

LEGAL PROTECTION OF CHILDREN AN WOMAN FROM DOMESTIC VIOLENCE (RESEARCH METHODS BY THE NORTH SUMATERA KPAI)

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Abstract

Domestic violence (KDRT) is a form of human rights violation that has serious impacts, especially on women and children. This article aims to analyze the form of legal protection provided to women and children victims of domestic violence in Indonesia. The results of the analysis show that although there are regulations such as Law Number 23 of 2004 concerning the Elimination of Domestic Violence, as well as the Child Protection Law, there are still various challenges in its implementation, such as patriarchal culture, low legal awareness of the community, and weak law enforcement. Further efforts are needed in the form of education, training of law enforcement officers, and empowerment of victims so that legal protection can run optimally.

Keywords: *Legal Protection, Women, Children, Domestic Violence, Human Rights.*

INTRODUCTION

Domestic violence (DV) is a type of human rights violation that remains prevalent in Indonesia. The most frequent victims of domestic violence are vulnerable groups such as women and children, who are physically, psychologically, and socially vulnerable. The impact of this violence not only directly harms the health and safety of victims but also impacts children's development and long-term social stability. Law No. 23 of 2004 concerning the Elimination of Domestic Violence provides a legal basis for protecting victims. However, the implementation of this law in practice continues to face numerous obstacles, such as a lack of case reporting, low public legal awareness, and weak law enforcement. Domestic violence remains a serious social problem because it occurs within the family environment, where love and mutual respect should be fostered. Ironically, individuals who should be protectors can become sources of suffering for their own family members. This violence is generally experienced by wives and children, who, within certain social constructs, are considered to occupy a subordinate position to men as heads of households. This situation reinforces the view that women and children are inferior, dependent on men, and powerless to refuse or challenge their treatment.

According to Article 1 of Law Number 23 of 2004, domestic violence is defined as any act against a person, particularly women, that results in suffering or misery, whether physical, sexual, or psychological, or domestic neglect. This act also includes threats, coercion, or the illegal deprivation of liberty within the domestic context. Children living in families are also often targeted, even though their rights are expressly protected by Law Number 35 of 2014 concerning Child Protection, which defines a child as any individual under 18 years of age, including those still in the womb. Various factors can trigger domestic violence, including economic problems, jealousy, and issues related to children. Of these three factors, financial issues are often the primary trigger, especially in families with limited income and when the wife does not have a job or other source of income. In families with children, differences of opinion regarding parenting can also lead to conflict. Infidelity is also a contributing factor, although very few cases have been uncovered. This is because domestic violence is a complaint-based offense, meaning legal proceedings can only be initiated if the victim reports it. Many victims hesitate to report their violence to the authorities due to feelings of shame and fear of bringing shame to the family. As a result, many cases of domestic violence remain unreported. However, child protection is expressly regulated in Law Number 35 of 2014 concerning Child Protection, which emphasizes that children have the right to protection from all forms of violence. According

to data obtained from the Indonesian Child Protection Commission (KPAI), there were 3,849 reports of violence against children in 2017, compared with 4,620 cases in the previous year, 2016. This high number indicates that domestic violence remains a serious problem that continues to grow annually. This phenomenon demonstrates that acts of violence occur due to the interaction between causal factors and the social and psychological conditions of the perpetrator and victim (Raharjo, 1983). Considering the various obstacles to providing protection for victims of domestic violence (DV), it is understandable that many victims remain reluctant to report the violence they have experienced. This is because the resolution mechanisms stipulated in Law Number 23 of 2004 concerning the Elimination of Domestic Violence often result in win-lose solutions, where one party benefits while the other suffers losses. This situation indicates that the primary goal of law enforcement, namely achieving substantive justice for all parties, has not been fully realized. In this context, when a wife is a victim of violence by her husband and reports the case, the legal process often results in marital dissolution, even divorce. The victim should be considered the most disadvantaged party and should be entitled to full protection of all her rights. This principle is a primary focus of the study.

