

***Legal Protection Principles for Victims of Domestic Violence
Based on Law Number 23 Year 2004 on the Elimination of
Domestic Violence***

¹Moch. Yusuf Bachtiar, ²Suwarno Abadi

^{1,2}Wijaya Putra University

Email: ¹yusufbachtiarsh@gmail.com, ²suwarnoabadi@uwp.ac.id

Abstract

Domestic violence (DV) represents a significant legal issue in Indonesia. Indonesia has enacted legislation, namely Law Number 23 Year 2004 on the Elimination of Domestic Violence, with the objective of providing protection for victims of domestic violence. In recent times, there has been a shift towards a restorative justice and penal mediation-based approach to resolving domestic violence cases. This article will examine the legal protection of victims of domestic violence in accordance with the aforementioned legislation, as well as the settlement of domestic violence cases through penal mediation at Surabaya Police Station. This is legal research with statute and conceptual approach. The results revealed that the legal protection granted to victims of domestic violence through Law Number 23 Year 2004 on the Elimination of Domestic Violence encompasses three forms of protection are as follows: 1.) external protection, 2.) legal protection through repressive action and 3.) curative protection. Criminal acts of domestic violence are settled through penal mediation and restorative justice at the Surabaya Police Station. Currently, two criminal offence settlements are based on the National Police Chief Regulation. It is recommended that penal mediation and restorative justice be regulated in the form of rules in the form of laws in the future.

Keywords: *legal protection; DV; mediation; restorative justice*

A. INTRODUCTION

1. Background

Human rights are rights that humans have solely because of humans. Humanity has it not because it is given by society or based on the law, but solely based on its dignity as a human being.¹

One of the most common types of human rights violations is violence against humans. Because violence is an action that is easiest for the strong to do to oppress the weak. This act of human rights violation always occurs with various forms and types of violence. The most frequent victims are women and children. Basically, violence is the root of human rights violations. Therefore, this kind of violence continues to occur and

¹ Jack Donnelly, *Universal Human Rights in Theory and Practice*, (London: Cornell University Press, 2003), 7.

drag on without any awareness from both the victim and the perpetrator to deal with it. Violence must be ended immediately and violence is a violation of human rights that often occurs and causes insecurity and anxiety to the victims.² Violence against women is a form of action that is contrary to the basis of humanity. Therefore, acts of violence against women are acts that violate human rights.

Women are individuals who have a dual role in social life. Women's first mission is to carry on a legacy that cannot be replaced by men. A woman's second role is her mother's role. This is one of the main reasons why women need to pay special attention to protect and respect their rights. Women's positions are still considered unequal to men's, and often women are victims of physical, psychological, and even fatal domestic violence. Violence creates shame and intimidation for women, the fear of violence prevents many women from taking the initiative and organizing the life they choose. This shows that many victims of domestic violence keep their mouths shut and obscure their problems.³

Legal protection as a form of protection is given to legal subjects through legal instruments, both preventively and repressively, written or unwritten, with the aim of providing justice, order, certainty, usefulness, and peace. This protection includes actions or efforts to protect society from arbitrary actions by rulers that are not in accordance with the rule of law, so that order and tranquility are realized, and human beings can enjoy their dignity as human beings.

According to article 28 letter G of the Constitution of the Republic of Indonesia in 1945. Everyone has the right to the protection of themselves, family, honor, society, dignity, and property under their power. This means that every citizen has the right to receive protection from the State against these aspects. In addition, every individual also has the right to feel safe and protected from threats that are contrary to human rights.⁴

Legal protection for women victims of domestic violence is regulated in various laws. The Criminal Code (KUHP) has many articles that can be associated and can be used as an act of physical violence against women, namely articles 351 and 356 of the Criminal Code. In addition to the Criminal Code which regulates security crimes for women suffering from physical violence in Law Number 23 of 2004 concerning the Elimination

² Antonio Cassese, *Human Rights in a Changing World*, (Jakarta: Yayasan Obor Indonesia, 1994), 5.

³ Morris Ginsbren, *Justice in Society*, (Bantul: Pondok Edukasi, 2003), 41.

⁴ Taufiqurrahman, "Legal Protection for Victims of Sexual Violence in Higher Education in the Perspective of Indonesian Positive Law". *Journal of Law Wijaya Putra* 1, no. 2 (2023): 268.

of Violence in Domestic Violence (hereinafter abbreviated as the PKDRT Law), namely article 6, article 16, and article 40.

The protection expected by the victim is a protection that can provide a sense of justice for victims of domestic violence, the majority of whom are women, in principle, is one of the problems of human rights violations so that this problem is a form of discrimination, especially against women and is a crime whose victims need to be protected both by government officials and the community.⁵ Legal protection for women victims of domestic violence still poses problems, especially knowing the provisions in the criminal law that require that a criminal act can only be prosecuted due to a complaint. Reporting is very difficult for victims, because reporting that the victim has committed a violent crime can be embarrassing when the family's disgrace is known to the public. On the other hand, law enforcement officials cannot handle violent crime cases without victim reports. It has not been enforced to the maximum, especially in terms of sanctioning the perpetrators.

De jure is not expressly regulated in the PKDRT Law, who are the perpetrators and victims of domestic violence, whether the husband is against the wife or vice versa, the wife is against the husband in Law Number 23 of 2004 only mentions the form of violence that includes in the household. But in fact, *de facto* in the field what happened was the husband as the perpetrator of domestic violence against his wife and children. For example, a case that occurred in Surabaya, a man from Surabaya, East Java, with the initials NS, had to languish in custody for abusing his wife, DP with bare hands.

