

## Research Article

# LEGAL AID FOR THE VICTIMS OF DOMESTIC VIOLENCE: PROBLEMS AND CHALLENGES

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*The number of domestic violence from year to year continues to increase. Many studies show that the increasing trend is motivated by many factors, one of which is the economy. This study aims to analyze the provision of legal aid for victims of domestic violence. This research is one of the community services programs in collaboration with the Center for Legal Aid, Faculty of Law, Universitas Negeri Semarang. This study shows that access to legal aid for victims of domestic violence has not been evenly distributed. This is due to several factors, ranging from not being exposed to cases of domestic violence, to the lack of information on legal aid for victims.*

**Keywords:** *Legal Aid; Domestic Violence; Victim of Crime*

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## I. INTRODUCTION

Violence is a form of oppression and human rights violations committed by one person to another, certain groups to other groups, adults, children, employers to their assistants and men to women. This action reflects that the strong tend to be superior and place the weak as victims.<sup>1</sup>

Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence, Article 5: Everyone is prohibited from committing domestic violence against people within the scope of his household, by: a. physical abuse; b. psychological violence; c. sexual violence; or d. household neglect.

The state is of the view that all forms of violence, especially domestic violence, are violations of human rights and crimes against human dignity as well as forms of discrimination. Current developments show that acts of physical, psychological, sexual violence, and neglect of the household actually occur so that adequate legal instruments are needed to eliminate domestic violence.

Meanwhile, various studies show that victims of domestic violence in Indonesia do not have much access to justice (proper legal assistance) due to the absence of witnesses or even the inability of victims to testify to reveal the crimes they have experienced.<sup>2</sup> In fact, sanctions in criminal law are a reaction to violations of the law that have been determined by law, ranging from detention, prosecution to the sentencing of sentences by judges. The most important part of any law is determining the legal system it adheres to. Policy issues determine the type of sanctions in criminal law, cannot be separated from the problem of setting goals to be achieved in sentencing. There is still a limited understanding of law enforcement officers from the Police, Prosecutors and Courts regarding the substance of laws and regulations intended to protect women and children who are victims of violence. This of course will also affect the implementation of the legal process for the fulfillment of the rights of victims, especially regarding the attitude and partiality of the investigators towards the rights of victims. In addition, things that affect the implementation of the legal process are cases of violence against women whose reports/complaints are withdrawn by the victim, and then

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<sup>1</sup> Abdurrachman, H. (2010). Perlindungan Hukum Terhadap Korban Kekerasan Dalam Rumah Tangga dalam Putusan Pengadilan Negeri Sebagai Implementasi Hak-Hak Korban. *Jurnal Hukum Ius Quia Iustum*, 17(3), 475-491.

<sup>2</sup> Jamaa, L. (2014). Perlindungan Korban Kekerasan dalam Rumah Tangga dalam Hukum Pidana Indonesia. *Jurnal Cita Hukum*, 2(2); Yudhanti, R., Arifin, S., & Rismadini, F. (2017). The Protection to Victims of Violence Based on Gender as a Fulfillment of the Constitutional Rights in the Perspective of Human Rights in Boyolali's District, Indonesia. *JILS (Journal of Indonesian Legal Studies)*, 2(1), 15-24.

law enforcement officers receive requests from victims not to continue the case.<sup>3</sup>

In addition, the limited number of police officers to monitor what happens in the future between the perpetrator and the victim makes it difficult to prevent the recurrence of cases of violence. Cases of domestic violence often occur in the household and are very rarely mentioned in general because the victim deliberately does not want to tell others, even the family where the victim considers that the situation she is experiencing is a normal case in the household and this is not a criminal act. feel personal and try to cover up and defend the perpetrator even though he has experienced violence. Furthermore, the victim considers that the integrity of the household is more important, moreover the victim is a housewife and if the perpetrator (husband) is prosecuted for a criminal act, it will disrupt the relationship between the household and the children. The victim thought that the violence she experienced, if reported to the police, would add to the complexity and suffering.<sup>4</sup>

The increase in the number of wives as victims of domestic violence means that it is necessary to control domestic violence crimes through law enforcement, but in reality about 95% of cases of domestic violence, especially against wives as victims, prefer to resolve them to the Religious Courts as the reason for applying for divorce in the Religious Courts for religious victims. Islam and the District Court for non-Muslim victims are compared through the mechanism of the criminal justice system to achieve justice for victims because the right to live safely, the rights not to be tortured have been disturbed, and as a deterrent effect for the perpetrator (husband).