LITERATURE REVIEW

Understanding Domestic Violence (DV)

Domestic violence is any act that causes physical, sexual, or psychological suffering, or neglect within the family. According to Law Number 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT Law), domestic violence includes physical, psychological, and sexual violence, as well as domestic neglect. This form of violence is not only perpetrated by husbands against wives, but can also occur vice versa, as well as against children or other family members living in the same household. According to Soeroso (2010), domestic violence is a human rights violation that most often occurs in the private sphere, as it is often considered a domestic matter that does not require state intervention. However, in reality, this violence has serious impacts on victims, especially women and children, both physically, mentally, and socially.

Legal Protection for Children and Women

Legal protection for children and women is a form of state responsibility in guaranteeing the right of every citizen to live safely and free from violence. According to Hadjon (1987), legal protection is all efforts made by the state to provide a sense of security, both preventively and repressively, to legal subjects. In the context of domestic violence, preventive legal protection is implemented through policies and legal outreach, while repressive protection is implemented through law enforcement processes against perpetrators. Specifically, Law Number 23 of 2002 concerning Child Protection (which has been amended by Law Number 35 of 2014) regulates children's rights to protection from violence, exploitation, and discrimination. Furthermore, Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (TPKS) also strengthens the legal position of women and children as victims of domestic violence by providing a more comprehensive legal framework.

Legal Protection Theory

Philipus M. Hadjon's (1987) theory of legal protection explains that legal protection for the public is divided into two forms:

1. Preventive legal protection, which is protection provided to prevent violations, through a clear legal system, regulations, and policies.
2. Repressive legal protection, which is protection provided after a legal violation has occurred, in the form of sanctions or reparations for victims. Teori ini relevan dalam konteks KDRT karena menunjukkan pentingnya dua pendekatan: pencegahan kekerasan melalui pendidikan dan sosialisasi hukum, serta penindakan tegas terhadap pelaku demi keadilan bagi korban.

RESEARCH METHODS

The type of research used in this study is empirical legal research, also known as sociological legal research or field research. This approach aims to examine the application of applicable legal provisions and examine how these laws are implemented in the social reality of society. In other words, empirical legal research focuses on factual conditions occurring in the field to obtain a concrete picture of the implementation of law in everyday practice. Through this approach, researchers attempt to identify and collect various relevant empirical facts and data. This data is then analyzed to identify emerging problems, allowing for the formulation of appropriate solutions to address the legal issues under study (Waluyo, 2002). To obtain answers to the problems examined in this research, various

legal sources are required as a basis for analysis. These legal materials consist of primary, secondary, and tertiary legal materials. The process of collecting legal materials is carried out through several stages, including collecting data relevant to the research topic and information sources that can support the analysis process. The data sources in this study are divided into two categories: primary and secondary data. Primary data is data obtained directly through field research, specifically observations and interviews with parties related to the research object. Meanwhile, secondary data is obtained through library research, which includes various scientific literature, legal documents, previous research results, and other relevant written sources.

Secondary data in this study is divided into three types of legal sources:

1. Primary Legal Sources

Primary legal sources are legal materials that have legally binding force and serve as the primary source in legal analysis. This material includes:

1) The Criminal Code (KUHP)

2) Law Number 39 of 1999 concerning Human Rights

3) Law Number 7 of 1984 concerning the Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women

4) Law Number 23 of 2004 concerning the Elimination of Domestic Violence

5) Law Number 4 of 1979 concerning Child Welfare

6) Law Number 23 of 2002 concerning Child Protection

7) Law Number 35 of 2014 concerning Child Protection.

