

Legal Protection for Wives as Victims of Domestic Violence in Terms of Obtaining Custody Rights for Minors



Delycia Revita¹, Titik Suharti², Dwi Tatak Subagiyo³

^{1,2,3} Faculty of Law, Wijaya Kusuma Surabaya University

ABSTRACT: This research article is entitled Legal Protection of Wives as Victims of Domestic Violence in Terms of Obtaining Custody Rights for Minors. The type of research used in this study is normative, namely based on the applicable laws and regulations (positive law) using a legal and conceptual regulatory approach. Where in all the legal materials that have been collected will be processed and analyzed systematically which are presented in the form of descriptions based on theory and legal principles so as to obtain clear conclusions and descriptions in discussing the problem. Based on the research method as mentioned above, the following discussion can be produced: A wife has rights as a victim of domestic violence. These rights are regulated in articles of Law No. 23 of 2004 concerning the Elimination of Domestic Violence.

KEYWORDS: Rights of Wives as Victims of Domestic Violence; Protection of Wives; Custody Rights for Minors

I. INTRODUCTION

Violence has often occurred in the lives of Indonesian society. Often acts of violence can be found in public areas, even in households there are also cases of violence that occur in them. Domestic violence or commonly abbreviated as KDRT often makes women (wives) the victims). The occurrence of domestic violence can have cumulative effects that are not simple, such as reducing women's self-confidence, then it can also hinder women's ability to participate, and disrupt the mental and physical health of the victim.¹

In its development, victims of domestic violence find it very difficult to tell or report the events of suffering they have experienced to law enforcement, because most of the victims assume that what happens in the house including the harsh treatment carried out by the husband is part of a private event (Household affairs).²

Violence against wives in a household is often considered by experts as a Hidden Crime. Although it has claimed quite a number of victims from various levels of society, Domestic Violence (DV) is still a serious social problem that has received little attention from the public,³ namely: 1. Domestic violence has a relatively closed (private) scope and is protected by privacy because the problem occurs in the household (family); 2. Domestic violence is often considered normal because of the belief that treating a wife as her husband wishes is the husband's right as the leader and head of the household; 3. Domestic violence occurs in a legal institution, namely marriage.

Violence after violence experienced by women turns out to leave a very heavy traumatic impact. In general, victims feel anxious, stressed, depressed, traumatized and blame themselves. While the physical consequences that are received and often arise are bruises, broken bones, damage to body parts and even death. Even though women (wives) are victims of violence, they tend to survive. This is because the wife is in a threatened situation, has no place to take shelter, for the benefit of the child, is afraid of being criticized by society because the shame will be imposed on women, and the reason for maintaining the marriage.⁴

Domestic violence (against women) is any act of verbal or physical violence, coercion/threat to life felt by a woman, whether still a child or an adult that can cause physical/psychological harm, arbitrary insults/deprivation of liberty. Basically, violence against women is any form of behavior carried out by the perpetrator of violence that gives rise to feelings of discomfort and fear,

¹ Muladi, 2002, *Demokrasi, Hak Asasi Manusia, dan Reformasi Hukum di Indonesia*, Jakarta: The Habibie centre, p. 40

² Dikdi M. Arief Mansur dan Elisatris Gultom, 2007, *Urgensi Perlindungan Korban Kejahatan Antara Norma dan Realita*, Cetakan Kesatu, Jakarta: PT Raja Grafindo Persada, p. 135.

³ Alimudin, 2014, *Penyelesaian Kasus KDRT (Kekerasan Dalam Rumah Tangga) Di Pengadilan Agama*, Cetakan Kesatu, Bandung: Mandar Maju, p. 36.

⁴ Mufidah Ch. dkk, 2006, *Haruskah Perempuan dan Anak Dikorbankan?*, Malang: Pilar Media, p. 13-14.

Legal Protection for Wives as Victims of Domestic Violence in Terms of Obtaining Custody Rights for Minors

both physical and non-physical violence.⁵ Violence has various forms that can be grouped as in cases of domestic violence. This form is grouped into large categories, namely: 1. Domestic violence/intimate personal relationships: Forms of violence from the perpetrator and victim have family relationships/other close relationships; 2. Violence in the public area: Forms of violence that occur outside of family or personal relationships; 3. Violence committed by/within the scope of the state: physical, sexual, and psychological violence that is committed, justified or allowed to occur by the state wherever it occurs.

The elimination of domestic violence in accordance with Article 4, Law No. 23 of 2004 (Domestic Violence Law) aims to: Prevent all forms of domestic violence; Protect victims of domestic violence; Take action against perpetrators of domestic violence; and Maintain the integrity of a harmonious and prosperous household.

Protection is all efforts aimed at providing a sense of security to victims carried out by the family, advocates, social institutions, police, prosecutors, courts, or other parties, either temporarily or based on a court decision. Ganely in his study "Understanding Domestic Violence" states that domestic violence is a pattern of aggressive and coercive behavior, including physical, sexual and psychological attacks as well as economic coercion carried out by adults or adolescents against their intimate partners.

