

Legal Policies for Eradicating Criminal Acts of Domestic Violence

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ABSTRACT

This study is about a legal study of the enforcement of Law No. 23 of 2004 concerning the elimination of domestic violence. It is described and analyzed more deeply on the principle of equality of law, for handling cases of domestic violence, the implementation of equality before the law, and models of legal protection. justice for perpetrators and victims of violence. In addition, this study aims to examine appropriate legal service procedures as well as legal protection for victims and perpetrators of crimes of domestic violence. On the other hand, there are cooperative efforts to recover victims of domestic violence based on Ministerial Regulation No. 4 of 2006 concerning the implementation and cooperation in the recovery of victims of domestic violence. The most important essence is the eradication of criminal acts of violence in the household which aims to make the conflicting parties aware in the home to be able to foster household integrity which affects children and people around the family. The method used in this study is empirical juridical and is described using primary and secondary data sources with literature review techniques using primary legal materials, secondary legal materials and tertiary legal materials. The primary legal material is in the form of applicable laws and regulations. With this study, it is hoped that the best system solution for handling cases of domestic violence in Indonesia will be obtained.

Keywords: Criminal Acts, Domestic Violence, Legal, Policies.

ABSTRAK

Penelitian ini merupakan kajian hukum terhadap penegakan Undang-Undang No. 23 Tahun 2004 tentang penghapusan kekerasan dalam rumah tangga. Dideskripsikan dan dianalisis lebih dalam mengenai asas persamaan kedudukan hukum, untuk penanganan kasus kekerasan dalam rumah tangga, implementasi persamaan di hadapan hukum, dan model perlindungan hukum yang berkeadilan bagi pelaku dan korban kekerasan. Selain itu, penelitian ini bertujuan untuk mengkaji prosedur pelayanan hukum yang tepat serta perlindungan hukum bagi korban dan pelaku tindak pidana kekerasan dalam rumah tangga. Di sisi lain, terdapat upaya kerjasama pemulihan korban KDRT berdasarkan Peraturan Menteri No. 4 Tahun 2006 tentang penyelenggaraan dan kerjasama pemulihan korban KDRT. Esensi yang paling penting adalah pemberantasan tindak pidana kekerasan dalam rumah tangga yang bertujuan untuk menyadarkan para pihak yang bertikai di dalam rumah tangga untuk dapat membina keutuhan rumah tangga yang berimbas pada anak dan orang di sekitar keluarga. Metode yang digunakan dalam penelitian ini adalah yuridis empiris dan diuraikan dengan menggunakan sumber data primer dan sekunder dengan teknik studi kepustakaan dengan menggunakan bahan hukum primer, bahan hukum sekunder dan bahan hukum tersier.

Bahan hukum primer berupa peraturan perundang-undangan yang berlaku. Dengan adanya penelitian ini, diharapkan dapat diperoleh solusi sistem yang terbaik bagi penanganan kasus kekerasan dalam rumah tangga di Indonesia.

Kata kunci: Tindak Pidana, Kekerasan Dalam Rumah Tangga, Hukum, Kebijakan

Istinbath: Jurnal Hukum

Website: <http://e-journal.metrouniv.ac.id/index.php/istinbath/index>

Received: 2024-04-02 | Revised: 2024-05-21 | Accepted: 2024-07-07 | Published: 2024-07-31.



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Introduction

All citizens in essence have the same rights and obligations. This is expressly regulated in Article 27 paragraph 1 of the 1945 Constitution of the Republic of Indonesia, that: "All citizens have the same position before law and government and are obliged to uphold that law and government without exception". Article 27 paragraph 2 at the same time emphasizes that every citizen, both men and women have the same position before the law, Article 27 paragraph 3 emphasizes that every citizen has the right and obligation to participate in efforts to defend the State. According to Article 27 chapter X concerning citizens and occupation. Women are equal partners for men and vice versa, have the same rights, obligations and opportunities in every field of life including in the household.¹ The family is the first social group in human life, where he learns and expresses himself as a social human being in social interaction with his group.² The new marriage and family will also give rise to rights and obligations as husband and wife in the family.³

Law Number 1 of 1974 concerning Marriage aims to prevent the life between husband and wife from disputes or physical actions (violence) which tend to hurt and endanger a person's life through the arrangement of equal rights and obligations between husband and wife in household life. Recently, violence in society seems to be increasing.⁴ Violence does not only occur in the public space, but also occurs in the domestic space (household)⁵. Domestic violence is unique and specific because this crime occurs within the household and takes place in intimate personal relationships, namely between husband and wife,

¹ Gilang Kusuma Hadi et al, Legal Protection for Husbands as Victims of Domestic Violence Perpetrated by Wives, GEMA Journal, THN XXVII/50/February - July 2015. p. 1

² Ridwan. 2006. Gender Based Violence (Theological, Juridical and Sociological Reconstruction) Purwokert: Center for Gender Studies (PSG) STAIN Purwokerto. p. 12

³ Abd. Rahman Ghazaly. 2006. Fiqh Munakahat. Jakarta: Kencana. p. 7

⁴ Moerti Hadiarti Soeroso. 2010. Domestic Violence in a Juridical-Victimological Perspective. Jakarta: Sinar Graphics. p. 23

⁵ La Jamaa, and Hadidjah. 2008. Islamic Law and the Law Against Domestic Violence. Surabaya: PT. BinaScience. h. 17

parents and children or between children and children or with people working in the household who live stay.

The history of domestic violence can be traced in writing since 612 BC in the Assyrian Empire, where criminal sanctions were imposed in the form of beatings or injuries to husbands who abused their wives by cutting off one of their fingers. On the other hand,⁶ a woman who beats her husband must pay 30 Mina and be beaten twenty times with a rattan.⁷ Domestic violence is one of the various forms of criminal acts of violence that occur a lot and have been identified in the international community.⁸ Domestic violence is a phenomenon that until now has been an atrocity that is very difficult to monitor. This is due to the fact that some people still have the wrong view that the problem of domestic violence is an internal family problem and is very personal in nature so that outsiders have no right to interfere in it.⁹ This violence often occurs against people who are closely related, such as husband and wife, prospective husband and wife, family members or household servants.

Policy for the formation of Law no. 23 of 2004 concerning the Elimination of Domestic Violence departs from the principle that 'every citizen has the right to feel safe and free from all forms of violence' in accordance with the philosophy of Pancasila and the 1945 Constitution of the Republic of Indonesia. This view is also based on Article 28 of the 1945¹⁰ Constitution of the Republic of Indonesia chapter XA concerning Human Rights and their amendments: Article 28 G Paragraph (1) of the 1945 Constitution of the Republic of Indonesia stipulates that "Everyone has the right to protection of himself/herself, family, honor, dignity and property under his 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 human right".¹¹ Article 28 H paragraph (2) of the 1945 Constitution of the Republic of Indonesia stipulates that "Every person has the right to receive special facilities and treatment to obtain equal opportunities and benefits in order to achieve equality and justice"¹².

The issuance of Law No. 23 of 2004 concerning the Elimination of Domestic Violence was also followed by the issuance of Ministerial Regulation No. 902 of 2011 by the State Ministry for Women's Empowerment and Child Protection. Issuance of this Ministerial Regulation with the consideration that: a) everyone has the right to be free from torture, punishment or cruel, inhumane, degrading human dignity; b) that Law Number 23 of 2004 concerning the Elimination of Domestic Violence and Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons oblige the public to carry out prevention and treatment of victims of violence; c) that efforts to eliminate violence against women need to be continued through activities to increase understanding of all elements of society including civil servants. The issuance of this Ministerial Regulation is a follow-up to Law Number 23 of 2004 concerning Domestic Violence, whereby with this regulation the ministry in charge of this task can implement the Law that has been promulgated. Based on the Regulation of the State Minister for Women's Empowerment and Child Protection of

⁶ Aroma Elmina Martha, 2013. *The Process of Forming Violence Laws Against Women in Indonesia and Malaysia*, Aswaja Pressindo, Yogyakarta.p. 13.

⁷ Ibid

⁸ Ibid.p.1

⁹ Anonymous, 1999. *Facing Domestic Violence*, Kalyanamitra-Women's Information and Communication Center, Jakarta. p. 4

¹⁰ Aroma Elmona Martha, *Women of Violence and the Law*, (Yogyakarta: UII Press, 2007) Print I. p. 137

¹¹ People's Consultative Assembly, Republic of Indonesia, 2013. *1945 Constitution of the Republic of Indonesia*, Secretariat General of the MPR RI, Jakarta,p. 157

¹² Ibid,p. 158

the Republic of Indonesia number 18 of 2011 as regulated in Article 1 in the Ministerial Regulation.

