



## Legal Protection of Children and Women Victims of Household Violence Based on Constitutional Perspective

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### **Abstract**

The Law on the Elimination of Domestic Violence has been made for a long time. It is expected to be able to tackle cases of domestic violence that result in children and women becoming victims. Until now, there has been an increase in the behavior of domestic violence that has occurred, and there has not been a decrease in cases, so it is deemed necessary to renew laws and regulations that can tackle and protect children and women as victims and can provide a deterrent effect on perpetrators of domestic violence. This study aims to identify and examine legal protection for children and women victims of domestic violence based on a constitutional perspective, as well as the pros and cons that characterize it. It is hoped that the results of the research will be able to contribute ideas in efforts to maximize the protection of children and women, especially from domestic violence. This type of research is normative research originating from literature. The data obtained in this study were analyzed using qualitative juridical methods.

**Keywords:** *Child Protection; Women Protection; Domestic Violence*

### **Introduction**

Humans, as living beings carrying out life and also obtaining offspring, can certainly carry out legal marriages both religiously and legally in the country. This marriage is a legal act carried out between a man and a woman in a bond that is valid religiously and legally in a country, as mentioned in Law Number 1 of 1974 concerning Marriage. In marriage, of course, the couple will build a household with good goals for the future and have offspring from the marriage.

Over time, a married life between spouses certainly does not always run well, which does not rule out the possibility of causing problems that arise in marriage. The existence of problems in marriage is certainly the main trigger for domestic disputes, which can also result in domestic violence.

Related to domestic violence certainly has a very bad impact on running domestic life, where, in general, the victims of some of these domestic violence cases are women and children. Based on the provisions of Article 1 point 1 of Law Number 3 of 2004 concerning the Elimination of Domestic Violence, it is stated that domestic violence is any act against someone, especially women, which results

in physical, sexual, psychological, and domestic misery or suffering including threats to commit unlawful acts, coercion, or deprivation of independence within the scope of the household. In the provisions of the article, it is clarified that domestic violence is generally the victim of women. However, it does not rule out the possibility that the victims of domestic violence are children.

The existence of domestic violence can also affect children's growth and development. The Law on the elimination of domestic violence is considered ineffective; there are still many cases of domestic violence. One example of domestic violence that occurs that results in women and children being victimized is the case of a viral video spread in December 2022 that shows a man, allegedly a father, beating his child. The video shows an adult male hitting a child in the head and kicking him. The uploader of the video is the wife of the perpetrator, who also uploaded video evidence when she received physical violence, namely kicks from the perpetrator.<sup>1</sup>

Not all acts of domestic violence can be handled thoroughly because, in some cases, victims often cover up on the grounds of cultural and religious structure ties and the lack of understanding of the applicable legal system. Protection by the state and society aims to provide a sense of security for victims and take action against the perpetrators.

Therefore, it is necessary to review the legal protection of women and children victims of domestic violence in terms of positive Law and also in terms of the state constitution in order to protect its citizens, especially women and children victims of domestic violence.

Domestic violence is a legal problem that often occurs in Indonesia, but this also needs special attention, considering that many cases of domestic violence are not handled properly; this often happens because victims of domestic violence cases do not report domestic violence to the authorities. This is certainly also a legal problem in the country of Indonesia related to the elimination of domestic violence.

Women and children are often victims of domestic violence; therefore, sometimes, many women and children are victims of domestic violence. They do not know how to report it to the authorities, even though these women and children are certainly also given legal protection, so applicable legal provisions must also give perpetrators of domestic violence sanctions and guidance, which is intended so that cases of domestic violence do not occur again.

By the provisions of Article 1 paragraph (3) of the Constitution of the Republic of Indonesia, namely the 1945 Constitution of the Republic of Indonesia, the state of Indonesia is a state of Law; therefore, the Law must be able to provide legal protection to all Indonesian citizens without distinguishing their race and religion, and also the Constitution has guaranteed the protection of Law and human rights for every Indonesian citizen, this is in order to create social justice for all Indonesian people. Law has a significant role in regulating everything in a country.<sup>2</sup> Law has a very important role in a country.<sup>3</sup> The primary purpose of the Law is justice; a state of Law must uphold the values of justice<sup>4</sup>.

