supervision and adoption of children or similar institutions where these concepts exist in national laws, in all cases the interests of the children shall be paramount;
7. The Same personal rights as husband and wife, including the right to choose a family name, profession and position.
8. the same rights for both husband and wife with regard to the selection, acquisition, management, administration, enjoyment and transfer of property, either free of charge or with compensation in the form of money.

By ratifying it, Indonesia is bound to carry out matters agreed upon in the convention, as long as it does not conflict with the principles and interests of the Indonesian nation.

## **5. Domestic Violence in Law Number 8 of 1981 concerning the Criminal Procedure Code**

An investigator is any official of the Indonesian National Police, according to Article 4 of the Criminal Procedure Code. A female police officer (Polwan) fills the position of investigator in cases of domestic abuse. Additionally, investigators are given additional authority by law, as stated in Article 6 of the Criminal Code, which also specifies that

"authorities of the Republic of Indonesia Police and certain civil servant officials". A female police officer (Polwan) is what is indicated in this context by a "police official".<sup>15</sup>

The presence of the PPA unit is a special unit at the Polres and Polresta, for women and children who have experienced acts of violence. If the policewoman is on duty, the reporter does not hesitate to reveal the acts of violence he has experienced<sup>16</sup>.

In addition, the Criminal Procedure Code also regulates the compensation issues for victims. As regulated on the issue of compensation for victims. As regulated in articles 98 to 101 of the Criminal Procedure Code. In this section, Article 98 paragraph (1) of the Criminal Procedure Code will be put forward as follows: "If an act which forms the basis of an indictment in an examination of a criminal case by a district court causes harm to another person, then the head judge at trial at the request of that person can decide to combine lawsuit for damages in the criminal case".

In addition to other articles, the provisions of Article 98 of the Criminal Procedure Code aim to give victims a chance and a way out to seek compensation for the effects of violent acts done by violent criminals. Furthermore, in accordance with Article 184 of the Criminal Procedure Code, which stipulates the following, proof is required to demonstrate the commission of acts of violence.:

1. Valid evidence is:
  - a. Witness statement;
  - b. Expert information;
  - c. Letter;
  - d. Instruction;
  - e. Defendant's statement.
2. Things that are generally known do not need to be proven.

Even if the only witnesses who should be present are the real victims, the absence of witnesses makes it more difficult to prove claims of domestic violence. As a result, further supporting information in the form of a letter is required. A *Visum et Repertum* letter of proof in favor of domestic violence from a physician. However, it is necessary to keep in mind the provisions of Article 183 of the Criminal Procedure Code, which states that "a judge may not impose a sentence on a person, unless with at least two valid pieces of evidence he obtains confidence that a crime has actually occurred and that the defendant is the one who is guilty of committing it."

The law stipulates that there are at least two pieces of evidence needed to prove the guilt of the perpetrator. In cases of domestic violence, it is difficult to find witnesses because these incidents are often carried out behind closed doors, meaning that they escape the sight of other people

#### IV. CONCLUSION

The government plays a significant part in offering victims of domestic violence legal protection. It is crucial for all parties involved in victim help and protection to work together. Social institutions play a significant part in ensuring that victims of domestic violence have access to legal protection. The institution needs good collaboration from all parties concerned, including the families of the victims and the larger community, for this reason. Safe houses and domestic violence institutions should both be expanded since they will go a

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<sup>15</sup>Moerti HS, op., cit. p.172

<sup>16</sup>"*KUHAP*", Focusindi Mandiri, Bandung, 2010.



long way toward assisting victims of domestic abuse in the future in regaining their psychological and mental health so they may lead fulfilling lives.

With the existence of Law Number 23 of 2004 concerning the Elimination of Domestic Violence, it is hoped that all parties can understand the existence of this law, especially law enforcement officers so that they can properly implement this law in resolving cases of Domestic Violence. and right on target, so that it can provide protection to victims of domestic violence both women and children and can provide a deterrent effect on perpetrators, because that is one of the goals of "law", to give a deterrent effect to perpetrators of crimes.

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## Rules and Regulation

- Law Number 23 of 2004 concerning the Elimination of Domestic Violence
- Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHP);
- Law Number 1 of 1974 concerning Marriage;
- Law Number 7 of 1984 concerning Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women;
- Law Number 39 of 1999 concerning Human Rights;
- Law Number 1 of 1946 concerning the Criminal Code (KUHP) and its amendments; (HAM)