Referring to article 1 of the Ministerial Regulation above, it implies that violence against women is any action based on gender differences, this means that this law tends to legalize the interests of certain types of people or groups and ignore other people or groups, even though everyone existing in a jurisdiction of a country can be treated equally before the law. In Article 28 I of the 1945 Constitution of the Republic of Indonesia it is stated that; 1) The right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to have a 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 a retroactive basis are human rights. which cannot be reduced under any circumstances. 2) Everyone is free from discriminatory treatment on any basis and has the right to protection against such discriminatory treatment. 3) Cultural identity and rights of traditional communities are respected in line with the times and civilizations. 4) The protection, promotion, enforcement and fulfillment of human rights is the responsibility of the state, especially the government. 5) To uphold and protect human rights in accordance with the principles of a democratic rule of law, the implementation of human rights is guaranteed, regulated and set forth in laws and regulations.

On the other hand, Article 1 of Law Number 1 Year 1974 says that "Marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family or household based on Belief in One Almighty God." In essence, it can be interpreted that marriage is a bond that legalizes the relationship between a man and a woman as husband and wife to form a household that is expected to achieve happiness until the end of life. Viewed from the civil aspect, the provisions of Article 26 of the Indonesian Civil Code (Code of Civil law) stipulate that "the law views the matter of marriage only in civil relations". Based on these provisions, Djaja S. Meliala is of the opinion that in the Civil Code, marriage is solely a civil agreement, it has nothing to do with the religion of the parties (the prospective bride and groom).¹³ Subekti explained that the article intends to state that a valid marriage is only a marriage that fulfills the requirements stipulated in the Civil Code (*Burgelijk Wetboek*), and religious conditions and regulations are set aside.¹⁴

The existence of a marriage bond between a man and a woman as husband and wife gives rise to rights and obligations, in this relationship both must be equally responsible. Likewise regarding the obligations of husband and wife in fostering a household regulated in Article 30 of Law no. 1 of 1974, namely "Husband and wife bear a noble obligation to uphold the household as the basis of the structure of society." Article 33 Law no. 1 of 1974. The obligation of a husband and wife in the household is the same as it is stipulated that the husband is obliged to protect his wife and provide all household needs according to his ability as regulated in Article 34 paragraph (1) of Law no. 1 of 1974, while the wife is obliged to manage household affairs as well as possible. Talking about the obligations of husband and wife in the household, of course the rights of husband and wife in the household are also regulated in Law no. 1 of 1974, especially in Article 31 paragraph (1) which states that "The rights and obligations of a wife are in balance with the rights and position of the husband in domestic life and social life together in society." Thus husband

¹³ Djaja S. Meliala, 2006, *Development of Civil Law concerning People and Family Law*, Nuansa Aulia, Bandung, p. 47.

¹⁴ Subekti, 1989, *Fundamentals of Civil Law*, Intermedia, Jakarta, p. 23

and wife have the right to carry out legal actions as regulated in Article 31 paragraph (2) of Law no. 1 of 1974.

Regarding the position in the household, it is regulated in Article 31 paragraph (3) of Law no. 1 of 1974 that the husband is the head of the family and the wife is the housewife. The rights and obligations of husband and wife in household life are regulated in Law no. 1 of 1974 with the aim of forming a harmonious family and mutual respect for one another. Law No. 39 of 1999 concerning Human Rights also stipulates that 'as creatures with dignity, humans have a number of basic rights that must be protected, such as the right to life, the right to opinion, the right to assemble, and the right to religion and belief. Human rights values teach that these basic human rights are protected and respected. Human rights teach the principles of equality and human freedom so that there may be no discrimination, exploitation and violence against humans in any form and also there are no restrictions or restraints on basic human freedoms. The treatment of the Human Rights Law is based on the 1945 Constitution of the Republic of Indonesia CHAPTER XA concerning human rights, based on Article 28A and Article 28B which states that, Article 28A: Everyone has the right to live and has the right to defend his life and existence. Article 28B: 1) Everyone has the right to form a family and continue offspring through legal marriage, 2) Every child has the right to survive, grow and develop and is entitled to protection from violence and discrimination.

Based on the two articles of the Republic of Indonesia Constitution stated above, the philosophical considerations for establishing the Republic of Indonesia Law Number 23 of 2004 concerning the elimination of domestic violence are;¹⁵ a) every citizen has the right to feel safe and free from all forms of violence in accordance with the philosophy of Pancasila and the 1945 Constitution of the Republic of Indonesia; b) all forms of violence, especially domestic violence, are violations of human rights and crimes against human dignity as well as forms of discrimination that must be eliminated, c) victims of domestic violence, most of whom are women, must receive protection from the state and/or society to avoid and be free from violence or threats of violence, torture, or treatment that degrades human dignity; d) whereas in reality there are many cases of domestic violence, while the criminal justice system in Indonesia has not guaranteed protection for victims of domestic violence; e) based on the considerations referred to in letters a, b, c, and d, it is necessary to stipulate a Law on the Elimination of Domestic Violence.

The birth of Republic of Indonesia Law number 23 of 2004 concerning the elimination of domestic violence as the forerunner of the state's desire to eliminate acts of violence in domestic life, where acts of violence are most manifest because there is conflict in the household. When acts of violence occur in a household between husband and wife, there are perpetrators and there are victims. The existence of violence reminds us of a situation that is rough, painful and has a negative impact. However, most people only understand violence as a form of physical behavior that is violent and full of cruelty, giving rise to other forms of physical behavior (violence or violence).

In the legal dictionary, violence is defined as an act that uses physical or physical force which can be predicted as a result of which the party affected by the act becomes unconscious, helpless or unable to do something.¹⁶ According to the Elimination of Domestic Violence Law Number 23 of 2004 article 1, paragraph 1, violence in the family is any act against a person, especially women, which results in physical, sexual, psychological

¹⁵ The basis for the consideration of the stipulation of Law No. 23 of 2004 concerning the elimination of domestic violence

¹⁶ Soesilo Prajogo 2007, Dictionary of International and Indonesian Law, Jakarta: Wipress, p. 249.

misery or suffering, and/or neglect of the household including threats to commit acts, coercion, or unlawful deprivation of liberty within the household sphere. Behind the violence of a husband against a wife which is the main focus of this Law, the violence of a wife against a husband is not seen on the other side of this Law.

This assumption can be put forward as a weakness of this Law, and can be considered as not accommodating the interests of the rights and obligations of a husband towards his wife in a household. Cases of domestic violence are a phenomenon like an iceberg which has recently been surfacing and increasing in number from time to time. The general assumption that women are always subordinated to the image of a victim of violence by a husband, should not be set in stone that violence in a household is always born from a husband, but violence also often comes from a wife against a husband. It could be that the violence occurred due to an imbalance in social status between the two, where the wife has a better social status than a husband. The wife does not carry out her obligations to her husband, the wife commits legal acts that are contrary to human rights, the wife violates the ethics or manners of married life both from a religious, cultural, social and political standpoint. The intended social status imbalance can weaken the husband's position as the head of the household, even though the husband carries out his responsibilities as the head of the household properly, but with a different social status position and a wife's social position is more dominant in society, both in the political field and culture also influence their social status in the midst of a household life. With a wife's social status like this, it causes the birth of a dominant arrogant attitude towards her husband by being condescending, isolating, belittling a husband. With attitudes like this, it arouses the husband's excessive sensitivity, and sometimes angers and irritates a husband so that it becomes the cause of acts of violence against a wife.

Conflicts in a household often occur not only due to physical violence, but also caused by psychological factors, from a wife to her husband. Therefore, it is appropriate that violence that occurs in a household is not only seen from the physical aspect, but must also be seen from the psychological aspect which is the cause of the violence that occurs, then the truth is concluded for a legal event and used as a basis for thinking we determine someone declared guilty, logically a legal event or the occurrence of a criminal act can occur for any reason. For this reason, domestic violence should not be seen as the end of an act of violence and is subordinated to an identical husband with violence, but the cause must also be seen as the reason for the occurrence of violence against a wife, and the violence that is usually perpetrated by a wife against her husband is mostly physical in nature, as stated by Arif Rohman that; Based on its form, violence can be classified into physical, psychological, and structural violence which includes: ¹⁷a) Physical violence, namely real violence that can be seen, felt by the body. The form of physical violence is in the form of taking away one's health or normal abilities of the body, up to the loss of one's life. Examples of persecution, beatings, murders, etc. b) Psychological violence, namely violence that has a spiritual or mental target so that it can reduce or even eliminate the normal abilities of the soul. Examples of lies, indoctrination, threats, and pressure, c) Structural violence, namely violence perpetrated by individuals or groups using the system, law, economy, or customs that exist in society. Therefore, this violence is difficult to recognize. Structural violence that occurs creates inequality in resources, education, income, intelligence, justice, and the authority to make decisions. This situation can affect a person's physical and mental.