2. Problem Formulation

Based on the description of the background of the problem above, the problems in this study are:

- a. How is the legal protection for victims of domestic violence based on Law Number 23 of 2004 concerning the Elimination of Domestic Violence?
- b. How is the settlement of domestic violence crimes through penal mediation and *restorative justice* at the Surabaya Police?

3. Research Methods

The research used is normative research or literature law research, which is legal research conducted by researching literature materials with the type of descriptive

⁵ Women's Journal Foundation, *Violence Against Women*. (Jakarta: SMKG Desa Putra, 2002), 1.

writing that aims to describe a certain matter that refers to legal norms contained in laws and regulations and court decisions as well as legal norms that exist in society. The approach used in this study is a *statute approach* in the form of all rules related to the issue in this study as well as a conceptual approach related to the theory relevant to the issue in this study.

B. DISCUSSION

1. Legal Protection Theory

The law must provide protection for all parties in accordance with their legal status because everyone has the same position before the law. The law also has a useful interest in taking care of human rights and interests. So that the law has the highest authority to determine human interests that need to be regulated and protected.⁶

Every legal relationship will give rise to opposite rights and obligations or each party in the legal alliance will have their own rights and obligations that must be fulfilled. If the rights and obligations are not fulfilled, it will cause losses to one of the parties in the engagement, therefore to protect and mitigate problems, legal protection is urgently needed.

Legal protection must look at the stages, namely legal protection is born from a legal provision and legal regulation provided by the community. Basically, legal regulations are the agreement of the community to regulate the relationship of behavior between members of the community and between individuals and the government which is considered to represent the interests of the community.⁷

The definition of legal protection, according to Satjipto Rahardjo, legal protection is to provide protection for human rights/human rights that are harmed by others and that protection is given to the community so that they can enjoy all the rights provided by the law. Meanwhile, Maria Theresia Geme defines legal protection as: "It relates to the action of the state to do something by (enforcing state law exclusively) with the aim of providing guarantees of the certainty of the rights of a person or group of people".⁸

In general, protection means protecting something from things that are beneficial, something can be in the form of interests or objects or goods, in addition, protection also

⁶ Satjipto Rahardjo, *Law Science*, (Bandung: Citra Aditya Bakti, 2000), 69.

⁷ *Ibid*, p. 53.

⁸ Salim HS, and Erlies Septiana Nurbani *Application of Legal Theory to Thesis and Dissertation Research*, (Jakarta: Rajagrafindo Persada, 2016), p. 262.

contains the meaning of protection given by a person to a weaker person. Legal protection can be interpreted as all efforts by the government to ensure legal certainty to provide protection to its citizens so that their rights as citizens are not violated, and those who violate them are subject to sanctions in accordance with applicable regulations. Legal protection is the protection of dignity and dignity, as well as the recognition of human rights owned by legal subjects based on the legal provisions of arbitrariness. A protection can be said to be legal protection if it contains the following elements:⁹

1. There is protection from the government for its citizens;
2. Guarantee of legal certainty;
3. Relating to the rights of citizens;
4. There are legal sanctions for those who violate it.

According to Philipus M. Hadjon, there are two types of legal protection facilities, namely:

a. Means of Preventive Legal Protection

In this preventive legal protection, legal subjects are given the opportunity to submit their objections or opinions before a government decision gets a definitive form. The goal is to prevent disputes. Preventive legal protection is of great significance for government actions based on freedom of action because with preventive legal protection, the government is encouraged to be cautious in making decisions based on discretion. In Indonesia, there is no special regulation regarding preventive legal protection.

b. Means of Repressive Legal Protection

Repressive legal protection aims to resolve disputes. The handling of legal protection by the General Court and Administrative Court in Indonesia is included in this category of legal protection. The principle of legal protection against government actions rests and is sourced from the concept of recognition and protection of human rights because according to the history of the West, the birth of concepts of recognition and protection of human rights is directed to the limitations and placement of obligations of the community and the government. The second principle that underlies the protection of the law against government actions is the principle of the state of law. Associated with the recognition and protection of human rights, the recognition and protection of human rights takes the lead and can be associated with the goals of the state of law.¹⁰

⁹ Muchsin, *Legal Protection and Certainty for Investors in Indonesia*, (Surakarta: Universitas Sebelas Maret, 2003), 14.

¹⁰ Philipus M. Hadjon, *Legal Protection for the Indonesian People*. (Surabaya: Bina Ilmu, 1987), 30.

2. Domestic Violence Crimes

Criminal acts come from a term known in Dutch criminal law, namely *Strafbaar feit* which consists of three words, namely *straf*, *baar* and *feit*. *Straf* is translated as criminal and legal, *baar* is translated as can or permissible, while *feit* is translated as actions, events, offenses and deeds.¹¹

According to Simons, a criminal act is an unlawful act that has been committed intentionally or unintentionally by a person who can be held accountable for his actions and which has been declared a punishable act by law.¹² While Moeljatno defines a criminal act as an act that is prohibited by a legal rule, the prohibition is accompanied by a threat (sanction) in the form of a certain criminal penalty for anyone who violates the prohibition.¹³

One of the essences of a criminal act is the existence of a fault (*schuld*). In a number of literatures on criminal law learning, 2 (two) forms of mistakes are known, namely mistakes as intentionality (*dolus*) and mistakes as negligence or forgetfulness (*culpa*).

In the context of domestic violence, the definition of domestic violence is mentioned in Article 1 number 1 of Law Number 23 of 2004 which states that Domestic violence is any act against a person, especially a woman, which results in physical, sexual, psychological, and/or domestic misery or neglect including threats to commit acts, coercion, or unlawful deprivation of independence within the scope of the household.

