

# Wife as a Perpetrator of Domestic Violence Viewed from the Perspective of Criminal Law

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**Abstract:** Domestic violence is a cruelty perpetrated by one partner against the other, not only leading to physical torture but also mental suffering. Victims of domestic violence are mostly women, but in reality, it is not only women who become victims of domestic violence; on the contrary, women themselves can also be perpetrators of domestic violence against their partners. An example of a case that occurred is a wife cutting off her husband's genitals. This phenomenon must receive protection from both society and the state to avoid and be free from violence and torture that have degraded the dignity and worth of humanity. The research method used is normative juridical, with the approach taken being a statutory approach.

Keyword: Perpetrator Wife, Domestic Violence, Victim's Rights.

#### **INTRODUCTION**

Basically, everyone who enters into the bond of marriage has a goal they wish to achieve, namely happiness both physically and spiritually. The purpose of every marriage institution is outlined in the general explanation of Law No. 1 of 1974, which states that "The purpose of marriage is to form a happy and lasting family, for which husband and wife need to help and complement each other, so that each can develop their personality, help, and achieve spiritual and material well-being." However, the journey of marriage does not always go smoothly. Many issues that then arise between the two often lead to disagreements and conflicts. Conflicts that do not cease can lead to Domestic Violence.

Violent behavior is a response to stressors faced by an individual, manifested through actual violent actions, whether towards oneself, others physically, or psychologically. (Emilyanil, 2019). If closely examined in daily life, the incidence of violence is typically directed towards women, whether in the form of sexual violence, acts of rape, or sexual harassment, which are predominantly aimed at women. The violence is understood as gender-based violence. This concept essentially refers to the subordinate position of women because their relationship reflects powerlessness and power, in other words, there is a power imbalance between women and men. (Rahmat, 2013).

Victims of domestic violence are generally women and children, while the perpetrators are men. (husbands). The relationship of the perpetrator with domestic violence includes people

who have blood relations, marriage, breastfeeding, caregiving, guardianship with the husband, and children, even household helpers who live in the house. The crime of domestic violence that occurs nowadays does not only have female and child victims, but men (husbands) can also become victims of domestic violence. Men (husbands) generally appear to be the most frequent perpetrators of domestic violence, but this does not mean that domestic violence is never committed by women (wives) against other family members, especially their husbands. Society considers that the violence committed by a wife against her husband within the household is a normal occurrence, as it is part of the dynamics of everyday married life. They also believe that the husband will be able to face and overcome it because they think that men are stronger than women.

Like in the case of a wife in Musi Banyuasin who cut off her husband's penis. Quoted from detikSumbagsel, the husband is named RH. His penis was cut off by his own wife, LY. The Head of Public Relations at the Musi Banyuasin Police, AKP Susianto, revealed that the incident occurred at the victim's house in Simpang Bayat Village, Bayung Lencir District, Muba, on Friday, February 23, 2024, around 5:00 AM WIB. At that time, the victim was sound asleep. Suddenly, the perpetrator LY became emotional seeing her husband sleeping. It is suspected that she had been harboring jealousy for a long time because RH often cheated and was recently caught. LY then took a sharp weapon and immediately cut off the victim's penis. It is suspected that out of jealousy, the victim was cheating, and at that time the victim was sleeping, so the perpetrator, who is his wife, immediately cut off the victim's genitals," said Susianto as reported by detikSumbagsel on Thursday, February 29, 2024. The victim, RH, suddenly woke up and screamed in pain. He panicked upon discovering that his penis had already been cut off. The victim was immediately given first aid by residents and rushed to Bayung Lencir Regional Hospital. (Syahbana, 2024).

So far, the laws that have been enacted provide more legal protection to wives who are victims of domestic violence, resulting in discrimination against husbands in terms of obtaining legal protection. However, in reality, husbands can also be victims of domestic violence perpetrated by their wives. Therefore, this research will discuss the formulation of the problem, namely: 1) How is domestic violence committed by women (wives) viewed from the perspective of criminal law? 2) How is legal protection provided to husbands as victims of domestic violence?.