¹⁷ Aroma Elmina Martha, *Women of Violence and the Law*, (Yogyakarta : UII Press, 2007) Print I p.30

Since the publication of Law Number 23 of 2004 concerning the Elimination of Domestic Violence, the government has dared to take over the legal area which previously included the domestic sphere, now it is now the public domain. So far, there has been a view that acts of violence against women, wives and children are seen as something normal and it is treated as a mere domestic conflict. This view is exacerbated by the existence of myths that demean the dignity of wives, women and children, on the other hand, husbands/fathers who are dominant over family members in the household with an excessive attitude as the unequal power relations between women and men take place in society. households, even accepted as a condition that really perpetuates domestic violence. From there the Elimination of Domestic Violence Law was born, which is the implementation of Law Number 7 of 1984 concerning Ratification of the Convention Concerning the Elimination of All Forms of Discrimination Against Women. Violence against women and children as well as other forms of discrimination is a global issue as well as a violation of human rights that must be resolved by the State and the wider community. With the Elimination of Domestic Violence Law, now all forms of domestic violence become criminal acts. One of the impacts of implementing domestic violence is the emergence of public awareness of domestic violence. Not a few people are braver to report cases of violence because of the protection of victims of domestic violence. Apart from that, various problems arose in completing the domestic violence legal process. In Law Number 23 of 2004 concerning Elimination of Domestic Violence in article 5 it is explained that domestic violence includes physical violence, sexual violence and neglect of the household. Physical violence is an act that results in pain, falling ill, or serious injury. Psychological violence is seen as an act that results in fear, loss of self-confidence, loss of the ability to act, a feeling of helplessness, and/or severe psychological suffering to someone. Sexual violence includes forcing sexual relations against people who live in the household and against someone within the scope of the household with other people for commercial purposes and/or certain purposes.¹⁸

With the Elimination of Domestic Violence regulation, all forms of domestic violence are no longer the internal domain of the family but are a public domain. For this reason, the public or the wider community, based on the Domestic Violence Law, can make efforts that are in accordance with their capabilities, including:¹⁹ 1) Preventing criminal acts from taking place, for example violence or even killing, 2) Providing protection to victims, 3) Providing assistance emergency, 4) Assisting the process of submitting an application for the determination of the protection of Non-Violence Families. Basic understanding of domestic violence as a personal issue limits the range of legal solutions to actively address the problem. In most societies, domestic violence is not yet accepted as a form of crime. However, as a result of advocacy by feminists within the scope of international human rights, social responsibility towards domestic violence has gradually been recognized by most countries in the world.

The problem of violence (violence against women, gender-based violence, female-focused violence, domestic violence) is currently not only an individual problem or a national problem, but is already a global problem, because it is related to the global issue of

¹⁸ See Article 5 of the Republic of Indonesia Law Number 23 of 2004 concerning the elimination of domestic violence (State Gazette of the Republic of Indonesia No. 23 of 2004, Supplement to the State Gazette of the Republic of Indonesia Number. 4419

¹⁹ Article 15 of the Republic of Indonesia Law Number 23 of 2004 concerning the elimination of domestic violence (State Gazette of the Republic of Indonesia No. 23 of 2004, Supplement to the State Gazette of the Republic of Indonesia Number.4419

Human Rights. which is interpreted as a set of rights that are inherent in the nature and freedom of humans as creatures of God Almighty and are His gifts that must be respected, upheld and protected by the state, law, government and everyone for the honor and protection of human dignity. (Article 1 number 1 number 39 of 1999 concerning human rights). These human rights are inherent in humans naturally since humans are born, where without human rights, humans cannot live as normal human beings. The link with human rights can be seen from various statements, including that violence is a barrier to development, because it will reduce self-confidence, reduce self-autonomy both in the economic, political, socio-cultural and physical fields. Thus the ability to take advantage of his life both physically, economically, politically and culturally becomes disrupted.

At the international level, violence has been seen as a frame of crime against basic rights and freedoms as well as the destruction and revocation of their freedom of the rights attached to them. This is a challenge in achieving equal rights, development and peace as recognized in the Nairobi Forward-looking Strategy for the Advancement of Women, which recommends a set of actions to combat violence against women. The recommendation is imposed on the Government as a legal and moral obligation to eliminate domestic violence through a combination of various serious steps. Domestic violence is a problem that has deep roots and occurs in all countries of the world. In this case, the international community has created effective and specific legal standards that pay attention to domestic violence. Actions to beat women, for example, have been included in international and regional human rights conventions which have the nature of being legally binding on the countries that have ratified them. These international human rights documents include the Universal 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”) which are standard regarding Human Rights, where victims of domestic violence can sue their respective countries. Various incidents of domestic violence have shown that the state has failed to pay attention to the complaints of victims. So the country can be subject to sanctions if the country is a member of international instruments as previously mentioned. The same can also be done under the Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”) and its Protocol, and also through the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (“CAT”).

Likewise, regional instruments can provide protection for women who are victims. The European Convention for the Protection of Human Rights and Fundamental Freedoms (“ECHR”), the American Convention on Human Rights (“ACHR”), together with the Inter-American The Convention on the Prevention, Punishment and Eradication of Violence Against Women (“Inter-American Convention on Violence Against Women”), and the African Charter on Human and Peoples' Rights (“African Charter”) are the principal regional human rights documents on which victims can domestic violence The negative effects of domestic violence also vary and are not only related to family relations, but also to members of the family within them. Apart from the victimization of women, domestic violence also results in the breakdown of family relationships, children can also be a source of social problems. This form of domestic violence is very dangerous, if allowed to continue it can endanger the victim's life. For this reason, it is necessary to receive treatment and protection, as for forms of domestic violence, including:²⁰ a) Physical violence, physical violence is an act of violence (such as: hitting, kicking, etc.) which results

²⁰ Op. Cit. Article 5 of the Domestic Violence Law

in injury, pain, or defects in the body causing death, b) Psychic Violence, Psychological violence is an act of verbal torture (such as: insulting, saying harsh and dirty words) which results in decreased self-confidence, increased fear, loss of ability to act and helplessness. this, if it happens frequently, can trigger revenge in the victim's heart, c) Sexual Violence, sexual violence is an act related to the wife to have sexual relations in ways that are not fair or even do not fulfill the wife's sexual needs.

The various analyzes and explanations of the thoughts above have drawn the world's attention to the existence of a wife/woman who is considered a victim of a husband's act of violence. It is common for a country based on law. However, the law was created not only intended for one side, but requires harmony, balance in its application, the law is held for all people without discriminating against certain status and gender. On the other hand, legal formulations that are properly enforced do not concern legal protection for a particular sex, but are appropriate for the mutual benefit of the two, as well as the general benefit as a common interest, namely equality in legal treatment or equality before the law.

In the Amendments to the 1945 Constitution, the concept of equality before the law is included in Article 27 paragraph (1) which states that: All citizens have the same position before law and government and are obliged to uphold this law and government with no exceptions.²¹ This is a recognition and guarantee of the equal rights of all citizens in law and government. The concept of equality before the law is what is adhered to in Article 27 paragraph (1) of the Amendments to the 1945 Constitution which forms the basis for protection for citizens so that they are treated equally before the law and government. This means that everyone is treated equally before the law. Equality before the law in the simple sense that everyone is equal before the law. Equality before the law or equality before the law is one of the most important principles in modern law. This principle has become one of the cornerstones of the Rule of Law doctrine which has also spread to developing countries such as Indonesia. If it can be stated that the principle of equality before the law is one of the manifestations of a rule of law (*recht staat*) so that everyone must be treated equally before the law (*gelijkheid van ieder voor de wet*).²² Thus, the embedded element implies equal protection before the law (equal justice under the law) and obtains equal justice before the law.

Deviant behavior in society requires a rule of law to regulate the gaps/deviations in behavior that occur. Legal protection given to the community is a social control against deviant behavior. The law works to protect the community from actions that can damage the order and the foundations of life in society, legal protection is not only given to people who are victims of a deviation/crime but also given to perpetrators of crimes as a form of protection for human rights. In general, women and children are often identified with victims of domestic violence where the perpetrators are men (husbands), but what is happening nowadays are not only women and children, but men (husbands) are also victims. domestic violence. Men (husbands) are generally impressed as the actors who commit the most violence in the household but that does not mean that domestic violence has never been perpetrated by women (wives) against other family members, especially husbands. The community considers that violence perpetrated by a wife against her husband within the household is a natural thing where it is part of the dynamics of normal household life, and assumes that the husband will be able to face and overcome it. As concrete evidence a wife commits physical violence against her husband, as was the case

²¹ Yasir Arafat. The 1945 Constitution of the Republic of Indonesia and its amendments, Permata Press. p.26.

