

LEGAL PROTECTION AGAINST VICTIMS OF DOMESTIC VIOLENCE IN UNREGISTERED MARRIAGES

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Abstract

This study purposes to analyze Law No. 23 Year 2004 in providing legal protection to victims of domestic violence against marriages that are not registered at the Office of Religious Affairs. The research is normative-legal research, using the statute approach, conceptual approach, and case approach. The legal materials used are primary legal materials and secondary legal materials. The collected legal materials are then analyzed qualitatively. The results of the study indicate that the law affirms that every citizen has the right to obtain legal protection, including victims of domestic violence. Law No. 23 Year 2004 concerning the elimination of domestic violence was then present to provide legal certainty related to legal protection in the event of domestic violence, the violence is both physical and psychological violence, the government then makes regulations related to protection schemes if it occurs violence starts from the protection of the police, social services, and courts. Especially for unregistered marriages, they can still get legal protection based on Law No. 23 Year 2004 if it can be proven that it is true that a marriage has occurred and lives in the same household.

Keywords: domestic violence, legal protection, not registered

INTRODUCTION

Domestic violence should not be new. However, all this time it has always been kept secret or covered up by the families of the perpetrators and the victims themselves. Domestic violence contains specific or special things. The specificity lies in the relationship between the perpetrator and the victim, namely the familial relationship or the relationship between the perpetrator and the victim. In addition, locus delicti refers to domestic violence, where the perpetrator and the victim reside. In other crimes, locus delicti is everywhere and in all places.¹

Violence against wives by husbands is very common in people's lives. But so far, it is sometimes kept secret or covered up by the family, as well as by the victims themselves. Besides that, community culture plays a role in this because people think that problems that occur within the household are personal problems so conflicts between husband and wife in the family are considered things that other people should not interfere with. In addition, forms of domestic violence such as beatings of wives by husbands are difficult to reveal, because the problem is considered a private matter.

The general assumption which states that a dangerous place is outside the home, for women, is actually not the case. In fact, women are more often injured and experience violence in the personal sphere, both in terms of their roles as wives, other family members, girlfriends, or intimate friends.²

By nature, humans were created by God Almighty in pairs, namely male and female. However, humans are born not directly in pairs, but can be paired after looking for a partner first. After finding their respective spouses and being recognized as husband and wife, then based on the provisions of the legislation in force in the homeland of the Republic of Indonesia, they must enter into a marriage bond which is implied that every marriage should be registered based on Law Number 16 Year 2019 amendments on Law Number 1 Year 1974 concerning Marriage, hereinafter referred to as the Marriage Law

As explained in Article 2 paragraph (2) of the Marriage Law, every marriage is registered according to the applicable legislation. This is an affirmation that every marriage event must be recorded at a predetermined marriage registration institution.

Marriage is the law of and for society (the law is from and for society). The Compilation of Islamic Law has given an adequate answer, namely that in order to ensure orderliness of marriage for the Islamic community, every marriage must be recorded (Article 5 paragraph (1) of the Compilation of Islamic Law) to be carried out before and under the supervision of a registrar if this is not done. (siri marriage) then marriage has no legal force, from here there are many cases of unregistered marriage that come to the surface with all the problems.

Then in terms of the occurrence of domestic violence, there are actually many influencing factors, such as the jealousy factor of one partner, weak economic factors, and so on. Violence in society is actually not a new thing. Violence is often carried out in conjunction with what is included in a criminal act, so the perpetrator must be processed according to the existing rules.³

In law enforcement practice in Indonesia, the legal rules used in dealing with domestic violence are contained in Law Number 23 Year 2004 concerning the Elimination of Domestic Violence. This law is a reference because in the Criminal Code (Kitab Undang-Undang Hukum Pidana/KUHP) the criminal threats and fines are so light that they are considered insufficient to provide a deterrent effect on the perpetrators.

