



# The Law Protection for the Woman Victim of Violence on Traditional Marriage

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Article Info	Abstract	
<p><b>Keywords:</b> Law Protection; Law, Domestic Violence; Traditional Marriage.</p>	<p><b>Introduction:</b> The law regulation about the elimination of domestic violence has been regulated on dalam Law Number 23 of 2004 about The Elimination of Domestic Violence that, "to prevent, protect the victim, and take action to the domestic violence perpetrator, country, and society must do the prevention, protection, and the perpetrator prosecution that suitable with the Pancasila's philosophy and the 1945 Constitution of the Republic of Indonesia".</p> <p><b>Purposes of the Research:</b> The victim who is bound by marriage that has been done traditionally but not done civilly.</p> <p><b>Methods of the Research:</b> The research's method on this writing is using the normative research's method. A research's method that been done with researching the library materials towards the regulations and literatures that relate with the problem that be researched. The Data that used is the secondary data with the secondary and tertiary legal materials collection priority. Then the data that be obtained are processed and served descriptively-analysis.</p> <p><b>Results of the Research:</b> The research's results shows that the domestic violence that be experienced by the women who her marriage has been done traditionally based on the Law of The Elimination of Domestic Violence can be categorized as the Domestic Violence Criminal Act, but on the handling, the investigator keep to do the things that be mandated by the constitution by giving the victim's rights and the law protection. The marriage's status that been done traditionally doesn't have the fixed legal foundation. But, the country keep guarantee the traditional existence in Indonesia.</p>	

## 1. INTRODUCTION

Domestic violence is the most common violence experienced by women, especially in Indonesia.<sup>1</sup> The violence against woman or more often known as gender based violence caused by the gender inequality because of the existence of the imbalance power relation, that often happen on domestic violence that been done by the person who has more power than the weaker person. The difference of those genders are actually not a problem as long as not creating the gender injustice, but the difference of those genders has created the injustice like marginalization or the economic impoverishment, subordination or be

<sup>1</sup> Andang Sari and Anggreany Haryani Putri, "Perlindungan Hukum Terhadap Perempuan Korban Kekerasan Dalam Rumah Tangga," *Krtha Bhayangkara* 14, no. 2 (2020): p. 237, <https://doi.org/10.31599/krtha.v14i2.291>.

considered as not important to take a public decision, stereotypically formation or negative labelling, violence, workload that heavier and longer.<sup>2</sup>

Gender violence is the most widespread violation of human rights, taking multiple forms: domestic violence, sexual abuse of girls, harassment at work, human trafficking, and rape by husbands or by strangers, in refugee camps, or as a tactic in war, and others. The list is long and not confined to one culture, religion or country.<sup>3</sup> Violence against women is the effect of the historical inequality of power relations between men and women that has resulted in the domination and discrimination of men over women.<sup>4</sup> Domestic violence will occur repeatedly, and even happens continuously like a vicious circle that will never be broken.<sup>5</sup>

Family is room the scope of a the most intense to adapt. Various ways are done to increase communication as well harmony in the household that can be family and prevent there is a conflict or problems that occur in the family.<sup>6</sup> The purpose of marriage is to form a happy and prosper household. But on living a marriage the dissimilarity of the vision on forming the household will creating the conflicts that caused the violence between husband and wife, the children or people on the household's scope. Domestic violence only applies in marriage or households resulting from marriages recognized by the state.<sup>7</sup>

The Domestic Violence is an action scope towards people especially woman, which effecting the misery or physical, sexual, psychology, and/or suffering the household neglect including threat to do the action, coercion, freedom's deprivation, against the law on the household scope. The majority of the domestic violence's victims are woman (wife) the perpetrators are husband, even though there are also victims which opposite, or the people that are subordinated on that household.