2. Secondary Legal Sources

Secondary legal sources are materials that serve to explain, interpret, and strengthen understanding of primary legal materials. These materials can include scientific research results, written works by legal experts, academic books, journals, articles from online media, and various documents or reports relevant to the research problem. 3. Tertiary Legal Sources Tertiary legal materials serve as supporting materials, providing additional explanations to primary and secondary legal materials. Examples include legal dictionaries, Indonesian dictionaries, encyclopedias, and other reference sources that help clarify the legal terms or concepts used in this research.

1. RESULTS AND DISCUSSION

Legal Protection for Women and Children in Domestic Violence

Social norms serve as guidelines for human ethical behavior within society. These norms determine which actions are considered appropriate and which are not, in accordance with prevailing social values. Therefore, each individual's behavior should align with prevailing social norms to create order in communal life. In general, social norms are divided into several types: moral norms, religious norms, legal norms, and norms of decency.

Among these various norms, legal norms hold a crucial position because they function to protect society from various forms of threats that could harm the public interest, whether related to the safety of life, property, or government order. Furthermore, legal norms also play a fundamental role in creating a sense of security, ensuring justice, and upholding social order. In this context, legal norms not only protect the interests of society in general but also provide special protection for vulnerable groups, such as children and women who are victims of violence, so that their rights can be legally guaranteed (Suransil, 2016).

A. Law Number 23 of 2004 concerning the Elimination of Domestic Violence

The increasing number of domestic violence cases over time, with the majority of victims being women, has led to the enactment of a legal policy in the form of Law Number 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT). This law was enacted as a state effort to provide legal protection for victims to protect them from violence, torture, threats of violence, and acts that demean human dignity. Although legally, victims of domestic violence are not limited to women, as the household encompasses wives, husbands, children, other family members, and individuals living or working within the household, empirically, women remain the most vulnerable to violence. This is due to a social construct that places women in a subordinate position, perceived as weak, and dependent on men, placing them at greater risk of becoming victims of physical and psychological violence within the household (Rato, 2010). According to Law Number 23 of 2004 concerning the Elimination of Domestic Violence, domestic violence is defined as any act committed against a person, particularly women, that causes suffering or misery, whether physical, sexual, or psychological, or in the form of domestic neglect. This definition also includes threats of violence, coercion, or unlawful deprivation of a person's liberty that occurs within the domestic sphere (Wantu, 2017). Various forms of prohibition related to domestic violence are expressly regulated in Law Number 23 of 2004

concerning the Elimination of Domestic Violence. First, Article 6 explains about physical violence, namely actions that cause pain, illness, or serious injury, with criminal sanctions for the perpetrators listed in Article 44. Second, Article 7 regulates psychological violence, namely actions that cause fear, loss of self-confidence, feelings of helplessness, or severe mental suffering, the sanctions for which are regulated in Article 45. Third, Article 8 prohibits sexual violence, namely the act of forcing sexual relations against someone living in the same household, with criminal provisions for the perpetrators listed in Articles 46, 47, and 48. Fourth, Article 9 prohibits domestic neglect, namely the act of someone who intentionally does not provide life, care, or maintenance to their family members as required by law or applicable agreements, with sanctions for the perpetrators set out in Article 49. Through these provisions, this law confirms the state's commitment to providing legal protection for all family members, especially women and children, to avoid all forms of violence in the domestic environment. In addition to containing provisions regarding the prohibition of violence and sanctions for perpetrators, Law Number 23 of 2004 concerning the Elimination of Domestic Violence also regulates protection for victims. Article 1 Paragraph (4) explains that protection is any form of effort aimed at providing a sense of security to victims. These efforts can be carried out by families, advocates, social institutions, the police, the prosecutor's office, the courts, or other parties, either temporarily or based on a court decision. Victims of domestic violence have the right to receive protection and recovery services from various parties in accordance with the provisions of the law, including the following:

a) Protection by the Police as stipulated in Articles 17, 18, 19, and 20, where the police are obliged to protect victims by collaborating with health workers, social workers, volunteer companions, and/or spiritual mentors. The police are also tasked with conducting investigations and providing information to victims regarding their rights.