In the provisions of the law, it is explained that domestic violence is any act against a person, especially a woman, which results in physical, sexual, psychological misery or suffering, and/or neglect of the household including threats to commit acts, coercion, or deprivation of liberty. against the law in the domestic sphere. This means that these provisions provide benefits and protection for women or wives who are allegedly more often victims of domestic violence in practice.⁴

In addition, the law also regulates the prevention and protection, and recovery of victims of domestic violence.⁵ Victims of domestic violence will receive legal protection to obtain legal guarantees or compensation for suffering or losses that have been experienced as a result of being a victim of a crime. So that the existence of this law makes law enforcers can protect victims as well as become legal certainty for victims in seeking justice.

The problem that then arises is when there is violence in the household but the marriage is not recorded at the Office of Religious Affairs (Kantor Urusan Agama/KUA) or the marriage is siri. This is

¹ Moerti Hadiati Soeroso, *Kekerasan Dalam Rumah Tangga dalam Perspektif Yuridis-Viktimologis*, Sinar Grafika, Jakarta, 2011, p. 121

² Kristi Poerwandari, *Kekerasan Terhadap Perempuan: Tinjauan Psikologis*, Alumni, Bandung, 2006, p. 283

³ Moerti Hadiati Soeroso, 2011, *Op.Cit.*, p. 1

⁴ Dewi Karya, *Tindak Pidana Kekerasan Dalam Rumah Tangga Yang Dilakukan Suami Terhadap Istri*, Jurnal Ilmu Hukum Fakultas Hukum Universitas 17 Agustus 1945, Vol. 9 No. 17, February 2013, p. 36

⁵ Murti Hadiati Soeroso, 2011, *Op.Cit.*, p. 90

certainly a legal issue for legal experts in responding to this because what is meant by the scope of the household here is not clear about who is entitled to legal protection.

If referred to under Article 2 of the Law on the Elimination of Domestic Violence, it includes:

- a. Husband, wife, and children.
- b. People who have family relationships with people as referred to in letter a because of blood relations, marriage, breastfeeding, care, and guardianship, who live in the household.
- c. People who work to help the household and stay in the household.

In the above provisions, the question then becomes whether the household referred to in Law Number 23 Year 2004 concerning the Elimination of Domestic Violence is a household whose marriage is registered at the Office of Religious Affairs or a marriage that is not registered (*siri marriage*).

Unregistered marriages are often used as a gap for men to only pay attention to the pillars and conditions in Islamic law without paying attention to formal requirements. Whereas in the Marriage Law it is very clearly regulated that marriages must be registered in the marriage certificate as a form of legal guarantee that a marriage event has occurred. Because in positive law in Indonesia, there is no such thing as an unregistered marriage, so there is no legality for an unregistered married couple to be considered legal by the state.

On this issue, of course, the most impactful of this serial marriage is the woman. Although from a religious perspective it is legal, the negative impact can be in the form of unclear status and legal protection for the wife if there are problems in the future.

In addition, regarding the rights obtained for registered and unregistered marriages, are they the same when there are cases of domestic violence. Then in terms of the application of the article, is it included in the general persecution as stated in the Criminal Code or included in Law Number 23 Year 2004 concerning the Elimination of Domestic Violence.

In practice in court, in cases of domestic violence with marital status under the hands or in an unregistered marriage, judges often give decisions on these cases not using Law Number 23 Year 2004 concerning the Elimination of Domestic Violence, but applying to the defendant the provisions of general abuse in the Criminal Code. because the elements are not fulfilled to be subject to articles in the PKDRT Law due to their marital status which is not valid according to applicable law. Whereas the PKDRT Law, can provide a more deterrent effect to the defendant because the criminal sanctions or fines are greater than in the Criminal Code, where the provisions are only general persecution.

A case of domestic violence in an underhand marriage has occurred in Soppeng Regency, South Sulawesi as explained in the chronology of the Watansoppeng district court decision number 55/Pid.Sus/2020/PN.Wns that the defendant named Bustang committed physical violence against I Sennang who is his wife which caused bruises on the thighs and hips of I Sennang. So with these facts, in conclusion, the panel of judges declared the defendant Bustang legally and convincingly guilty of committing a criminal act of domestic violence and was sentenced to 5 (five) months in prison.