The perpetrator or victim of the domestic violence are the people who have the blood relation, marriage, the same nursing mother, nurturing, guardianship with the husband and children and even the housemaid who live in a household. Not all the domestic violence's action can be handled completely because the victim often cover the reason of cultural and religion structure bond, and not understood the implemented law system. Whereas the protection's purposes by the country and society are to give the safe feeling towards the victim and also to take action against the perpetrator.

This thing is effected by the domestic violence case are the case with big number that found compare with the other violence case. The domestic violence is also a complicated

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<sup>2</sup> Mansour Fakih, *Analisis Gender Dan Transformasi Sosial* (Yogyakarta: Pustaka Pelajar, 2010).

<sup>3</sup> Oscar Fernández Álvarez and Lally Kouadio Alexis, "Violence against Women and Children. A Distant and Domestic Hell," *Procedia - Social and Behavioral Sciences* 161 (2014): p.7, <https://doi.org/10.1016/j.sbspro.2014.12.002>.

<sup>4</sup> Abdul Aziz, "Islam Dan Kekerasan Dalam Rumah Tangga," *Kordinat XVI*, no. 1 (2017): p. 166.

<sup>5</sup> Winda Ayu Fazraningtyas, Dini Rahmayani, and Indana Rahmah Fitriani, "Kejadian Kekerasan Pada Perempuan Selama Masa Pandemi COVID-19," *Dinamika Kesehatan: Jurnal Kebidanan Dan Keperawatan* 11, no. 1 (2020): p. 368, <https://doi.org/10.33859/dksm.v11i1.550>.

<sup>6</sup> Ayu Setyaningrum and Ridwan Arifin, "Analisis Upaya Perlindungan Dan Pemulihan Terhadap Korban Kekerasan Dalam Rumah Tangga (KDRT) Khususnya Anak-Anak Dan Perempuan," *JURNAL MUQODDIMAH: Jurnal Ilmu Sosial, Politik Dan Hummaniora* 3, no. 1 (2019): p.10-11, <https://doi.org/10.31604/jim.v3i1.2019.9-19>.

<sup>7</sup> Nur Rofiah, "Kekerasan Dalam Rumah Tangga Dalam Perspektif Islam," *Wawasan: Jurnal Ilmiah Agama Dan Sosial Budaya* 2, no. 1 (2017): p. 32, <https://doi.org/10.15575/jw.v2i1.829>.

thing. Not like the other crime, where the victim and the perpetrator are in the personal, legal, and institutional and also have social implication.<sup>8</sup>

Domestic violence is unique, because this crime occurs within the household and takes place in an intimate personal relationship, namely between husband and wife, parents and children or between children and children or with people who work in the household and live permanently.<sup>9</sup> The law regulation about the elimination of the domestic violence has been regulated on the Law Number 23 of 2004 about the Elimination of The Domestic Violence. On the general explanation of that, "to prevent, to protect the victim, and to take the action towards the domestic violence's perpetrator with the Pancasila philosophy and 1945 Constitution of the Republic of Indonesia".

Although on the various regulations that give the protection towards the perpetrator, formulated on the serious criminal threat, especially relate to domestic violence's problem, however on the reality there is case where people who become the domestic violence's victim, the victim come and report to the police, the victim who has the marriage bond that been done traditionally but not done civilly or on the church, where based on Article 2 verse (1) alphabet b and c the Law of Domestic Violence mention that :

- 1) The person who has the family relation with the person who mentioned on the alphabet (b) because of blood relation, marriage, the same nursing mother, nurturing, guardianship, who stay on the household.
- 2) The person who work to help the household and stay on that household.

Many incidents of violence against women are not reported because they are considered a disgrace to the family. Women also tend to choose to remain silent and keep to themselves the problems of violence they experience, for fear that if they speak up and ask for support from others, they will be blamed.<sup>10</sup> Based on the background description above, so the problem is whether the violence action that do in the traditional marriage can be categorized as the domestic violence based on the Elimination of Domestic Violence (UUPKDRT).