#### METHOD

This writing uses a normative research method, which usually consists only of document studies, namely using legal sources such as regulations, court decisions, contracts/agreements, legal theories, and scholarly opinions. Wiradipradja explains that normative legal research is a type of legal research that examines positive legal norms as its object of study. In normative legal research, law is no longer viewed merely as a utopian concept but has been institutionalized and written in the form of existing norms, principles, and legal institutions. (Muhaimin, 2020) The legal materials used in the research were collected through tracing and documentation studies, both via e-books, libraries, and internet media, thus eliminating the need for direct data collection from the community regarding the research issues. With the legal materials collected and categorized, they were then examined using a conceptual approach, a legislative approach, and a case approach to obtain an overview or answer to the issues that are the focus of this research.

#### **RESULTS AND DISCUSSION**

#### Domestic Violence Committed by Women (Wives) from the Perspective of Criminal Law

Studies on gender-based violence often construct men as perpetrators and women as victims. Susan Hanks' opinion (Director of the Family and Violence Institute in Alameda, California) regarding the factors causing abuse perpetrated by men against women: "There are

no specific characteristics of men who abuse women." Whether the man is of a certain age, economic condition, or specific sexual deviation. The man abuses due to his psychological condition. Men who commit violence want to seek power or control over their partner, or their own lives. It could also be because they are constantly dependent on women and are worried about actions from women regarding their freedom. Some other men resort to violence because that is the only way they know to get close to their partner. (Yulia, 2010).

Just like men, women also tend to be perpetrators of domestic violence. Article 5 of Law Number 23 of 2004 regulates the forms of domestic violence. The provision states as follows: "Everyone is prohibited from committing domestic violence against individuals within their household, in the following ways: a. physical violence; b. psychological violence; c. sexual violence; or d. neglect of the household." Physical violence as referred to in Article 5 letter (a) is an act that causes pain, illness, or serious injury. Physical violence can be committed by women against their husbands, children, in-laws, domestic workers, or anyone within the household scope. Forms of physical violence range from abuse to taking a life. Some of the cases that have come to light include beating the husband, smothering the child with a pillow, pouring hot water on the maid, and so on. Cases of husbands having their genitals cut off have occurred several times. The motive is almost the same, namely the husband who is known to have committed adultery. The easiest way to prove physical violence is by attaching the results of a visum et repertum. The criminal threat for women who commit physical violence in the household is regulated in Article 44 of Law Number 23 of 2004 as follows:.

- 1) Every person who commits acts of physical violence within the scope of the household as referred to in Article 5 letter a shall be punished with imprisonment for a maximum of 5 (five) years or a fine of up to Rp 15,000,000.00 (fifteen million rupiah).
- 2) In the event that the act referred to in paragraph (1) results in the victim falling ill or suffering serious injury, the offender shall be punished with imprisonment for a maximum of 10 (ten) years or a fine of up to Rp 30,000,000.00 (thirty million rupiah).
- 3) In the event that the act referred to in paragraph (2) results in the death of the victim, the offender shall be punished with imprisonment for a maximum of 15 (fifteen) years or a fine of up to Rp 45,000,000.00 (forty-five million rupiah).
- 4) In the event that the act referred to in paragraph (1) is committed by a husband against his wife or vice versa, which does not cause illness or hinder the performance of official duties or livelihood activities, the offender shall be punished with imprisonment for a maximum of 4 (four) months or a fine of up to Rp 5,000,000.00 (five million rupiah).

Psychological violence can also be perpetrated by women within their household. Psychological violence as referred to in Article 5 letter b is an act that causes fear, loss of selfconfidence, loss of ability to act, helplessness, and/or severe psychological suffering to someone. Factually, this form of psychological violence is most often perpetrated by women. For example, when a wife demands from her husband every day, compares her husband, and does not respect him, a daughter-in-law who does not treat her mother-in-law well, or a mother who constantly scolds her child. Article 45 paragraph (1) of Law Number 23 of 2004 regulates the criminal threats against perpetrators of psychological violence, as follows:

- 1) Any person who commits psychological violence within the household as referred to in Article 5 letter b shall be punished with imprisonment for a maximum of 3 (three) years or a fine of up to Rp 9,000,000.00 (nine million rupiah).
- 2) In the case where the act referred to in paragraph (1) is committed by a husband against a wife or vice versa, which does not cause illness or hinder the performance of duties, occupation, or daily activities, shall be punished with imprisonment for a maximum of 4 (four) months or a fine of up to Rp 3,000,000.00 (three million rupiah).