b) Health services as stipulated in Article 21, namely, victims have the right to receive a medical examination and a post-mortem examination (*visum et repertum*) at the request of police investigators, which has legal force as evidence in court.

c) Services provided by social workers as stipulated in Article 22 include several forms of assistance, including:

1) Conducting counseling sessions to strengthen the victim's mental health and provide a sense of security;

2) Providing information regarding the victim's rights to police protection and the issuance of a protection order by the court;

3) Accompanying and transporting the victim to a safe house (shelter) or alternative housing; and

4) Integrated coordination with the police, social services, and other social institutions to ensure optimal service delivery for the victim.

d) Services provided by volunteer companions as stipulated in Article 23, namely providing assistance to the victim starting from the investigation process. Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, in Article 1 Paragraph (12), emphasizes that children's rights are part of human rights that must be guaranteed, protected, and fulfilled by parents, families, communities, the state, the government, and local governments. Therefore, all levels of society have a collective responsibility to prevent and anticipate all forms of violence against children, as well as to optimize various protection efforts so that children can fully enjoy and exercise their rights. As a concrete manifestation of the state's commitment to protecting children from all forms of violence, the government enacted Law Number 35 of 2014, which regulates preventive and handling measures through repressive, curative, and rehabilitative approaches for both victims and perpetrators. Article 1 Paragraph (15a) of the law explains that violence against children is any act that causes suffering or misery, whether physical, psychological, sexual, or neglect, including threats, coercion, or unlawful deprivation of liberty (Julyanodkk, 2019).

Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection explicitly prohibits all forms of violence against children. One form of violence against children regulated by the law is physical violence, as stated in Article 76C, which stipulates that everyone is prohibited from placing, allowing, committing, ordering, or participating in acts of violence against children. Criminal sanctions for perpetrators of physical violence are expressly regulated in Article 80 of the law. In addition to physical violence, this law also prohibits psychological violence against children, as stipulated in Articles 76D and 76E. Article 76E stipulates that every individual is prohibited from committing acts of violence or threats of violence, coercion, fraud, spreading false information, or persuading a child to commit or tolerate indecent acts. Sanctions for perpetrators of mental violence and indecent acts against children are stipulated in Articles 81 and 82. Prohibitions related to sexual violence are further stipulated in Articles 76D and 76I, with Article 76I emphasizing that everyone is prohibited from placing, allowing, ordering, or participating in the economic and/or sexual exploitation of children. Sanctions for perpetrators of sexual violence and child exploitation are stipulated in Articles 81 and 88. Child neglect is also prohibited under Article 76B, which states that everyone is prohibited from placing, allowing, involving, or requesting the

involvement of a child in situations of ill-treatment and neglect. Sanctions for perpetrators of child neglect are stipulated in Article 77B. This law not only includes provisions regarding prohibitions and sanctions for perpetrators of violence but also emphasizes the importance of comprehensive child protection. According to Article 1 Paragraph (2), child protection encompasses all efforts aimed at ensuring and protecting children so that their rights are guaranteed, enabling them to live, grow, develop, and participate optimally in accordance with human dignity and worth, and to receive protection from discrimination.

In addition, there are provisions regarding special protection for children in Article 1 Paragraph (15), which is defined as protection provided to children in certain circumstances to ensure a sense of security from threats that could endanger their lives and well-being during the development process (Suheri, 2018). Special protection for children is further explained in Law Number 35 of 2014, an amendment to Law Number 23 of 2002 concerning Child Protection, specifically in Article 59A. This article explains that special protection for children is implemented through various efforts, including:

- a) Implementing immediate treatment, including providing therapy and physical, mental, and social rehabilitation, as well as taking preventive measures against illness and other health problems.
- b) Providing psychosocial support throughout the treatment process until the child recovers.
- c) Providing social support for children from low-income families.
- d) Provide protection and assistance for children at every stage of the judicial process.