In the Domestic Violence Law, Article 5 also explains the prohibition of domestic violence, which states that everyone is prohibited from committing domestic violence against people within their household by means of: Physical Violence; Psychological Violence; Sexual Violence; Neglect of Household. In Article 10 of the Domestic Violence Law, a wife who experiences domestic violence has the right to receive: Protection from the family, police, prosecutors, courts, advocates, social institutions, or other parties, either temporarily or based on the determination of a protection order from the court; Health services according to medical needs; Handling specifically related to the confidentiality of the victim; Assistance by social workers and legal assistance at every level of the examination process in accordance with the provisions of laws and regulations; and Spiritual guidance services.

The definition of custody above has the same meaning as *hadhonah* or child care as referred to in Article 1 letter (g) of the Compilation of Islamic Law, which regulates, "Child care or *hadhonah* is the activity of caring for, maintaining, and educating children until they are adults or able to stand alone". The Compilation of Islamic Law regulates the power of custody of children in Article 105, in Article 105 of the Compilation of Islamic Law it is regulated as follows: The care of children who are not *mumayyiz* or not yet 12 years old is the right of the mother; The care of a child who is *mumayyiz* is handed over to the child to choose between the father or mother as the holder of the right to care; The maintenance costs are borne by his father.

The provisions above regulate child custody power based on the child's age and intelligence level, children who are under 12 years old or not yet *mumayyiz* are under the care of the mother and vice versa, if they are 12 years old or have *mumayyiz*, the child has the right to choose who will look after him. Child welfare does not only talk about the cost of living for children, but more broadly about their growth and development, both spiritual, physical and social. Every child has the right to receive care, guarantees, and security for their interests, including protection from various disturbances that come, therefore a wife who experiences domestic violence has the right to have custody of a minor child with several factors of thought if given custody of her father, including: 1. The condition of a husband who is light-handed/temperamental likes to commit violence causes a traumatic feeling in the child if given custody to his father; 2. Children can have a grudge against their father because they often see their mother experiencing domestic violence; 3. The child's psychological growth and development can be disturbed, finally the child's growth experiences problems.

Based on the description of the background of the problem and the title of the study, the problem is formulated as follows: how is the legal protection of a wife as a Victim of Domestic Violence in terms of obtaining custody of minor children?

II. RESEARCH METHODS

The type of research used in this study is normative, namely by basing it on the applicable laws and regulations (positive law) using the laws and conceptual regulatory approaches. Legal materials are collected through inventory and identification procedures regarding laws and regulations, as well as classification and systematization of legal materials according to the research problems. Therefore, the technique of collecting legal materials used in this study is by using literature studies. Literature studies are carried out by reading, reviewing, recording and making reviews of library materials that are related to this research.

⁵ Sita Aripurnami, 2000, *Kekerasan Terhadap Perempuan, Aspek-aspek Sosial Budaya dan Pasal 5 Konvensi Perempuan, dalam Pemahaman Bentuk-bentuk Tindak Kekerasan Terhadap Perempuan dan Alternatif Pemecahannya*, Penyunting Achie Sudiarti Luhulima, Jakarta: PT Alumni, p. 116.

Legal Protection for Wives as Victims of Domestic Violence in Terms of Obtaining Custody Rights for Minors

III. DISCUSSION

Legal Protection for Wives as Victims of Domestic Violence According to Law No. 23 of 2004

The integrity and harmony of the household can be disrupted if the quality and self-control cannot be controlled, which can ultimately result in domestic violence. Domestic violence often makes a woman (wife) the victim, the occurrence of this incident can have cumulative effects that are not simple such as reducing women's self-confidence and can also hinder women's ability to participate and disrupt the mental and physical health of the victim. There are many factors that cause domestic violence, including: Individual Factors (Women); Partner Factors; Socio-Cultural Factors; Economic Factors.

Legal protection for women who have become victims of domestic violence has been regulated in the Domestic Violence Law with the aim of saving victims of domestic violence so that victims feel safer because they are protected by law. In accordance with the considerations of the Domestic Violence Law, victims of domestic violence, most of whom are women, must receive protection from the State or society to avoid and be free from violence or threats of violence, torture, or treatment that degrades human dignity and status.⁶

Theoretically, legal protection is divided into two, namely:⁷

1. Legal Protection for Women as Victims of Domestic Violence in a Preventive Manner, and Legal protection that is preventive in nature, namely before the violation occurs. Preventive legal protection in the Domestic Violence Law is reflected in the formulation of acts that are classified as criminal acts of domestic violence, which provide limitations on things that should not be done, as well as providing protection to victims.
2. Legal Protection for Women as Victims of Domestic Violence in a Repressive Manner. Legal protection that functions to resolve problems experienced by victims. This legal protection is the last legal protection, in the form of fines, imprisonment, additional penalties, and so on, which can only be given if a violation has occurred. Repressive protection in the Domestic Violence Law is reflected in the criminal sanctions imposed on perpetrators who violate the provisions of the Law.