The PKDRT Law regulates the imposition of criminal penalties for every person who violates the prohibition on committing domestic violence mentioned in article 5 of the PKDRT Law which states that "everyone is prohibited from committing domestic violence against people within the scope of their household, by:

a. Physical Violence

Physical violence is an act that causes pain, illness or serious injury.¹⁴ This definition is similar but not the same as the meaning of "persecution" listed in article 351 of the Criminal Code. The difference is because "Physical Violence" is given an authentic interpretation in article 6 of the PKDRT Law. while in article 351 of the Criminal Code, the meaning of "persecution" is not explained but is only called the qualification of the

¹¹ Adami Chazawi, *Criminal Law Lesson 1*, (Jakarta: PT. King Grafindo, 2007), 69.

¹² P.A.F. Lamintang, *Fundamentals of Indonesian Criminal Law*, (Bandung: Citra Aditya Bakti, 1997), 185.

¹³ Ismu Gunadi and Jonaedi Efendi, *Criminal Law*, (Jakarta: Kencana, 2014), 35.

¹⁴ Teguh Prasetyo, *Criminal Law Revised Edition*, (Jakarta: PT Raja Grafindo Persada, 2010), 59.

delicacies, namely "persecution"¹⁵.

The crime of domestic violence with this type of physical violence is further divided into 4 (four) forms, namely:¹⁶

1. Ordinary Physical Violence

Judging from the formulation of article 44 paragraph (1) of the PKDRT Law, for the proof of this article must be fulfilled:

- a) Everyone;
- b) Those who commit acts of physical violence; and
- c) In the scope of the household.

The construction of physical violence in article 44 paragraph (1) of the PKDRT Law is:

- a) if physical violence is committed by the husband against the wife or vice versa.
 1. There must be an act that causes pain;
 2. The pain must cause illness or hindrance to doing work or seeking livelihoods and daily activities.
- b) If physical violence is committed by a non-husband against the wife or vice versa, then the condition is sufficient, there is only an act that causes pain.¹⁷

2. Physical Violence Causes Victims to Fall Ill or Seriously Injured

Judging from the formulation of article 44 paragraph (2) of the PKDRT Law, for this article to be proven, the elements must be fulfilled.¹⁸

- a) Everyone;
- b) Those who commit acts of physical violence in paragraph (1);
- c) In the scope of households; and
- d) Resulting in the victim getting sick or seriously injured.

Criminal threats for those who commit physical violence are regulated in article 44 of the PKDRT Law as follows:

- a. Sentenced to imprisonment for a maximum of 5 (five) years or a maximum fine of Rp. 15,000,000.00 (fifteen million rupiah);
- b. If the victim falls ill or is seriously injured, he shall be sentenced to

¹⁵ Guse Prayudi, *Various Aspects of Domestic Violence: Complete with a Description of the Elements of the Crime*, (Yogyakarta: Merkid Press, 2015), 33.

¹⁶ Rika Saraswati, *Women and Domestic Violence Resolution*, (Bandung: PT Citra Aditya Bakti, 2006), 1.

¹⁷ Guse Prayudi, *Op Cit*, h. 35-38.

¹⁸ *Ibid*, p. 2.

imprisonment for a maximum of 10 (ten)¹⁹ years or a maximum fine of Rp. 30,000,000.00 (thirty million rupiah);

- c. If it results in the death of the victim, it shall be punished with imprisonment for a maximum of 15 (fifteen) years or a maximum fine of Rp. 45,000,000.00 (forty-five million rupiah);

In the event that the act as intended in paragraph (1) is committed by the husband against the wife or vice versa which does not cause illness or obstruction to carry out the work of the position or the livelihood and daily activities, the offender shall be sentenced to imprisonment for a maximum of 4 (four) months or a maximum fine of Rp. 5,000,000.00 (five million rupiah).²⁰

b. Psychic Violence

Acts of psychological violence are actions that aim to degrade a woman's image, either through words or deeds (hurtful words, dirty words, slurs, insults, and threats) that suppress women's emotions. These actions result in fear, loss of self-confidence, loss of ability to act, distrust and/or severe psychological suffering in a woman.²¹

Criminal threats for those who commit psychological violence are regulated in article 45 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence as follows:

- a. Every person who commits an act of psychological violence within the scope of the household as referred to in article 5 letter b shall be sentenced to imprisonment for a maximum of 3 (three) years or a maximum fine of Rp. 9,000,000.00 (nine million rupiah);
- b. In the event that the act as referred to in paragraph (1) is committed by the husband against the wife or vice versa which does not cause illness or obstruction to carry out the work of the position or the object of search or daily activities, shall be punished with imprisonment for a maximum of 4 (four) months or a maximum fine of Rp. 3,000,000.00 (three million rupiah).²²

c. Acts of Sexual Violence

¹⁹ *Ibid*, p. 64.

²⁰ *Ibid*, p. 65.

²¹ Jack D. Douglas & Frances Chaput Wakster, *Violence in Theories of Violence*, (Jakarta: Ghalia Indonesia, 2002), 11.

²² *Ibid*, p. 12.

Acts of sexual violence are violence that has sexual nuances, including as unwanted behavior and has a sexual meaning called sexual harassment, as well as various forms of forced sexual relations called rape. If it is considered common to declare that a dangerous place is outside the home, for women this is not the case. Women are actually more injured and experience violence in the personal sphere, both in relation to their roles as wives and other family members.²³

Acts of sexual violence according to article 5 of the PKDRT Law include:

- a. Forced sexual relations carried out against people who live within the scope of the household;
- b. Coercion of sexual relations with one member of the household, with another person for commercial purposes and/or certain purposes.