²² Lilik Mulyadi, Criminal Procedure Code, Citra Aditya Bakti, Jakarta, 2007, p. 20

with the Ruling Amar.²³

Number.271/Pid.Sus-KDRT/2015/PT.BDG, by the West Java High Court Judge Against the defendant Yeni Haryani Binti H. Harun Al Rasyid who bit the chest of the witness Cecep Maulana (husband). As a result of the defendant's actions, the witness Cecep Maulana suffered abrasions and bruises + 2X2 cm in the right chest area according to the Visum Et Repertum issued by R. Syamsudin Hospital, SH Sukabumi City Number: 445/921/RS-RSU/2014 dated 14 October 2014 which signed by dr. Martin Kurniawan as the examining doctor with the conclusion of abrasions and bruises in the right chest area. The defendant's actions as stipulated and criminally punishable violated Article 44 paragraph (4) of RI Law No. 23 of 2004 concerning the Elimination of Domestic Violence; based on the demands of the Public Prosecutor No.Reg.Perk: PDM-57/SMI/05/2015, dated 28 July 2015, which principally demands that the Panel of Judges of the Garut District Court decide: (1) Declare the Defendant Yeni Haryani Binti H. Harun Al Rasyid was found guilty of committing the crime of Domestic Violence, namely violating Article 44 Paragraph (4) of the Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence; (2) Sentenced to imprisonment for the defendant Yeni Haryani Binti H. Harun Al Rasyid for 2 (two months);

So far, the laws that have been made provide more legal protection for wives who are victims of domestic violence, while there is often discrimination against husbands in terms of obtaining legal protection, because in reality husbands are also victims of domestic violence perpetrated by a wife, as quoted from the court decision in the above case.

Method

This study is normative juridical, using literature that is relevant to normative or doctrinal approaches supplemented by empirical data, which examines or analyzes the application of the principle of equality before the law to crimes of domestic violence, Approach to statutory regulations (statute approach), and a conceptual approach (conceptual approach), as well as a casuistic approach (case approach).²⁴ The statute approach is used to examine laws and regulations regarding current legal issues, strengthened by a case approach by examining cases related to the legal issues at hand and have received court decisions and have permanent legal force.²⁵ Conceptual approach (conceptual approach) to obtain appropriate legal arguments to answer problems.²⁶ The research uses a statutory approach to examine a law, with an ontological and philosophical basis which is used to study and analyze the nature of legal justice in the handling of cases of domestic violence, both in international legal instruments and national law. It also uses a conceptual and case study approach to find out the implementation of the principle of equality before the law for the settlement of crimes of domestic violence, as well as a conceptual approach to find out a model of fair and balanced legal protection for a victim of domestic violence.

The source of primary legal material used is legal rules in the form of government regulations or other laws and regulations and the powers and functions of legal institutions that have the authority to do so. Also sources of secondary legal materials in the form of books and other printed materials, including software, which are accessed via the internet (download), various books, scientific journals and research results, as well as tertiary legal

²³ [www.http://decisionmahkamahagung.nomor:445/921/RS-RSU/2014.go.id/decision](http://decisionmahkamahagung.nomor:445/921/RS-RSU/2014.go.id/decision).

²⁴ Peter Mahmud Marzuki, *Ibid.* p. 93

²⁵ *Ibid*,p.94

²⁶ *Ibid*,p.95

materials are legal materials that support primary legal materials and legal materials. secondary.²⁷

The data collection technique used was to examine legal material in the form of legal rules in the form of: 1) the 1945 Constitution of the Republic of Indonesia, 2) Law Number 8 of 1981 concerning the Criminal Procedure Code, 3) the Criminal Procedure Code. criminal law, 4) Law no. 39 of 1999 concerning human rights, 5) Law No. 23 of 2004 concerning PKDRT, including text books, articles in various scientific magazines or research journals in the field of law, papers presented in various forms of meetings such as discussions, seminars, workshops, and others. To support or complement this research, the authors also use case studies on domestic violence crimes committed by wives against husbands.

Qualitative and comprehensive analysis of legal materials,²⁸ by elaborating quality legal materials in the form of regular, coherent, logical, non-overlapping and effective sentences so as to facilitate in-depth legal interpretation linked to various aspects with prescriptive techniques, interpreting the materials law by constructing laws and arguments, which are then evaluated based on legal reasoning related to the problem.

Result and Discussion

The essence of equality before the law according to international and national legal instruments

1. Universal Declaration of Human Rights

Upholding human rights both in Indonesia and internationally is still a new thing. Although there were several international treaties and agreements that could be found before World War II, international concern for upholding human rights only started with certainty at the birth of the UN Charter in 1945. The birth of recognition of human rights began with the revolutions of England, France and United States of America. Although the Magna Carta (1215), is often said to be the birthplace of human rights, in reality it was only a compromise on the division of power between King John and his nobles.²⁹

Almost the same as the revolutionary upheaval in England, the United States also experienced the same thing. This was marked by the birth of the American Declaration of Independence (1776) drawn up by Thomas Jefferson. These ideals were previously set forth in the form of the Virginia Declaration of Rights. But it wasn't until 1791 that the United States adopted The Bill of Rights which was accomplished with a series of amendments to their constitution.³⁰ Even though the history of the development of human rights can be traced back to ancient times, and there has even been international recognition under the UN Charter, Indonesia is still one of the last countries to implement human rights enforcement, even though these rights have been included in the Constitution 1945. In the 1945 Constitution (before several amendments were made), guarantees for the protection of human rights were formulated in several articles, including: 1). Article 27 All citizens have the same position before law and government and are

²⁷ Devi K. G Sondakh, 2009, Individual Criminal Responsibility for Perpetrators of Human Rights Violations in the Context of National Law Reform, Dissertation, Postgraduate Program at Hasanuddin University, Makassar.p. 240.

²⁸ Ibid

²⁹ Scott Davidson translated by A. Hidayat Pudjaatmaka, Human Rights: History, Theory and Practice in International Associations, PT. Main Staka Graffiti, Jakarta, 1994, p.2

³⁰ Ibid, p. 5

obliged to uphold that law and government, without exception. 2) Every citizen has the right to work and a life worthy of humanity.

This article describes the protection of the right to equal treatment without discrimination and the right to welfare 1). Article 28 which states freedom to associate and assemble, express opinions verbally and in writing and so on is stipulated by law. This article describes the protection of the right to personal freedom and the right to express opinions. 2). Article 299 (1) The state is based on Belief in the One and Only God. 3) The state guarantees the freedom of each resident to embrace their own religion and to worship according to their religion and belief. This article describes the protection of religious rights. 4). Article 31 (1) Every citizen has the right to receive instruction. 2) The government shall endeavor and organize a national teaching system, which shall be regulated by law. This article describes the protection of the right to self-development. During the New Order government, it was suspected that there were many violations of human rights that resulted in criticism from both within the country and abroad. Given that human rights issues are often used as a tool to put pressure on Indonesia in international forums, not even a small amount of financial assistance that Indonesia will receive is hampered because Indonesia is considered not to provide a place for the growth of human rights, so immediately after the reform era rolled around, the People's Consultative Assembly Decree was issued Republic of Indonesia Number XVII/MPR/1998, November 13, 1998 concerning Human Rights which assigns High State Institutions and all Government Apparatuses to respect, uphold and disseminate an understanding of Human Rights to all people (Article 1).

In addition, to assign the President of the Republic of Indonesia and the Indonesian People's Representative Council to ratify various United Nations instruments on Human Rights, as long as they do not conflict with Pancasila and the 1945 Constitution (Article 2). Article 1 paragraph (1) Law No. 39 of 1999 concerning Human Rights provides an explanation of Human Rights, namely a set of rights that are inherent in the nature and existence of humans as creatures of God Almighty and are His gifts that must be respected, upheld and protected by the state, law, government and every people for the sake of honor and protection of human dignity. Even though human rights are basic rights that are naturally attached to human beings from birth and whose existence must always be protected, respected, defended and appreciated by anyone, in practice it is not easy to enforce because there are still many forms of human rights violations, both are vertical (performed by state apparatus against citizens or vice versa) or horizontal (between citizens and citizens). starting from those that are "small", for example discrimination in obtaining legal and government services, such as in the settlement of criminal acts of domestic violence.

The family is the first social environment known to humans. In the human family learn to start interacting with others. That's why, in general, people spend a lot of time in the family environment. Even though the family is an ideal social institution for developing the potential that exists in each individual, in reality the family is often a place for the emergence of various cases of irregularities or other illegal activities, causing misery or suffering, committed by one family member against another family member. such as assault, rape, murder. This situation is commonly referred to as Domestic Violence.³¹

³¹ Article 1 point 1 Law no. 23 of 2004 concerning the Elimination of Domestic Violence defines Domestic Violence as any act against a person, especially women, which results in physical, sexual, psychological misery or suffering, and/or neglect of the household including threats to commit acts, coercion, or unlawful deprivation of liberty within the household sphere.

