



## Legal Protection for Women as Victims of Domestic Violence Based on Article 1 of Law No. 23 of 2004

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**Abstract:** This study aims to analyze and find out the implementation and implementation of women's protection related to Law Number 23 of 2004 where families are harmonious, happy, and love each other. It is everyone's goal to carry out their household life as expected. The results of the study show that family conflict has always been a supporting factor for the occurrence of acts of domestic violence, There are still many people who do not understand that if a conflict occurs, women and children are very vulnerable to becoming victims. This happens because of the thought that everything that happens within the family sphere is a secret that cannot be known by the public (other people) and it is a disgrace for a husband and wife to tell about their household problems. Even so, violence is often used to describe behavior, both open violence where violence is seen, for example in fights. violence is closed, hidden, and not done directly, as in threatening behavior.

**Keywords:** Legal Protection; Women; Domestic Violence.

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### How to cite:

Kohongia, Cindra Ningsih. "Legal Protection for Women as Victims of Domestic Violence Based on Article 1 of Law No. 23 of 2004", *Estudiante Law Journal* 4. (2) (Juni, 2023): 330-338

# 1. Introduction

One of the mandates of the Opening of the 1945 Constitution of the Republic of Indonesia as the *modus vivendi* (noble agreement) for the formation of the Indonesian state in the fourth paragraph states that one of the goals of the state is "to protect the entire Indonesian nation", this has provided a bridge to the existence of holistic and comprehensive protection that become the responsibility of the state along with the elements of the state inherent in it. As is well known, that Of course, if you read the nuances of kebatinan from the birth certificates of this country, then substantively this country was formed to be free from all forms of oppression, both physically and psychologically for all the people and society mediating the Unitary State of the Republic of Indonesia, including in this case is the child.<sup>1</sup>

Indonesia is the highest agreement of the state's formers, even though it has experienced a constitutional test when the 1945 Constitution was amended into the Constitution of the United Republic of Indonesia in 1949, even so the recognition of the regions under the auspices of the State of Indonesia is still recognized.<sup>2</sup> An absolute requirement for state sovereignty is the existence of a society that obeys the constitution and its government.<sup>3</sup> Because the essence of the constitution is the conception of the state which is the basis and limitation of the constellation of the state administration system.<sup>4</sup> Therefore, in legal politics, a legal discovery and new law-making that is in accordance with the goals of the State is a value that must be implemented in order to achieve legal supremacy and justice.<sup>5</sup>

In our daily lives, even in society, in order to make ends meet, there are often crimes and violations committed by certain people and people who threaten some members of society, which in law is known as criminal acts.<sup>6</sup> At present, not only the crime rate or quantity of crime is increasing but also the type of crime or quality has developed rapidly in Indonesia. Criminal sanctions are seen as an effective solution in tackling this problem. Criminal sanctions are a manifestation of the state's responsibility to maintain security and order as well as efforts to protect the law for its citizens. This is a logical consequence

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<sup>1</sup> N. M. Alhasni, M. R., Badu, L. W., & Nggilu, "Menakar Peran Kepolisian Dalam Mencegah Tindak Pidana Pencabulan Terhadap Anak Di Bawah Umur," *Jurnal Legalitas* 12, no. 2 (2019): 110-23.

<sup>2</sup> Novendri M. Nggilu, "Tinjauan Yuridis Pengaturan Sanksi Pidana Dalam Peraturan Daerah Provinsi Gorontalo," *Lambung Mangkurat Law Journal*. 5, No. 2 (2020): 109-121., 110

<sup>3</sup> Mellisa Towadi and Nur Mohamad Kasim, "An Indication of China ' s Policy towards Uighurs and Its Implications by International Law Aspects." *Jambura Law Review*. 3, No. 01 (2021): 55-71., 69

<sup>4</sup> Ahmad and Novendri M. Ngilu Faculty, "The Pulse of the Fifth Amendment to the 1945 Constitution Through the Involvement of the Constitutional Court as the Principle of the Guardian of the Constitution." *Constitutional Journal*. 16, No. 4 (2019): 785-808., 791