However, what is interesting in this case is that Bustang and I Sennang were married in 1988 in Muslim religion, but the marriage was never registered with the relevant institution and the legality of their marriage was only proven by a certificate of having been married/married Number: 539/KJN/VI/2008 dated June 28, 2008. So it can be concluded that the marital status between Bustang and I sennang is an underhand marriage because it is only equipped with a certificate of having been married/married.

On this issue, a wife who gets domestic violence but whose marital status is an underhand marriage becomes unclear of legal protection. So the legal protection for victims of domestic violence in underhand marital status is blurred. In fact, as mandated by the constitution, it is regulated that the state is obliged to protect the rights of every citizen as a consequence of the state based on laws that uphold human rights.

METHOD

The research is normative-legal research,⁶ by using the statute approach, conceptual approach, and case approach.⁷ The primary legal materials used in this research are the Criminal Code, Law Number 23 Year 2004 concerning the Elimination of Domestic Violence, and the Watansoppeng District Court Decision Number: 55/Pid.Sus/2020/PN.Wns. Secondary Legal Materials

⁶ Irwansyah, *Penelitian Hukum, Pilihan Metode dan Praktik Penulisan Artikel*, Mirra Buana Media, Yogyakarta, 2020, p. 158

⁷ Kadarudin, *Mengenal Riset dalam Bidang Ilmu Hukum, Tipologi, Metodologi, dan Kerangka*, Uwais Inspirasi Indonesia, Ponorogo, 2020, p. 151

are all publications on a law that are not official documents which include textbooks, legal dictionaries, legal journals, and comments on court decisions. The collected legal materials are then analyzed qualitatively.⁸

DISCUSSION

Legal Protection for Victims of Domestic Violence in Unregistered Marriages

Marriage is one of the dimensions of life that is very important in human life in any world. Once the importance of marriage is so important, it is not surprising that the world's religions regulate marriage issues, even the traditions or customs of the community and state institutions do not lag behind in regulating marriages that apply among their people.

Marriage according to Article 1 of Law Number 1 Year 1974 concerning Marriage, what is meant by marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Godhead. Thus, marriage is a contract that in its entirety is contained in the word marriage or *tazwīj* and is a sacred ceremonial speech.⁹

The purpose of marriage is also described in Article 1 of Law Number 1 Year 1974 concerning Marriage (hereinafter abbreviated as the Marriage Law) is to form a happy and eternal family (household) based on the One Godhead.¹⁰ Happiness in a household means that there is the harmony that creates a sense of calm, peace, and love for each other without suspecting each other.¹¹ While eternal in the household means that once the marriage is carried out, it continues and cannot be decided just like that. But apart from the sacredness of marriage about the realization of a sense of happiness, peace, and tranquility, not a few marriages that end tragically even end up at the green table. The causes are various, ranging from incompatibility, continuous disagreements, third persons, and domestic violence.

The number of cases that occur, especially domestic violence, is a matter of particular concern, marriages that should have a happy ending actually lead to actions that hurt other people. Based on this, one of the important things that have received serious attention from the government in the reform era is the issue of domestic violence, including violence perpetrated by husband and wife or violence by parents against children, to be regulated by law. This is considering that domestic violence is a form of violation of human rights and a crime against humanity, as well as an act of discrimination.

Actions that are categorized as forms of violence are more an act of violence committed by people closest to them in interpersonal relationships, which can be carried out by close friends, can be boyfriends, superiors and subordinates, life partners, or family members who are both bound in a marriage that is mutually exclusive. legal or out of wedlock. Groups that are considered vulnerable to being victims of violence are women and children, and this violence can occur in public places, at work, at school, or even in the family environment, or what we know as Domestic Violence.

At first, especially before the issuance of the law, it was very difficult for a victim of Domestic Violence to seek justice or obtain protection for what happened to him. Because not only at that time there was no legal umbrella, but on the other hand there was a public view that revealing things that happened in the household was a taboo, disgraceful, and very private matter, which did not need intervention from outside parties, including if it was a house problem. The latter is actually already a form of violence. This is strongly believed by the majority of Indonesian people, so that there are almost never incidents or cases of Domestic Violence reported to the authorities, it may even be reported to the closest relatives, because of the strong belief that it is a disgrace or taboo and finally violence. In the household becomes a very closed or covered up. The victim is also silent, enjoying her sadness and loneliness in harboring feelings of pain, both physically and psychologically or other feelings, which are basically things that are very unfair to their human rights and really need not only social protection but also protection. law.