Every victim of domestic violence must also get proper legal protection, and this legal protection must also be balanced with good law enforcement. This research discusses the legal protection given to women and children who are victims of domestic violence in terms of the Constitution of the Republic of Indonesia.

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<sup>1</sup><https://www.medcom.id/nasional/peristiwa/5b2JxE4b-viral-video-kdrt-terhadap-anak-dan-istrinya-raden-indrajana-sofiandi-dikecam-warganet>. Diakses pada tanggal 25 Mei 2023, pada pukul 21.00 WIB.

<sup>2</sup>Arsyad Aldyan, The Indonesian State Law System Is Based On The Philosophy Of Pancasila And Constitution. RES JUDICATA. Volume 6, Nomor 1. 2023.

<sup>3</sup>Arsyad Aldyan. The Influence of Legal Culture in Society to Increase the Effectiveness of the Law to Create Legal Benefits. International Journal of Multicultural and Multireligious Understanding. Vol 9. No. 11. 2022

<sup>4</sup>Arsyad Aldyan. Et.Al. The Model of Law Enforcement Based on Pancasila Justice. Journal of Human Rights, Culture and Legal System. Vol 2. No 3. 2022.

Domestic violence, of course, is not only regulated in the Law on the Elimination of Domestic Violence, but it is also necessary to know that the highest Law in the hierarchy of laws and regulations also regulates and provides legal protection to every citizen, as well as providing protection from violence that makes life uncomfortable and makes life uneasy. Therefore, it is also necessary to look at the legal protection of children and women victims of domestic violence from the perspective of the Constitution of the Republic of Indonesia.

### ***Research Method***

The research that the author conducted is descriptive-analytical, which describes the issue of legal protection for children and women victims of domestic violence based on a constitutional perspective. This type of research is normative juridical, where the primary data collection technique uses secondary data or literature data, including primary legal material, secondary legal material, and tertiary legal material. The stages of research to collect materials, namely library research, are carried out to find secondary data, including primary, under, and tertiary legal materials. The method or procedure used to collect primary and secondary data is literature study, which is studying primary and secondary legal materials in the form of legislation, official records or minutes in making laws and judges' decisions, books, legal dictionaries, papers, magazines and newspapers. The data obtained in this study were analyzed by qualitative juridical methods, which means that the data is measured indirectly for descriptive data. Hence, the presentation does without use numbers, tables or statistical formulas.

### ***Literature Review***

In Indonesia, domestic violence, especially against wives, is often not considered a serious problem for several reasons, such as:<sup>5</sup>

- 1) There is no accurate statistical data;
- 2) Domestic violence is a deeply personal issue and is related to the sanctity of a household;
- 3) Relate to culture; and
- 4) There is fear of the husband.

According to Article 1 of the Law on the Elimination of Domestic Violence, the definition of Domestic Violence is any act against a person, especially women, that results in physical, sexual, psychological, and domestic misery or suffering as a threat to commit coercive acts, or unlawful deprivation of liberty within the scope of the household. This Law is not only for the benefit of women, but for all people and those who experience injustice in gender differences.

Domestic violence is well regulated in the Criminal Code and also regulated in the Law on the Elimination of Domestic Violence, which are both public laws that regulate the relationship of individuals with state violence is regulated in it.

### ***Discussion***

Article 5 of the Domestic Violence Law, violence that occurs in the household includes:

#### **1. Physical Violence**

Article 6 of the Law on the Elimination of Domestic Violence explains that violence in the household is an act that causes pain, falls ill or fights that cause serious injury. Physical violence can also

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<sup>5</sup> Kementerian Pemberdayaan Perempuan dan Perlindungan Anak: Jakarta, 2017, hlm. 39

be said to be actions that cause pain, injury to the body, injury or disability to a person's body, and can cause death to a person.

## 2. Psychological or Psychic Violence

Article 7 of the Law on the Elimination of Domestic Violence explains that psychological violence is an act that causes fear, loss of self-confidence in a person, loss of ability to act to do something, a sense of helplessness in oneself, and experiencing severe psychological suffering in oneself. The explanation of psychic violence is important because it proves that psychic violence is not easy and not everyone can judge that someone experienced psychic violence, including judges. So, to facilitate this proof, UUPKDRT provides a breakthrough by submitting a psychiatric visum carried out by experts in their fields.