a. Efforts to Prevent and Handle Children and Women Victims of Domestic Violence

Preventive measures to protect children and women from violence are strategic steps that need to be implemented comprehensively, planned, and sustainably. This is crucial because the effects of violence are not only experienced by individual victims but also impact family harmony and social stability within the community. These preventive measures include educational, preventive, curative, and empowerment measures, implemented collaboratively by various parties such as families, communities, schools, government institutions, and private organizations. At the family level, prevention is achieved by implementing positive parenting patterns, establishing open communication, and instilling moral and religious values from an early age so that children grow up in a loving environment free from violent behavior. Parents also need to be trained in parenting skills to help them manage their emotions, understand their children's needs, and educate in a manner that supports healthy child development.

Within the educational environment, schools have a significant responsibility to instill character values, gender equality, and a culture of anti-violence. Counseling and outreach programs on children's rights, the dangers of bullying, and gender-based violence need to be integrated into the school curriculum and activities. Teachers, particularly Guidance and Counseling (BK) teachers, must be equipped with the skills to detect and handle cases of violence early to provide optimal protection to students. Furthermore, collaboration between schools and child and women's protection agencies can strengthen counseling, advocacy, and legal education services for the school community. At the community level, prevention is achieved through strengthening community-based protection systems. Community leaders, religious leaders, integrated health post (Posyandu) cadres, and social organizations play a crucial role in building collective awareness that violence against children and women constitutes a human rights violation. Activities such as public campaigns, training for protection cadres, and the formation of child and women's groups can be effective efforts to prevent violence. The use of digital and social media can also support the dissemination of information, anti-violence campaigns, and provide quick and easy access to complaints for the community and victims.

From a legal perspective, prevention can be strengthened through firm law enforcement against perpetrators, publicizing legal sanctions as a deterrent, and providing adequate legal protection for victims. The government, through institutions such as the UPTD PPA (Empowerment and Child Protection Unit), P2TP2A (Child Protection Unit), and the Indonesian Child Protection Commission (KPAI), needs to actively conduct outreach, provide complaint services, and establish a responsive and accessible hotline system. Therefore, efforts to prevent violence against children and women must be comprehensive, taking into account children's rights and gender equality, involving all parties, including families, education, communities, the media, and law enforcement. Intersectoral collaboration is crucial for creating a safe, friendly, and violence-free environment, allowing children and women to grow, develop, and participate with dignity in accordance with humanitarian principles (Suryamizon, 2017). One way to provide legal protection to children and women who are victims of violence is through prevention efforts, namely actions aimed at reducing and preventing violence from occurring. This step is taken through the establishment of several legal regulations specifically protecting the interests and rights of children and women to prevent various forms of violence and discrimination..

According to Harkristuti Harkriswono, legal protection for female victims of violence can be achieved through several strategic steps, including:

1) Reforming or re-regulating acts of violence against women in legislation to broaden their scope and encompass various forms of violence that were previously not explicitly regulated.

2) Implementing specific legal regulations that provide comprehensive protection for women victims of violence, which at least includes:

a) The right of women to receive protection from law enforcement against potential threats or further action from the perpetrator.

b) The right to receive medical, psychological, legal, and social support to restore the victim's physical and mental health and restore self-confidence.

c) The right of victims to receive compensation for the suffering they have experienced, whether through government responsibility or institutions responsible for providing protection.

d) The right of victims to receive information regarding case developments and related court decisions.

e) The establishment of a special national institution to accommodate and provide support to women who have experienced violence.

f) Implementation of training for law enforcement officers to develop sensitivity and a deeper understanding of violence against women and to handle cases from a gender perspective.

g) Implementation of public education to increase public understanding of women's rights, their role in the community, and the significance of protection for victims of violence.

Preventive legal protection, as regulated by law, generally provides guidelines and limits regarding the rights and obligations of each party to prevent violations. Conversely, repressive legal protection functions as a form of law enforcement after a violation has occurred, namely by imposing legal sanctions on perpetrators of violence to uphold justice and provide a deterrent effect (Hartanti, 2013).