Implementation of the principle of equality before the law for victims of domestic violence

1. Crime of Domestic Violence

The term criminal act is a translation of strafbaarfeit, in the Criminal Code (KUHP) there is no explanation of what is meant by strafbaarfeit itself. Usually a crime is synonymous with offense, which comes from the Latin word delictum. In the legal dictionary the limitation of offenses is listed as follows: "Delict is an act that can be subject to punishment because it is a violation of the law (crime)."³² Criminal acts which in Dutch are called strafbaarfeit, consist of three syllables, namely straf which is defined as criminal and legal, baar is defined as can and may be, and feit is defined as acts, events, violations and actions.

The definition of a crime in the Criminal Code is known as strafbaarfeit and in the literature on criminal law often uses offense, while legislators formulating a law use the term criminal act or criminal act or criminal act. Based on the existing formulation, the offense (strafbaar feit) contains several elements, namely: a). A human act; b). The act is prohibited and punishable by law; c). The act was carried out by someone who can be held accountable. A person's actions can be categorized as criminal acts if they meet the elements of a criminal act.³³ The elements in question include; 1) Subjective Elements, namely elements that are contained or attached to the perpetrator or associated with the perpetrator and include everything that is contained in his heart. The subjective elements of a crime are: 1) Intentional or unintentional (dolus or culpa). 2) The purpose of an attempt or pogging as referred to in Article 53 paragraph 1 of the Criminal Code. 3) Various purposes or ogbrands as contained, for example, in the crimes of theft, fraud, extortion, forgery, and others. 4) Planning in advance or voorbedachte raad as for example contained in the crime of murder according to Article 340 of the Criminal Code. 5) Feelings of fear or vress such as those contained in the formulation of criminal acts according to Article 308 of the Criminal Code. 2) Objective elements consist of 1) Elements that are outside the actor. 2) The elements that have to do with circumstances, namely in the circumstances in which the actions of the actor must be carried out. The objective elements of a crime are: a). The nature of violating the law or wederrechtelijkheid. b). The quality of the perpetrator, for example "the condition of a civil servant" in a crime of office according to Article 415 of the Criminal Code or "the condition of being a manager or commissioner of a limited liability company" in a crime according to Article 398 of the Criminal Code., c) Causality, namely the relationship between something action as a cause with something reality as a result.³⁴

2. Case Study of Domestic Violence

The issuance of the Elimination of Domestic Violence Law is still in the nature of a complaint offense which limits other people from participating in handling it. The drafters of this law did intend to implement a "balance sentence", namely taking action against perpetrators of domestic violence on the one hand, but at the same time wanted to maintain the integrity of the household. As a complaint offense, criminal sanctions are a

³² Sudarsono, Legal Dictionary, Fifth Edition, PT. Rineka Cipta, Jakarta, 2007, p. 92

³³ Amir Ilyas, Criminal Law Principles, Renggang Education Yogyakarta and Pukap Indonesia, Yogyakarta, 2012, p.20

³⁴ Lamintang, Fundamentals of Indonesian Criminal Law, Third Print, PT. Citra Aditya Bakti, Bandung, 1996, p. 193-194.

last resort (*ultimum remedium*); if there is peace then the case will be revoked and the integrity of the family is maintained.³⁵ Criminal law in Indonesia adheres to the principle of complaint delict (*klachtdelict*) which is a crime that can be prosecuted if there is a complaint first by those who have the right to file a complaint, namely the victim or his representative, or certain families in certain matters or people who are specifically authorized to complaints by people who are entitled, this does not provide enough space for the parties or husband and wife or people who are in the same family environment to take action as long as nothing is reported. This impression gives an indication that if a crime is not reported to the police, it is impossible to proceed legally.

In line with the statement above, the general assumption is that men (husbands) are generally impressed as the actors who commit the most violence in the household, but that does not mean that domestic violence has never been committed by women (wives) against other family members, especially towards husband. Society also considers that violence perpetrated by a wife against her husband within the household is something normal, but for the writer this is an extraordinary thing because usually between husband and wife each has a different nature when viewed from the side of destiny, because women are born with weaker and gentler traits than men (husbands). However, in its development it has undergone changes following the current developments.

At the same time, their role is positioned equal to that of men as a form of their emancipation in nation-building. Behind his emancipation, there has been a change in character that tends to be emotional, sullen towards the opposite sex (men). This was stated, because lately, women have contributed to coloring cyberspace, as well as other media with criminal acts of following the opposite sex. This statement was put forward in line with the cases that occurred including the murder case committed by Andi Erni Astuti, a wife who killed her husband (Musakkir Sarira), a people's representative (chairman of the Regional People's Representative Assembly) of North Kolaka district, Southeast Sulawesi, as follows; The case of the death of the chairman of the North Kolaka Regional People's Representative Assembly who was stabbed by his own wife. Because the young wife was jealous of the victim who allegedly had another ideal woman. The incident started with a fight between the two in the room. The assailant immediately took a knife and stabbed the victim. Meanwhile, according to police investigations, the perpetrator has admitted all his actions and is in a normal mental condition. As shown by Indosiar's Afternoon Patrol, Saturday (21/7/2017), the police secured evidence, the victim's blood-stained clothes, and a knife used to torture the victim. Meanwhile, the victim's official residence is still being cordoned off by police and heavily guarded by security forces. Previously, the chairman of the Regional People's Representative Assembly for North Kolaka Regency, Southeast Sulawesi, Musakkir Sarira was found dead at his official residence. He received a stab wound from a sharp weapon in the upper abdomen that hit his liver and died before undergoing surgery.³⁶

This incident was then handled by the police by swiftly accelerating the legal process for the incident or event by arresting the perpetrators as reported by *merdeka.com* that; North Kolaka Police, Southeast Sulawesi named AE, the wife of North Kolaka Regional People's Legislative Council (Regional People's Representative Assembly) Chairman Musakkir Sarira as a suspect in the murder of her own husband. AE is the sole suspect, and

³⁵ Fatahillah A.Syukur, 2011, *Mediation of cases of domestic violence in theory and practice in Indonesian courts*, CV. Mandar Maju, Bandung, Bandung, p. 47-48.

³⁶ Wife of Chairman of DPRD North Kolaka Kills Husband Out of Jealousy <http://news.liputan6.com/read/3135915/istri-ketua-dprd-kolaka-utara-kill-suaminya-because-cemburu>

has now been detained. "The status of a suspect and detention has begun at the North Kolaka Police," said North Kolaka Police Chief AKBP Bambang Satriawan when contacted by merdeka.com, Thursday (19/10). The suspect confessed that he regretted killing his husband. This regret was seen when the victim was examined by police investigators. "When the investigation went smoothly, from what he said he was sorry," said Bambang. Based on the testimony of the witness, he saw the victim coming home from work and then entering the house. The witness then left the victim's house. After that, the victim was not seen leaving the house again. "Suddenly at 11 (night) they were found at the dinner table," he continued. The suspect was charged with Article 338 of the Criminal Code, a subsidiary of Article 351 paragraph 3 of the Criminal Code related to murder with a penalty of 15 years in prison.³⁷

The determination of the perpetrator as the main suspect in this case was based on his confession at the time of police questioning followed by initial evidence found at the crime scene and the perpetrator's statement before the police regarding the reasons stated and the mode used in the act of killing the victim, as reported by liputan6.com as follows; The motive for the stabbing case that led to the death of the chairman of the North Kolaka Regional People's Representative Assembly, Musakkir Sarira, by his wife, Andi Erni Astuti, has begun to emerge. From the suspect's confession, the police said that the stabbing case was motivated by jealousy." The victim said loudly and left the suspect in the room, he left around eight o'clock. Then, when he was about to return, at ten o'clock, when he opened the bedroom door, the suspect was already carrying a knife and immediately stabbed the knife," said the North Kolaka Police Chief, AKBP Bambang Satriawan, as broadcast by Liputan6 Petang SCTV, Friday (20/10/2017). Meanwhile, in this murder case, the police have secured a number of pieces of evidence. Among them are the victim's bloodstained clothes and a knife used to assault the victim. Meanwhile, the crime scene (Crime scene) at the victim's office is still being heavily guarded by the police. Apart from that, police lines are still visible at the crime scene where the chairman of the North Kolaka Regional People's Representative Assembly Musakkir Sarira, was killed.³⁸