In the event that there is a report or complaint on domestic violence, this is practically a dead end in the handling of the legal process, because there is no legal umbrella. While the existing law (KUHP) only recognizes the term persecution (physical violence), so it is often difficult, especially to prove non-physical violence, in this case psychological violence or other forms. Likewise, the mechanism for handling victims was not yet available, because it was not yet available at that time, so

⁸ Kadarudin, *Penelitian di Bidang Ilmu Hukum (Sebuah Pemahaman Awal)*, Formaci Press, Semarang, 2021, p. 171

⁹ M.A. Tihami and Sohari Sahrani, *Fikih Munakahat (Kajian Fikih Nikah Lengkap)*, PT. RajaGrafindo Persada, Jakarta, 2014, p. 8

¹⁰ Article 1 of Law Number 1 Year 1974 concerning Marriage

¹¹ Ketut Oka Setiawan, *Hukum Perorangan dan Kebendaan*, Sinar Grafika, Jakarta, 2016, p. 45

that victims of domestic violence often did not get adequate protection. This is truly a disaster for anyone who experiences as a victim of domestic violence, especially if the victim is a woman or child.

The problem lies not only in the scarcity of the rule of law, but the public's view that domestic violence is a disgrace or a very personal thing also covers the perspective of law enforcers, whose perspective is practically the same, which is very patriarchal. Sensitivity to the problem of domestic violence, including gender sensitivity to the victim, is still not proportionately experienced. Thus, the victim's great hopes are dashed and have to bear heavy disappointment when the reported case does not get legal certainty in the process, simply because law enforcement officials believe that the issue of domestic violence is not a public problem but an internal family problem.

But then the government finally enacted Law Number 23 Year 2004 concerning the Elimination of Domestic Violence (UU-PKDRT), which is expected to be used as an adequate legal instrument, which includes, among others, regulating prevention, protection of victims, and prosecution of perpetrators. Domestic violence, while maintaining integrity for the sake of family harmony. Thus, the matter of domestic violence is no longer something that is considered private but has become a public issue, so the handling is also expected to be carried out proportionally as effort to protect victims and handle perpetrators. This has also been guaranteed protection in our constitution, namely, the 1945 Constitution of the Republic of Indonesia.

Law No. 23 of 2004 was then presented with the consideration that:

- every citizen has the right to feel safe and free from all forms of violence in accordance with the philosophy of Pancasila and the 1945 Constitution of the Republic of Indonesia.
- that all forms of violence, especially domestic violence, are violations of human rights and crimes against human dignity as well as forms of discrimination that must be abolished.
- whereas victims of domestic violence, most of whom are women, must receive protection from the state and/or society in order to avoid and be free from violence or threats of violence, torture, or treatment that degrades the degree and dignity of humanity.
- whereas in reality there are many cases of domestic violence, while the legal system in Indonesia has not guaranteed protection for victims of domestic violence.

The basis for the considerations mentioned above is then formulated and poured into 8 Chapter 56 Articles to provide protection within the scope of the household. The things that are regulated include explaining the principles and objectives of this law, then the form of prohibition of violence that is prohibited in the household, also explaining the rights of victims in the event of domestic violence, then the obligations of the government and the community in the event of violence. The form of protection provided to victims of violence also regulates the recovery of victims after becoming victims of Domestic Violence, as well as criminal provisions for perpetrators of domestic violence. For further details, chapters by chapters and points contained in the Law on the Elimination of Domestic Violence will be explained.

General Provisions of Law No. 23 Year 2004 concerning the Elimination of Domestic Violence

Chapter 1 general provisions consisting of 2 articles, article 1 and article 2 explain that domestic violence is any act against a person, especially women, which results in physical, sexual, psychological misery or suffering, and/or neglect of the household including threats. to commit acts, coercion, or deprivation of liberty against the law within the scope of the household. And this form of violence must be abolished and the State provides guarantees to prevent domestic violence by taking action against perpetrators of domestic violence and protecting victims of domestic violence.