Criminal threats for those who commit sexual violence are regulated in articles 46 – 48 of the PKDRT Law as follows:

Article 46: Every person who commits an act of sexual violence as referred to in article 8 letter a shall be sentenced to imprisonment for a maximum of 12 (twelve) years or a maximum fine of Rp. 36,000,000.00 (thirty-six million rupiah).²⁴

Article 47: Every person who forces a person who lives in his household to have sexual intercourse as referred to in article 8 letter b, shall be sentenced to a minimum of 4 (four) years in prison and a maximum of 15 (fifteen) years in prison or a fine of at least Rp. 12,000,000.00 (twelve million rupiah) or a maximum fine of Rp. 300,000,000.00 (three hundred million rupiah).

Article 48: In the event that the act as in article 46 and article 47 results in the victim getting an injury that does not give any hope of recovery at all, experiencing a mental or psychiatric disorder for at least 4 (four) consecutive weeks or 1 (one) year not consecutively, abortion or death of the fetus in the womb or resulting in the malfunction of the reproductive organs, shall be punished with a minimum prison sentence of 5 (five) years and a maximum prison sentence of 20 (two ten years or a fine of at least Rp. 25,000,000.00 (twenty-five million rupiah) and a maximum fine of Rp. 500,000,000.00 (five hundred million rupiah).

d. Household Neglect

Neglect in this context is in the form of economic neglect where not being given regular or sufficient amount of alimony, restricting and/or prohibiting proper work inside or outside the home, so that the victim is under the control of the person, criminal threats for those who commit domestic neglect are regulated in article 49 of the PKDRT Law, which are as follows:

²³ Saporinah Sadli, *Perception of Deviant Behavior*, (Jakarta: Bulan Bintang, 1976), p. 56.

²⁴ Satjipaton Raharjo, *O.P.Sit*, H. 20.

Sentenced to imprisonment for a maximum of 3 (three) years or a maximum fine of Rp. 15,000,000.,00 (fifteen million rupiah), every person who commits:

- a. Abandoning others within the scope of their household as referred to in article 9 paragraph (1); and
- b. Abandoning others as referred to in article 9 paragraph (2).

Article 9 paragraphs (1) and (2) itself read:

- (1) Every person is prohibited from abandoning a person within the scope of his household, even though according to the law applicable to him or by consent or agreement he is obliged to provide life, care or maintenance to that person.
- (2) Neglect as referred to in paragraph (1) also applies to every person who results in economic dependence by restricting and/or prohibiting proper work inside or outside the home so that the victim is under the control of that person.

3. Forms of Legal Protection for Victims of Domestic Violence

a. External Protection

The protection of victims of domestic violence at the External stage is carried out through temporary protection and protection by the court, as well as advocacy for victims of domestic violence. Legal protection for wives who are victims of domestic violence according to this law is (1). Temporary protection; (2). Determination of protection orders by the court; (3). Provision of special service rooms (RPK) at police stations; (4). Provision of safe houses or alternative residences; and (5). Providing legal advice by advocates to victims at the level of investigation, prosecution, and examination at court sessions.

Considering that most law enforcement officers are men, therefore, according to the mandate of this law, a special institution is provided, namely the RPK in the police agency with special officers, namely female police (polwan), so that victims are not afraid to report violence experienced by victims.

In this regard, the process of protecting victims of domestic violence in the early stages is in the form of temporary protection. The process of obtaining temporary protection is regulated in article 16 of the PKDRT Law, that:

- a). Within 1 x 24 (one time twenty-four) hours from the date of knowing or receiving a report of domestic violence, the police must immediately provide temporary protection to the victim.
- b). Temporary protection as intended in paragraph (1) is given no later than 7 (seven) days from the time the victim is received or handled.
- c). Within 1 x 24 (one time twenty-four) hours from the provision of protection as

intended in paragraph (1), the Police are obliged to request a letter of determination of the protection order from the Court.

b. Legal Protection Through Repressive Actions Against Perpetrators

Legal protection for victims of domestic violence crimes receives less attention from the law, both material criminal law and formal criminal law (criminal procedure law) compared to legal protection for suspects and defendants. This is influenced by several factors, including: (1) legal factors; (2) legal awareness of victims; (3) supporting facilities; and (4) human resources. The existence of a law and regulation in a legal system is very decisive for the realization of legal certainty, because law is the main source of law²⁵. Therefore, even though Law Number 23 of 2004 has existed, there are still many victims who do not report their cases to the police for reasons such as: (1) embarrassment, hesitation with extended family, disgrace if many people know about it. This reason arises because of the understanding of some members of society, that the violence experienced by the wife is the result of the wife's own fault; (2) great dependence on the perpetrator (husband) economically; and (3) related to the performance of law enforcement in handling cases is a consideration for women to report violence that occurs to them²⁶. The lack of public trust, including victims of domestic violence, in the legal system in the country is caused by the fact before the birth of Law Number 23 of 2004. Many reports of domestic violence are not continued to the investigation stage against the perpetrators. Because with that, it further strengthens the victim's belief that even if someone reports, they will not get special protection from law enforcement, especially the police.

After the birth of Law Number 23 of 2004, it is hoped that the awareness of victims to report to the authorities if there is an act of domestic violence. The victim according to this law is *Socially Weak Victims*. That is, those who have a weak social position that causes someone to become a victim. Especially women and young children. The perpetrator will be prosecuted based on the provisions as in the PKDRT Law.

c. Curative Protection Through Domestic Violence Victim Assistance

The protection of victims of domestic violence according to Law Number 23 of 2004

²⁵ Dikdik M. Arief Mansur and Elisatris Gultom, *The Urgency of Protecting Crime Victims* (Jakarta: Rajagrafindo Persada, 2008), 173.

