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Legal Protection for Victims of Domestic Violence through Penal Mediation in Indonesia

Eko Novianto^{1*}, Nahdiya Sabrina², Leni Dwi Nurmala³

^{1, 2, 3} Faculty of Law, Merdeka University of Malang, Indonesia

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***Corresponding author:** Eko Novianto

Abstract

Domestic violence remains a frequently occurring social issue in Indonesia, with the majority of perpetrators being husbands or fathers, and the victims being women and children. The current criminal law paradigm leans toward a restorative approach, prioritizing penal mediation over litigation. The purpose of this study is to analyze legal protection for women's and children's rights in domestic violence, as well as penal mediation as a means of protecting victims' rights in Indonesia. This article employs a normative legal method, with a statutory and conceptual approach. Data were collected through literature studies, which were then processed and reviewed descriptively-qualitatively. The results show that the legal protection provided by Law No. 23 of 2004 concerning the Elimination of Domestic Violence is quite detailed but only offers short and temporary protection. The protection is also more oriented towards a repressive paradigm than preventive, meaning that protection is only provided after a crime has occurred. This study recommends that penal mediation be attempted in domestic violence cases as a concept that is in accordance with the restorative justice principle, which must be attempted at all stages of criminal proceedings, such as investigation, prosecution, and examination of cases in court, so that the criminal law paradigm that focuses on restorative justice can be implemented more comprehensively for both victims and perpetrators.

Keywords: domestic violence, legal protection, penal mediation.

Introduction

Various forms of violence frequently occur in the lives of society in general. However, violence occurs not only in public areas but also in the domestic sphere, giving rise to social issues such as domestic violence. Ironically, in various cases of domestic violence, women and children are the dominant victims of criminal acts of violence perpetrated by husbands or fathers, whether physical, psychological, sexual, or economic. According to data

from the National Commission on Violence Against Women in 2025, there were at least 35,131 cases per year. Many victims of domestic violence find it difficult to report their suffering to law enforcement due to the strong belief that a domestic violence is a private matter and therefore reporting to the police will only create shame for their family. This results in prolonged suffering for

victims of domestic violence without protection (Mansur & Gultom, 2007).

Domestic violence is a serious social problem that has, unfortunately, received little public attention for several reasons. First, domestic violence is relatively confined and confidential because it occurs within the scope of family life, which is considered private. Second, violence that occurs is often considered common because it is believed that treating a wife however the husband pleases is the husband's right as head of the household. Third, no one is allowed to interfere in household affairs because it is a private matter within the family. Fourth, domestic violence occurs within a formal (official) institution, namely marriage (Setiawan et al., 2026).

In order to address the social problem of domestic violence, the Indonesian government has passed Law No. 23 of 2004 concerning the Elimination of Domestic Violence. The formation of this law is based on 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." All forms of violence, especially domestic violence, constitute a violation of human rights and a crime against human dignity, and a form of discrimination that must be eliminated. Considering that victims of domestic violence, most of whom are women and children, protection for women and children must be provided by the state and/or society to avoid and be free from violence or threats of violence, torture, or treatment that degrades human dignity. However, cases of domestic violence still occur frequently, while the legal system in Indonesia still has some 'holes' in which the protection towards the victims is not guaranteed against domestic violence.

Furthermore, in resolving criminal cases, the paradigm of criminal law in Indonesia is shifting toward a restorative justice approach, rather than a retributive approach that focuses solely on punishing the perpetrator. This paradigm shift is based on the view that resolving criminal acts aims not only to provide retribution but also to restore social relationships, repair the losses suffered by victims, and encourage more constructive accountability for perpetrators. Through a restorative approach, victims, perpetrators, and the community are given space to participate in the resolution process to achieve just recovery (Riyadi, 2024). In the context of domestic violence, criminal law functions not only to impose sanctions on perpetrators but also seeks to restore the physical, psychological, and social losses experienced by victims as a result of the act. Furthermore, the restorative justice paradigm emphasizes the importance of resolving cases through penal mediation as an alternative to litigation, as long as it does not neglect the protection of victims' rights and the principles of justice.

In line with these developments, the increasingly widespread application of restorative justice and penal mediation in the criminal justice system raises various issues that require examination, particularly in domestic violence cases. While the restorative approach offers a more dialogical and recovery-oriented solution, its application must not diminish legal protection for victims, particularly women and children, in vulnerable positions. The risk of unequal power relations, pressure to reconcile, and the potential for re-victimization are aspects that must be carefully considered in every mediation process. Based on this background, this article is written to review the legal protection of women's and children's rights in cases of domestic violence perpetrated by husbands, specifically in the context of the application of penal

mediation as a realization of the restorative justice paradigm. Thus, the discussion is expected to provide an analysis of the limits of the restorative approach so that it continues to guarantee the protection of victims' rights and aligns with the goals of just criminal law.

Research Method

This article employs a normative legal research method with a statutory and conceptual approach. The normative method means viewing law as a societal norm, or it can also be interpreted as legal research that focuses on the use of library and secondary sources (Soekanto, 2007). The statutory approach is carried out by examining the statutory regulations related to the legal issue being handled, while the conceptual approach can be understood as an analytical method that is based on existing and continuously developing scientific doctrines to be used as a reference for understanding and developing fundamental concepts regarding the problem being studied (Marzuki, 2017). Normative legal method is chosen based on the type of study in this article, which focuses on the ambiguity of norms that makes legal protection for women and children, who are the main victims of domestic violence, less comprehensive. The analysis was conducted using descriptive qualitative methods to address the issue of unclear legal norms.