Although the Law has been made and published, there are still many victims of domestic violence who do not dare to report it to the authorities, also because of the lack of trust from the community in the legal system in Indonesia which ultimately causes many cases of domestic violence to be left alone. According to Government Regulation No. 4 of 2006 concerning the Implementation and Cooperation of the Recovery of Victims of Domestic Violence, it is explained in Article 1 number 1 concerning Victim Recovery, which is all efforts to strengthen victims of domestic violence to be more empowered, both physically and psychologically.⁸

Victim recovery is given to victims of domestic violence (wives) which is facilitated by Government Agencies whose purpose is to restore victims both physically and psychologically and provide services to restore the condition of victims of domestic violence. The parameters of the Law on the Elimination of Domestic Violence are based on the following principles: Respect for Human Rights; Justice and Gender Equality; Non-discrimination; Protection of Victims.

Then in Article 49 of the Domestic Violence Law it is also stated that one of the objectives of eliminating domestic violence is: Preventing all forms of domestic violence; Protecting victims of domestic violence; Taking action against perpetrators of domestic violence; Maintaining the integrity of a harmonious and prosperous household.

Legal protection for a wife who has become a victim of domestic violence according to this Law is of 5 types, namely: Temporary Protection; Determination of a protection order by the Court; Provision of a Special Service Room (RPK); Provision of a safe house or alternative residence; Provision of legal consultation by an advocate to the victim at the investigation, prosecution and examination levels at the Court Hearing.

Efforts to provide protection to wives as victims of domestic violence as stated in Article 25 of the Domestic Violence Law, if they need protection and services from an advocate, the things that are provided are: 1. Providing legal consultations that include information on the victim's rights and the judicial process; 2. Accompanying victims at the investigation, prosecution, and examination levels in court and helping victims to fully explain the domestic violence they have experienced; 3. Coordinating with fellow law enforcers, volunteer companions and social workers so that the judicial process runs as it should.

Victims of domestic violence in this case the wife who experiences a case of violence in Article 26 according to the Domestic Violence Law have been stated: 1. Victims have the right to directly report domestic violence to the police either at the victim's location or at the scene of the incident; 2. Victims can give power of attorney to family or other people to report domestic violence to the police either at the victim's location or at the scene of the incident.

In providing temporary protection, the police can work together with health workers, social workers, volunteer companions, and/or spiritual guides to accompany victims as stated in Article 179 of the Domestic Violence Law, the police are required to provide information to victims about the victim's right to receive services and assistance. The police must immediately conduct an

⁶ Syahrul Ramadhon, AAA.Ngr.Tini Rusmini Gorda, 2020, "Perlindungan Hukum Terhadap Perempuan Sebagai Korban Kekerasan Dalam Rumah Tangga Secara Preventif dan Represif", *Jurnal Analisis Hukum*, p. 210.

⁷ *Ibid*, p. 211.

⁸ *Ibid*, p. 32.

Legal Protection for Wives as Victims of Domestic Violence in Terms of Obtaining Custody Rights for Minors

investigation after learning or receiving a report of domestic violence. The police must immediately inform the victim about several things that happened in this domestic violence case, what are the police's obligations towards the victim as stated in Article 20, including: Identity of officers for introduction to the victim; Domestic violence is a crime against dignity and humanity; The police's obligation to protect victims.

Law enforcement officers mostly consist of men, therefore, according to the mandate of the Domestic Violence Law, a special institution is provided, namely the RPK at the Police Agency with special officers, namely female police (polwan) so that victims do not feel afraid to report the violence they have experienced.

In this case of domestic violence, there are several patterns of the cycle of domestic violence between husband and wife which consist of 3 stages, namely:

1. Main Phase, increasing tension where at this stage the perpetrator of violence begins to blame his partner and uses minor abuse to control his partner, on the other hand the victim (wife will try to be patient and feelings arise within her to save and maintain her household).
2. Acute Abuse Phase, tension that has increased and can explode into acts of abuse, in this case the husband intends to teach his partner a lesson so that a feeling of fear arises in the wife and the wife tries to release her anger by fighting back.
3. Calm State Phase or honeymoon, After the wife is abused, sometimes the perpetrator realizes and regrets his actions (by apologizing to the wife) which have crossed the line and promises not to commit the abuse again.

Legal protection for domestic violence in several laws in Indonesia, including:

1. Legal Protection in the Criminal Code. Indonesian Criminal Law still poses a threat to every perpetrator of domestic violence or other crimes. Several criminal threats for perpetrators of domestic violence in the Criminal Code that previously applied the Domestic Violence Law which was used as a reference for law enforcement officers to protect women from violent crimes.
2. Legal Protection in the Domestic Violence Law. The articles that have been related to the provisions of the legislation on domestic violence have made it possible as a means or effort for law enforcement officers to be used as a reference for actions for perpetrators of domestic violence. The definition of protection in the Law is stated in Article 1 paragraph (4), namely all efforts aimed at providing a sense of security to victims carried out by the family, advocates, social institutions, police, prosecutors, courts, or other parties, either temporarily or based on a court decision.⁹ In addition, it is also explained in Article 1 paragraph (6) regarding temporary protection, namely protection directly provided by the police and/or social institutions or other parties, before the issuance of a protection order from the court.