²⁶ Sulistyowati Irianto and L.I. Nurtjahyo, *Women at the Women's Perspective Judicial Monitoring Conference*, (Jakarta: Yayasan Obor Indonesia in collaboration with *Covention Watch Center for Women and Gender Studies UI*, and NZAID, 2006), 68.

also includes curative efforts or rehabilitation of victims through assistance from social volunteers, medical officers and advocates. As part of psychological protection, victims need assistance both related to spiritual services from spiritual guides, and advocacy in legal processes. For spiritual ministry. Based on article 24 of this law, spiritual guides are required to provide explanations about their rights and obligations and provide reinforcement of faith and piety to victims. Especially for victim recovery efforts, the services provided can be obtained from health workers, social workers, companion volunteers and spiritual guides.²⁷ Spiritual services to women who are victims of domestic violence can be carried out by clergy in accordance with the religion (belief) of the victim.

Victims of domestic violence need to get advocacy from accompanying volunteers, especially if the domestic violence cases experienced by victims are processed legally. Article 23 emphasizes that in providing services, companion volunteers may: a). inform the victim of their right to have one or more companions; b). Accompanying the victim at the level of investigation, prosecution, or court examination by guiding the victim to objectively and completely explain the domestic violence he or she has experienced; c). listen empathetically to all the victim's words so that the victim feels safe accompanied by a companion; d). Actively provide psychological/physical reinforcement to the victim.

The same assistance also needs to be provided by advocates to victims at the level of court hearings. In Article 25, it is explained that in terms of providing protection and services, advocates are obliged to: a). provide legal advice that includes information on victims' rights and judicial processes; b). Assist the victim at the level of investigation, prosecution, and examination in court hearings and assist the victim to fully disclose the domestic violence he has experienced; and/or c). coordinate with fellow law enforcers, accompanying volunteers, and social workers so that the judicial process runs as it should. In order to maximize the process of protection for victims of domestic violence, article 18 of Government Regulation Number 4 of 2006 concerning the Implementation of Cooperation in the Recovery of Victims of Domestic Violence mandates that in certain cases, health workers, social workers, companion volunteers, and/or spiritual guides can cooperate with: a). the police, to report and process perpetrators of domestic violence;

²⁷ Suryono Ekotama, Harum Pudjianto, and G. Wiratama, *Abortus Provocatus for Rape Victims from the Perspective of Victimology, Criminology and Criminal Law*, (Yogyakarta; Atmajaya University, 2001), 176-177.

b). Advocates, to assist victims in the reconciliation process; c). other law enforcement, to assist victims in court proceedings; d). National Commission on Anti-Violence Against Women; e). Indonesian Child Protection Commission (KPAI); and/or f). certain parties who are wanted for the benefit of the victim.

In line with the above regulations, the victim also has the right to obtain a notification about his case that is being handled by the police related to the criminal act committed by the perpetrator. This step is important to avoid efforts from certain parties who try to stop the inspection process without a clear reason. In fact, if the perpetrator of a crime of domestic violence has a reason to suspend his detention, it is very important to notify the victim or his family about the suspension of detention, to ensure the safety of the victim. This is generally regulated in article 5 of Law Number 13 of 2006 concerning the Protection of Witnesses and Victims, that a witness and victim have several rights, including: a). obtaining information about the development of the case; b). obtain information about court decisions; and c). knowing in the event that the convict is released.

Thus, the existence of the advocate serves to provide legal advice on the legal interests of the victim, both at the level of investigation, guidance, and court trials. The existence of advocates in this case is a form of empathy for the victim's suffering by overseeing the legal process of the violence they experience. The attitude of empathy for the victim is actually very influential on the victim, not only the realization of legal protection for the victim, but also can restore the victim's confidence, so that he dares to explain the domestic violence he experiences completely and objectively. The existence of objective and complete information from the victim in turn can provide capital to think about sustainable protection efforts to the victim. He explained that the process of protecting victims of domestic violence regulated by the PKDRT Law is comprehensive.

4. Handling Domestic Violence Cases at the Surabaya City Resort Police Through Penal Mediation

Mediation is one of the alternative dispute resolution options that are out of court. In general, mediation is defined as an alternative to dispute resolution by involving a neutral third party to find a satisfactory solution (*win-win solution*). Mediation has several advantages, including lighter costs, flexible time and procedures, and prioritizing

the common interests of the parties.²⁸ Mediation is believed to be able to resolve the problem completely and fairly. The resulting agreement is formulated by the disputing parties and the result is a *win-win solution*. Consequently, there is no more resistance from the opposing side. The various advantages generated by mediation make this method integrated into the judicial system in Indonesia. As stipulated in the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2016 concerning Mediation Procedures.²⁹

Mediation can be used to resolve various conflicts, such as marriage, land, medical, tribal, religious to disputes within political parties. In the future, mediation was also used in the settlement of various criminal acts. According to Barda Nawawi Arief, the practice of penal mediation is often found in community life. For example, in *cyber crimes*, domestic violence crimes, traffic crimes, crimes involving children as perpetrators, and even proposed to handle corruption crimes. The implementation of penal mediation is a solution to the weakness of the penal system in Indonesia. Research by the National Legal Development Agency shows that the criminal justice system has several weaknesses, including: *First*, there is a process of dehumanizing criminal offenders. The provision of criminal sanctions makes the lives of criminals no longer productive in society. *Second*, there is contamination between criminal offenders. *Accidental offenders, newcomers (novices in crime)* are corrupted through their association with chronic criminals in prison. *Third*, stigmatization of criminal offenders. The prison sanctions received by the perpetrators of criminal acts pose a psychological burden, because the public already knows the crimes they committed.³⁰

Penal mediation is carried out based on the *restorative justice paradigm*. This paradigm requires a change in the pattern of relations between perpetrators, victims and the state that are facing each other into a pattern of cooperation and integration. *Restorative justice* provides a balanced approach to the needs of victims, perpetrators, and society through the process of maintaining security and dignity for all parties. Bagir Manan as quoted by Barda Nawawi Arid stated that *restorative justice* is an effort to build joint participation between perpetrators, victims, and community groups to solve

²⁸ Erik Sabti Rahmawati, "Implications of Mediation for Parties Litigating in the Malang Religious Court," *De Jure: Journal of Law and Sharia* 8, no. 1 (June 2016): 2, <https://doi.org/10.18860/jfsh.v8i1.3725>.