Victims of domestic violence are very difficult to get assistance, especially victims from the poor who are entitled to free legal aid. Often the difficulty of accessing legal aid causes the victims to give up and end up facing themselves and letting go of their lost rights. Therefore, it is necessary to have additional knowledge and pro-active attitude from experts to introduce the community to offering the legal aid program.

Based on the description above, the Authors comprehensively assesses the low level of public knowledge about the right to legal assistance and legal handling of criminal acts of domestic violence that occur in the community. And this is triggered by several factors including:

1. The level of public education is still low.
2. The lack of public understanding about the handling of cases of domestic violence that occurred, especially understanding related to

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<sup>3</sup> Hasibuan, S. A. (2019). Kebijakan Kriminal (Criminal Policy) Terhadap Anak yang Melakukan Kekerasan dalam Rumah Tangga. *Jurnal Hukum Responsif*, 7(2), 17-29.

<sup>4</sup> Kobandaha, M. (2017). Perlindungan Hukum Terhadap Anak Korban Kekerasan dalam Rumah Tangga dalam Sistem Hukum di Indonesia. *Jurnal Hukum Unsrat*, 23(8).

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the Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence.

3. The lack of information about Law number 16 of 2011 concerning Legal Aid in Indonesia to the community itself.

Meanwhile, the definition of the Elimination of Domestic Violence contained in Law Number 23 of 2004 concerning the Elimination of Domestic Violence, are: Guarantees given by the state to prevent domestic violence and take action against perpetrators of domestic violence and protect victims of domestic violence.<sup>5</sup>

## II. LEGAL AID FOR DOMESTIC VIOLENCE VICTIMS: CONTEMPORARY ISSUES

Limitations of the definition of Legal Aid contained in Article 1 paragraph (1) of Law Number 16 of 2011 concerning Legal Aid is a legal service provided by legal aid providers free of charge to legal aid recipients.

the definition of the Elimination of Domestic Violence contained in Law No. 23 of 2004, that: “every act against a person, especially a woman, which results in physical, sexual, psychological misery or suffering, and/or neglect of the household, including threats to commit acts, coercion, or unlawful deprivation of liberty within the household” (Article 1 paragraph 1). Considering that the Law on Domestic Violence is a public law in which there is a threat of imprisonment or a fine for those who violate it, the wider community, especially men, in their position as heads of families should know what domestic violence is. As for who is included in the household scope, are:

1. Husband, wife, and children, including adopted children and step-children ;
2. People who have family relations with husbands, wives who live permanently in the household, such as: in-laws, daughters-in-law, in-laws, and parents of son-in-law; and
3. People who work to help in the household and stay in the household, such as domestic workers.

The forms of domestic violence as mentioned above can be carried out by husbands against family members in the form of:

1. Physical violence, which results in pain, illness or serious injury ;
2. Psychological violence, which results in fear, loss of self-confidence, loss of ability to act, feeling helpless, etc.
3. Sexual violence, in the form of sexual coercion in an unnatural way, either for the husband or for other people for commercial purposes, or for certain purposes ; and

<sup>5</sup> Alfitri, A. (2020). Protecting Women from Domestic Violence: Islam, Family Law, and the State in Indonesia. *Studia Islamika*, 27(2), 273-307.

4. Domestic neglect that occurs within the scope of his household, which according to law is required for him. In addition, neglect 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.

For victims of domestic violence, the law has regulated the rights that can be prosecuted against the perpetrators, including:

1. Protection from the family, police, prosecutors, courts, advocates, social institutions, or other parties as well as on the stipulation of a protection order from the court;
2. Health services in accordance with medical needs;
3. Special handling is related to the confidentiality of the victim;
4. Assistance by social workers and legal assistance; da
5. Spiritual guidance services. In addition, victims of domestic violence are also entitled to receive services for the recovery of victims from health workers, social workers, companion volunteers and/or spiritual mentors (Article 10 of Law No.23 of 2004 concerning Elimination of Domestic Violence).

In the Law on the Elimination of Domestic Violence, the Government has obligations, namely:

1. To formulate a policy to eliminate domestic violence;
2. Organizing communication, information and education about domestic violence;
3. Organizing outreach and advocacy on domestic violence; and
4. Organizing gender sensitive education and training, and issues of domestic violence and establishing standards and accreditation of gender sensitive services.

Law No.23 of 2004 also regulates the community's obligations in the Elimination of Domestic Violence, where for everyone who hears, sees, or knows of the occurrence of domestic violence is obliged to make efforts:

1. prevent domestic violence;
2. Provide protection to victims;
3. Provide emergency assistance; and
4. Propose the process of submitting an application for the determination of protection.