In an effort to protect the law for victims of domestic violence, as here the victim is the wife, violence is also regulated in the Domestic Violence Law with several acts of violence that are often committed or committed against a woman, the forms of domestic violence include:

- a. Physical Violence. Acts that result in pain, illness or serious injury. Physical violence in both mild and severe forms. Physical violence in mild forms, for example, pinching, pulling hair, hitting with blows that do not cause injury and the like. While physical violence in severe forms, for example, hitting until injured, abusing, injuring, killing and the like.
- b. Psychological Violence. Acts that result in fear, loss of self-confidence, loss of ability to act, feelings of helplessness, and/or severe psychological suffering in a person. Psychological Violence does not have visible evidence that can be seen with the naked eye, but psychological violence often has a longer impact.
- c. Sexual Violence. Violence in the form of sexual harassment such as words, symbols and attitudes that lead to pornography, indecent acts, rape and the like. Forced sexual intercourse committed against a person residing in a household. Forced sexual intercourse against one person in the household with another person for commercial purposes and certain purposes.
- d. Economic Violence/Domestic Neglect. Violence in the form of economic neglect generally does not carry out its responsibilities in providing sustenance and other economic rights to the wife, children or other family members in the household. Because in essence everyone is prohibited from neglecting people in the household, even though according to the law that applies to him or because of an agreement or contract he is obliged to provide life, care, or maintenance to that person.

The Domestic Violence Law also regulates Criminal Provisions as explained in Article 44:

- a. Any person who commits an act of physical violence within the scope of the household as referred to in Article 5 letter a shall be punished with a maximum imprisonment of 5 (five) years or a maximum fine of Rp. 15,000,000,- (fifteen million rupiah).
- b. In the event that the act as referred to in paragraph (1) results in the victim falling ill or being seriously injured, shall be punished with a maximum imprisonment of 10 (ten) years or a maximum fine of Rp. 30,000,000,- (thirty million rupiah).

⁹ *Ibid.*, p. 3.

Legal Protection for Wives as Victims of Domestic Violence in Terms of Obtaining Custody Rights for Minors

- c. In the event that the act as referred to in paragraph (2) results in the death of the victim, shall be punished with a maximum imprisonment of 15 (fifteen) years or a maximum fine of Rp. 45,000,000,- (forty five million rupiah).
- d. In the case of acts as referred to in paragraph (1) committed by a husband against a wife or vice versa which does not cause illness or obstacles to carrying out work or livelihood or daily activities, the perpetrator shall be punished with imprisonment for a maximum of 4 (four) months or a maximum fine of Rp. 5,000,000,- (five million rupiah).

Article 45 of the Domestic Violence Law also explains the Criminal Provisions for acts of Psychological Violence:

- a. Any person who commits acts of psychological violence within the scope of the household as referred to in Article 5 letter b shall be punished with imprisonment for a maximum of 3 (three) years or a maximum fine of Rp. 9,000,000,- (nine million rupiah).
- b. In the case of acts as referred to in paragraph (1) committed by a husband against a wife or vice versa which does not cause illness or obstacles to carrying out work or livelihood or daily activities, the perpetrator shall be punished with imprisonment for a maximum of 4 (four) months or a maximum fine of Rp. 3,000,000,- (three million rupiah).

In sexual violence, criminal provisions are also regulated as stated in Article 46, namely "Any person who commits an act of sexual violence as referred to in Article 8 letter a shall be punished with a maximum imprisonment of 12 (twelve) years or a maximum fine of Rp. 36,000,000, - (thirty-six million rupiah)", while the criminal provisions for Article 8 letter b are regulated in Article 47, namely "Any person who forces a person who lives in his household to have sexual relations as referred to in Article 8 letter b shall be punished with a minimum imprisonment of 4 (four) years and a maximum imprisonment of 15 (fifteen) years or a minimum fine of Rp. 12,000,000, - (twelve million rupiah) or a maximum fine of Rp. 300,000,000, - (three hundred million rupiah)". The Criminal Provisions that have been stated in the Domestic Violence Law are further clarified if they result in injuries that do not provide hope of healing, the regulation is stated in Article 48, namely: In the event that the act as referred to in Article 46 and Article 47 results in the victim getting injuries that do not provide hope of healing at all, experiencing mental or mental disorders for at least 4 (four) weeks continuously or 1 (one) year not in a row, miscarriage, or death of the fetus in the womb, or resulting in the failure of the reproductive organs, shall be punished with a maximum imprisonment of 20 (twenty) years or a fine of at least Rp. 25,000,000, - (twenty five million rupiah) and a maximum fine of Rp. 50,000,000, - (fifty million rupiah). Domestic violence which is last mentioned in the Domestic Violence Law is also regulated by criminal provisions as stated in Article 49, namely Punished with a maximum imprisonment of 3 (three) years or a maximum fine of Rp. 15,000,000,- (fifteen million rupiah), each person: a. Neglecting another person within the scope of his/her household as referred to in Article 9 paragraph (1); b. Neglecting another person as referred to in Article 9 paragraph (2).