<sup>5</sup> Mohamad Hidayat Muhtar, "Model Politik Hukum Pemberantasan Korupsi Di Indonesia Dalam Rangka Harmonisasi Lembaga Penegak Hukum." *Jambura Law Review*. 1, No. 1 (2019): 68-93., 73

<sup>6</sup> Dian Ekawaty Ismail and Mohamad Taufiq Zulfikar Sarson, "Criminology Analysis of Women's as Perpetrators of Domestic Violence Crimes," *Jambura Law Review* 3, no. 1 (2021): 57-76., 58

of the concept of forming a state which, according to JJ Rosseau, is based on community agreements. Furthermore, the people agreed to enter into a noble agreement (*modus vivendi*) which was set forth in a basic law in the form of the state constitution. <sup>7</sup> Legal protection is really needed because of efforts to integrate various needs in associations so that there are no conflicts between needs and can enjoy all the rights granted by law. <sup>8</sup> The state is firmly obliged to try to fulfill the rights of every citizen. <sup>9</sup>

Many things can be defined as causes of violence against women that affect harmony in the family (especially in the household). Among the main reasons, the existence of unlimited family needs between humans in everyday life is very positive on the one hand because humans are very dependent on one another in meeting their needs. However, on the other hand, this relationship sometimes creates conflicts of interest that can lead to acts of crime (violence) by one party against another. <sup>10</sup>

The development of the women's movement to fight for their rights is not only developing in many countries in the world, but also in Indonesia. We realize that the injustices that women suffer as a result of the culture of society (prioritizing men) must end. Because this injustice can lead to violence against women both in the domestic and public spheres, which is then known as gender-based violence. <sup>11</sup>

The division of gender roles between husband and wife in the distribution of roles and decision-making will make it easier to carry out all family functions so as to form harmony in the family. <sup>12</sup>

In providing protection for victims and carrying out acts of domestic violence behavior, Law No. 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT), on September 22, 2004 further strengthened the legal construction in eradicating violence in Indonesia, although the process law enforcers still found some obstacles.

With the Law on the Elimination of Domestic Violence being formed, it can be seen that there are similarities in the conditions of many women who are not protected in their marriages. Based on this situation, Law no. 1 of 1974 concerning Marriage. <sup>13</sup>

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<sup>7</sup> Ramdan Kasim, "Dehumanisasi Pada Penerapan Hukum Pidana Secara Berlebihan (Overspanning van Het Straftrecht)," *Jambura Law Review*. 2, No. 1 (2020): 1-29., 3

<sup>8</sup> Jufryanto Puluhulawa, Mellisa Towadi, and Vifi Swarianata, "Perlindungan Hukum Situs Bawah Air Leato / Japanese Cargo Wreck The Legal Protection of The Leato Underwater Site" *Jurnal Reformasi Hukum* 24. No. 2 (2020): 189-208., 197

<sup>9</sup> Julius Mandjo, "The Right to Obtain Free Assistance and Legal Protection for The Indigent People Through Legal Assistance Organizations." *Jambura Law Review*. 3, No. 02 (2021): 365-77., 375

<sup>10</sup> Edwin Manumpahi, "Kajian Kekerasan Terhadap Psikologi Anak," *Jurnal Hukum V*, no. 2 (2016): 375.

<sup>11</sup> Umin Kago, "Bentuk-Bentuk Kekerasan Yang Dialami Perempuan," *Jurnal Legalitas* 2, no. 1 (2009): 13.

<sup>12</sup> Yohana Susana Yembise, "Pemberdayaan Dan Perlindungan Perempuan (PPPA) Sebagai Kunci Keluarga Harmonis," *Jurnal Hukum* 3, no. 2 (2019): 100.

<sup>13</sup> Undang-Undang Perkawinan No. 1 tahun 1974.

Article 27 of the Civil Code states that at the same time a man is only allowed to have one woman as his wife and vice versa. This statement emphasizes the principle of a monogamous marriage, thus polygamous and polyandry marriages are clearly against the law and are even considered as a crime.<sup>14</sup>

We can conclude that there are differences in strength and power between women and men in the sense of differences that are perceived as rights and abilities to exercise self-control over one another.<sup>15</sup>

Data on complaints of cases of acts of violence against women obtained from the National Family Planning Population Agency (BKKBN) together with the Office of Population Control, Family Planning, Women's Empowerment and Child Protection (DP2KBP3A), North Bolaang Mongondow Regency.