## 2. METHOD

The research's method on this writing is using the normative research's method. A law research's method which do with researching the library materials or secondary data as the basic material to be researched by holding to search towards the regulations and literatures which relate to the problem that be researched.<sup>11</sup> The data that be used are the secondary data with the priority collection of the secondary and tertiary law materials. Then the data that be obtained are processed and served *descriptively-analysis*.

## 3. RESULTS AND DISCUSSION

The marriage is the very important event on the traditional society's life, the reason of the marriage's relation is not relate to the both of bride, but also to the parents of both sides,

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<sup>8</sup> Ahmad Imam, *Perempuan Dalam Kebudayaan* (Yogyakarta: PT. Tiara Wacana, n.d.), p. 25.

<sup>9</sup> Hamidah Abdurrachman, "Perlindungan Hukum Terhadap Korban Kekerasan Dalam Rumah Tangga Dalam Putusan Pengadilan Negeri Sebagai Implementasi Hak-Hak Korban," *Jurnal Hukum Ius Quia Iustum* 17, no. 3 (2010): P. 476, <https://doi.org/10.20885/iustum.vol17.iss3.art7>.

<sup>10</sup> Anthon Freddy Susanto, "Pendekatan Restoratif Dalam Kekerasan Rumah Tangga Menurut Perspektif Hukum Pidana," *Pagaruyuang Law Journal* 4, no. 2 (2021): p. 250.

<sup>11</sup> Soerjono Soekanto and Sri Mamudji, "Penelitian Normatif (Suatu Tinjauan)" (Jakarta: Rajawali Press, 2001), p. 13-14.

the siblings, and each family. The marriage is also the important even which means completely get the attention and followed by the ancestor's spirits from the both sides. The traditional marriage must be understood as the marriage based on the customary rules that be regulated on local society. Those regulations are the form that consist of value and norms. Like put forward by the Hilman Hadikusuma are:<sup>12</sup>

- 1) The requirements of the payment, financing, and the wedding ceremony that be asked by the woman can't be fulfilled by the man's side,
- 2) The woman has not allowed by her parent to have husband but because of the condition the women do the action by her own self,
- 3) The woman's parent and the family reject the proposal from the man's side, and then the woman do the action by her own self,
- 4) The woman has engaged with a man that not be loved by the woman,
- 5) The woman and the man has been done thing that against the customary law and the religion law (the woman is already pregnant and so on)

The couple do the traditional marriage more not registered what has been regulated on Law Number 1 of 1974 about marriage. On the context of traditional marriage that not registered considered valid, but on the national law, this administrative registration process has been part of the positive law so with this registration process, the rights and the obligations will be recognized in front of the law.

The violence against woman often found on the traditional marriage. The case settlement towards woman on the traditional marriage's scope often settled in a family way or settled traditionally, because their marriage are done traditionally. Whereas, the victim's rights on a criminal action has been regulated by the country that be found on the constitution.

### 3.1 The Rights of The Domestic Violence's Victim

The regulation of the domestic violence criminal action has been regulated on the Law Number 23 of 2004 about The Elimination of Domestic Violence. The rights of the domestic violence's victim has been regulated on the Article 10 on Law Number 23 of 2004, that states that the victim has right to get:

- 1) The protection from the family side, police, prosecutor, court, advocate, social institution, or the other side whether temporary or based on the determination of protection order from the court,
- 2) The health service suitable with the medical needs,
- 3) The special handling relate to the victim's privacy,
- 4) The accompaniment by the social worker and law assistance on each investigation level process,
- 5) And also the spiritual guidance service.

The law system proves that on an investigation towards the criminal act in Indonesia use the Criminal Procedural Law or Kitab Undang-undang Hukum Acara Pidana that is Law Number 8 of 1981, where on the preliminary investigation and investigation and also on the examination in court level must be guided on Law Number 23 of 2004 that has been given the rights and protections towards the victim witness. If needed, the victim witness must get the protection from the Witness and Victim Protection Institution based on the

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<sup>12</sup> Hilman Hadikusuma, *Hukum Perkawinan Adat Dengan Adat Istiadat Dan Upacara Adatnya* (Bandung: Citra Aditya, 2003), p. 34.