This regulation clearly leads to a goal that is to be achieved by the Law, namely providing legal protection for victims of domestic violence so that they receive fair treatment and proper protection.

There are also Legal Protection Efforts for Women Victims of Domestic Violence provided by the Government, namely:

1. Women and Children's Services (PPA). The National Police Headquarters has formed a Women and Children's Services Unit (PPA) in the Regional Police (Province), Regional Police and Resort Police (Regency/City) which is managed by Policewomen to provide services to women and children who are victims of crime with the hope that the Unit can facilitate victims of domestic violence crimes to get maximum protection.
2. Legal Aid. In addition to the availability of Women and Children's Services (PPA) with legal aid that has been provided by the Government, the community is also encouraged to be able to provide legal aid through legal institutions whose numbers and activities are increasing in providing legal aid to victims, in addition to actively providing socialization and advocacy to law enforcers to prosecute and impose severe penalties on perpetrators of domestic violence.

This protection order effort is also stated in the Domestic Violence Law Article 1 paragraph (6) which reads: a decision issued by the court to provide protection to the victim, so according to the order from the Court, the government works together with related agencies to form and provide protection services for victims of domestic violence.

In the Domestic Violence Law, especially in CHAPTER VI, a special chapter on Protection is also explained, which is stated in Article 16, which reads as follows: 1. Within 1 x 24 hours (one time twenty-four) hours from the time of knowing or receiving a report of domestic violence, the police are required to immediately provide temporary protection to the victim; 2. Temporary protection as referred to in paragraph (1) is given no later than 7 (seven) days from the time the victim is received or handled; 3. Within 1 x 24 (one time twenty-four) hours from the time of providing protection as referred to in paragraph (1), the police are required to request a protection order determination letter from the court.

A wife who experiences domestic violence is required to receive health services to determine whether the injuries on the victim's body are categorized as light or serious, as stated in Article 21 paragraph (1) of the Domestic Violence Law, namely: Checking the victim's health in accordance with professional standards; Making a written report on the results of the examination of the victim and a visum et repertum at the request of the police investigator or a medical certificate that has the same legal force as evidence.

Legal Protection for Wives as Victims of Domestic Violence in Terms of Obtaining Custody Rights for Minors

Obtaining Custody Rights of Minors

Child care is another term for child care, which basically means that children have become the responsibility of both parents, starting from education, economics and the basic needs of the child himself. only bound by marriage but also continuing even though a divorce has occurred. Hadhanah according to Shari'a is the right to educate children for people who have custody rights. Hadhanah in the sense of the Shari'a is caring for children who are not yet tamyiz and are not yet able to do their affairs independently, such as taking care of themselves, bathing, washing clothes and protecting themselves from danger. According to Hasbi Ash Shidieqy, hadhanah is educating children and taking care of all their interests within a certain age limit by people who have the right to educate them from their mahrams.¹⁰

It is required that the person who will care for the child has Kafa'ah or dignity commensurate with the child's position, and is able to carry out the duties as a child caretaker. So if the ability and kafa'ah include several of these conditions, the right to care for children will not be invalidated. The conditions for obtaining or receiving child custody are: Islam; puberty; Healthy mind; Trustworthy; Not married; Capable of educating children; Should have the ability to perform hadanah.

Child custody is an obligation of parents to provide services, protect, educate and care for children until adulthood, either during the marriage bond or parents who have divorce or dissolution of marriage. Regarding the applicable law on the division of custody rights, hadhanah is understood as an effort to care for, nurture and maintain children who are under 12 years old. At that age range, children are not yet able to distinguish and choose what is right, what is good and bad in his life, therefore the child needs an adult to take care of him.

The requirements that must be met when filing a child custody lawsuit to the Court, namely: Photocopy of the Plaintiff's ID card; Photocopy of Divorce Certificate; Photocopy of Family Card (KK); Photocopy of Birth Certificate Child; Lawsuit Letter addressed to the Chief Justice; Salary/Income Statement (For Civil Servants/TNI/Polri). The time period for resolving a case depends on the trial process, but the Religious Court generally has a target for resolving a case of no more than 30 days since the case was registered. Stages in filing a child custody lawsuit, namely: Filing a lawsuit to the court; Paying court costs. Those who cannot afford it can litigate for free; The plaintiff and defendant or their attorneys attend the hearing based on a court summons; At the first hearing, The judge tries to reconcile both parties. Husband and wife who are going to divorce must also come in person; If this is unsuccessful, the judge requires both parties to first undergo mediation; If mediation is unsuccessful, the examination of the case is continued by reading the lawsuit, answer, answer -answer, evidence; The judge will decide the divorce suit in an open session.