²⁹ Nevey Verida Ariani, "Alternative Alternative Settlement of Business Disputes Outside the Court," *Rechtsvinding: National Legal Development Media* 7, no. 1 (2012): 286.

³⁰ Kuat Puji Prayitno, "Restorative Justice for Criminal Acts in Indonesia: A Philosophical Juridical Perspective in Law Enforcement *in Concreto*," *Legal Dynamics* 12, no. 3 (2012): 40.

criminal acts. This paradigm positions perpetrators, victims, and the community as "stakeholders" who work together and directly try to find solutions that are seen as fair for all parties (*win-win solutions*). The purpose of the *restorative justice* paradigm is to repair or restore criminal acts committed by the perpetrators of crimes with actions that are beneficial to the perpetrators, victims and their environment that involve them directly (reintegration and rehabilitation) in solving problems.³¹

The implementation of penal mediation emphasizes dialogue, negotiation, deliberation, so as to give birth to an agreement that can be accepted by the parties. Penal mediation emphasizes the recovery of victims and imposes responsibility for mistakes on the perpetrators of crimes through remedial efforts by identifying the root of the case which then determines the remedial efforts that should be needed. The implementation of penal mediation in criminal cases has several objectives, including: (a) Reducing the accumulation of cases in the Judicial Institution; (b) Prioritize the nature of legal decentralization, namely by involving the litigants to meet directly by ensuring the empowerment of the parties in resolving the case; (c) There is a calculation of the interests and position of the victim so that in solving domestic violence cases the interests of the victim can be accommodated; (d) The cost of resolving cases is relatively cheap with a relatively fast case resolution process; (e) is confidential and confidential; (f) Minimizing the existence of dirty games by the legal mafia which makes the cost more expensive and the length of the process of resolving criminal cases in judicial institutions. Not much different from the concept of mediation in general, the implementation of the results of the agreement in penal mediation depends on the good faith of the parties.³² Based on this, the penal mediation process must involve legal institutions related to criminal justice, such as the Police, the Prosecutor's Office, and judicial institutions. This is so that penal mediation can still be controlled by the criminal justice system, so that the results of penal mediation that are decided still have legal force.³³

The litigation channel is a widely used means to resolve criminal acts, including

³¹ Yulia Pratiwi, *"The Role of Advocates in Implementing Penal Mediation as an Alternative to Criminal Case Resolution: A Study on the Application of Penal Mediation in the Surakarta Region"* Thesis, Jenderal Soedirman University, 2013, 40.

³² Hani Barizatul Baroroh, "Penal Mediation as an Alternative to Domestic Violence (KDRT)," *in Right: Journal of Religion and Human Rights* 2, no. 1 (March 2017): 196, <http://ejournal.uin-suka.ac.id/syariah/inright/article/view/1238>.

³³ Laely Wulandari, "Policies for Handling Domestic Violence Through Penal Mediation," *LAW REFORM* 4, no. 1 (October 2010): 17, <https://doi.org/10.14710/lr.v4i1.312>.

cases of domestic violence. Law Number 23 of 2004 concerning the Elimination of Domestic Violence only does not provide space for the settlement of domestic violence by peaceful or familial means. According to Hani Barizatul Baroroh, the settlement of domestic violence cases in the criminal justice system has several lengths, including: (1) the parties are not given enough time and opportunity to participate in expressing the concept of justice from their respective perspectives; (2) only paying attention to legal facts and ignoring emotional factors. The victim could not fully tell the pain he experienced; (3) rigid, complicated, and long inspection procedures. This tends to add to the suffering of the victims; (4) high required costs; (5) the imposition of criminal penalties fails to provide a deterrent effect to the perpetrators; (6) The imposition of imprisonment on the perpetrators, the majority of whom are the economic support of the family, causes damage to the future of the family and children.³⁴

Based on these conditions, not a few cases of domestic violence crimes are resolved peacefully by applying penal mediation. Several cases were solved at the Surabaya City Resort Police. The settlement of domestic violence cases through mediation is based on: (a) Article 15 paragraph (2) letter k and Article 16 paragraph (1) letter l of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia; Letter of the Chief of the National Police of the Republic of Indonesia Pol Number: B/3022/XII/2009S/SDEOPS dated December 14, 2009 concerning Case Handling Through *Alternative Dispute Resolution* (ADR); (c) Regulation of the Supreme Court of the Republic of Indonesia Number 2 of 2012 concerning Adjustment of the Limit of Minor Crimes and the Amount of Fines in the Criminal Code; (d) Regulation of the Chief of the National Police of the Republic of Indonesia Number 7 of 2008 concerning Basic Guidelines for the Strategy and Implementation of Community Policing in the Implementation of Police Duties.