For victims who experience violence and/or threats of violence within the household. entitled to protection, the protection referred to in this law is all efforts aimed at providing a sense of security to the victim carried out by the family, advocate, social institution, police, prosecutor, court, or another party, either temporarily or based on a stipulation. court. In addition, this law also recognizes temporary protection, temporary protection is protection that is directly provided by the police and/or social institutions or other parties, prior to the issuance of a protection order from the court. Then to provide protection for victims of domestic violence, they must obtain a determination issued by the court in the form of a protection order. Then in providing protection, the minister is involved as one of the institutions that provide protection whose scope of duties and responsibilities is in the field of women's empowerment.

In the law on the elimination of domestic violence, many legal breakthroughs have been made by accommodating family members more broadly than before, which was limited to husband and wife relationships. The scope of the household in this Law includes:

- a) husband and wife, and children;
- b) people who have family relationships with people as referred to in letter a because of blood

relations, marriage, breastfeeding, care, and guardianship, who live in the household; and/or

- c) people who work to help the household and stay in the household. The person who works as intended is a person who is seen as a member of the family for the period of time he is in the household in question.

So, the Law on the Elimination of Domestic Violence in addition to using the concept of the 'nuclear' family, namely mother, father, and child, also uses the concept of the 'batih' family where these are in-laws, daughters-in-law, besan, in-laws, stepchildren, adopted children, uncles, aunt and others.

Principles and Objectives of Law No. 23 Year 2004

This law consists of 2 articles, namely Article 3 and Article 4 which explain the principles and objectives in providing protection against domestic violence, these principles include:

- a. respect for human rights, this law then comes on the basis of protection and respect for rights as a human being and a citizen where every citizen has the right to protection, peace, and security in carrying out his life and life.
- b. justice and gender equality, that in the realm of domestic and family relations, women are often victims of violence, this is because women are considered as weak figures so they tend to become victims of violence, this law was then present to provide protection for women and victims other violence in order to get justice in living life.
- c. non-discrimination, the law on the elimination of domestic violence then pays attention to all aspects, there is no discrimination between women as the weak, that every color of the country has the right to a sense of security.
- d. protection of victims, every citizen who is a victim of violence has the right to get protection.

The purposes of this law are:

- 1) prevent all forms of domestic violence,
- 2) protect victims of domestic violence;
- 3) take action against perpetrators of domestic violence;
- 4) maintain the integrity of a harmonious and prosperous household.

With the issuance of a law on the elimination of domestic violence, it is hoped that it will be able to provide education to the public so that domestic violence does not occur, there is no discriminatory action, and if there are victims, the law then guarantees the protection that will be provided by the State and takes action against the perpetrators. violence with appropriate punishment.

Prohibition of domestic violence according to Law No. 23 Year 2004 concerning the Elimination of Domestic Violence

Consisting of articles 5 to 9, this section describes the forms of domestic violence that are not allowed, including:

- a. physical violence, physical violence as referred to above is an act that causes pain, falls ill, or is seriously injured. Physical violence is a type of violence that often occurs in cases of domestic violence. These acts of violence can take the form of hitting, slapping, kicking, strangling, grabbing or even burning limbs.
- b. Psychological violence is an act that results in fear, loss of self-confidence, loss of ability to act, feeling helpless, and/or severe psychological suffering on a person. Psychological or psychological violence is any act and speech used to criticize, demean, or reduce the victim's self-confidence. also includes threats, insults, and behavioral control in the household.
- c. sexual violence as referred to includes:
 - 1) coercion of sexual intercourse carried out against people who live within the scope of the household;
 - 2) coercion of sexual intercourse against one person within the scope of his household with another person for commercial purposes and/or certain purposes.
 - 3) neglect of the household. Everyone is prohibited from abandoning people within the scope of his household, according to the law that applies to him, or because of an agreement or agreement he is obliged to provide life, care, or maintenance for that person. Neglect also applies to anyone who causes economic dependence by limiting and/or prohibiting proper work inside or outside the home so that the victim is under the control of that person.

