

# Legal Protection of Women Victims of Domestic Violence from a Human Rights Perspective

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## Abstract

This research aims to explore the protection of women based on Human Rights. The research method employed a literature review. The results of the study indicate that the protection of women who are victims of Domestic Violence (DV) based on Human Rights (HR) is essential in building a just and civilized society. Nations have international obligations to ensure the protection and fulfillment of HR for all members of society, including women, as stated in the state's obligation to safeguard the interests of humanity (obligations erga omnes). International HR instruments place states as parties responsible for implementing the contents of these instruments, making international obligations imperative. The Domestic Violence Eradication Act (DVEA) serves as a legal foundation specifically regulating acts of violence within households and recognizing the rights of victims, including the right to temporary protection, healthcare services, counseling, and rehabilitation. However, there are still challenges in implementing the DVEA, and victims often hesitate to report violence due to social and economic factors and fear of societal perceptions. Fulfilling the rights of victims requires collaboration among various stakeholders, and raising awareness in society about DV issues and victims' rights is crucial for creating positive change in the protection of women who are victims of DV. In conclusion, the protection of women in DV from a HR perspective involves a strong state responsibility in creating a safe and supportive environment for women, ensuring access to justice, and upholding their HR without exception. This is a crucial step in ensuring that women can live without fear and violence within their households, in line with the HR principles that underlie the existence of every individual.

## Keywords

Human Rights; Legal Protection; Women.



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## INTRODUCTION

According to the Law of the Republic of Indonesia Number. 39 of 1999 concerning the Fundamental Rights of Persons, which is next pronounced as the Human Rights Law, describes human rights as all rights that are attached to and listed in people as God's creation, as a result of which rights must be respected, protected, and protected by the state through its instruments of regulation. Human rights come from God as their creator and must be protected by the state as the holder of the authority to make

regulations to prevent human rights (Afif and Indarti, 2019). The Human Rights Law stipulates that "every person is born freely with the same and suitable degree of person, endowed with ideas and minds to live in society, nation and state in the enthusiasm of kinship. Each person has the power over the recognition and guarantee of protection and equal legal treatment, finding clarity of law and similar treatment before the law.

Everyone has the power over the protection of human rights and the independence that people without distinction (Mahmudi et al., 2023). In essence, it intends to ensure the equality of human rights accompanying people in the life of society, nation and state. Various legal instruments, both in national and global scope, are built to prevent human rights, this matter ensures that there is a common understanding among all believers in all parts of the world that human rights are something that is meaningful and valuable and must therefore be protected and respected (Wantu, 2020).

The national legal instrument in Indonesia regarding legal human rights protection at this time is the child of the "General Statement on the Fundamental Rights of Persons (DUHAM) or the General Declaration of Human Rights in 1948". This is because the principles under human rights protection contained in the DUHAM are also embraced in the Human Rights Law in Indonesia. There are also principles under human rights protection, including; upholding the degree and degree of people in the chart of distributing collateral to every person, whether male or female, in terms of the right to profession, safety, political rights, the right to participate in the administrative, judicial and legislative aspects, the rights to learning, the right to individual independence, the right to family and reproduction (Prantiasih, 2016).

The issue of women's human rights protection is currently a serious case. The exploitation of women's subordinate rights as well as those that have been said on the face is becoming a big problem. Women who for conventional customs, especially Javanese conventional customs, are obliged to raise their hands to men, in fact this custom still exists to this day even though it has entered the understanding of gender equality from customs outside Indonesia. Javanese conventional customs are not completely wrong when they are clashed with understanding gender equality, but this matter can be a cultural advancement for Javanese citizens to be more advanced and better, namely by adhering to understanding gender equality in their culture (Rosyadah and Rahayu, 2021).

The reality of gender equality in Indonesia today, based on data launched by the Ministry of Women's Empowerment and Child Protection of the Republic of Indonesia, shows that the gender gap in some key zones in Indonesia is facing a shrinkage trend. There are also key zones that are interpreted as health and learning, opportunities, as

well as voice and bureau, and legal features needed for gender mainstreaming in development. This style of shrinking the gender gap does not mean that gender equality in Indonesia is good, while there are many things that need to be fixed in terms of gender equality cases in Indonesia (Department of Empowerment, 2020).

In the Global Human Rights Agreement "The General Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR) have been regulated by a common consensus which is the usual standard for Basic Rights of the Person, if domestic violence is a global case, each country that ratifies it must have a strong commitment to deterrence various acts of domestic violence. The arrival of the PKDRT Law as a regulatory stage is appropriate in a concrete way to be able to distribute legal protection to women's rights and avoid acts of violence against women in the domestic sphere.