However, for crimes of minor psychological and physical violence as well as sexual violence that occurs in the relationship between husband and wife, then what applies is a complaint offense. This means that the victim herself reports the domestic violence she has experienced to the police (article 26 paragraph 1 of Law 23 of 2004). However, the victim can authorize the family or an advocate/lawyer to report domestic violence to the police (article 26 paragraph 2). If the victim is a child, a

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report can be made by the parent, guardian, caregiver, or child concerned (article 27).<sup>6</sup>

As for criminal sanctions in violation of Law No. 23 of 2004 concerning Domestic Violence, it is regulated in Chapter VIII starting from article 44 to article 53. Especially for domestic violence in the sexual field, a minimum of 5 years in prison and a maximum of 15 years in prison or 20 years applies. imprisonment or a fine of between 12 million and 300 million rupiah or between 25 million and 500 million rupiah (Articles 47 and 48 of the Elimination of Domestic Violence Law). And it should also be noted that in general, Law No. 23 of 2004 concerning the Elimination of Domestic Violence, is not only directed at a husband, but can also be directed at a wife who commits violence against her husband, children, family or assistants who live in that one household.<sup>7</sup>

Alluding to violence against children (*child abuse*) and women is clinically defined as an action taken by one individual against another individual that results in physical and or mental disorders. But in the opinion of the author, the problem of violence in this case is not only defined as an act that causes physical and mental disorders but also causes social disturbances, because violence is not only in the form of emotional, sexual, and physical but also in economic terms, such as being forced to become a prostitute. maids, buskers and so on.

Likewise, the perpetrator can not only be perpetrated by people closest to the family (domestic violence) but also by outsiders, in other words, not only violence but also crime and the modus operandi is growing. As at the end of the first quarter of 2007, cases with a high level of extremity emerged, namely a number of cases of child murder by their own biological mothers. The most recent case, March 2008, a mother killed her baby and toddler by throwing them into the bathtub. The new mode to watch out for is the case of trafficking in children to sell their organs. According to reports at a meeting in Australia, it is suspected that there are children from Indonesia who are victims of child trafficking for the purpose of selling their organs. Data on cases reported to the police shows that every year there are about 450 cases of violence against children and women.

As many as 45 percent of the number of cases are children of the victims. From this report, the mode of human trafficking has changed. Where initially human trafficking was only in terms of prostitution and labor, but recently it has developed into organ trafficking. The author believes that this mode of action does not only happen to children but also to women as well as teenagers who are able-bodied.

<sup>6</sup> Setyowati, D., & Rusdiana, E. (2020). Relevance of Criminal Law Formulation in the Law of Domestic Violence Elimination in Indonesia. *JILS (Journal of Indonesian Legal Studies)*, 5(1), 95-124.

<sup>7</sup> *Ibid.*

Furthermore, Acts of domestic violence in Indonesia have been regulated in Law Number 23 of 2004 concerning the Elimination of Domestic Violence. In Article 1 point 1, the definition of domestic violence is any act against a person, especially a woman, which results in physical, sexual, and psychological misery or suffering and/or neglect of the household, including threats to commit acts, coercion or unlawful deprivation of liberty within the scope of the home. ladder. However, this Domestic Violence Law applies to everyone and does not discriminate between genders.<sup>8</sup>

Therefore, this law does not only apply to wives, but also applies to husbands. Because, as stated in Article 3 letter b, the elimination of domestic violence adheres to the principle of gender equality. Thus, every person or victim has the right to report the violence they have experienced to the police. Meanwhile, based on article 10, victims of domestic violence have the following rights:

1. Protection from the family, police, prosecutors, courts, advocates, social institutions, or other parties, either temporarily or based on a protection order from the court;
2. Health services according to medical needs;
3. Special handling 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.

### III. LEGAL AID FOR DOMESTIC VIOLENCE VICTIMS: PROBLEMS ANC CHALLENGES IN RECENT CONDITION

The presence of the Law on the Elimination of Violence in the Household (hereinafter the PKDRT Law) various aspects that have been taboos that have not been revealed can be seen more clearly. The PKDRT Law also has a strategic meaning, especially in the context of legal protection for victims. The PKDRT Law is not only intended for women but for all family members. However, as emphasized in Article 1, the PKDRT Law is primarily intended to protect women, which reads in full: *“Domestic violence is any act against a person, especially a woman, which results in physical, sexual, psychological misery or suffering,*

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<sup>8</sup> Nilan, P., Broom, A., Demartoto, A., Doron, A., Nayar, K., & Germov, J. (2008). Masculinities and violence in India and Indonesia: Identifying themes and constructs for research. *Journal of Health and Development*, 4(1), 209-228.