The Rights of Victims of Domestic Violence Law no 23 of 2004 concerning the Elimination of Domestic Violence

In this section, this law then pays attention to the rights of victims of domestic violence to get protection from both the family and the state, the rights of victims of domestic violence are then described, among others:

- a. obtain protection from the family, police, prosecutors, courts, advocates, social institutions, or other parties, either temporarily or based on the stipulation of a protection order from the court;
- b. obtain health services in accordance with medical needs;
- c. get special treatment related to the confidentiality of the victim;
- d. obtain assistance from social workers and legal assistance at every level of the examination process in accordance with the provisions of the legislation;
- e. receive spiritual guidance.

Forms and responsibilities of the Government in efforts to prevent domestic violence

These forms of responsibility include:

- a. formulate policies on the elimination of domestic violence;
- b. organize communication, information, and education about domestic violence;
- c. organize socialization and advocacy on domestic violence;
- d. organize gender-sensitive education and training and issues of domestic violence and set standards and accreditation of gender-sensitive services.

The above provisions are implemented by the Minister, the Minister may coordinate with relevant agencies in implementing the provisions as referred to above.

For the provision of services to victims, the government and local governments in accordance with their respective functions and duties can make efforts:

- a. provision of a special service room at the police station;
- b. provision of apparatus, health workers, social workers, and spiritual guides;
- c. creation and development of systems and mechanisms for cooperation in service programs involving parties that are easily accessible to victims;
- d. provide protection for companions, witnesses, families, and friends of victims.

The government and local governments in accordance with their respective functions and duties, can cooperate with the community or other social institutions.

Everyone who hears, sees, or knows of the occurrence of domestic violence is obliged to make efforts within the limits of his ability to:

- a. prevent the occurrence of criminal acts;
- b. provide protection to victims;
- c. provide emergency assistance;
- d. assist in the process of submitting an application for protection determination.

Efforts to protect when domestic violence occurs

Legal protection is to provide protection for human rights that are harmed by others and that protection is given to the community so that they can enjoy all the rights granted by law.¹² If domestic violence has occurred and there are victims in the incident, within 1 x 24 (one time twenty-four) hours from the time of knowing or receiving reports of domestic violence, the police must immediately provide temporary protection to the victims. Temporary protection is given no later than 7 (seven) days since the victim is received or handled.

Within 1 x 24 (one time twenty-four) hours as of the granting of the protection as referred to in paragraph (1), the police are obliged to request a letter of the stipulation of a protection order from the court.

In providing temporary protection, the police can work together with health workers, social workers, companion volunteers, and/or spiritual mentors to assist victims.

The police are obliged to provide information to victims about their rights to receive services and assistance.

The police must immediately conduct an investigation after knowing or receiving a report about the occurrence of domestic violence. The police immediately inform the victim about:

- a. identity of officers for identification of victims;

¹² Satjipto Rahardjo, *Ilmu Hukum*, PT. Citra Aditya Bakti, Bandung, 2000, p. 54

- b. domestic violence is a crime against human dignity;
- c. the duty of the police is to protect victims.

In providing health services to victims, health workers must:

- a. examine the health of the victim in accordance with professional standards;
- b. make a written report on the results of the examination of the victim and *visum et repertum* at the request of the police investigator or a medical certificate having the same legal force as evidence. Services are carried out in health facilities owned by the government, local government, or the community.

In providing services, social workers must:

- a. conduct counseling to strengthen and provide a sense of security for victims;
- b. provide information on the rights of victims to obtain protection from the police and the determination of a protection order from the court;
- c. take the victim to a safe house or alternative place of residence;
- d. carry out integrated coordination in providing services to victims with the police, social services, and social institutions needed by victims. Workers' services are carried out in safe houses owned by the government, local government, or the community.

In providing services, companion volunteers can:

- a. inform the victim of her right to have one or more companions;
- b. assist the victim at the level of investigation, prosecution, or court examination level by guiding the victim to objectively and completely describe the domestic violence she has experienced;
- c. listen empathetically to all the narratives of the victim so that the victim feels safe accompanied by a companion;
- d. actively provide psychological and physical reinforcement to the victim. Article 24 In providing services, the spiritual guide must provide an explanation of the rights, and obligations, and provide strengthening of faith and piety to the victim.