Domestic violence that is also prohibited by law is sexual violence. Article 8 of Law Number 23 of 2002 defines sexual violence as referred to in Article 5 letter c, which includes:

- a. Coercion of sexual relations against a person residing within the household; In some cases of sexual violence occurring within the household, the mother becomes the perpetrator by forcing or facilitating her partner (husband or another man) to have sexual relations with her child.
- b. Coercion of sexual relations against one person within the household with another person for commercial and/or specific purposes. The provisions of this article regulate sexual exploitation of individuals within the household. Sexual exploitation is carried out to gain economic benefits from people under his/her control.

The last part that falls under domestic violence is the crime of abandonment. Neglect is one of the domestic violence acts that occurs quite frequently in society. Article 9 (1) of Law Number 23 of 2002 stipulates:

- 1) Everyone is prohibited from neglecting individuals within their household, even though according to the applicable law or by agreement or contract, they are obliged to provide life, care, or maintenance to that individual;
- 2) Neglect as referred to in paragraph (1) also applies to anyone who causes economic dependency by restricting and/or prohibiting them from working appropriately inside or outside the home, thereby placing the victim under their control.

Abandonment that can be committed by women and is commonly found in society, such as leaving a husband who is in a sick condition. This action is indeed considered wrong by society, but it turns out that such actions can be punishable by law. The criminal threat of neglect is regulated in Article 49 of Law Number 23 of 2002, which states that it is punishable by imprisonment for a maximum of 3 (three) years or a fine of up to Rp 15,000,000.00 (fifteen million rupiah): "Anyone who: a. neglects another person within their household as referred to in Article 9 paragraph (1); b. neglects another person as referred to in Article 9 paragraph (2).

### Legal Protection for Husbands as Victims of Domestic Violence Committed by Wives as Perpetrators of Domestic Violence

#### Reviewed under Law Number 23 of 2004 concerning the Elimination of Domestic Violence

Domestic violence does not only happen to women and children; men (husbands) can also be victims of domestic violence, although not as predominantly as women, which means men also need protection from the domestic violence they experience (Rouf, 2016). The Domestic Violence Eradication Law is a significant legal breakthrough for the protection of human rights, particularly for the protection of those harmed within the family or household. An important legal breakthrough in the domestic violence law not only regulates the enforcement of human rights but also identifies parties who may be involved in domestic violence, so that victims need protection.

In Article 2, it is stated that the scope of the household includes: a. husband, wife, and children; b. people who have family ties with those referred to in letter (a) due to blood relations, marriage, breastfeeding, fostering, and guardianship, who reside in the household; and/or c. people who work to assist the household and reside in that household. (Manan, 2008) The definition of "household" in the Domestic Violence Prevention Law is very broad, so it not only aims to protect women/wives but also other family members, even those who do not have blood ties but have long lived with the family or worked in the household, including husbands. Because, the facts on the ground show that husbands, children, or domestic workers can also experience domestic violence. Therefore, if a man (husband) is abused by his wife, he can obtain protection of his rights under the Domestic Violence Law (UU PKDRT) if he reports to the authorities. In addition to regulating the imposition of criminal sanctions, it also stipulates the state's obligation to provide legal protection to the husband who becomes a victim and subsequently reports it.