The mediation process of criminal cases is carried out by presenting the parties to the case. The perpetrator and the victim were met directly assisted by police members as mediators. The mediator in this case is an investigator who uses the right of discretion. The right of discretion can only be used in very necessary and urgent circumstances while still paying attention to the applicable laws and regulations. The mediator is tasked with helping to formulate the goals of the litigants so that an agreement is reached. The

³⁴ Fatahillah A. Syukur, *Mediation of Domestic Violence (Domestic Violence) Cases Theory and Practice in Indonesian Courts*, (Bandung: CV. Mandar Maju, 2011), 40.

mediator does not have the right to force the litigants to choose the form of settlement.

Domestic violence crimes that are included in the Women and Children Service Unit (PPA) of the Surabaya City Resort Police from 2022 to 2024 have changed every year, but in practice it can be known that the settlement of domestic violence cases at the Surabaya Police is more dominant with non-litigation case settlement using penal mediation means. Of the 67 cases, 59 cases have been resolved by non-litigation channels, namely penal mediation, which when proportioned to 92% of cases are resolved by means of penal mediation. A total of 4 cases that when proportioned to 4% were resolved through litigation and 4 other cases that were proportioned to 4% were still in the process and have not been resolved. This is in line with the basis of the social interaction of the people of Surabaya which is more based on the principles of kinship, kinship and mutual cooperation. So that it forms a sense of tolerance and easy forgiveness by prioritizing common interests.³⁵

An example of a domestic violence case that is resolved with an alternative to penal mediation is in a domestic violence case with the Police Report Registration Number LPB/194/II/2024/JATIM/RES/SBY, dated February 18, 2024 under the name of the Complainant Neneng Noorziah and the reported Muhammad Hafilludin. Neneng reported that her husband Hafilludin with a complaint had committed a crime of domestic violence against him who committed physical violence by gripping the victim's wrist so that the victim suffered minor injuries, while the main trigger was economic factors. Then by the Surabaya Police investigators, observations were made which showed that the case had a relatively mild impact on the victim so that the Surabaya Police investigators sought peace between the parties with the aim of not breaking up the household building. Furthermore, the mediation process was carried out in a forum by presenting Neneng's sister and Hafiludin's brother to meet directly and accompanied by investigators who also served as mediators and then the parties negotiated, deliberated, and negotiated where the mediator as the third person in charge of helping to formulate the problem so that a consensus was reached and the domestic violence case was solved with the desired result and agreed upon by the parties.³⁶

An example of a domestic violence case that is resolved by penal mediation in 2024 is a domestic violence case with a police report registration number

³⁵ Rina Shanty, Dewi Nainggolan, Interview, (Surabaya: April 18, 2024).

³⁶ Rina Shanty, Dewi Nainggolan and Siti Dewi Khotimah (Surabaya: April 20, 2024).

LPB/199/III/2024/JATIM/RES/SBY which was recorded on March 1, 2024 on behalf of the NM complainant and the reported RP. RP was reported for having committed violence against NM by slapping the victim on the cheek. So that there was a slight swelling on the victim's cheek. The results of the investigation showed that the consequences of the perpetrator's actions were classified as a minor impact on the victim that should still be repaired. From these considerations, the investigator suggested making peace efforts by using mediation to the parties. It is hoped that the household between the perpetrator and the victim can still be saved. Responsibility is imposed on the perpetrator to repair the damage that has been done. Then the two litigants are ready to conduct penal mediation accompanied by an investigator who acts as a mediator in resolving the case so that a case settlement can be reached with the results agreed upon by the parties.³⁷

The Head of the Women and Children Service Unit (PPA) of the Surabaya Police Satreskrim, AKP Rina Shanty Dewi Nainggolan stated that this means of penal mediation is in accordance with the characteristics of the people of Surabaya who still prioritize resolving cases by peaceful means. In disputes in the family realm, family integrity is a cultural priority of the people of Surabaya who are always maintained. Penal mediation in its implementation, in addition to providing excellent benefits for litigants, also encountered obstacles in its implementation, including: a) law enforcement officials have difficulty convincing litigants to resolve cases by means of mediation; b) limited time. Penal mediation is a member of the criminal justice system so that there is a limited time in the implementation of mediation for a case, even though the case is very complex and sensitive; c) Lack of preparation and follow-up. The number of investigators who are tasked with being mediators who lack preparation in resolving a case, even though the level of complexity and sensitivity of the case differs from one case to another. The understanding of the mediator who thinks that the task has been completed along with the establishment of an agreement from both parties, even though supervision is still needed for the implementation of the agreement that has been established; d) failure to maintain the original objective; This often happens because of the dominance in the criminal justice system, so that the purpose of penal mediation that is still a member of the system becomes shaky; e) Accountability of Perpetrators. There is a use of criminal offenders who use penal mediation as a way to avoid prison criminal justice. So that after

³⁷ Rina Shanty, Dewi Nainggolan and Siti Dewi Khotimah (Surabaya: April 20, 2024).

reaching an agreement, they did not carry it out.³⁸

Based on the Regulation of the National Police Chief Number 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice, the settlement of domestic violence crimes committed at the Surabaya Police through the following steps:

The process of implementing the settlement of criminal cases through *the restorative justice system* according to the Regulation of the National Police Chief Number 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice begins with receiving a request for peace from both parties.³⁹ This means that the desire to carry out the election must be based on the will of both parties (the complainant and the reported party) at the initiation of the police (investigator/mediator). From the results of the study, it was found that the desire to reconcile was still the will of the litigants, namely the perpetrator and the victim, but at the beginning of the process, mediation would be carried out in the nature of an offer, the investigator required mediation. This shows that the implementation of settlement through *restorative justice* fulfills one of the principles of *restorative justice*, namely building joint participation between perpetrators and victims, it's just that the Surabaya Police does not include community groups to resolve an event or criminal act of domestic violence.