This is also the case in the estimation section of the PKDRT Law which reports that all forms of violence, especially domestic violence, are violations of human rights as well as violations of human dignity and forms of discrimination that must be removed. Related to the above which is the background for researchers to carry out observations or research related to how to actually design protection by legal means as well as basic rights for women who are victims of violence that is attempted within the scope of the house. This is so that the human rights draft that promotes equality between men and women in the eyes of the law can be implemented in a concrete way.

## **METHOD**

The normative legal method used in this study focuses on the analysis of the law contained in laws and regulations and other legal documents. This approach allows researchers to examine applicable legal norms, both written and those that develop in legal practice. Thus, this study aims to understand and interpret legal rules that are relevant to the problems studied, as well as evaluate how these rules are applied in various contexts. In addition, the normative legal approach also allows for comparative analysis with other legal systems or legal developments that have occurred.

In its implementation, this study uses a descriptive-analytical method to describe and explain legal concepts related to the research topic. With this method, researchers not only describe the applicable legal rules, but also criticize them using relevant primary and secondary library sources. This critical analysis aims to find the advantages and disadvantages in the application of certain legal norms and provide better solutions

or recommendations. Thus, this study is expected to contribute to the development of legal science and offer a deeper perspective on the legal issues studied.

## **FINDINGS AND DISCUSSION**

### **Findings**

Inform The protection of women victims of Domestic Violence (KDRT) based on Human Rights (HAM) is essential in building a just and civilized society. The state has an international obligation to ensure the protection and expression of human rights for all parts of the citizenry, including women, as well as being claimed in the role of the state to prevent the needs of the people (obligations erga omnes). The global human rights instrument puts the state as the party that is obliged to carry out the content of the instrument, resulting in an imperative global role. At the national level, countries like Indonesia have arranged human rights protection in the constitution and national law, including the Law on the Elimination of Domestic Violence (PKDRT Law).

The PKDRT Law is a special legal basis for regulating acts of domestic violence and justifying the rights of victims, including the right to temporary protection, health services, assistance, and resocialization. However, there are still obstacles in the implementation of the PKDRT Law, and victims are often reluctant to report violence due to social, economic, and fear of public perception. The fulfillment of victims' rights requires cooperation between various parties, and public awareness of domestic violence issues and victims' rights is also important to create better changes in the protection of women victims of domestic violence. By understanding and implementing human rights principles, the state can be more effective in protecting women victims of domestic violence and ensuring that their rights are respected and fulfilled.

Domestic Violence is every action "To a woman, especially a woman, whose impact seems to be distress or burden by means of physical, intimate, intellectual, and/or domestic neglect is listed as a danger to carry out actions, coercion, and the struggle for freedom by unlawful means within the scope of the household" (Wardhani, 2021). The crime of domestic violence is defined as violence that is intertwined in the individual realm, usually between people who are connected through intimacy (intimate bonds, intimate bonds, adultery), blood ties or bonds regulated by law.

The state is responsible for making a legal instrument in fulfilling its obligation to produce protection and the expression of human rights for all parts of its society, none other than women. This matter is known about the role of the state in preventing the needs of the people (obligations erga omnes). Global human rights instruments generally have the characteristics of centering the country as an important aspect and putting the country as the party that must carry out the content of the global human

rights instrument. That way, the global role is imperative for each country, because the country cannot avoid that role if it is not said to violate global law. As a result, in its implementation, all state policies must be based on human rights (Nadilla, 2019).

One of the forms of wisdom based on human rights and gender equality is the wisdom of at least 30% of women's participation in ordinary determination, as well as regulated in Law No. 17 of 2017 concerning Common Determination. The role of the state as an important bearer of the role of "human rights" is found in the initial part of the ICCPR and ICESCR if considering the obligation of states under the charter of the United Nations to promote public respect for and observance of human rights and freedom, Indonesia has committed to preventing the human rights of every citizen by arranging the protection of human rights in its Constitution, especially in the Law of the Republic of Indonesia in 1945 jo in Law Number. 39 on human rights.

The protection, promotion, strengthening and venting of human rights is the responsibility of the State, especially the Ruler and Law Number. 39 on human rights essentially ensures that the role of the state is to prevent, glorify, promote and advance human rights (Rahayu, 2015). Violence is an action that directly or indirectly can cause pain or burden to the victim. Domestic violence is an act that is classified as a misdemeanor that causes a negative impact on the victim either physically, psychologically or psychologically (Setyaningrum and Arifin, 2019).