The definition of a Victim in Article 1, paragraph 3 is "A victim is a person who experiences violence and/or threats of violence within the household. A husband who becomes a victim of domestic violence certainly suffers various forms of suffering/loss, such as material, physical, or psychological, so the protection provided to the husband also takes various forms." Victims are guaranteed protection in accordance with Article 1, paragraph 4, which states that "Protection is all efforts aimed at providing a sense of security to the victim carried out by family members, advocates, social institutions, police, prosecutors, courts, or other parties, either temporarily or based on a court order." The rights of victims as explained in Article 10 are: a) protection from family members, police, prosecutors, courts, advocates, social institutions, or other parties, either temporarily or based on a court protection order; b) health services according to medical needs; c) special handling related to the confidentiality of the victim; d) assistance by social workers and legal aid at every stage of the investigation process in accordance with the provisions of the legislation; and e) spiritual guidance services. The Domestic Violence Law selectively distinguishes between the function of protection and the function of services, where not all institutions and agencies referred to in this Law can provide protection by taking legal action to impose sanctions on the perpetrator. Protection by non-law enforcement institutions and agencies is more in the form of providing consultation, mediation, assistance, and rehabilitation services, rather than reaching the litigation stage. (pengadilan). But the role of each institution and agency is very important in the effort to prevent and eliminate domestic violence.

The Domestic Violence Law divides protection for husbands who are victims of domestic violence into temporary protection and protection with court orders, as well as services. Protection and services are provided by institutions and agencies according to their respective duties and functions, including:

#### a. Police:

In the process of investigation and prosecution by the Police, the victim has the right to directly report domestic violence to the police either at the victim's location or at the scene of the incident (Article 26 paragraph (1) of the Domestic Violence Prevention Law). The victim can authorize family members or others to report domestic violence to the police either at the victim's location or at the scene of the incident (Article 26 paragraph (2) of the Domestic Violence Prevention Law). Within 1 x 24 hours from the time of knowing or receiving a report of domestic violence, the police are obliged to immediately provide temporary protection to the victim. The temporary protection as referred to is provided for a maximum of 7 (seven) days from the time the victim is received or handled (Article 16 paragraphs (1) and (2) of the Domestic Violence Law). Within 1 x 24 hours from the provision of the temporary protection as referred to, the police are obliged to request a court order for protection (Article 16 paragraph (3) of the Domestic Violence Law). In providing temporary protection, the police can collaborate with healthcare professionals, social workers, accompanying volunteers, and/or spiritual advisors to assist the victim (Article 17 of the Domestic Violence Prevention and Handling Act). The police are obligated to inform the victim about their rights to receive services and support (Article 18 of the Domestic Violence Prevention and Handling Act). The police must immediately conduct an investigation upon knowing or receiving a report about domestic violence (Article 19 of the Domestic Violence Prevention and Handling Act). The police must promptly inform the victim about: a) the identity of the officer for recognition by the victim; b) domestic violence being a crime against human dignity; and c) the police's obligation to protect the victim. (Pasal 20 UU PKDRT). The police can arrest and subsequently detain the perpetrator without a warrant if they are believed to have violated the protection order, even if the violation did not occur at the police station. The arrest and detention as referred to must be accompanied by an arrest and detention order after 1 x 24 hours (Article 35 paragraph (1) and (2) of the Domestic Violence Law). According to Article 35 paragraph (3),

the suspension of detention does not apply to detention as referred to in Article 35 paragraph (1) and (2) of the Domestic Violence Law.

b. Healthcare Workers

Healthcare workers are individuals who dedicate themselves to the field of health and possess knowledge and/or skills through education in the health sector, which for certain types require the authority to carry out health efforts. (Koswara, 2018) (Pasal 1 angka 3 UU No. 23 tahun 1992 tentang Kesehatan). In providing health services to victims, healthcare workers must: a) examine the victim's health according to their professional standards; b) create a written report of the examination results and a forensic medical report at the request of the police investigator or a medical certificate with the same legal standing as evidence. (Pasal 21 ayat 1 UU PKDRT). The healthcare services are provided at health facilities owned by the government, local government, or the community.

c. Social Workers

Social workers are the frontline profession in providing social services to help individuals, groups, families, and communities in solving the social problems they face. (Lestari, 2023) In providing services, social workers must: a. conduct counseling to empower and provide a sense of security for the victims; b. provide information about the victims' rights to receive protection from the police and the issuance of protection orders from the court; c. escort victims to safe houses or alternative residences; and d. coordinate comprehensively in providing services to victims with the police, social services, and social institutions needed by the victims. (Pasal 22 ayat 1 UU PKDRT). The social worker's services are provided in safe houses owned by the government, local government, or the community.