The determination of the perpetrator as a suspect was followed by the actions of the police as investigators to carry out the reconstruction of the criminal incident by presenting witnesses to the incident to be questioned in order to be used as a reason for proving the actions committed by the perpetrator, which was then made into a police investigation report which was used by the police as the basis for naming the perpetrator as a suspect and delegated to the prosecutor's office became the basis for prosecuting the perpetrators, as quoted from liputan6.com: Andi Erni Astuti (right) the suspect in the murder of her husband, North Kolaka Regional People's Representative Assembly Chairperson Musakkir Sarira (right) underwent a psychiatric examination and was declared sane by the North Kolaka Police. (Liputan6.com/Ahmad Akbar Fua). The wife of the chairman of the North Kolaka Regional People's Representative Assembly, Andi Erni Astuti, who was named a suspect in the murder of her own husband Musakkir Sarira, has been behind bars at the Kolaka Utara District Police, since Thursday, October 19 2017. This mother of three children who is known to have jealous traits is often thought to be jealous excessive jealousy by her husband's family, and received special police monitoring. The North

³⁷ Polres Kolaka Utara, Southeast Sulawesi
<https://www.google.co.id/search?dcr=0&q=wife+kill+husband&sa=X&ved=0ahKEwjQkpOO1YbXAhUBsI8KHS7cDLQ1QIIhAEoBQ&biw=1360&bih, 20/10/2017>

³⁸ Chairman of DPRD North Kolaka, <http://news.liputan6.com/read/3135272/motif-istri-ketua-dprd-kolaka-utara-tusuk-suami-dinding-tewas, 20/10/2017>

Kolaka Police Criminal Investigation Unit has conducted psychiatric tests on the suspect. According to the Police Chief, AKBP Bambang Satriawan, Andi Erni Astuti, his mental condition is normal. This employee at the North Kolaka Health Service can smoothly answer questions asked by investigators. "He has been examined, he can answer questions smoothly given by investigators, he is healthy," said AKBP Bambang Satriawan, met in Kendari City, Monday (23/10/2017). Bambang said that his party would carry out a reconstruction of the murder case at the office of the chairman of the North Kolaka Regional People's Representative Assembly. This reconstruction will involve the suspect and a number of witnesses who have been examined." Tomorrow, Tuesday (24/10/2017) or Wednesday (25/10/2017) we will reconstruct this case, accompanied by a number of scenes in the BAP when the murder occurred," said Bambang. It is known that the police have completed six investigations witness. From the testimony of witnesses who were at the victim's house at that time, the suspect carried out the action himself. There was no involvement of other people. "Investigators have also observed him, from the results of the investigation the suspect really regrets his actions, especially since his children are still small," said Bambang Satriawan. Andi Erni Astuti was named a suspect in the abuse that caused her husband, chairman of the North Kolaka Regional People's Representative Assembly, Musakkir Sarira, to bleed to death from a stab wound to his stomach, Wednesday, October 18, 2017. As a result of this stab, the North Kolaka Regency PDIP politician suffered a 4.1-centimeter stab wound. The doctor who carried out the post-mortem stated that the stab wound to the victim's heart, which was one of the main causes of his life, could not be saved.³⁹

Judging from the formulation of Article 44 paragraph (3) of the Regional People's Representative Assembly Law, for this article to be proven, the following elements must be fulfilled: a) Everyone; b) Those who commit acts of physical violence in paragraph (1); c) Within the scope of the household; d) Resulting in the death of the victim. The prohibited act of this article is committing physical violence which causes people within the household to lose their lives. In Article 44 paragraph (3) the act that causes the victim to "sick" then "falls ill or is seriously injured". Thus the next construction of this article namely the phrase "resulted in the death of the victim" appears after "illness" which resulted in "falling ill or serious injury" suffered by the victim. The death of the victim is not referred to as the perpetrator, which is a distinguishing feature of the crime of physical violence in the Elimination of Domestic Violence Law in particular (the crime of maltreatment in the Criminal Code in general) from the crime of murder. Therefore, if the death of the victim was intentional or intended by the perpetrator, then the perpetrator must be charged with the murder article (338 Criminal Code). By looking at the formulation of physical violence resulting in death in Article 44 paragraph (3) of the PKDRT Law, it is evident that this Law still distinguishes between "physical violence" and "murder". This must be underlined, do not let cases of intentionally killing other people (murder) within the scope of the household let alone killing lives planned beforehand (premeditated murder) be submitted as a case of domestic violence. To distinguish between "persecution that causes death" and "deliberately killing other people's lives" as stated by R. Soesilo as follows: "Severe injury or death here must only be a result that was not intended by the maker. If death is intended, then the act is considered murder (Article 338 of the Criminal Code).

In different cases, violence is also perpetrated by the wife against her husband within the scope of the household which is a natural thing where it is part of the dynamics of

³⁹ [www.http://putusan.mahkamahagung.nomor:445/921/RS-RSU/2014.go.id/putusan](http://putusan.mahkamahagung.nomor:445/921/RS-RSU/2014.go.id/putusan).

married life. 271/Pid.Sus-KDRT/2015/PT.BDG, by West Java High Court Judge Against:⁴⁰Defendant Yeni Haryani Binti H. Harun Al Rasyid who bit witness Cecep Maulana's (husband) chest. As a result of the defendant's actions, the witness Cecep Maulana suffered abrasions and bruises + 2X2 cm in the right chest area according to the Visum Et Repertum issued by R. Syamsudin Hospital, SH Sukabumi City Number: 445/921/RS-RSU/2014 dated 14 October 2014 which signed by dr. Martin Kurniawan as the examining doctor with the conclusion of abrasions and bruises in the right chest area. The defendant's actions as stipulated and criminally punishable violated Article 44 paragraph (4) of RI Law No. 23 of 2004 concerning the Elimination of Domestic Violence; based on the Public Prosecutor's Charges No.Reg.Perk: PDM-57/SMI/05/2015, July 28 2015, which principally demands that the Panel of Judges of the Garut District Court decide: (1) Declare the Defendant Yeni Haryani Binti H. Harun Al Rasyid guilty of committing the crime of Domestic Violence namely violating Article 44 Paragraph (4) of the Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence; (2) Sentenced to imprisonment for the defendant Yeni Haryani bint H. Harun Al Rasyid for 2 (two) years two months. The two cases mentioned above are the answer that so far, laws that have been formed provide more legal protection for wives who are victims of domestic violence, in fact the incident has turned upside down in that, there is often discrimination against husbands in terms of obtaining legal protection, because in reality the husband is also a victim of domestic violence perpetrated by the wife, as quoted from the court decision in the above case.

Frederich von Savigny could not accept the truth of the assumption that positive laws that once formed were enforced at all times and places. According to Savigny, society is an organic unit that has a common belief, which he calls the soul of the community or the soul of the nation or *volksgeist*, namely the common understanding and belief in something. So according to this flow, the source of law is the soul of the community, and its contents are rules regarding people's living habits. Laws cannot be formed but grow and develop together with people's lives. Laws are formed only to regulate public relations at the will of the community through the state. Whereas with the stipulation of various acts as criminal acts (categorized as complaint offenses) in the Regional People's Representative Assembly Law, conceptually, complaint offenses are offenses or criminal acts whose prosecution in court depends on the initiative of the victim. In the event that a criminal act is qualified as a complaint offense or a complaint crime, it is the victim or his family who must be proactive in considering whether the incident he just experienced will be reported to the authorities for a settlement according to criminal law provisions. The qualification of an act that is prohibited and punishable by crime as a complaint delict, shows the stance of the Indonesian legislators that the interests protected by this provision are more private than public.

The logical consequence of the formulation of acts of domestic violence as a complaint offense in the Elimination of Domestic Violence Law is that law enforcement officials can only be passive, and do not have the authority to intervene or interfere in a matter of community members which is legally declared a domestic problem, and the enforcement of the provisions in this law depends more on the independence of every person who is the target of the legal protection of this law. The problem that arises from Law Number 23 of 2004 is that the reluctance of a wife who is a victim of violence to report to the authorities, in this case the police, because some of the consequences that arise from the report are

⁴⁰ Ketua DPRD Kolaka Utara, <http://regional.liputan6.com/read/3137517/ini-hasil-tes-kejiwaan-istri-ketua-dprd-kolaka-utara>, 23/10/2017),

divorce, loss of a living because her husband goes to jail, the future of children is threatened and others. Under these conditions, in terms of legal sociology, it is very difficult to achieve maximum success in enforcing the Regional People's Representative Assembly Law.

Referring to Friedman's system theory, as mentioned earlier, the difficulty factor for law enforcement actually originates from the component of the legal substance itself, the cultural values that exist in society related to the life of the household. With the formulation of the crime of domestic violence with all the complexity of the problem as a crime of complaint, making actions that lead to efforts to convict the perpetrators will actually lead to the emergence of counter-productive impacts on the basic objectives of establishing the Regional People's Representative Assembly Law itself. Therefore, returning to the basic idea of using criminal law as the final tool in efforts to deal with crime (*ultimum remedium*), the existence of the Regional People's Representative Assembly Law must place more emphasis on efforts to optimize the function of state administrative law in society.