After the police received the request for peace between both parties (the complainant and the reported party) signed on the stamp, the investigator conducted an administrative study of the formal requirements for case settlement through *restorative justice* by fulfilling the formal requirements in the form of:

1. Letter of request for peace between both parties. In the police report Number LPB/194/II/2024/JATIM/RES/SBY, dated February 18, 2024 at the Surabaya Police, the reported person and the complainant made a letter requesting peace⁴⁰.
2. Statement of peace and dispute resolution of the parties to the case. At the Surabaya Police, the mediation process was declared to have ended by producing the items of agreement between the perpetrators and victims of domestic violence and the peace process and followed up with the inauguration of a written peace agreement made by both parties and signed by both parties which was used as a peace statement.
3. Minutes of Additional Examination of the litigants after the case is resolved

³⁸ Rina Shanty Dewi Nainggolan Interview, (Surabaya: April 18, 2024).

³⁹ Regulation of the National Police Chief Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice.

⁴⁰ Rina Shanty Dewi Nainggolan, Interview, (Surabaya: April 18, 2024).

through restorative justice; Investigators conduct BAP of the litigants who have resolved the case through the restorative justice system.

4. The perpetrator does not object to liability, compensation, or done voluntarily. An example of a case at the Surabaya Police report Number: LPB/194/II/2024/JATIM/RES/SBY, dated February 18, 2024 that the perpetrator has admitted his mistake, apologized to the victim, and will give Rp 500,000,000 as compensation for 3 months to the victim, and promised not to commit any form of criminal acts of persecution to the victim or other people.
5. All criminal acts can be committed *by Restorative Justice* for general crimes that do not cause human casualties. Especially criminal offenses that contain absolute and relative complaints.⁴¹

According to the investigator's statement, domestic violence cases can be carried out *by Restorative Justice* because the suspect and the victim still have family relationships, namely husband and wife, causing minor injuries, and cases based on humanitarian considerations and prioritizing coaching. Meanwhile, the material requirements for the case are carried out with the fulfillment of material requirements including cases of domestic violence at the Surabaya Police as an example of a police report Number: LPB/194/II/2024/JATIM/RES/SBY. It does not cause public unrest and there is no rejection from the community because it does not harm others. In this case, there is no impact on social conflict because the impact of the example of domestic violence cases by the parties to the conflict does not have an impact on the surrounding community. In the peace letter, the points of agreement that have been agreed and signed by both parties show that there is a statement from all parties involved not to object and exercise their right to sue before the law. The reason why investigators carried out *restorative justice* in the case was because the level of guilt of the perpetrator was relatively not severe and the perpetrator was not a recidivist. The domestic violence case was mediated during the investigation.

In the *Restorative Justice process* at the Surabaya Police, the report entered the Surabaya Police to carry out the investigation process until the investigation. In the process of summoning the suspect, the victim, and the investigator have offered and explained the settlement of the case in a *restorative justice* manner to the suspect. After

⁴¹ Rina Shanty Dewi Nainggolan, Interview, (Surabaya: April 18, 2024).

mediation and success. Investigators directed both parties to make a Peace Request Letter. Furthermore, the investigator provided an understanding of the important benefits of *restorative justice*. In the next stage, investigators directed the victim and the suspect to make a Letter of Collective Agreement. From the results of the author's interview with the Investigator, it refers to the *Restorative Justice* Joint Agreement Letter of the parties. After that, both parties signed the letter. The last stage, namely the investigator compiling administrative completeness and special case title documents as well as the report on the results of the case title. In the Regulation of the National Police Chief Number 8 of 2021 concerning the Handling of Crimes Based on Restorative Justice after the final stage, the investigator issues an SP3 Decree (Investigation Termination Order) signed by the Chief of Police and recorded in the register book as *a restorative justice* case counted as a case settlement.⁴²

C. CONCLUSION

Based on the discussion mentioned above, it can be concluded that legal protection for victims of domestic violence crimes based on Law Number 23 of 2004 concerning the Elimination of Domestic Violence includes: 1.) external protection through temporary protection by the court, as well as advocacy for victims of domestic violence, 2.) Legal protection through repressive actions against perpetrators through criminalization based on Law Number 23 of 2004 and 3.) Curative Protection through Assistance for Domestic Violence Victims.

As for the settlement of domestic violence crimes through penal mediation at the Surabaya Police, currently there are 2 (two) criminal settlements based on Perkap (Police Chief Regulation) and the Police Chief's Letter, namely penal mediation and *restorative justice*. Where penal mediation is an approach that brings together both parties, the victim and the perpetrator here, both parties will be mediated whether or not the domestic violence case is resolved in a family manner. Meanwhile, *the restorative justice* approach is to return the losses experienced by the victim, where the loss is committed by the perpetrator to the victim, and the victim asks for compensation for what he feels and experiences in domestic violence and the perpetrator is obliged to provide compensation for the damage.

It is hoped that in the future the settlement of domestic violence crimes in

⁴² Rina Shanty Dewi Nainggolan, Interview, (Surabaya: April 18, 2024).

Indonesia, namely penal mediation and *restorative justice*, should be regulated clearly and firmly in a stronger regulatory hierarchy, for example, there is a separate law in penal mediation and *restorative justice* so that it will create a clear legal basis in these two alternative settlements. At this time, penal mediation and *restorative justice* are only based on law with the existence of the National Police Chief's Regulation, so that hierarchically it is considered less strong than the hierarchy of laws and regulations in Indonesia. The formation of a strong legal umbrella must be immediately carried out by the House of Representatives together with the Government to form a basis at the level of law.

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