Child Custody Rights Under the Child Protection Act

In Indonesia, divorce is increasingly showing an increasing trend from year to year and this occurs in almost all Religious Courts in Indonesia. The impact of divorce is no less serious than the impact of household turmoil that is the impetus for the divorce itself, in addition to the couple after the divorce, the joint assets that have been painstakingly collected must also be destroyed. No less important is when a divorce occurs, the ones who will experience the negative impact of the divorce are the children in the family. After each husband and wife separate and get their new partners back, the next new problem is what will befall their children and that will have a long-term impact on them where at the beginning they were a harmonious family, both their parents felt the warmth and intimacy became just a memory for them, moreover when the husband and wife have found a replacement for a new partner, it is not certain that the new partner they marry will also be willing to accept the children brought from the husband or from the wife.

Article 1 number (1) of Law No. 23 of 2002 concerning Child Protection (Child Protection Law) explains the definition of a child as: "A person who is not yet 18 (eighteen) years old, including a child who is still in the womb." Meanwhile, Article 1 paragraph (2) explains that Child Protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop, and participate optimally in accordance with human dignity and honor, and receive protection from violence and discrimination. The Child Protection Law also provides a definition of family contained in Article 1 paragraph (3) as the smallest unit in society consisting of husband and wife, or wife and child, or father and child, or mother and child, or blood relatives in a straight line up or down to the third degree, while the definition of parents in the Child Protection Law is the biological father and/or mother, or father and/or stepmother, or father and/or adoptive mother.

The conflict over custody rights carried out by both parents does not actually protect the rights and interests of the child as regulated in the Child Protection Law, the conflict over the child has actually damaged the interests, rights and development of the child's life, especially if the child is kidnapped and taken by force by one of the parents and forced to come along using violence, being pulled and even some who have confiscated the child so that he is not found by one of the parents. This clearly sets aside all the rights of the child as regulated in the Child Protection Law, and is also a violation of the provisions of Article 4, Article 13, Article 16 paragraph (1) and (2), of the Child Protection Law which states:

¹⁰ T.M. Hasbi Ash Shidieqy, 2001, *Hukum Antar Golongan: Interaksi Fiqh islam dengan Syari'at Agama Lain*, Semarang: Pustaka Rizki Putra, p. 92.

Legal Protection for Wives as Victims of Domestic Violence in Terms of Obtaining Custody Rights for Minors

Article 4. Every child has the right to live, grow, develop, and participate fairly in accordance with human dignity and honor, and to receive protection from violence and discrimination.

Article 13. Every child, while in the care of parents, guardians, or any other party responsible for care, has the right to receive protection from: Discrimination; Exploitation, both economic and sexual; Neglect; Cruelty, violence and abuse; Injustice; Other mistreatment

The struggle for children sometimes leads to forgetting and ignoring the child's right to obtain education, the child is taken far away to a hiding place, not sent to school and positioned in the house continuously, kept away from his social life, thus ignoring the child's right to socialize with his peers. In the event that the parent, guardian or caregiver of the child carries out any form of treatment as referred to in paragraph (1), then the perpetrator is subject to increased punishment. Article 16 paragraph (1): Every child has the right to receive protection from being the target of abuse, torture, or inhumane punishment. Article 16 paragraph (2): Every child has the right to obtain freedom in accordance with the law.

Child Protection Law, in CHAPTER VI concerning Custody is explained in Article 30, Article 31 and Article 32 with the following text:

Article 30: In the event that a parent as referred to in Article 26 neglects his/her obligations, supervision measures may be taken against him/her or parental custody may be revoked. Supervision measures against parents or revocation of custody as explained above shall be carried out by a court ruling.

Article 31 paragraph (2): If one of the parents, siblings, or family up to the third degree, is unable to carry out their functions, then the revocation of parental custody as referred to in paragraph (1) may also be submitted by an authorized official or other institution that has the authority to do so.

Article 32: The court ruling as referred to in Article 31 paragraph (3) shall at least contain the following provisions: Does not sever the blood relationship between the child and his/her biological parents; Does not eliminate the obligation of the parents to finance their child's life.

So it can be concluded that child custody rights according to Law No. 23 of 2002 concerning Child Protection states that custody rights will be revoked if one of the parents is negligent in looking after the child and does not provide his/her rights properly.

Child Custody Rights Based on the Compilation of Islamic Law

Child care in the view of the Compilation of Islamic Law is something that every Muslim must pay great attention to and must do for their children, both when the parents are still in harmony and when their parents are divorced. Hadhanah is so important in the view of the Compilation of Islamic Law (KHI), that it regulates in detail the obligations of Muslim parents in Indonesia to care for their children, so that their worldly life and their afterlife can run well.

In Article 104 KHI it is stated: All costs of breastfeeding a child are borne by the father. If the father has died, then the cost of breast-feeding is borne by the person who is obliged to provide support to the guardian; Breastfeeding is carried out for a maximum of two years and weaning can be done in less than two years with the consent of the father and mother. Article 105 KHI also states that in the event of a divorce, then: The maintenance of a child who is not mumayyiz or not yet 12 years old is the right of the mother; The maintenance of a child who is mumayyiz is handed over to the child to choose between his father or mother as the holder of the right to maintain him; The maintenance costs are borne by his father.