Efforts to optimize the function of state administrative law, in this regard what is intended is an effort to educate the morality of all levels of society in a more positive direction in the form of realizing a society that is morally anti-violence in the household. The state should look back at the reality in Indonesian society which is very patriarchal so that it can further assess more wisely regarding other steps that should be taken in order to make the Regional People's Representative Assembly Law enforceable effective in practice and ultimately lead to the goal of enacting the Regional People's Representative Assembly Law, namely abolishing or at least minimize cases of domestic violence against women in social life in Indonesia.

A model of legal protection that is fair and balanced for husbands and wives

a. Legal protection from the Police

Protection from the police by conducting an investigation and investigation process by the police, the victim has the right to report domestic violence directly to the police both where the victim is and at the scene of the case (Article 26 paragraph (1) of Law Number 23 of 2004). Victims can authorize their families or other people to report domestic violence to the police both where the victim is and at the scene of the incident (Article 26 paragraph (2) of Law Number 23 of 2004). Within 1 x 24 (one time twenty four hours) from knowing or receiving reports of domestic violence, the police must immediately provide temporary protection to the victim. The temporary protection referred to is given no later than 7 (seven) days after the victim is received or handled (Article 16 paragraph (1) and (2) of Law Number 23 of 2004). Within 1 x 24 (one twenty-four hours) from the time the protection is given as intended, the police are required to request a letter of determination of a protection order from the Court (Article 16 paragraph (3) of Law Number 23 of 2004). In providing temporary protection, the police can cooperate with health workers, social workers, companion volunteers and/or spiritual guides to assist victims (Article 17 of Law Number 23 of 2004).

The police are obliged to provide information to victims about the victim's right to receive services and assistance (Article 18 of Law Number 23 of 2004). 2004). The police immediately inform the victim about: a.) the identity of the officer to identify the victim; b). domestic violence is a crime against human dignity; and c). the obligation of the police to protect victims (Article 20 of Law No. 23 of 2004). Number 23 of 1992 concerning Health. d) The police can arrest and then carry out detention without a warrant against the

perpetrator who is believed to have violated the order of protection, even though the violation was not committed where the police were on duty.

The arrest and detention referred to must be given an arrest and detention warrant after 1 x 24 (one twenty four) hours (Article 35 paragraph (1) and (2) of Law Number 23 of 2004). According to Article 35 paragraph (3) of Law Number 23 of 2004, suspension of detention does not apply to detention as referred to in Article 35 paragraph (1) and (2) of Law Number 23 of 2004 (Article 36 paragraph (1) and (2)) Law Number 23 of 2004). Health workers in providing health services to victims must: a). examine the health of victims according to their professional standards; b). make a written report on the results of the examination of the victim and post mortem et repertum at the request of the police investigator or a medical certificate which has the same legal power as evidence (Article 21 paragraph (1) of Law Number 23 of 2004). These services are carried out in health facilities owned by the central government, regional government or the community (Article 21 paragraph (2) of Law Number 23 of 2004).

b. Legal protection of social workers

A social worker is someone who has professional competence in social work obtained through health workers. A health worker is any person who has devoted himself in the health sector and has knowledge and/or skills through education in the health sector which for certain types requires authority to carry out health efforts as referred to in the Law on formal education or practical experience in the field of social work/welfare. officially recognized by the government and carry out professional social work duties. In providing services to victims, social workers must: a) conduct counseling to strengthen and provide a sense of security for victims; b) provide information regarding the rights of the victim to obtain protection from the police and the establishment of a protection order from the court; c) take the victim to a safe house or alternative place of residence; and d) carry out integrated coordination in providing services to victims with the police, social services, social institutions needed by victims (Article 22 paragraph (1) of Law Number 23 of 2004).

Social worker services are carried out in safe houses owned by the government, local government or the community (Article 22 paragraph (2) of Law Number 23 of 2004). accompanying victims at the level of investigation, prosecution or court examination by guiding victims to objectively and completely describe the domestic violence they experienced; a) listen empathetically to all the narratives of the victim so that the victim feels safe being accompanied by a companion; and b). actively provide psychological and physical reinforcement to victims based on article 23 of Law Number 23 of 2004. Likewise, victims are given guidance by spiritual guides who provide services, explain to victims regarding rights, obligations and provide strengthening of faith and piety to victims (Article 24 of Law Number 23 of 2004).

Curative Protection Through Assistance for Victims of Domestic Violence

Companion volunteers are people who have expertise in counseling, therapy and advocacy to strengthen and recover victims of violence. in providing services to victims, they can do things, among other things, inform victims of their right to get one or more companions; Domestic Violence Law No. 23 of 2004). Protection for victims of domestic violence according to Law Number 23 of 2004 also includes curative efforts or victim rehabilitation through assistance from social volunteers, medical officers and advocates. As part of psychological protection, victims need assistance, both in relation to spiritual services from spiritual guides, as well as advocacy in legal proceedings. For spiritual services. Pursuant to Article 24 of this Law, spiritual advisers are required to provide

explanations regarding rights, obligations and provide strengthening of faith and piety to victims.⁴¹ 45 Especially for efforts to recover victims, the services provided can be obtained from health workers, social workers, companion volunteers and or spiritual guides (Article 39).⁴²

Services of a spiritual nature to wives who are victims of domestic violence can be carried out by clergy according to the religion (beliefs) of the victim. For victims who are Muslim, spiritual services can be provided by preachers (dai), kiai, or other Islamic religious figures appointed by the government. The essence of the service is spiritual in nature, is advice to be patient, steadfast and increase good deeds to draw closer to Allah so that he gets rid of the problem of violence he is experiencing, and asks Allah that his husband will be given guidance so that he realizes his mistakes and repents, stops the habit of committing acts of violence in the household stairs to his wife (victim). Because one of the factors that causes husbands to commit violence against their wives is the husband's low piety and/or the wife's low patience. Article 40 of this Law states that (1) health workers are obliged to examine victims according to their professional standards; (2) in the event that the victim requires treatment, the health worker is obligated to restore and rehabilitate the victim's health.⁴³ The health check includes both physical and psychological health as part of the victim's health recovery. Relevant to this, Article 41 of Law Number 23 of 2004 mandates that social workers, companion volunteers, and/or spiritual guides are required to provide services to victims in the form of providing counseling to strengthen and/or provide a sense of security for victims .⁴⁴

Victims of domestic violence need to receive advocacy from companion volunteers, especially if cases of domestic violence experienced by victims are legally processed. Article 23 of Law Number 23 of 2004 confirms that in providing services, companion volunteers can: a). Inform victims of their rights to get one or more companions; b). Accompanying victims at the level of investigation, prosecution, or court examination level by guiding victims to objectively and completely describe the domestic violence they experienced; c) Listen empathetically to all the narratives of the victim so that the victim feels safe being accompanied by a companion; and D). Provide active psychological and physical reinforcement to victims.⁴⁵ Legal protection after reporting cases of violence they experienced, but victims feel they do not get legal protection from the authorities, because the way they respond to victims' reports tends to be uncomfortable for victims. Because so far the police still seem to be interrogating the victim rather than protecting her when the victim reports acts of domestic violence perpetrated by her husband to her. Victims of domestic violence have the right to provide information without pressure and to be free from ensnared questions.⁴⁶ In this regard, the presence of accompanying volunteers is the right solution, so that victims can receive concrete legal protection.

Legal protection from Advocates

Advocates in providing protection and services are obliged to: a) provide legal consultations which include information regarding victims' rights and the judicial process;

⁴¹ Republic of Indonesia, Law Number 23 of 2004, h. 9.

⁴² Republic of Indonesia, Law Number 23 of 2004, h. 13-14.

⁴³ Republic of Indonesia, Law Number 23 of 2004, p. 14.

⁴⁴ Republic of Indonesia, Law Number 23 of 2004, p. 14.

⁴⁵ Republic of Indonesia, Law Number 23 of 2004, p. 9.

