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## Legal Protection For Wife As A Victim Of Domestic Violence Based On Law No. 23 Of 2004 On The Elimination Of Domestic Violence

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**Abstract.** *This study discusses domestic violence, especially against wives, after the issuance of Law No. 23 of 2004 concerning "Elimination of Domestic Violence." This study aimed to determine the protection of wives as victims of domestic violence. The research method used was normative legal research, using primary, secondary, and tertiary legal materials. Library research was conducted to collect legal materials. The conclusion that can be put forward is that Law No. 23 of 2004 has normatively provided protection to victims or wives, but it is still not comprehensive, and there are still forms of protection that require more detailed explanation or description.*

**Keywords:** *Legal protection, Wives, Victims of Violence.*

### 1. INTRODUCTION

A general explanation of the Law of the Republic of Indonesia No. 23 of 2004 concerning "Elimination of Domestic Violence" states that the integrity and harmony of a happy, safe, peaceful, and peaceful household is the desire of every person in married life. Article 29 of the 1945 Constitution guarantees that the Republic of Indonesia is based on the Almighty God. Thus, every person in the scope of the household exercising their rights and obligations must be based on religion. This needs to be continuously developed in building a household life".

This is further explained by the general explanation of Law of the Republic of Indonesia No. 23 of 2004, which states that integrity and harmony are highly dependent on each person in the household environment, especially determined by the quality of behavior and self-control of each individual in the household. The integrity and harmony of the household can be disturbed if the husband or wife cannot control themselves when facing a problem. Finally, violence can occur in the household, causing discomfort to those in the household.

Domestic violence is a serious problem that occurs in many communities worldwide, including Indonesia. Domestic violence not only has an impact on the physical victim but, no less importantly, also has an impact on psychological, social, and economic factors. Although laws have been enacted that regulate the prohibition of domestic violence, the fact is that domestic violence is a frightening thing, especially for women who are more vulnerable to becoming victims of domestic violence. Based on data from the Ministry of Women's Empowerment and Child Protection (KPPPA), in 2023, the number of cases of violence in Indonesia reached 18,466 cases and 11,324 of them were cases of domestic violence.

Survey The 2021 National Women's Life Experience (SPHPN) shows that one in four women aged 15-64 years have experienced physical and/or sexual violence during their lifetime by partners and those other than partners (dikbud.go.id).

Law No. 23 of 2004 concerning the Elimination of Domestic Violence can be said to be a step forward or progressive step taken by the Indonesian government to provide legal protection for victims of domestic violence, including wives. Wives are often in a weak position when compared to their husbands. In Indonesia, domestic violence is seen as an internal family problem that, in principle, should not be known to other people or outsiders. There is a sense of shame if internal family problems are known by other parties; therefore, if domestic violence occurs, wives are reluctant to take the case to court. Patriarchal culture may influence this, which tends to place wives lower so that they are powerless to oppose treatment, which is detrimental to them.

In the journal Gender-based Violence and Economic Empowerment, Gammage stated that patriarchal culture encourages the normalization of domestic violence with society tending to blame victims if they report it to the authorities (Gammage, S. et al;l, Gender based violence and economic empowerment, Gender & Development Journal, Vol. 25 Issue 2, 2017).

article 1Number 1 of Law No. 23 of 2004 defines domestic violence as any act against a person, especially a woman, that results in physical, sexual, psychological misery, suffering, and/or neglect of the household, including threats to commit acts, coercion, or unlawful deprivation of liberty in the household environment.

Observing article 1 number 1 of Law No. 23 of 2004 above, the impact of domestic violence is not only on the physical suffering of the victim but what cannot be ignored is the psychological suffering which certainly requires time to recover and requires expert assistance in the field because this concerns the mental and psychological state of the victim. Psychological suffering can affect other family members, especially children, if they witness violence.

Law No. 23 of 2004, which was enacted on September 22, 2004, in Article 4, states that the elimination of domestic violence aims to: a. prevent all forms of domestic violence; b. protect victims of domestic violence; c. prosecute perpetrators of domestic violence; and d. maintain the integrity of a harmonious and prosperous household.