The explanation from the KHI means that parents do not need to fight over child custody, because in this case it is very strict that child custody is given to the mother and the father is obliged to finance all the child's living needs so that he can grow and develop well. In Marriage Law No. 1 of 1974, which was enacted on January 2, 1974 and came into effect on October 1, 1975, is one form of law in Indonesia regarding marriage and its legal consequences. Marriage is a physical and spiritual bond between a man and a woman. and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Eternal God, while according to the KHI in Article 2 it is explained that marriage according to Islamic Law is a marriage or contract that is very strong to obey Allah's command and carry it out is worship.

Children aged 5 years are still classified as minors, according to KHI based on Presidential Instruction No. 1 of 1991, Article 105 letter (a) states "The maintenance of a child who is not yet mumayyiz or not yet 12 (twelve) years old is the right of the mother". Even though the child will be under the care of the mother, the cost of maintaining the child will still be borne by the father. The KHI is also in line with the Decision of the Supreme Court of the Republic of Indonesia No. 102 K/Sip/1973 dated 24 April 1975 which states "Based on the jurisprudence regarding child guardianship, the benchmark is that the biological mother is prioritized, especially for young children, because the interests of the child are the most important." criteria, unless it is proven that the mother is not fit to care for her child". Likewise with the Decision of the Supreme Court of the Republic of Indonesia No. 126K/Pdt/2001 on August 28, 2003, which states "If a divorce occurs, a child who is still under the age of care should be handed over to the to the person closest and most familiar to the child, namely the mother."

Legal Protection for Wives as Victims of Domestic Violence in Terms of Obtaining Custody Rights for Minors

Even so, it is not impossible for a father to obtain custody of his child, even though the child is still 5 years old, with the legal basis for granting custody to the father compared to having to grant custody to the mother when the child is still a minor, namely the Supreme Court Decision of the Republic of Indonesia No. 102K / Sip / 1973, this decision states that guardianship of the child will fall to the mother unless it is proven that the mother is unreasonable in caring for her child.

In Article 156 letter C KHI, a father or mother who is divorced can lose custody of their child or what in this regulation is called hadhanah. Etymologically, the word hadhanah (al-hadhanah) means "al-Janb" which means beside or under the armpit, or it can also be ascertained to place something near the ribs such as carrying, or placing something in the lap. The intention is to care for and educate a child who is not yet mumayyiz or who is not yet capable of carrying out legal actions or an adult who has lost his mind (intelligence), because they cannot yet do their own needs.

The basic order of people who have the right to perform hadhanah is: 1. Maternal relatives take precedence over paternal relatives if their level within the family is the same; 2. Grandmothers have priority over sisters, because children are part of grandfathers, therefore grandmothers have more rights than sisters; 3. Sibling relatives take precedence over non-biological relatives and maternal relatives take precedence over paternal relatives.

The basis of this order is the order of relatives who are related to a mahram, with the stipulation that at the same level the mother's side takes precedence over the father's side, if relatives who are related to a mahram do not exist then the right of hadhanah moves to relatives who are not related to a mahram. Article 156 letter C reads "if the hadhanah holder is unable to guarantee the physical and spiritual safety of the child, even though the costs of living and hadhanah have been covered, then at the request of the relative concerned the Religious Court can transfer the hadhanah rights to another relative who also has hadhanah rights".

Referring to this article, this means that to win a child custody lawsuit, a plaintiff must be able to guarantee the physical and spiritual safety of the child. Physical Safety means, such as: Not hitting, injuring or committing other physical violence against the child; Providing a safe environment for the child. Meanwhile, for Spiritual Safety, including: Providing affection, religious teachings, and good education to the child; Behaving and being a good role model for the child; Providing a good environment for the child. The following are reasons why a mother's custody rights over a child can be lost, including: The mother has bad behavior; The mother goes to prison; The mother cannot guarantee the physical and spiritual safety of her child.

IV. CLOSING

Conclusion

The conclusion of this study based on the explanation explained above according to the Domestic Violence Law must be implemented based on the principles of Respect for Human Rights, Justice and Gender Equality, Non-Discrimination and Protection of Victims. The Domestic Violence Law also states that everyone is prohibited from committing domestic violence against people within their household, whether it be physical violence, psychological violence, sexual violence or neglect of the household. This Domestic Violence Law was created with the aim of preventing all forms of domestic violence, protecting victims of domestic violence, prosecuting perpetrators of domestic violence and maintaining the integrity of a harmonious and prosperous household.

Victims of domestic violence in the Domestic Violence Law also have the right to receive protection from the family, police, prosecutors, courts, advocates, social institutions, or other parties, either temporarily or based on the determination of a protection order from the court, have the right to receive health services according to medical needs, have the right to receive special treatment related to the confidentiality of the victim, have the right to receive assistance from social workers and legal assistance at every level of the examination process in accordance with the provisions of laws and regulations and have the right to receive spiritual guidance services. The impacts caused by domestic violence such as psychological trauma in the form of depression, stress, having Trust Issues (Crisis of Trust), emotional instability of the soul by providing legal psychological services will have a good impact on the victim's psychology to be much more stable than before and given counseling and consultation sessions with companions/paralegals. The Domestic Violence Law explains the Criminal Provisions to protect victims of domestic violence which have been stated in Articles 44 to 49 with legal entanglements according to the type of violence committed, so that both the perpetrator and the victim also get justice in accordance with the actions that have been committed.