In terms of providing protection and services, advocates are obliged to:

- a. provide legal consultation that includes information on victims' rights and the judicial process;
- b. assist the victim at the level of investigation, prosecution, and examination in court proceedings and assist the victim in fully describing the domestic violence she has experienced;
- c. coordinate with fellow law enforcers, companion volunteers, and social workers so that the judicial process runs as it should.

The victim has the right to directly report domestic violence to the police, both at the victim's location and at the scene of the case.

The victim can authorize the family or other people to report domestic violence to the police, both at the place where the victim is and at the scene of the case.

In the event that the victim is a child, the report can be made by the parent, guardian, caregiver, or the child concerned which is carried out in accordance with the provisions of the applicable laws and regulations.

The chairman of the court within a period of 7 (seven) days from the receipt of the application must issue a letter of determination containing an order to protect the victim and other family members unless there is a good reason.

Applications to obtain a warrant of protection can be submitted by:

- a. the victim or the victim's family;
- b. victim's friend;
- c. police;
- d. companion volunteer;
- e. spiritual guide. Article 30 (1) Application for a protection order shall be submitted in oral or written form.

In the event that the application is submitted orally, the clerk of the local district court must record the application.

In the event that the request for a protection order is submitted by the victim's family, friends,

police, companion volunteer, or spiritual guide, the victim must give his/her consent.

In certain circumstances, an application may be submitted without the victim's consent. At the request of the victim or his proxies, the court may consider:

- a. establish a special condition;
- b. modify or cancel a special condition of the protection order.
 - 1) Protection orders can be given for a maximum period of 1 (one) year.
 - 2) Protection orders can be extended upon court order.
 - 3) Application for the extension of the Protection Order shall be submitted 7 (seven) days prior to the expiration of its validity period.
 - 4) The court may declare one or more additional protection orders.

In granting additional protection orders, the court is obliged to consider information from victims, health workers, social workers, companion volunteers, and/or spiritual mentors.

Based on consideration of the dangers that may arise, the court may state one or more additional conditions in the protection order. In granting additional conditions in the protection order, the court is obliged to consider information from victims, health workers, social workers, companion volunteers, and/or spiritual mentors.

The police can arrest for further detention without a warrant against perpetrators who are believed to have violated a protection order, even if the offense was not committed in the place where the police officer was assigned. Arrest and detention must be given a warrant for arrest and detention after 1 x 24 (one time twenty-four) hours.

Suspension of detention does not apply to detention To provide protection to victims, the police can arrest perpetrators with sufficient preliminary evidence for violating a protection order. The arrest can be continued with detention accompanied by a warrant for detention within 1 x 24 (one time twenty-four) hours.

Victims, police, or accompanying volunteers can submit a written report regarding an alleged violation of the protection order.

In the event that the court obtains a written report, the perpetrator is ordered to appear within 3 x 24 (three times twenty-four) hours for examination.

The examination is carried out by the court at the place where the perpetrator lived with the victim at the time the violation was alleged to have occurred.

Achmad Ali argues that among legal practitioners, there is a tendency to always see the judicial system as merely a legal institution, which is full of normative content, followed by a number of judicial principles which are very ideal and normative, which in reality are completely different. with the use of moral studies and legal studies (normative).¹³ Several factors must be considered sociologically by the judge in making a decision on a case, including the nature of the criminal offense (whether it is a serious or minor criminal offense and the threat of punishment for the criminal offense).¹⁴

If the court finds out that the perpetrator has violated the protection order and is suspected of committing further violations, the court may require the perpetrator to make a written statement containing the ability to comply with the protection order.

If the perpetrator still does not heed the written statement, the court can detain the perpetrator for a maximum of 30 days. Detention is accompanied by a restraining order.