From the table it can be seen that the number of cases has increased from year to year, namely in 2018 there were 7 cases of violence against women, in 2019 it increased to 10 cases, then in 2020 it experienced a significant increase to 21 cases.

Furthermore, based on the phenomenon above, the researcher conducted an analysis in the form of Law No. 23 of 2004 and Legal Protection of Women as Victims of Domestic Violence based on the points of the problem of violence that exist in the household sphere.

This research focuses on cases where violence is carried out openly, what factors cause violence to occur frequently. How is the legal protection for victims? The problem is how far the legal system is applied in cases of violence against women in the household against the level of harmony in the family itself based on article 1 point 1 of Law No. 23 of 2004.

The reason for choosing Legal Protection for Women as Victims of Domestic Violence Based on Article 1 point 1 of Law No. 23 of 2004 namely violence perpetrated against women in terms of gender discrimination aspects, in which women are often victims of violence

In the era of modernization, violence experienced by women in the form of activity restrictions, physical violence, economic violence also often occurs, namely the exploitation of women, cases of selling one's own wife are not a strange thing, another phenomenon that neglects family members.

Thus, the researcher is interested in conducting research related to **Legal Protection for Women as Victims of Domestic Violence Based on Article 1 of Law No. 23 of 2004.**

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<sup>14</sup>Ibid Hal 43.

<sup>15</sup> Ibid Hal 69

## 2. method

This type of research is normative-empirical research, a type of research based on norms or laws and regulations examines the process of working or interacting with law in society. In the process of working the law, what is meant is to examine more deeply whether the legal process that applies in society has been running properly or not, so that juridical sociological legal research which obtains data from primary and secondary, it is hoped that from this approach it can be known how the law is applied. empirically it is a symptom of society that can be studied as a cause that gives rise to consequences on various aspects of social life.<sup>16</sup>

## 3. Analysis And Discussion

### **Factors Influencing the Occurrence of Domestic Violence Based on a Review of Law Number 23 of 2004**

Factors Causing Domestic Violence Factors in the occurrence of domestic violence can be caused by the existence of an unequal power relationship between husband and wife. Patriarchal culture places men or husbands at a higher level of power than women or wives, so that women are often considered the property of their husbands when they are married. This creates inequality in the relationship because the husband has more power over his wife than his own wife.

Economic dependency. Patriarchal education and culture that has become part of society gives the view that a wife should really depend on her husband. This phenomenon often makes some wives not used to being independent or economically empowered, so when domestic violence occurs the wife has to survive. This kind of behavior also makes the husband feel that he has more power over his wife's helplessness.

Violence as a tool to resolve conflict. Violence against wives usually occurs against the background of a mismatch between the husband's expectations and the reality. Violence is carried out with the aim that the wife can fulfill her expectations without putting up a fight because of her powerlessness. This phenomenon is also still one of the cultural bases in society that if a woman or wife does not obey, then they must be treated harshly so that she becomes obedient.

Competition. Basically human life is full of competition and never want to lose, as well as with a husband and wife. Competition between husband and wife occurs as a result of inequality between the two to fulfill each other's desires, both in education, social relations, economic domination, working conditions and society can lead to competition which can lead to domestic violence. Culture also creates the view that men should not

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<sup>16</sup> Mukti Fajar dan Yulianto Achmad, *Dualisme Penelitian Hukum Normatif & Empiris* (Yogyakarta: Pustaka Pelajar, 2015).

lose or be inferior to women, so it is not surprising that violence against women or wives occurs only to fulfill the ego of men or husbands.

frustrated. Violence can also occur due to psychological fatigue which causes self-frustration and a husband's lack of ability to cope with stress. Frustration arises due to a discrepancy between expectations and reality that is felt by the husband. This is common for couples who are not ready to marry, husbands who do not have a job and steady income to meet household needs, and are still completely limited in their freedom. In this case, the husband usually seeks an escape from drunkenness and other negative actions which results in taking the form of violence against his wife, whether physically, sexually, psychologically, or even abandonment of the family.