Several acts fall into the category of psychic violence, such as insulting, threatening, or frightening as a means to impose a will, alienating the wife from the outside world. According to the Center for Gender-Perspective Health Communication, restricting wives from carrying out family planning programs and maintaining their reproductive rights as women includes psychological violence. Reproductive rights here such as:

- a. The right to information and education;
  - b. The right to health care and protection;
  - c. The right to freedom of thought;
  - d. The right to decide when and in the future of having children;
  - e. The right to life;
  - f. The right to be free from maltreatment and bad behavior;
  - g. The right to choose the form of the family; and
  - h. The right to build and plan a family.
- ### 3. Sexual Violence

According to Article 8 of the PKDRT Law, what is meant by sexual violence is coercion into sexual relations committed against people who live within the scope of the household and coercion of sexual relations against someone within the scope of the household with other people for commercial purposes or certain purposes.

## 4. Household Abandonment

The PKDRT Law explains that everyone is not allowed to neglect people within the scope of their household because, according to the Law that applies in society, there is an agreement or agreement that is obliged to provide life, care or maintenance for that person. The neglect referred to also applies to anyone who causes economic dependence by limiting and prohibiting other parties from working properly inside or outside the home and causing the victim to be under the control of that person.<sup>6</sup> Examples of neglect include not providing a living for his wife or children, letting his wife work after her husband controls her income, employing her as a wife and taking advantage of the wife's economic dependence to manage her life.

Article 20 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, "In the implementation of child protection various parties such as the State, Government, Regional Government, Community, Family, and Parents or Guardians are obliged and responsible in it. Legal protection that is carried out before children become victims of crime is preventive legal protection. Legal protection carried out after the child has become a victim of crime is repressive legal protection. The protection provided aims not to create new problems for children in the

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<sup>6</sup>Law Number 23 of 2004 concerning Domestic Violence Article 9.

future which cause children to become traumatized and damage children's growth and development in socializing.<sup>7</sup>

Legal protection for children is carried out repressively when children have become victims or perpetrators of sexual crimes. Even though children have become perpetrators, children still have inherent rights as regulated in the Law. This matter stated in Article 15 of the Child Protection Act that every child has the right to obtain protection from:

- a. Abuse in political activities;
- b. Abuse in political activities: Involvement in armed disputes;
- c. Involvement in social unrest;
- d. Involvement in events that contain elements of violence;
- e. Involvement in war And
- f. Sexual crime.

Apart from that, protection can also be given as stated in Article 25 of the Law on the Elimination of Domestic Violence; protection is carried out for:

- a. Provide legal consultations that include information regarding victims' rights and the judicial process;
- b. Accompanying victims at the stages of investigation, prosecution and examination in court proceedings and assisting victims to describe the domestic violence they experienced fully; and
- c. Coordinate with fellow law enforcers, companion volunteers, and social workers so the judicial process runs as it should.

Article 10 of the Law on the Elimination of Domestic Violence, Victims are entitled to:

- a. Protection from the family, police, prosecutors, courts, advocates, social institutions, or other parties, either temporarily or based on a stipulation of a protection order from the court;
- b. Health services according to medical needs;
- c. Handling specifically related to victim confidentiality;
- d. Assistance by social workers and legal assistance at every stage of the examination process and
- e. Spiritual guidance service.

Women and children are indeed very vulnerable to violence that occurs in the household. This is because women and children are considered weak, and men are considered to have more energy and physical strength than women and children. Women and children who are often victims of domestic violence must certainly get good legal protection, which is expected so that not many cases of domestic violence occur in the State of Indonesia.

Indonesia, as a state of Law, must provide legal protection to anyone regardless of status and gender, but in cases of domestic violence, the victims are often women and children. This is not intended to differentiate between genders, but this is because in many cases of domestic violence, the victims are often women and children.

The Law certainly protects the protection of victims of domestic violence in Indonesia and, of course, is also protected by the Constitution of the Republic of Indonesia, namely the 1945 Constitution of the Republic of Indonesia. This is a form in which the rule of Law must protect every citizen. Domestic violence is something that often occurs in Indonesia.