Suggestion

For Social Institutions or Community Institutions, it is necessary to hold socialization in each RT, RW, Kelurahan or Sub-district about the importance of family knowledge and how important it is for village officials or hamlet heads to know the legal basis of the Domestic Violence Law in order to be the basis for implementing first-level resolution if there is a case of domestic violence in the surrounding environment so that it can provide protection and a sense of security to wives who have become victims of domestic violence, which is the majority of victims, is very large.

Legal Protection for Wives as Victims of Domestic Violence in Terms of Obtaining Custody Rights for Minors

For the General Public, the need for awareness of each individual in responding to each victim of domestic violence so as not to blame/judge the victim in order to create conditions and a sense of security for victims to complain and tell the events they experienced in order to minimize the occurrence of delays in handling that should be given during times of crisis for victims when experiencing domestic violence.

For the Government and Law Enforcers, there is a need for more laws or legal bases by the central, regional and village governments to provide protection to women and children as the majority targets of violence in order to create security, justice and protection for women and children for victims of domestic violence and there is a need for awareness not to immediately blame the victim and to share what the victim suffers by upholding justice and providing guidance and legal justice in accordance with cases reported to the authorities and providing a comfortable and safe place for victims and friendly and adequate officers without discriminating against victims based on race, religion, ethnicity, position and culture.

REFERENCES

- 1) Undang-Undang Dasar Republik Indonesia
- 2) Kitab Undang-Undang Hukum Pidana
- 3) Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan
- 4) Undang-Undang Nomor 23 Tahun 2004 tentang Penghapusan Kekerasan Dalam Rumah Tangga
- 5) Undang-Undang Nomor 39 Tahun 1999 tentang Hak Asasi Manusia Undang-Undang No.23 Tahun 2003 tentang Perlindungan Anak
- 6) Peraturan Pemerintah Nomor 4 Tahun 2006 tentang Penyelenggaraan dan Kerja Sama Pemulihan Korban Kekerasan Dalam Rumah Tangga
- 7) Putusan Mahkamah Agung RI No 102 K/SIP/1973 tanggal 24 April 1975
- 8) Putusan Mahkamah Agung RI No.126 K/SIP/2001 Tanggal 28 Agustus 2003
- 9) Putusan Mahkamah Agung RI No. 423 K/SIP/1980 Tanggal 23 September 1980
- 10) Putusan Mahkamah Agung RI No. 239 K/SIP/1990 Tanggal 24 April 1990
- 11) Alimudin, 2014, *Penyelesaian Kasus KDRT (Kekerasan Dalam Rumah Tangga) Di Pengadilan Agama*, Cetakan Kesatu, Bandung: Mandar Maju.
- 12) Dikdi M. Arief Mansur dan Elisatris Gultom, 2007, *Urgensi Perlindungan Korban Kejahatan Antara Norma dan Realita*, Cetakan Kesatu, Jakarta: PT Raja Grafindo Persada.
- 13) E. Kristi Poerwandari, 2000, *Kekerasan Terhadap Perempuan: Tinjauan Psikologi Feministik, dalam Pemahaman Bentuk-Bentuk Tindak Kekerasan terhadap Perempuan dan Alternatif Pemecahannya*, Penyunting Achie Sudiarti Luhulima, Jakarta: PT Alumni.
- 14) Mufidah Ch. dkk, 2006, *Haruskah Perempuan dan Anak Dikorbankan?*, Malang: Pilar Media.
- 15) Muladi, 2002, *Demokrasi, Hak Asasi Manusia, dan Reformasi Hukum di Indonesia*, Jakarta: The Habibie Centre.
- 16) Sita Aripurnami, 2000, *Kekerasan Terhadap Perempuan, Aspek-aspek Sosial Budaya dan Pasal 5 Konvensi Perempuan, dalam Pemahaman Bentuk-bentuk Tindak Kekerasan Terhadap Perempuan dan Alternatif Pemecahannya*, Penyunting Achie Sudiarti Luhulima, Jakarta: PT Alumni.
- 17) Syahrul Ramadhon, AAA.Ngr.Tini Rusmini Gorda, 2020, "Perlindungan Hukum Terhadap Perempuan Sebagai Korban Kekerasan Dalam Rumah Tangga Secara Preventif dan Represif", *Jurnal Analisis Hukum*.
- 18) T.M. Hasbi Ash Shiddieqy, 2001, *Hukum Antar Golongan: Interaksi Fiqh Islam dengan Syari'at Agama Lain*, Semarang: Pustaka Rizki Putra.



There is an Open Access article, distributed under the term of the Creative Commons Attribution – Non Commercial 4.0 International (CC BY-NC 4.0) (<https://creativecommons.org/licenses/by-nc/4.0/>), which permits remixing, adapting and building upon the work for non-commercial use, provided the original work is properly cited.