Law No. 23 of 2004 contains several provisions that emphasize protection for victims of domestic violence, including the victim's right to receive a sense of security, protection, legal assistance from advocates, spiritual guidance services, and rehabilitation.

Article 10 of Law No. 23 of 2004 states that victims have the right to receive: protection from the family, police, prosecutors, courts, advocates, social institutions, or other parties, either temporarily or based on the determination of a protection order from the court; b. health services according to medical needs; c. special handling related to the confidentiality of the victim; d. assistance by social workers and legal assistance at every level of the examination process in accordance with the provisions of laws and regulations, such as spiritual guidance services.

Law No. 23 of 2004 is the normative basis for efforts to protect victims of violence, especially wives, in the household environment. This law regulates the rights of victims of violence that should be welcomed. However, if examined further, the existence of the law still finds a legal vacuum, referring to the absence or lack of clear and detailed rules contained in several articles of the law. For example, regarding the victim's right to obtain legal assistance, the legal assistance provided by the state or victim must try to obtain legal assistance for themselves. This legal vacuum can cause ineffectiveness in the implementation of the law for the elimination of domestic violence.

## **2. RESEARCH METHOD**

StudyThis is a type of normative legal research, using a statute approach; namely, it is carried out by examining laws and regulations related to the legal issue being researched (Peter Mahmud Marzuki, 2007: 93).

The legal materials in this study consist of primary legal materials, namely legal materials in the form of laws and regulations (Jhoni Ibrahim, 2006: 295), and secondary legal materials in the form of law books, including theses, legal dissertations, legal journals, legal dictionaries, and comments on court decisions related to the research problem (Peter Mahmud Marzuki, 2014: 181). Tertiary legal materials are legal materials provide guidance and explanations for primary and secondary legal materials. For example, abstracts of legislation, legal encyclopedias, indexes of legal magazines, and others (Seokanto and Mamuji, 1995: 33).

ForCollecting the legal materials required in this study used library research techniques. The tool used to collect legal material was a document study. The analysis of legal materials in this study was carried out using qualitative methods (Arikunto, 1996: 234).

Based on the description above, the author asks whether the provisions in Law No. 23 of 2004 are sufficient to provide comprehensive protection to wives who are victims of violence.

### **3. RESULTS AND DISCUSSION**

#### **Understanding Domestic Violence.**

A harmonious and happy household life is a dream for every human being with a family. It is hoped that this harmonious life can continue for both children and grandchildren. However, in reality, it is not uncommon to witness many households that initially looked happy, but ended in separation. Causative factors include violence committed by one party, resulting in a sense of insecurity for the party who received the violence and can even leave deeper emotional wounds.

Perpetrators of domestic violence are often people who have a very close relationship with the victim, such as a husband or wife, who are, in essence, responsible for protecting other family members. Therefore, acts of domestic violence are considered more serious because they destroy a sense of security and bonds of trust in the family, which should be the main place of protection.

The family, as the smallest society, should be made an institution that is able to protect and provide comfort to all its members. However, sometimes, this condition can disappear because one member commits violence. Violence can be committed by a husband against a wife or vice versa, and parents against their children often receive violence from their parents.

The Big Indonesian Dictionary defines violence as something that is violent in nature, characterized by someone's actions that cause physical damage (Dept. of Education and Culture, Big Indonesian Dictionary, 1996).

In article 1 number 1 of Law No. 23 of 2004 defines domestic violence as any act against a person, especially women, that results in physical, sexual, psychological suffering, or neglect of the household, including threats to commit acts, coercion, or unlawful deprivation of liberty within the scope of the household. This definition emphasizes that domestic violence is not only limited to physical violence but also includes emotional violence and neglect that causes discomfort or suffering.

If looking closely at the explanation of Article 1 of Law No. 23 of 2004, there is no further explanation of what household neglect means. To obtain more comprehensive clarity, it would be better to explain the intended household neglect.