Law Number 13 of 2006. The appearance of both of these laws is expected to give the strong law foundation for the witness and victim protection on giving the true information to get the real truth without experiencing the threat or torture and also the possibility of lawsuits for the witness and victim to report.

Based on the Law Number 23 of 2004, it is called the handling with the integrated criminal justice system. It is called as integrated means that the handling of the domestic violence case not only by the suspect/the perpetrator of the violence but also to consider the rights of the victim and also how the rehabilitations. Therefore on the Article 4 of the Law Number 23 of 2004 regulates the purpose of the Elimination of The Domestic Violence that are:

- 1) To prevent any form of the domestic violence
- 2) To protect the victim of the domestic violence
- 3) To take the action towards the perpetrator of the domestic violence
- 4) to keep the wholeness on the household to be harmonious and prosper.

The cause of the domestic violence can be identified because of the gender factor and patriarchy, the imbalance power relation on modeling role (imitating behavior). The gender and the patriarchy that be told will create the inequality power relation because the man is considered for having power to organize his household including his wife and children. The assumption that the husband's wife and the husband that has higher power than the other family member is making man to more likely to do the violence.<sup>13</sup>

With based on the purpose of the elimination of the domestic violence so the handling whether on the investigation level or in the court, so there must be the balance between giving the punishment to the perpetrator or the victim's protection and the rehabilitation of the victim. For that, so the investigator on doing the investigation, will not working alone but also cooperating integrated with the health force/hospital, the victim's companion, the clergy to look for the real truth on reveal the domestic violence incident that be reported. If on the preliminary investigation finish and enter the investigation level, so the attorney of the victim will accompany the victim between the attorney of the perpetrator accompany the perpetrator.

The first step that is conducted is to finish the police investigation report meanwhile the mediation process is conducted by all partied. The mediation here is the deliberation in front of the investigator, prosecutor and/or judge to look for the meeting point which beneficial to all of the parties in order to maintain the wholeness of the household that are harmonious and prosper. Although the criminal process keep going according to the criminal procedure law that is regulated on the criminal procedure law book. In this step, the police of the Republic of Indonesia must have the understanding about the *police women desk* and also the professional and empathy towards the victim, which now there has been formed the Special Service Room in the Local Police in each provinces in Indonesia that is special to handle the investigation of the Domestic Violence case.

The report from the domestic violence's victim who their marriage be done traditionally, the police has been tried to fulfil the rights of the Domestic Violence's victim as stated on the Law of The Elimination of The Domestic Violence, especially on giving the protection towards the victim. The police immediately give the protection to the victim after the complaint and also ask for the protection setting to the court, provide the special room

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<sup>13</sup> Saraswati R, Perempuan Dan Penyelesaian Kekerasan Dalam Rumah Tangga (Bandung: Citra Aditya Bakti, 2006), p. 43.

for the victim's service, and explain to the victim about the rights that they will get as the victim of the Domestic Violence's victim.

The government need to make the law regulation which oblige the full rehabilitation towards the condition that be experienced by the victim. The government need to make serious efforts in order all the rights of the victim can be fulfilled without any discrimination based on the marriage registration status. The police need to give the understanding to the Domestic Violence's victim that the accompaniment not only be done by the people who close to the victim, because the accompaniment have the special tasks that is only known by the professional staff. The government need to provide the fee to pay the professional staff on accompanying the victim in order that cost will not be a burden to the victim.