d. Companion Volunteers

In providing services, companion volunteers can: a. inform the victim of their right to have one or more companions; b. accompany the victim at the investigation, prosecution, or court examination stage by guiding the victim to objectively and completely describe the domestic violence they have experienced; c. listen empathetically to all the victim's accounts so that the victim feels safe being accompanied by the companion; and d. actively provide psychological and physical support to the victim. (Pasal 23 UU PKDRT). e. Spiritual Advisor

Accompanying volunteers must be aware of the rights of violence victims as stipulated in Article 10 of the Domestic Violence Prevention and Handling Act (UU PKDRT) so that they can perform their duties effectively. Likewise, the procedures or processes for reporting or filing a complaint about violence must also be known by the volunteers. The accompanying volunteers should also be able to cooperate with the relevant parties in carrying out their duties, such as communicating with the police, prosecutors, courts, healthcare workers, spiritual counselors, or social workers. (Handoyo, 2008). In providing services, spiritual counselors must explain the rights and obligations and offer reinforcement of faith and piety to the victims. (Pasal 24 UU PKDRT).

f. Lawyer

Lawyers in providing protection and services are required to: a) provide legal consultations that include information about the rights of victims and the judicial process; b) accompany victims at the investigation, prosecution, and court hearing stages and help victims fully present the domestic violence they have experienced; or c) coordinate with other law enforcement officers, accompanying volunteers, and social workers to ensure the judicial process runs as it should. (Pasal 25 UU PKDRT).

g. Court

The head of the court, within a period of 7 (seven) days from the receipt of the application, is obliged to issue a decree containing a protection order for the victim and other family members, unless there is a valid reason. (Pasal 28 UU PKDRT). At the request of the victim or their representative, the court may consider: a. imposing a special condition; b.

modifying or revoking a special condition of the protection order. Such considerations can be submitted together with the process of filing domestic violence cases for protection orders. (Pasal 31 UU PKDRT). In the implementation of these efforts, both the Central Government and the Regional Government can collaborate with the community or other social institutions. (Pasal 14 UU PKDRT).

# Reviewed from Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning the Protection of Witnesses and Victims

The definition of a victim according to Article 1, paragraph 3 of Law No. 31 of 2014 is "a person who suffers physical, mental, and/or economic losses caused by a criminal act." The rights that a husband who becomes a victim of domestic violence can obtain are outlined in Article 5 paragraph (1), so he must receive protection, including: a. protection for personal safety, family, and property, as well as freedom from threats related to the testimony he will, is, or has given; b. participation in the process of choosing and determining the form of protection and security support; c. providing testimony without pressure; d. receiving an interpreter; e. freedom from entrapment questions; f. receiving information about the case's progress; g. receiving information about the court's decision; h. receiving information in case the convict is released; i. confidentiality of identity; j. receiving a new identity; k. receiving temporary housing; l. receiving new housing; m. receiving transportation cost reimbursement as needed; n. receiving legal advice; o. receiving temporary living expense assistance until the protection period ends; and/or p. receiving accompaniment.

In Article 10, it provides a guarantee of protection to members of the community who have good intentions to report criminal acts and also witnesses who provide their testimony that based on their testimony, among others: (1) Witnesses, Victims, Perpetrator Witnesses, and/or Reporters cannot be legally prosecuted, either criminally or civilly, for the testimony and/or report they will, are, or have given, unless the testimony or report is given in bad faith. In the event of legal action against Witnesses, Victims, Perpetrator Witnesses, and/or Reporters for the testimony and/or report they will, are, or have given, the legal action must be postponed until the case they reported or testified to has been decided by the court and has obtained permanent legal force. This is a form of protection for the human rights of a husband who is a witness and victim of domestic violence, which is expected to provide testimony so that there is clarity in a case and to keep him away from feelings of pressure and fear.