#### **Types of Domestic Violence**

Domestic violence acts or actions are phenomena that can often be witnessed through news in various mass media, both print and electronic. With the development of today's communication media, acts of domestic violence can be easily accessed by many people, so

cases of domestic violence are no longer a strange thing. Domestic violence is not only found in developing societies, but also in poor communities to celebrities and in societies in developed countries such as the United States (Abdul Rahman in Emilda Firdaus, 2014: 147). Domestic violence is a form of crime that attacks the dignity and human dignity of a person that should not be tolerated.

According to Muladi(2002:40), violence against women is an obstacle to development because it can cause cumulative effects that are not simple. Domestic violence is also called a hidden crime or a hidden crime because the perpetrator and victim try to keep the act or violent secrets from the public eye (Moerti Hadiati Soeroso, 2006: 1). Therefore, domestic violence that appears superficially, especially violence against women, is less than reality.

Initially, violence against women was not different from other conventional crimes, not positioned as a crime with a distinctive character, specifically for victims of the female gender and having a distinctive impact, both specifically for the victim and generally for the social aspects of society, and there was no special treatment for women as victims who experienced the impact of violent behavior that befell them. Currently, the law is more responsive and accommodates the development of understanding the complexity of the forms and impacts of crimes directed at women as victims, so that the term violence against women is known (M. Munandar Sulaeman and Siti Homzah in Imelda Firdaus, 2014: 146).

Regarding domestic violence, Law No. 23 of 2004 states that types of violence are regulated in Article 5.

The types of domestic violence are:

1. Physical violence.

As stated in Article 6 of Law No. 23 of 2004, physical violence results in pain, illness, or injury.

Physical violence involves attacks that result in bodily injuries to the victim, such as hitting, kicking, or pushing. Physical violence is the most easily recognized form of violence because it can be witnessed and is often the primary basis for reports of domestic violence.

2. Psychological Violence.

According to Article 7 of Law No. 23 of 2004, psychological violence results in fear, loss of self-confidence, loss of ability to act, feelings of helplessness, and/or severe psychological suffering in a person.

This psychological violence is often difficult to detect because it is difficult to find physical traces, but it has a wide impact because it can damage a person's mental health. Violence can also be in the form of lowering self-esteem, insulting, or threatening, causing

mental stress to a person. The impact of psychological violence lasts longer than that of physical violence. Usually, recovery takes longer and requires expert help.

Psychological violence is a form of violence that is not physical but can cause deep emotional trauma. For example, in the form of insults, threats, intimidation, and coercion of will, in the form of manipulation, can cause the victim to lose freedom of thought and action.

Article 45 Law no. 23 of 2004 states:

- a. Any person who commits acts of psychological violence within the scope of the household shall be punished with imprisonment for a maximum of 3 years or a maximum fine of Rp. 9,000,000 (nine million).
- b. In the case of acts as referred to in point a above committed by a husband against his wife or vice versa, which do not cause illness or obstacles to carrying out work, livelihood, or daily activities, the punishment shall be imprisonment for a maximum of 4 months or a maximum fine of Rp. 3,000,000 (three million rupiah).

### 3. Sexual Violence.

According to Article 8 of Law No. 23 of 2004, what is meant by sexual violence is any act in the form of forced sexual intercourse, forced sexual intercourse in an unnatural and/or unwanted manner, or forced sexual intercourse with another person for commercial purposes and/or certain purposes.

Sexual violence according to Article 8 of Law No. 23 of 2004 includes:

- a. forced sexual intercourse committed against a person residing in the household.
- b. Forcing sexual relations with one person within a household with another person for commercial and/or certain purposes.

Further explained by Article 46 of Law No. 23 of 2004, anyone who commits a sexual act should be punished with a maximum imprisonment of 12 years or a maximum fine of Rp. 36,000,000 (36 million rupiahs).