### **3.2 The Law Protection Efforts That be Done on Fulfillment of the Rights of the Domestic Violence's Victim**

The law protection means with all of the efforts by the government to guarantee the legal certainty to give the protection to the citizen in order the right as a citizen is not violated and also for the one who violate will get the sanction according to the existing rules. Based on Article 1 Number (4) of the Law of The Elimination of The Domestic's Violence, the protection is: Any efforts that is showed to give the safe feeling towards the legal subject on the form of legal instruments whether on the preventive or repressive.

However with the existence of the government that establish the Law of the Elimination of The Domestic Violence, this means that the government give the fulfillment guarantee and the protection of the rights of the woman/man/children or adult to get justice, comfort, peace, equality on social life, whether on family life, society, and the country life. That law is very needed to socialized whether on bureaucrats, or societies so that the intent, purpose, and the content that is contained and implied on this law can be understood.

The protection efforts towards the Domestic Violence's victim can be done with so many kind of methods, started with do the prevention legal action of the domestic violence which is by the action that anticipate any kind of form of the domestic violence with many methods, that are: increase the understanding and socialize about the effort to create a *sakinah mawaddah wa rahmah* family with the marriage that be done must be registered. The family's economy empowerment, increase the religion understanding and spiritual deepening. The understanding about the rights and obligations of all the family members. To build the good and smooth family communication. The next is legal action handling and the advocacy of the physical violence's victim that happen on domestic violence criminal act, towards the perpetrator will be sentenced according to the Article 351, Article 351 regulate the minor abuse, Article 352 regulate the planned abuse, Article 354 regulate the severe abuse, Article 355 regulate if the severe abuse that is pre-planned and Article 356 KUHP is about abuse.

The protection effort toward the domestic violence's victim can be done by so many methods like:<sup>14</sup>

- a) The provision of the special service room in the police office
- b) The provision of the health staff, social worker, and spiritual guide

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<sup>14</sup> Koerniatmanto Soetoprawiro, Ratna Riyanti, and Soesi Idayanti, "Upaya Perlindungan Hukum Terhadap Korban Kekerasan Dalam Rumah Tangga" (Bandung, 2012), p. 15-18.

- c) The manufacture and development of the system and the service program service mechanism
- d) Give the protection for the accompanier, the witness, and the family
- e) Do the social cultural approach
- f) By give the education to embed the understanding about the rights of the human, respect towards peers by anti-violence culture development
- g) The policy changes with set the local regulation of woman and children protection
- h) The provision of the public facility with the holistic service mechanism like Integrated Service Center
- i) Set the budget for the woman on the regional revenue and expenditure budget.
- j) Put the gender sensitivity on each program
- k) Give the consultation, mediation, companion and rehabilitation service. Meanings it does not reach the litigation. But however, each institution's role are very important to prevent and eliminate the domestic violence action.
- l) The temporary protection and the protection with the court decision and also service, the protection and the service is given by the institution based according to the task and its each function
- m) The protection by the police in the form of temporary protection that be given maximum 7 (seven) days, and on 1x24 hour since giving the protection, the police is obliged to ask for the letter off appointment of protection order from the court. The temporary protection by this police can be done by cooperating with the health staff, social, companion volunteer and the spiritual guide to accompany the victim. The service towards this domestic violence's victim must use the special service room in the police office with the system and cooperation service program mechanism which easy to be accessed by the victim.
- n) The government and the society need to immediately build the shelter to accommodate, serve, and isolate the victim from the domestic violence's perpetrator. In line with that, the police according to the task and the authority can do preliminary investigation, arrest, and detention with the sufficient preliminary evidence and accompanied by the command. The detention towards the domestic violence's perpetrator. Even the police can do the arrest and detention without the order warrant of the protection order violation, means those arrest and detention warrant can be given after 1x24 hour.
- o) The protection from the advocate be given on the form of law consultation, do the mediation and negotiation between parties including the victim's family and the perpetrator's family (mediation), and accompany the victim at the investigation, prosecution, and the trial in court (litigation), do the coordination with the law enforcer fellow, companion volunteer, and social worker (cooperation and partnership).
- p) The protection with the court ruling which are issued on the form of the protection order that be given for 1 (one) year and can be extended. The court can do the detention with the detention warrant towards the perpetrator of the domestic violence for 30 (thirty) days if that perpetrator do the violation towards the statement that be signed by him/her about the ability to fulfill the protection order from the court. The court can also give the additional protection based on the danger consideration that probably can appear towards the victim. The health staff service is very important means especially on the effort to give the sanction towards the perpetrator of the domestic violence.