Based on the above, it can be used as a basis for sentencing in the event of domestic violence, even if the marriage is not registered with the marriage registrar, Law No. 23 Year 2004 concerning the Elimination of Domestic Violence can still be applied to ensnare perpetrators of domestic violence. household, because the elements have been met to implement the law. Various legal efforts must be given by law enforcement officers to provide a sense of security, both mentally and physically from interference and various threats from any party.¹⁵ Legal protection is an action to protect or provide assistance to legal subjects, using legal instruments.¹⁶

Then when viewed from the theory of justice which states that justice is a morally ideal condition of truth about something, whether it concerns objects or people, if domestic violence occurs for unregistered marriages, it will cause injustice to the victim when the law applied is only limited. in the Criminal Code regarding persecution, while in reality they live within the scope of the household which incidentally is entitled to legal protection in accordance with the applicable law.

¹³ Achmad Ali, *Menguak Tabir Hukum*, Gunung Agung, Jakarta, 2002, p. 46

¹⁴ Bismar Siregar, *Hukum Pidana Acara*. Bina Cipta, Jakarta, 1989, p. 33

¹⁵ C.S.T. Kansil, *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*, Balai Pustaka, Jakarta, 1989, p. 102

¹⁶ Philipus M. Hadjon, *Pengantar Hukum Administrasi Indonesia*, Gajah Mada University Press, Yogyakarta, 2011, p. 10

Due to the fact that underhand marriages or commonly called marriages are not legally registered, they are often used as shortcuts for men by only paying attention to the pillars and conditions in Islamic law, without paying attention to formal requirements. Although the laws and regulations clearly regulate it as regulated in the Marriage Law, every marriage is recorded according to the applicable laws and regulations. In the Regulation of the Minister of Religion of the Republic of Indonesia No. 11 Year 2007 Chapter X Marriage Registration Article 26 Paragraph (1) that the Marriage Registrar (Pegawai Pencatat Nikah/PPN) records marriage events in the marriage certificate.¹⁷ It should be for people who are going to get married to avoid marriages that are not registered because legally it is no longer difficult to prove that the marriage is true, but on the other hand, there are still many people who are trapped in circumstances that require the occurrence of betel marriages or unregistered marriages, many at least there will be parties who are harmed, but on the one hand, if violence has occurred and there are victims of the violence, law enforcers should be more sensitive to the events that occur, starting from the causes of betel marriage until the marriage is not recorded to give consideration to the application of the law or punishment to be given to perpetrators of domestic violence.

The essence of the judge's juridical considerations is proving the elements of an offense, whether the defendant's actions fulfill and are in accordance with the offense charged by the public prosecutor, and the judge's decision.¹⁸ The mitigating factors are that the defendant is not yet an adult, regarding the trial and assistance of a crime.¹⁹ Victims of Domestic Violence who are married but not legally registered. according to the law, their marriage is not recorded in the Office of Religious Affairs or the Civil Registry, only religiously married. However, the husband and wife living in the same house for a long period of time can be classified into the household scope as stipulated in Article 2 paragraphs (1) and (2) of the PKDRT Law. In addition, based on Article 10 a of the PKDRT Law, the form of legal protection given to victims of domestic violence is that victims are entitled to protection from their families, and the police, prosecutors, courts, advocates, social institutions, or other parties either temporarily or based on a protection order from the court.

CONCLUSION

the law affirms that every citizen has the right to obtain legal protection, including victims of domestic violence. Law No. 23 Year 2004 concerning the elimination of domestic violence was then present to provide legal certainty related to legal protection in the event of domestic violence, the violence is both physical and psychological violence, the government then makes regulations related to protection schemes if it occurs violence starts from the protection of the police, social services, and courts. Especially for unregistered marriages, they can still get legal protection based on Law No. 23 Year 2004 if it can be proven that it is true that a marriage has occurred and lives in the same household.

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¹⁷ Article 26 Chapter X Marriage Registration in Regulation of the Minister of Religion of the Republic of Indonesia No. 11 Year 2007 concerning Marriage Registration.

¹⁸ Lilik Mulyadi, *Hukum Acara Pidana*. PT Citra Aditya Bakti, Bandung, 2007, p. 193

¹⁹ Adami Chazawi, *Hukum Acara Pidana*. PT Raja Grafindo, Jakarta, 2005, p. 75

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