Forms of Handling Children and Women Victims of Violence

Addressing violence against children and women is a systematic process to address and resolve acts of violence perpetrated by perpetrators, which are essentially violations of prevailing norms, values, and laws in society. This response plays a crucial role in safeguarding human rights, particularly because children and women are physically, psychologically, and socially vulnerable. The types of violence experienced can include physical, emotional, sexual, and neglect, all of which can have long-term effects on the victim's character development, mental state, and social interactions. Therefore, victim care must be comprehensive and integrated, taking into account various aspects, including medical, psychological, legal, and social aspects. Medically, affected individuals must receive immediate healthcare to address physical injuries, prevent infection, and address reproductive health consequences, particularly in situations of sexual violence. Psychologically, victims require counseling and mental rehabilitation to support recovery from trauma, restore a sense of security, and boost self-confidence to enable them to live a better life. In the legal field, protection for children and women who are victims of violence is regulated through various legal instruments, including Law Number 35 of 2014 concerning Child Protection, Law Number 23 of 2004 concerning the Elimination of Domestic Violence, and Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence. The implementation of these various legal regulations ensures that the law enforcement process can proceed with support for victims, including aspects of identity protection, legal assistance, and the provision of restitution or compensation for the harm experienced.

Meanwhile, from a social perspective, the role of government and non-governmental institutions is crucial. Institutions such as the Regional Technical Implementation Unit for the Protection of Women and Children (UPTD PPA), the Integrated Service Center for the Empowerment of Women and Children (P2TP2A), social institutions, and various community organizations play an active role in providing integrated services, conducting direct outreach to victims, and implementing economic empowerment programs so that victims can gain independence and return to social functioning in society (Tampubolon, 2016). Addressing violence against children and women also needs to include preventive efforts through education and raising public awareness about the importance of gender equality, positive parenting, and the dangers of gender-based violence. These preventive measures can be implemented through various activities such as public campaigns, outreach, integration of materials into educational curricula, and the use of social media as a means to raise collective awareness of the issue of violence.

Furthermore, community-based interventions play a crucial role, for example through integrated health posts (Posyandu), schools, community leaders, and religious leaders, who can be at the forefront of early detection and reporting of cases of violence. This approach strengthens protection at the grassroots level by involving active

community participation. Throughout the process, a victim-centered approach must be a top priority so that every form of intervention, whether medical, legal, or social, does not increase the trauma or suffering of victims but rather truly supports their recovery and empowerment process. Addressing child and women victims of violence should be implemented in an integrated and coordinated manner across sectors, involving health, legal, education, social, and economic empowerment. This holistic and integrative approach focuses not only on victim recovery but also on prevention efforts and cultural transformation to prevent future violence. Success in providing effective protection depends heavily on the synergy between the government, educational institutions, communities, and families, working together to create a strong and sustainable protection system. Through this collaboration, it is hoped that children and women can fully enjoy their rights, live in safety, dignity, and freedom from all forms of violence.

CONCLUSION

Preventing violence against children and women is a shared responsibility that must be carried out systematically, integratedly, and sustainably. These efforts include strengthening the role of families through positive parenting and moral education, optimizing the role of schools in fostering an anti-violence culture through programs such as Child-Friendly Schools, and engaging the community through family counseling services (PUSPAGA), public campaigns, and the establishment of Women-Friendly and Child-Caring Villages/Sub-districts. Furthermore, government support through the provision of SAPA 129 complaint services, legal assistance by P2TP2A, and firm law enforcement against perpetrators are essential in preventing violence. Collaboration across sectors such as families, schools, communities, the media, and the government can make prevention efforts more effective. Prevention based on children's rights and gender equality will create a safe, friendly, and violence-free environment, allowing children and women to grow, develop, and participate fully in accordance with their human dignity.

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