## **Discussion**

Considering the many negative impacts caused by the act of violence and the high value of the violence that exists, the provisions of the Law that regulate the Elimination of Domestic Violence are Law No. 23 of 2004. Before the existence of Law No. 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT Law), the enforcement of domestic violence problems often encountered obstacles and was not maximally tried, mainly linked to legal protection and the venting of rights to victims. The crime of bui that exists and is regulated in the Criminal Code (KUHP) often makes certain doubts for the victim, because there is an economic and social dependence on the actor, as a result of the conclusion that the victim does not tell the crime of violence that he feels.

So far, the crime law in a de facto way has not been able to prevent victims of domestic violence (KDRT). Because this determination is very common, so it has not yet estimated the difficulties felt by the victim in accessing healing, mainly because of her gender. Criminal law does not pay attention to patriarchal and aristocratic customary conditions and there is a comparison of social categories or statuses that give rise to gaps in social ties, especially domestic ties (Kasmanita, 2019). There is a

PKDRT Law that contains various updates and innovations in the protection of human rights (HAM) activities that prioritize the prevention of domestic violence (protecting) and non-criminal actions (repressive), and expanding the interpretation of domestic violence to include violence that does not only include physical, psychological and intimate violence.

However, it also lists neglect at home as an act of violence that can be punished. Remembering the high problem of violence, especially domestic violence, and legal reform is very necessary, especially related to women. This legislation innovation is needed because the existing determination has not been fulfilled and is no longer in line with the progress of citizens' laws. Therefore, it is necessary to organize the crime of domestic violence in a certain way, even though the criminal law in the usual way has arranged the persecution as well as the morality and neglect of people who want a living and alimony (Dwinanarhati, 2018).

"The purpose of the birth of the PKDRT Law is to protect victims of domestic violence. This is a good advanced stage for victims of domestic violence to be able to sue and feel more comfortable because they are protected by the law, The presence of the law ensures the realization of a country of law that is "lawful" and lawful, it is very much needed because law is the important basis of the law. The making of the PKDRT Law is made through considerations including:

- a. If every citizen of the country has a sense of comfort and freedom from all forms of violence, it is in accordance with Pancasila and the Unitary Underground Law of the Republic of Indonesia in 1945;
- b. If all forms of violence, especially domestic violence, violations of human rights and wrongs to the status of persons and forms of discrimination must be abolished;
- c. if the majority of women who are victims of domestic violence want the protection of the state and/or citizens to protect them from violence or the danger of violence, persecution or attitudes that diminish their degree;
- d. If the Indonesian legal system does not fully guarantee protection for victims of domestic violence and if the problem of violence, especially in the family, is often intertwined. The PKDRT Law is a law that regulates cases in a special way linked to acts of violence, as a result of which it contains elements of *lex special*.

The elements of the *lex special* are as follows: Corrective factors to actors; The PKDRT Law regulates the replacement of rewards from the Criminal Code which only regulates crimes and compensation, in the form of social activities and intervention

programs imposed on actors. This is intended so that the actors do not return to carry out the violent act; Protective factor for citizens; The presence of the PKDRT Law is aimed at avoiding acts of violence that are intertwined in the domestic sphere, because so far the problem of domestic violence is thought to be an exclusive problem as a result of the violence that is intertwined is not easy to intervene; Protective Factor to the victim; The PKDRT Law contains articles that provide protection to victims of violence in domestic relations, especially to subordinated parties (vulnerable groups).

Legal protection for women who are victims of domestic violence for the PKDRT Law is in the form of: protection while; determination of protection orders by the legal assembly; the provision of Special Service Rooms (RPK) at police stations; the provision of comfortable houses or substitute places to live; Provision of legal discussions by advocates to victims at the level of investigation, prosecution, and checking at the Law Assembly conference.

How to obtain protection while it is regulated in the PKDRT Law which reports if: Within a limited duration of 1 x 24 (once 2 and 4) hours from recognizing or welcoming information about domestic violence, the police must quickly distribute protection to the victim; Protection, while also defined in part (1), is handed over for a very long period of 7 days after the victim was obtained or handled; Within a duration of 1 x 24 (once 2 2 4) hours limited from the provision of protection as also defined in section (1), the police must request a message of determination of protection orders from the legal assembly.

Not only protection from the PKDRT Law, women as victims also have the right to protection to themselves from danger or threats from other parties. Until then, all victims as witnesses who face acts of violence against themselves have the rights regulated in Law Number 13 of 2006 concerning the protection of witnesses and victims. The right as defined in Law No. 13 of 2006 is the right to obtain protection by legal means in sharing explanations and evidence of what is intertwined. This protection provides encouragement for victims of domestic violence not to worry and hesitate to report to the right party if they find domestic violence.