- q) The health staff according to their profession are obliged to give the written report of the medical examination result and make the visum et repertum upon the request from the police investigator or make the other medical certificate that has legal force as the evidence.
- r) The social worker service is given in the form of counseling to strengthen and give the safety feeling towards the victim, give the information about the victim's rights to get the protection, and also deliver the coordination with the related institutions.
- s) The companion volunteer service can be given to the victim about the victim's rights to get one or some companion volunteers, accompany the victim to explain objectively the domestic violence action that they experienced on the investigation, prosecution, and the examination in the court level, listen and give the psychology and physical affirmation towards the victim.
- t) The service from the spiritual guide be given to give the explanation about the rights, the obligation and give the faith and piety affirmation towards the victim.

The law protection effort that be given by the investigator all this time towards the domestic violence's victim even for those who do the marriage traditionally are:

- 1) Each of the report, the investigator accept the police report and follow up to the court level.
- 2) The cooperation with the Public Health Office to do the handling by do the visum through the hospital.
- 3) The cooperation with the Social Service on accompany the domestic violence's victim.
- 4) The investigator try to do the understanding towards the victim relate to the violence action for that problem can be solved in family way for the sake of children's growth who still need the attention and the nurture from both of the their parent, but the victim is still determined to process the victim because the action from the perpetrator has been done many times towards the victim. So the victim does not longer want that problem to be solved in family way, then the problem is processed by the applicable law in Indonesia in order that the perpetrator will not repeat the same action towards the victim, with that incident the victim feel traumatized upon the action that be done by the perpetrator to the victim's self.

With that incident the investigator do the actions like this:

- 1) Accept the report from the victim.
- 2) Accompany the victim to do the visum.
- 3) Do the examination to the witnesses who was at the scene.
- 4) Do the examination towards the victim
- 5) Do the examination towards the perpetrator and be appointed as the suspect
- 6) The investigator switch the status that is the preliminary-investigation at the beginning become the investigation.
- 7) The investigator issue the arrest report to the suspect which is valid for 1x24 hour.
- 8) The investigator give the detention warrant for the suspect that valid for 1x24 hour.
- 9) The investigator give the detention warrant which is signed by The Head of Resort Police that valid for 20 (twenty) days.



- 10) The investigator issue the perpetrator's extension of detention request letter which valid for 40 (forty) days, to the Head of the State's Attorney.
- 11) The investigator do the process until the trial level.

The effort to fulfill the rights and give the help must give the safe feeling towards the witness and/or the victim, the law protection of the criminal victim as the part of society's protection, can be created on various forms, like through give the restitution, compensation, medical service, and legal assistance, without looking whether the marriage is done traditionally or be registered, but how a woman victim of the domestic violence can get the protection that is mandated by the constitution. The rights of the women on this traditional marriage must be protected, although the traditional marriage is not registered by country.

#### 4. CONCLUSION

Based on the discussion description so can be concluded that the domestic violence which experienced by the woman who her marriage is done traditionally does not fulfill the existing elements of Law of The Elimination of Domestic Violence, but only fulfill the elements of the prosecution criminal action on the formulation of the criminal law book. The investigator keep operate the things which be mandated by the constitution with giving the victim's rights and law protection. The marriage status that been done traditionally does not have the fixed legal foundation, so it is not registered on the country's law like the regulation about the marriage on the Law of the Marriage. But the country keep guarantee the customary law existence in Indonesia.

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