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<sup>7</sup> Andika Wijaya and Wida Peace, (2016). *Sexual Crime Emergency*, Sinar Graphic Publisher, Jakarta, p.89

As the basis of state law, the Constitution has the hierarchical position of the highest legislation in the State of Indonesia, namely the 1945 Constitution of the Republic of Indonesia, which also protects women and children who are vulnerable to domestic violence. Domestic violence is a criminal offense, and it is a form of violence that must be eradicated.

Legal protection of every citizen is very important for every legal state, such as in Indonesia. However, it should be noted that providing legal protection is certainly not only in a state of Law, but every state must still protect every citizen properly, especially about rights related to the survival of every citizen.

Protecting every citizen in a state of Law, especially for rights related to a decent life, is very important in every country, especially in a state of Law. The existence of domestic violence today certainly makes an important thing to discuss because this is certainly also an act that violates the provisions of Criminal Law. Therefore, legal protection for victims of domestic violence is a major thing if there is an act of domestic violence.

Legal protection for victims of domestic violence needs to be strengthened in order to eradicate the criminal acts of domestic violence that are happening today. Based on Lawrence M Friedman's legal system theory related to the legal system, 3 very important subsystems can certainly be linked in order to provide good legal protection for victims of domestic violence crimes that currently occur frequently.

When looking at the theory of the legal system from Lawrence M Friedman, which is divided into 3 subsystems, namely Legal Substance, Legal Structure, and Legal Culture, if a criminal act of domestic violence is in terms of its legal system from these 3 important subsystems, it can be explained that, in terms of legal substance related to domestic violence in Indonesia, it has been regulated in the Law, namely Law Number 23 of 2004 concerning the Elimination of Domestic Violence, which is a legal substance that provides legal protection for every victim of domestic violence.

The legal protection of children is also regulated in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. This shows that the Indonesian state, in terms of Law, especially from the substance of the Law, has provided legal protection for children and women victims of domestic violence.

However, it should be further noted that when looking at the hierarchy of laws and regulations above the Law, there is still a legal hierarchy above the Law, as stated in the Law on the Establishment of Legislation that the highest hierarchy of laws and regulations is the 1945 Constitution of the Republic of Indonesia, which is the Constitution of the Republic of Indonesia.

Still related to the substance of the Law in terms of domestic violence, the highest hierarchy of legislation, namely the Constitution of the Republic of Indonesia, also provides legal protection for every victim of domestic violence. This shows that the Indonesian Constitution also protects every citizen to have a comfortable and non-violent life. The Constitution of the Republic of Indonesia also protects every citizen to prevent violence and protect the right to life of every citizen.

The Constitution of the Republic of Indonesia, namely the 1945 Constitution of the Republic of Indonesia, has also provided a rule of Law that provides and guarantees legal protection to its citizens, including children and women victims of domestic violence; more precisely, this is regulated in Articles 28A, 28B paragraph (2), 28D, 28F, 28G, and 28I paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

Article 28A of the 1945 Constitution of the Republic of Indonesia states that "every person has the right to live and defend their life ."In connection with this article, domestic violence can, of course,

also threaten the life of a person in the household; if a person's life is threatened due to domestic violence, then this certainly violates the provisions of the state constitution, namely Article 28A.

Article 28B (2) of the 1945 Constitution of the Republic of Indonesia "every child has the right to survive, grow and receive protection from violence and discrimination ."About domestic violence that often occurs today, especially about children who are treated with domestic violence, this certainly violates the provisions of Article 28B paragraph (2) of the Constitution of the Republic of Indonesia because, basically, children must also receive protection from violence, including domestic violence and also this is intended so that children can grow properly in their survival.

Article 28D of the 1945 Constitution of the Republic of Indonesia states that "everyone has the right to guarantee fair legal protection and equality before the law ."Without taking sides, the Law must be able to provide protection properly; this is the mandate of Article 28D of the Constitution of the Republic of Indonesia. This also includes when there is domestic violence; everyone who is a victim of domestic violence, then whoever the victim is, must be guaranteed fair legal protection without discrimination.