Less opportunities for women in the legal process. In court proceedings, there is very little opportunity for the wife to reveal the violence she has experienced. This can also be seen from the lack of KUHAP discussing the rights and obligations of the wife as a victim, because her position is only as a reporting witness or victim witness. This is important because the victim's report to the law enforcement agencies may not be considered a crime but simply a misunderstanding within the family.

In the jurisdiction of North Bolaang Mongondow Regency, the lack of courage for victims to report makes it difficult for the government to monitor its citizens. It is difficult for the government to provide protection because the government itself is not aware of any acts of violence.

Violence that occurred in the legal area of North Bolaang Mongondow Regency which often occurred both physical violence and psychological violence. Physical violence in the form of beatings, kicks, and anything that hurts physically. Psychological violence committed in the form of polygamy and humiliation. The thing that becomes an obstacle for the government in dealing with cases that occur is because victims tend to cover up cases of violence committed against victims.

Seeing this phenomenon, several activists concerned about women in North Bolaang Mongondow took the initiative to help and unite to help an institution that cooperates with the government to deal with the problem of violence against women. The agency is called the Population Control Service, Family Planning for Women's Empowerment and Child Protection (DP2KBP3A) of North Bolaang Mongondow Regency. The North Bolaang Mongondow Regency Government together with DP2KBP3A work together to handle cases of violence that occur, this form of cooperation is when there are reports of acts of violence against its citizens, the government acts as a companion for victims

The issuance of various conventions or laws with a gender perspective to protect women from human rights violations has not been able to fully guarantee women from human rights violations. According to the Big Indonesian Dictionary (KBBI) Protection itself is defined as a process, method and act of protecting. Meanwhile, what is meant by legal

protection is an act to protect and protect legal subjects, based on the applicable laws and regulations.<sup>17</sup>

One of the protection efforts is the fulfillment of the rights of Witnesses and Victims. Because without adequate protection for witnesses and victims it will be very difficult for them to be willing to give their testimony. Especially in cases of crimes against humanity where the perpetrators are usually people or groups who have power or have power. So that in the end this provides an opportunity for the creation of impunity that has been enjoyed by the perpetrators of crimes against humanity.<sup>18</sup>

While legal protection is all efforts aimed at providing a sense of security to victims carried out by the family, social institutions, police, courts, or other parties who are witnesses to crimes. Both temporary and based on a court decision.

In other words, it can be said that legal protection is a separate picture of the function of the law itself which provides a concept where the law provides justice, order, certainty, benefit and peace.

The government is still working on improving the legal system to make it more gender responsive, by issuing legal regulations, one of which is by issuing various legal regulations for both witnesses and victims. Or for the interests of women.<sup>19</sup>

Citizens' constitutional rights which include human rights and citizen rights guaranteed in the 1945 Constitution apply to every citizen. Where it can be seen from the formulation that uses the phrases "everyone", "all citizens", "every citizen", or "every citizen", which shows that constitutional rights are owned by every individual citizen without distinction either based on ethnicity, religion, belief, politics, or gender. The handling effort is the fulfillment of the rights of women victims of domestic violence.

#### **4. Conclusion**

Legal protection for women that directly regulates domestic violence has been included in several laws such as; Law No. 23 of 2004 (Articles 44, 45, 46, 47, 48, and 49), and Law No. 21 of 2007 (Articles 2, 3, 4, and 12). Of the many provisions in various laws and regulations that regulate the legal protection of women, they still do not maximally protect women from domestic violence because there is an asymmetry between one law and another and the lack of understanding of gender adds to the imperfections in the provisions made in the form of laws as stipulated needed by society, especially women as victims of violence.

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<sup>17</sup>Kamus Besar Bahasa Indonesia(KBBI)

<sup>18</sup>Artikel: Damar Junior dkk, 2009, *Perlindungan Terhadap Saksi dan Korban*, KOMISI NASIONAL ANTI KEKERASAN TERHADAP PEREMPUAN.Jakarta. Hal 11.

<sup>19</sup> Anita Rahmawaty, "Perlindungan Hukum Atas Kekerasan Terhadap Perempuan," *Jurnal 7*, no. 1 (2014): 85.

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