# **Reviewed from Government Regulation Number 4 of 2006 on the Implementation and Cooperation in the Recovery of Domestic Violence Victims**

Victim recovery is all efforts to empower victims of domestic violence to be more resilient, both physically and psychologically. The implementation of victim recovery is carried out by government agencies and local governments, as well as social institutions, in accordance with their respective duties and functions, including providing the necessary facilities for victim recovery. These facilities include: a) special service rooms in the police force; b) expert and professional personnel; c) service centers and safe houses; and d) other facilities and infrastructure necessary for victim recovery (Article 2 of Government Regulation No. 4 of 2006). The implementation of victim recovery activities includes: a) health services; b) victim assistance; c) counseling; d) spiritual guidance; and e) resocialization.

In providing services to the victim, healthcare professionals make efforts: a) taking the victim's medical history; b) examining the victim; c) treating the illness; d) restoring health, both physical and mental; e) counseling; and/or f) referring to more adequate healthcare facilities if necessary. For investigative purposes, authorized healthcare personnel must create a visum et repertum and/or a visum et repertum psychiatricum or issue a medical certificate. Social workers in providing services to victims can do so in safe houses, service centers, or alternative residences owned by the government, local government, or the community. Article

16 paragraph (1) explains that cooperation in the context of victim recovery, local governments can coordinate between relevant agencies and the community that cares about the elimination of domestic violence. In Article 18: In certain cases, health workers, social workers, accompanying volunteers, and/or spiritual guides can collaborate with: a) the police, to report and process perpetrators of domestic violence; b) advocates, to assist victims in the judicial process; c) other law enforcement officers, to assist victims in court proceedings; d) the National Commission on Violence Against Women; e) the Indonesian Child Protection Commission (KPAI); f) certain parties deemed necessary for the benefit of the victim.

For the implementation of recovery for husbands who are victims of domestic violence, it is carried out by government agencies and local governments as well as social institutions in accordance with their respective duties and functions, and can cooperate with the community or social institutions, both national and international, whose implementation is in accordance with the laws and regulations. From this provision, social institutions have the opportunity to play a role in the efforts to rehabilitate victims of domestic violence. Before the husband who is a victim of domestic violence is reintegrated into society (resocialization), social institutions provide support to the victim by coordinating and collaborating with other parties (healthcare workers, spiritual advisors, advocates, psychologists, social workers, accompanying volunteers, etc.) so that the victim of domestic violence can socialize with the community.

#### **CONCLUSION**

Domestic violence is categorized as a crime in the legal sense as regulated by Law Number 23 of 2004 concerning the Elimination of Domestic Violence. The scope of the household includes husbands, wives, and children; individuals who have family relationships due to blood ties, marriage, breastfeeding, fostering, and guardianship, who reside in the household; and/or individuals who work to assist the household and reside in that household. As a crime, domestic violence can be punished as stipulated in the threats of punishment regulated by Law Number 23 of 2004. Domestic violence can be perpetrated by women (wives), including physical violence, psychological violence, sexual violence, and neglect.

The legal basis for taking action to obtain protection for husbands who are victims of domestic violence can be found, among others, in: Law Number 23 of 2004 on the Elimination of Domestic Violence, Law Number 31 of 2014 on Amendments to Law Number 13 of 2006 on the Protection of Witnesses and Victims, and Government Regulation Number 04 of 2006 on the Implementation and Cooperation of Domestic Violence Victim Recovery. A husband who becomes a victim of domestic violence is entitled to protection from family members, the police, the prosecutor's office, the court, lawyers, social institutions, or other parties, whether temporary or based on a court protection order. Recovery for husbands who are victims of domestic violence is carried out for their benefit, where the husbands who are victims can receive services from healthcare professionals, social workers, accompanying volunteers, and spiritual counselors. Although the perpetrator of domestic violence is a woman (wife), women in the criminal justice system are still protected by the separation of detention spaces and are examined by a women's unit. Therefore, in the system of addressing domestic violence crimes, preventive efforts are needed, specifically character education socialization, especially for prospective parents, to provide understanding and readiness regarding the concept of household management, being a wife, husband, in-law, parent, and member of a family. This is very necessary so that in carrying out a marriage, if there are incompatibilities in running a household, they are not resolved with violence, whether physical, psychological, sexual, or neglect of the household.

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