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*and/or neglect of the household, including threats to commit acts, coercion, or unlawful deprivation of liberty within the household”.*<sup>9</sup>

In cases of domestic violence, not a few family members who commit violence are sentenced to criminal penalties, the violence that is usually committed is physical or psychological violence. Physical violence is as referred to, as follows: “*Physical violence as referred to in Article 5 letter a is an act that causes pain, falls ill, or is seriously injured.*”

Legal action in the event of domestic violence, the public can report to the competent authorities as stipulated in Article 26 paragraph 1 of the PKDRT Law, which reads:

1. The victim has 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.
2. The victim can authorize the family or other person to report domestic violence to the police, both at the victim's place and at the scene of the case.

If there is neglect in the household, both neglect by husband and wife, the act of neglect can be reported and snared with punishment. The act of neglect is also classified as an act of neglect of wife and children based on Article 9 of the PKDRT Law, its contents explain as follows:

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.

Domestic neglect can be reported to the local police on suspicion of a criminal act of neglect. In the PKDRT Law, the threat of household neglect is regulated in Article 49, which reads as follows:

*Sentenced to a maximum imprisonment of 3 (three) years or a maximum fine of Rp. 15,000,000.00 (fifteen million). Everyone who:*

- a) *Neglecting other people within the scope of their household as referred to in Article 9 paragraph (1).*
- b) *Neglecting other people as referred to in Article 9 paragraph (2)*

In fact, the right to life is part of human rights and is a basic right that is inherent in human nature, is universal and lasting. Therefore, it

<sup>9</sup> Hanifah, A. (2017). Permasalahan Kekerasan dalam Rumah Tangga dan Alternatif Pemecahannya. *Sosio Konsepsia*, 12(3), 45-56. See also Jamaa, L. (2014). Perlindungan Korban Kekerasan dalam Rumah Tangga dalam Hukum Pidana Indonesia. *Jurnal Cita Hukum*, 2(2).



must be protected, respected, maintained, and should not be ignored, reduced or taken away by anyone. In Article 3 of Law Number 39 of 1999 it is stated that:

- 1) Everyone is born free with equal and equal human dignity and is gifted with reason and conscience to live in society, nation and state in the spirit of brotherhood.
- 2) Everyone has the right to recognition, guarantee, protection and fair legal treatment as well as legal certainty and equal treatment before the law.
- 3) Everyone has the right to the protection of human rights and basic human freedoms, without discrimination.

Then this is emphasized again in Article 4, which reads: “*The right to life, the right not to be tortured, the right to freedom of person, thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person and equal before the law and the right not to be prosecuted on the basis of retroactive law, are human rights. human rights that cannot be reduced under any circumstances and by anyone.*”

Article 4 of Law Number 39 of 1999 explicitly states that torture and discrimination against fellow individuals are not justified. Because the rationale for the formation of this law is to protect, maintain and enhance human dignity, it is necessary to recognize and protect human rights. Without it, humans will lose their nature and dignity, so that they can encourage humans to become wolves for other humans (*homo homini lupus*). Therefore, acts of violence that occur within the household are acts that do not respect the human rights of others.<sup>10</sup>

#### IV. CONCLUSION

This study concludes that protection for victims of domestic violence has been regulated in the Legal Aid Act, the Law on the Elimination of Domestic Violence, the Human Rights Act, or the Criminal Code. Constraints and challenges faced in legal protection for victims of domestic violence include obstacles to the willingness of witnesses (victims) in revealing the crimes they have experienced. In addition, the family environment and culture become one of the obstacles in

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<sup>10</sup> Rumble, L., Febrianto, R. F., Larasati, M. N., Hamilton, C., Mathews, B., & Dunne, M. P. (2020). Childhood sexual violence in Indonesia: a systematic review. *Trauma, violence, & abuse*, 21(2), 284-299; Hayati, E. N., Högberg, U., Hakimi, M., Ellsberg, M. C., & Emmelin, M. (2011). Behind the silence of harmony: risk factors for physical and sexual violence among women in rural Indonesia. *BMC women's health*, 11(1), 52; isyah, S., & Parker, L. (2014). Problematic conjugations: Women's agency, marriage and domestic violence in Indonesia. *Asian Studies Review*, 38(2), 205-223.

maximizing protection for victims of domestic violence because this is considered an internal family problem (family disgrace).

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“In situations of captivity the perpetrator becomes the most powerful person in the life of the victim, and the psychology of the victim is shaped by the actions and beliefs of the perpetrator.”

**Judith Lewis Herman**

*Trauma and Recovery: The Aftermath of Violence  
- From Domestic Abuse to Political Terror*

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