⁴⁶ Republic of Indonesia, Law Number 13 of 2006 concerning Protection of Witnesses and Victims (Cet. II; Jakarta: Sinar Graphic, 2008), p. 4.

b) accompanying victims at the stages of investigation, prosecution and examination in court proceedings and assisting victims to fully explain domestic violence; or if the application is submitted orally, the district court clerk, c) coordinates with fellow law enforcers, companion volunteers, and social workers so that the judicial process runs as it should (Article 25 of Law Number 23 of 2004). The local government must record the application (Article 30 paragraph (1) and (2) of Law Number 23 of 2004). In the event that an application for a protection order is filed by the family, friends of the victim, the police, accompanying volunteers

Legal Protection from the Court

The chairman of the court within 7 days of receiving the request must issue a decision letter containing an order to protect the victim and other family members, unless there is a proper reason (Article 28 Law Number 23 of 2004). Law Number 23 of 2004 concerning the Elimination of Domestic Violence also provides protection in the form of a protection order for husbands who become victims with the following conditions:

1. An application for a protection order can be filed by: the victim or the victim's family; victim's friend; police; accompanying volunteers; spiritual guide (Article 29 of Law Number 23 of 2004).
2. An application for a protection order is submitted in oral or written form. In or spiritual guide, the victim must give his consent. In certain circumstances, an application can be filed without the victim's consent (Article 30 paragraph (3) and (4) of Law Number 23 of 2004).
3. Within a period of 7 (seven) days from receiving the application, the chairman of the court must issue a decision letter containing an order to protect the victim and other family members, unless there is a proper reason (Article 28 Law Number 23 of 2004).
4. At the request of the victim or their attorney, the court may consider: a. establishing a special condition; b. change or cancel a special condition of the protection order. The considerations referred to above can be submitted together with the process of filing cases of domestic violence (Article 31 paragraph (1) and (2) of Law Number 23 of 2004). (1) and (2) Law Number 23 of 2004).
5. Orders of protection can be given within a maximum period of 1 (one) year. The protection order can be extended based on a court decision (Article 32 paragraph (1) and (2) of Law Number 23 of 2004). The application for the extension of the Protection Order is submitted 7 (seven) days before the expiration date (Article 32 paragraph (3) of Law Number 23 of 2004).
6. The court may issue one or more additional protective orders. In granting additional protection orders, the court is required to consider information from victims, health workers, social workers, accompanying volunteers, and/or spiritual mentors (Article 33 paragraph (1) and (2) of Law Number 23 of 2004).
7. Based on consideration of the harm that may arise, the court may state one or more additional conditions in the protective order. In granting additional conditions in a protection order, the court is obliged to consider information from victims, health workers, social workers, companion volunteers, and/or spiritual mentors (Article 34 paragraph The police can arrest and then carry out detention without a warrant against perpetrators who are believed to have violated the protection order) , even though the offense was not committed where the police were on duty.

8. Arrest and detention as intended must be given an arrest and detention warrant after 1 x 24 (one twenty four) hours (Article 35 paragraph (1) and (2) of Law Number 23 of 2004).
9. To provide protection to victims, the police can arrest perpetrators with sufficient preliminary evidence for violating protection orders.
10. The arrest referred to can be followed by detention accompanied by a detention order within 1 x 24 (one time twenty four) hours (Article 36 paragraph (1) and (2) of Law Number 23 of 2004).
11. Victims, police or accompanying volunteers can submit written reports regarding alleged violations of protection orders (Article 37 paragraph (1) of Law Number 23 of 2004).

In the event that the court receives the written report as referred to, the perpetrator is ordered to appear before 3 x 24 (three times twenty four) hours to be carried out by the Court where the perpetrator lived with the victim at the time the violation was suspected to have occurred (Article 37 paragraph (2) and (3) Law Number 23 of 2004). Provision of a special service room at the police station; Provision of apparatus, health workers, social workers, and spiritual mentors; Creation and development of systems and mechanisms for cooperation in service programs that involve parties that are easily accessible to victims; and If the court knows that the perpetrator has violated the protective order and is suspected of committing further violations, the court may oblige the perpetrator to make a written statement whose content is in the form of a willingness to comply with the protection order (Article 38 paragraph (1) of Law Number 23 of 2004) .

Application of Rules for the Protection of Victims of Domestic Violence in District Court Decisions As described above, Law Number 23 of 2004 contains legal rules that are not only related to law enforcement against perpetrators of domestic violence, but also specifically regulate the protection of victims of domestic violence. Thus this law regulates *lex specialis* regarding the protection of victims of domestic violence. In this regard, the initial stage of the process of protecting victims of domestic violence is in the form of temporary protection from the police. The process of obtaining temporary protection is regulated in Article 6 of this law, that (1) within 1 x 24 (one time twenty four) hours from knowing or receiving reports of domestic violence, the police are obliged to immediately provide temporary protection to victims ; (2) temporary protection as referred to in paragraph (1) is given no later than (seven) days after the victim is received or handled; and (3) within 1 x 24 (one twenty four) hours from the granting of protection as referred to in paragraph (1), the police are required to request a letter of determination of a protection order from the court. So, temporary protection is protection for victims of domestic violence (wives) which are provided directly by the police and/or social institutions, or other parties, prior to issuing a stipulation of a protection order from the court.

Temporary protection is very important to be given immediately to victims of domestic violence because if the victim has to wait for the issuance of a protective order from the court, it is feared that the process will take a long time, while the victim needs protection in a relatively short time. The urgency of this temporary protection is especially for victims who are vulnerable to violence. continuation of the perpetrator after he reported his case to the authorities. The District Court cannot issue an order for the protection of the court against the victim without a request from the police. The absence of a request for protection from the court against victims of domestic violence

from the police is due to several reasons, namely (1) the perpetrator is in detention so there is no fear that he will commit repeated violence against victim, or (2) because the victim has reconciled with the perpetrator. If we examine this second reason, most of the perpetrators who are accused of domestic violence have reconciled with the victim, because the victim is his own wife.⁴⁷

Based on the description above, it can be stated that the police as investigators do not submit a request for court protection against victims of domestic violence to the District Court on the grounds that the perpetrator is in custody, so it is impossible to commit acts of violence again to the victim and the victim remains safe. Likewise, perpetrators who have made peace with victims are also not detained because the reconciliation between perpetrators and victims shows that the perpetrators did not commit repeated violence against victims. In another case, the panel of judges at the Bekasi District Court obstructed the Witness and Victim Protection Agency (Witness and Victim Protection Agency) against Tuti Mujiarti, who experienced domestic violence allegedly committed by her husband, DNS and had entered the LPSK protection program since April 30 2012. However, investigators prioritized the return report. the victim's husband compared Tuti's report as a victim of domestic violence, and the actions of the panel of judges who considered the presence of the LPSK illegal. Besides that, the panel of judges issued a stipulation No: 406/Pen.Pid.B/2012/PN. Bks on May 31 2012 by placing Tuti under house arrest, even though at that house Tuti often experienced physical and psychological violence perpetrated by DNS, accompanied by the actions of the Public Prosecutor who forced Tuti to carry out the judge's decision.⁴⁸ This shows that victims of domestic violence can experience criminalization on reports of husbands (perpetrators) of domestic violence, so that the victim's position changes to that of a suspect. From the description above, it can be argued that the protection of victims of domestic violence is more likely to be carried out through repressive measures (imprisonment) for perpetrators of domestic violence. Even though the prison sentences handed down to perpetrators of domestic violence also tend to be low. For example, the perpetrators of physical violence perpetrated by a husband against his wife in Pekanbaru were only required to be imprisoned for one year and the Panel of Judges at the Pekanbaru District Court only handed down a sentence of 10 months for the perpetrator. Even though the High Court increased the perpetrator's sentence to one year and six months in prison, the Supreme Court had a different opinion and returned the amount of sentence according to the Pekanbaru District Court's decision, namely a 10-month prison sentence. According to the explanation above, it is important that the legal process for a case of domestic violence, temporary protection is very important to be immediately given to victims of domestic violence because if the victim has to wait for the issuance of a protection order from the court, it is feared that the process will take a long time, while the victim needs protection in a relatively short time. The urgency of temporary protection is very important, especially for victims who are vulnerable to further acts of violence from perpetrators after they report their cases to the authorities.

⁴⁷Glenny de Fretes, SH, Head of Public Relations at the Ambon District Court, "interview," Ambon, 27 June 2011.

⁴⁸ See Siti Sophia, "Judges at Bekasi District Court Hangi Protection for Victims of Domestic Violence," June 1, 2012, in [http:// www.lpsk. go.id/page/4f88c 11b631](http://www.lpsk.go.id/page/4f88c11b631) (accessed 3 May 2012).

Conclusion;

1. The best mechanism for handling cases of domestic violence in Indonesia is to formulate a legal policy that is oriented to human values with a humanistic approach for imposing criminal sanctions on offenders, being rehabilitated, as well as socializing in society, and there are efforts to protect the law against victims to raise their awareness, to take responsibility for public order.
2. The implementation of the principle of equality before the law against crimes of domestic violence is that there are strict legal policy efforts from law enforcers, in this case the police, together with prosecutors, courts, advocates, social institutions, or other competent parties, including health workers, social workers, accompanying volunteers and spiritual mentors to assist victims, followed by an examination process in accordance with the provisions of the appropriate laws and regulations in accordance with applicable laws.
3. The model of fair and balanced legal protection for handling domestic violence is to always build legal awareness of perpetrators and victims, repair or prepare adequate supporting facilities for law enforcement officials and other parties involved in the law enforcement process, prepare credible law enforcement resources supported by comprehensive laws, containing an appropriate legal protection system.

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