### 4. Domestic Neglect.

Article 9 of Law No. 23 The year 2004 stated:

- a. Every person is prohibited from neglecting a person within his/her household, even though, according to the law applicable to him/her or because of an agreement or contract, he/she is obliged to provide life, care, or maintenance to that person.
- b. Neglect, as referred to in point a above, also applies to any person who causes economic dependency by limiting or prohibiting proper work inside or outside the home so that the victim is under the control of that person.

The implications of neglect, as stated in Article 9 of Law No. 23 of 2004 above, are further explained in Article 49 of Law No. 23 of 2004, punishable by imprisonment for a maximum of three years or a maximum fine of Rp. 15,000,000,- for anyone who neglects another person within their household.

The essence of domestic neglect should not be interpreted as including economic neglect alone but also includes the attention, protection, and affection that should be given to household members.

Domestic neglect can cause family members to suffer from malnutrition, psychological trauma, broken family relationships, and so on.

Article 49 of Law No. 23In 2004, when viewed from its objectives, it was able to guarantee the fulfillment of basic rights in the family, protect vulnerable family members, and create responsibility and obedience to the law in the household environment.

### **Legal Protection for Wives Based on Law No. 23 of 2004.**

Legal protection can be interpreted as an effort to protect the government by using available regulations or regulations. Protection is essentially a function of law. Legal protection is the protection of dignity and honor, as well as the recognition of human rights owned by legal subjects based on legal provisions from arbitrariness or as a collection of regulations or rules that will be able to protect one thing from another (M.Hadjon, 1987: 25).

Setiono (2004:3) believes that legal protection is an action or effort to protect society from arbitrary actions by authorities that are not in accordance with legal regulations to create order and peace so that humans can enjoy their dignity as human beings.

Talking about domestic violence cannot be separated from Law No. 23 in 2004. This law can be said to be an urgent step that has been taken by the Government, aiming to prevent all forms of domestic violence, protect victims of domestic violence, prosecute perpetrators of violence, and maintain the integrity of a harmonious and prosperous household (Article 4 of Law No. 23 of 2004).

The elimination of domestic violence is carried out based on the principles:

- a. Respect for human rights. Domestic violence is a serious violation of human rights and should not be tolerated. Protection of these human rights was stated in the 1945 Constitution. Article 28 I number 1 of the 1945 Constitution states that the right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right not to be prosecuted on the basis of retroactive laws are human rights that cannot be reduced under any circumstances.

b. Gender Justice and Equality,

Gender equality, as stated in Article 3 of Law No. 23 of 2004, is a condition in which women and men enjoy equal status and have the same conditions to fully realize their human rights and potential for the integrity and continuity of the household in a proportional manner.

Domestic violence often occurs in the context of gender inequality. By accommodating this principle in Law No. 23 of 2004, at least to eliminate the patriarchal culture, which is one of the roots of domestic violence, it can create a balanced and fair relationship in the household.

c. Non-discrimination and protection of victims (Article 3 of Law No. 23 of 2004).

Non-principle Discrimination is intended to provide equal legal treatment to all people without distinction between gender, religion, race, economic status, social status, and physical ability.

Thus, it can be understood that the law on the elimination of domestic violence prioritizes equal treatment for all parties.

Article 28 of the 1945 Constitution states that everyone has the right to protect themselves, their family, their honor, their dignity, and the property under their control and has the right to a sense of security and protection from the threat of fear to do or not do something that is a basic human right.

Protection of citizens is the state's obligation, especially victims of domestic violence, from various forms of violence such as physical, psychological, and sexual violence. This protection can create a sense of security for victims and is expected to prevent repeated violence. Protection of victims reaffirms the need for special treatment for victims of domestic violence aimed at recovering their physical and psychological conditions.

In relation to protection for victims of domestic violence, Article 10 of Law No. 23 of 2004 states that victims have the right to receive: protection from family, police, prosecutors, courts, advocates, social institutions, or other parties, either temporarily or based on a court order for protection; b. health services according to medical needs; c. special handling related to the confidentiality of the victim; d. assistance by social workers and legal assistance at every level of the examination process in accordance with the provisions of laws and regulations, for example, spiritual guidance services.