Article 28F of the Constitution of the Republic of Indonesia 1945 "everyone has the right to communicate and obtain information to develop their personal and social environment and convey information ."When domestic violence occurs, it often happens that the victim is not allowed to communicate with other people, this is of course, also related to the frequent occurrence when there is a case of domestic violence, the perpetrator sometimes limits the victim so that the victim does not communicate well with other families, this, of course, can endanger the victim, especially the perpetrator can re-commit domestic violence, besides that prohibiting communication can also make a person's psychological condition decrease.

Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that "everyone has the right to legal protection and a sense of security from all forms of threats and doing or not doing is a human right ."Domestic violence, of course, often occurs when the perpetrator makes threats and makes the victim feel insecure. In contrast, the victim must also get good legal protection when this happens. This threat will certainly have a bad impact on the psychological condition of the victim, especially if the victims of domestic violence are children; it will also affect the growth and development of children.

Article 28G paragraph (2) of the Constitution of the Republic of Indonesia 1945, "everyone is free from torture or degrading treatment". This article is certainly an article that is closely related to cases of domestic violence that often occur, considering that domestic violence often tortures family members or also dehumanizes victims who are members of the family as well. It is clear that domestic violence is also prohibited, and the Constitution also gives its victims legal protection.

Article 28I paragraph (1) of the 1945 Constitution of the Republic of Indonesia states "the right to life, the right not to be tortured, the right to freedom of thought and conscience ."Domestic violence often occurs when the perpetrator tortures the victim. This certainly not only violates legal provisions specifically related to the elimination of domestic violence, but it also violates the Indonesian state constitution, which is the highest legal regulation in the hierarchy of laws and regulations.

Based on the existing legal substance in Indonesia, it is clear that Indonesian Law has prohibited domestic violence and also provides legal protection to victims of domestic violence. This, of course, must also be strengthened by a good legal structure. The legal structure is one of the subsystems and the legal system theory of Lawrence M. Friedman.

The legal structure related to domestic violence in Indonesia currently has several controls in place in order to minimize cases of domestic violence, including the existence of a women and children's

service unit, the police, the National Commission for Child Protection, and the National Commission for the protection of women. These agencies are all agencies tasked with the occurrence of violence against women and children.

Looking at the structure and substance of the Law in Indonesia, it has provided legal protection to victims of domestic violence; this also certainly provides repressive protection for victims of domestic violence and also includes taking action against perpetrators of domestic violence. The Indonesian state as a state of Law must provide good legal protection for every citizen.

About the third subsystem of Lawrence M Friedman's legal system theory, currently, there are still many people who do not understand the Law that violence against children and women violates human rights, child protection laws and the Law on the Elimination of Domestic Violence. In addition, there are still many children and women victims of violence who do not know about the legal protection they can get, which is also a right that every citizen must obtain. Many women victims of domestic violence are often embarrassed and afraid to report it to the authorities, and then many also make this the basis for filing for divorce.

The legal culture related to domestic violence is related to the mindset of each victim who still thinks that domestic violence is a natural act. Many think that domestic violence is not sustainable or does not happen again. Sometimes, many think that domestic violence is a disgrace and gives shame to victims and families. Hence, assumptions like this, of course, make people reluctant to report if they are victims of domestic violence. This, of course, also makes many cases of domestic violence occur but are not reported, so they are not handled properly.

### **Conclusions**

Based on the results of the research above, it can be concluded that the Indonesian state has provided good protection for women and children victims of domestic violence, which often occurs in Indonesia. In terms of legal substance, the Indonesian state has provided legal protection in Articles 28A, 28B paragraph (2), 28D, 28F, 28G, and 28I paragraph (1) of the 1945 Constitution of the Republic of Indonesia, and also in Law Number 23 of 2004 concerning the Elimination of Domestic Violence, besides that it is also regulated in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. Then, in terms of legal structure, in Indonesia, there are women's and children's service units, the police, the National Commission for Child Protection, and the National Commission for the Protection of Women as a legal structure for handling domestic violence cases. Regarding the legal culture in society, about cases of domestic violence, there are still people who are victims of domestic violence who do not report the incident, so it is not handled properly because there are still those who think that it is embarrassing and is a disgrace to the family, so it is better to cover up and of course, it is also necessary to guide families as a preventive measure for domestic violence.

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