Even though the PKDRT Law has been enforced until the case that arises after that is if not often the victim of domestic violence prefers to be silent about the violence he feels because he thinks that the violence is a bad thing for the family. As a result, the violence then continued and caused physical, psychological and psychological destruction for the victim. While many victims do not dare to tell about the violence they already have, this matter is influenced by some aspects as a result of which they are reluctant to tell the right parties about it. The aspects that cause them to be reluctant

to report it include economic dependence and the influence of the ability of law enforcement.

Informing women who are victims of domestic violence is not an easy matter. Not only domestic violence is thought to be bad for the family, the victim's concern for the residents' assumptions is also an estimate for the victim. Until then, the exploitation of victims' rights in the healing effort after it is known that the victim is someone who faces acts of violence needs to be examined. Efforts to heal victims of domestic violence start from good social supervision. Families and residents in this regard do not share bad thoughts with victims of the impact of domestic violence which can affect the victim's psychological situation because they get negative assumptions from the surrounding area. In this regard, victims of violence need to get action through services and proper assistance to heal the victim's physical, psychological or psychological health situation. The PKDRT Law shares the benchmarks of efforts to eliminate domestic violence based on the following principles (Hanafi and Sri Herlina, 2023): Basic Human Rights Service; Gender Equality and Equality; Non-discrimination; Protection to the victim.

The PKDRT Law reports that one of the goals of the elimination of domestic violence is to avoid all forms of violence that exist in the household (Mestika, 2022). This is because all forms of violence of any kind are a mistake against the human degree that is contrary to the values of human rights. The PKDRT Law, which is interpreted as the rights for victims of domestic violence, includes: Protection from the family, police, prosecutor's office, legal assembly, advocates, social bodies, or other parties is good while or sourced from the determination of protection orders from the legal assembly; Providing health services to victims of violence through medical action. Victims of violence have the power over healing services and get special medical action from the health authorities; Victims of violent acts also have the right to receive assistance and action in a special way related to the victim's confidentiality. Assistance in this matter is the assistance of briefing to victims of acts of violence which is handed over by the power of the briefing expert with the ability of intellectual description to share enlightenment for victims of violence in solving their problems; Victims of violence receive assistance in a spiritual way. The purpose of providing spiritual education is so that the victim can get an explanation and guidance on the rights and roles of God and what must be tried from religious and religious beliefs; Next, the services that must be obtained by victims of violence are resocialization services. Resocialization is a service provided by social institutions by sharing input to



victims of violence with the aim that victims can return to their social uses in the lives of residents (Dominggus, 2021).

In terms of the empowerment of the rights of victims of domestic violence, cooperation between various parties, from health workers, social workers, spiritual counselors, volunteer aides and law enforcement. The cooperation bonds that are defined as regulated in the PKDRT Law include (Wibowo, 2021): The police, to inform and work on perpetrators of domestic violence crimes; Advocates, to assist victims in judicial proceedings; Other law enforcers are to help victims in the way they are tried; The National Commission on Anti-Violence against Women (Komnas Wanita) with the obligation to assist victims of domestic violence; The Indonesian Child Protection Commission (KPAI) with the obligation to assist victims of domestic violence, especially to children.

To protect the rights of victims of domestic violence, it is necessary to shake hands from various parties such as the role of rulers who have responsibilities in efforts to prevent domestic violence as well as the active position of citizens.

## **CONCLUSION**

From the perspective of Human Rights (HAM), the protection of women who are victims of Domestic Violence (KDRT) is an imperative role of the state. The state has a responsibility to produce legal instruments that are efficient and effective in preventing women's rights, without discrimination. This includes women's right to live free from violence, the right to protection, equal access, and the support needed. Laws such as Law No. 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT Law) are an illustration of the concrete application of human rights protection for women who are victims of domestic violence. This law distributes protection while protection orders, the provision of protective facilities, and legal encouragement for victims. Not only that, the PKDRT Law justifies the rights of victims as part of the state's role to prevent, glorify, and advance human rights.

Wisdom such as the participation of at least 30% women in the normal determination is an illustration of wisdom based on human rights and gender equality. It reflects efforts to create equal access for women in the political arena, reflecting aspects of non-discrimination and justice. However, efforts to protect women in domestic violence are not only limited to making laws and policies. The importance of a holistic approach that includes education, awareness, community support, and effective handling of domestic violence cases. This requires cooperation between various parties, including the government, law enforcement, social institutions, and the general public.

Thus, the protection of women in domestic violence from a human rights perspective involves a strong state responsibility in creating a safe and supportive environment for women, ensuring access to justice, and ensuring their human rights are respected without exception. This is an important step in ensuring that women can live without fear and domestic violence, in accordance with the human rights principles that underlie the existence of each individual.

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