Further explanation in Article 10 letter a, what is meant by social institutions are social institutions or organizations that care about the problem of domestic violence, such as legal aid institutions.



A social worker is someone who has professional competence in social work obtained through formal education or practical experience in the field of social work/social welfare, which is officially recognized by the government and carries out professional social work duties.

In relation to the rights of victims, as stated in Article 10 of Law No. 23 of 2004 above, especially regarding medical services and counseling services, this still needs to be further explained so that victims do not encounter difficulties in accessing appropriate medical or counseling services, especially in remote areas, because domestic violence can occur anywhere, including remote areas.

Victimdomestic violence has the right to receive protection from law enforcement officers, but this is not explained further in Article 10 of Law No. 23 of 2004; it does not detail the protection mechanism further. To get a sense of security for victims of domestic violence, especially women or wives, revision is needed; Article 10 of Law No. 23 of 2004 also does not include sanctions for institutions or parties that do not provide protection and the rights of victims. This provision seems less legally strong, so it is often not consistently applied.

Social workers must provide services in relation to social workers (Article 22 of Law No. 23 of 2004).

- a. provide counseling to strengthen and provide a sense of security for victims,
- b. provides information regarding the victim's right to receive protection from the police and the issuance of a protection order from the court.
- c. take the victim to a safe house or alternative residence,
- d. Perform integrated coordination in providing services to victims with the police, social services, and social institutions needed by the victims.

These social work services are carried out in safe houses owned by the government, the local government, or the community.

Victimdomestic violence has the right to receive protection and services from its advocates. In terms of providing protection and services, advocates are required to: a. provide legal consultations that include information on the rights of victims and the judicial process; b. accompany victims at the investigation, prosecution, and examination levels in court and help victims to fully describe the domestic violence they have experienced; c. or coordinate with fellow law enforcers, volunteer companions, and social workers so that the judicial process runs as it should (Article 25 of Law No. 23 of 2004).

In relation to victim assistance from legal counsel, many things can still be questioned, including whether the intended legal assistance is provided by the state or the victim must find an advocate themselves to whom the victim may not necessarily have access and no less importantly related to the limited funds owned by the victim, especially for members of the community domiciled in areas far from urban areas and classified as low-income communities. Therefore, economic and geographical limitations make it difficult for victims to obtain legal assistance. From a normative perspective, assistance provided by legal counsel still needs improvement; for example, legal counsel services are provided free of charge to victims of domestic violence.

Regarding the victims' right to health services, the law does not further regulate what happens if the health services covered by the government do not cover all the victims' medical expenses. It cannot be denied that many members of society still experience violence from low-income communities.

Furthermore, Article 30 of Law No. 23 of 2004 states:

- a. Requests for protection for victims are submitted orally or in writing.
- b. If an application is submitted verbally, the clerk of the local district court is obliged to record the application.
- c. If the application for a protection order is submitted by the victim's family, friends, police, volunteer companions, or spiritual guides, the victim must give consent.
- d. Under certain circumstances, an application can be submitted without the victim's consent.

As explained in Article 30 number 4, what is meant by certain conditions, for example, fainting, coma, and life, is seriously threatened.

In relation to Article 30, attention needs to be paid to the process of applying for a protection order from the court, which often takes a long time. In this condition, victims often feel unsafe and uncomfortable during the process.

As a victim of domestic violence, it has the right to receive compensation from the perpetrator (Article 48 of Law No. 23 of 2004). The problem in this case is related to filing for compensation or damages that are often complicated, meaning they also require additional legal processes and may not be easily accessible to victims of violence who may be tired of going through the legal process.

#### 4. CONCLUSION

Based on the previous descriptions, it can be concluded that Law No. 23 of 2004 has provided legal protection for victims; however, the legal protection regulated is still not comprehensive because there are still many regulations that normatively require further elaboration, for example, assistance provided by legal counsel, whether free of charge, which is also related to health services or medical services and counseling for victims.

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