Results and Discussion

1. The Restorative Justice Paradigm in Handling Criminal Acts

Restorative justice is an approach within the criminal justice system that focuses on restoring things back to how it was for the consequences of criminal acts through the active involvement of perpetrators, victims, and the community. Unlike the retributive paradigm, which emphasizes retribution through punishment, restorative justice prioritizes solutions that repair the harm caused by the perpetrator. This paradigm focuses on the interests of the victim, without neglecting the perpetrator's responsibility to repair the consequences of their actions. In the context of the national criminal law development, restorative justice has become the main direction for criminal law reform in Indonesia, reflected in the enactment of Law No. 1 of 2023 concerning the Criminal Code and Law No. 20 of 2025 concerning the Criminal Procedure Code. This paradigm shift demonstrates that the criminal justice system is no longer viewed solely as an instrument of punishment, but also as a means of realizing substantive, balanced, and restorative justice (Garcia et al., 2025).

The application of restorative justice is also in line with the humanist paradigm developed in the reformation of Indonesian criminal law, which is also a demand of the international community. The humanist paradigm views every individual, both victim and perpetrator, as a human being with dignity and rights that must be respected and protected by law. Therefore, the resolution of criminal cases is not only aimed at imposing sanctions, but also at considering humanitarian aspects, reconciliation, and the restoration of social relations that have been affected by the crime. This approach encourages conflict resolution through dialogue and deliberation based on the good faith of all parties. Restorative justice is expected to be a manifestation of humanitarian values that strive to create a balance between the interests of victims, perpetrators, and society in realizing the goals of a more just criminal law (Agusta et al., 2025).

One concrete form of restorative justice implementation in the Indonesian criminal law system is penal mediation. Penal mediation is a mechanism for resolving criminal cases through a dialogue process involving the victim and perpetrator, with the assistance of a neutral third party, to reach a just settlement agreement. Through this mechanism, the perpetrator is held accountable for the consequences of their actions and makes restitution for the losses suffered by the victim. Meanwhile, the victim is given the opportunity to express their feelings and obtain a resolution that is more responsive to their needs for recovery. This approach is better applied than simply imposing sanctions on perpetrators through criminal punishment. Penal mediation is seen as an important instrument in implementing the principles of restorative justice in criminal law enforcement practices in Indonesia (Arpangi et al., 2024).

The preference for penal mediation over litigation is based on various practical and legal considerations. Litigation generally involves relatively high costs, lengthy timeframes, and complex procedures, often resulting in a failure to achieve satisfactory resolutions for the parties. Furthermore, the high number of cases filed with the courts leads to a case backlog, potentially reducing the effectiveness and quality of examinations and judicial decisions. In such circumstances, penal mediation offers a simpler, more efficient alternative, focusing on resolving the substance of the conflict rather than solely imposing a penalty. Therefore, the development of penal mediation mechanisms is expected to not only increase the effectiveness of the criminal justice system but also strengthen the protection of victims' interests, encourage accountability for perpetrators, and achieve faster, simpler, and more cost-effective justice.

2. Penal Mediation as a Way to Handle Domestic Violence based on the Restorative Justice Principle

Philosophically, Article 28A of the 1945 Constitution regulates human rights regarding the right to life, stating: "Everyone has the right to live and the right to defend their life and livelihood." Furthermore, Article 28B Paragraph (2) states: "Every child has the right to survive, grow and develop and has the right to protection from violence and discrimination." These two articles stipulate that everyone has fundamental rights that must be protected, namely the right to live and defend their life, especially for children. Therefore, any form of discrimination against a person is a constitutional violation that must be subject to legal consequences (Wibowo, 2021).

Reflecting on the Constitution, every citizen, constitutionally, has the right to feel safe and free from all forms of violence, even within the scope of the household. As a form of protection for this right, the state has passed Law No. 23 of 2004 concerning the Elimination of Domestic Violence because all forms of violence, including domestic violence, constitute a violation of human rights and a crime against human dignity, as well as a form of discrimination that must be eliminated. Sociologically, the formation of this regulation is due to the high rate of domestic violence perpetrated by, mostly, husbands or fathers, where criminal sanctions are very low, resulting in injustice for victims, especially wives or children. Meanwhile, the legal system in Indonesia does not guarantee protection for victims of domestic violence (Salsabila & Maulidiana, 2026).

In terms of case-settlement by restorative principle, law enforcement officials, particularly the police, play a central role.

Law No. 23 of 2004 concerning the Elimination of Domestic Violence explains in Articles 16 to 38 regarding protection for victims of domestic violence. The police can provide temporary protection for a maximum of 7 (seven) days from when the victim's report is received or treated. The police can also collaborate with health workers, social workers, volunteer companions, and/or spiritual guides to accompany the victim. During the temporary protection process, the police are required to provide information to the victim about the victim's right to receive services and assistance. The victim can and has the right to report domestic violence directly to the police, either at the victim's location or at the scene of the incident. The victim can also designate a family member or other person to report domestic violence to the police, either at the victim's location or at the scene of the incident. If the victim is a child, the report can be made by the parent, guardian, caregiver, or other adults, carried out in accordance with the provisions of applicable laws and regulations (Saraswati, 2006). Thus, handling criminal acts does not solely focus on punishing the perpetrator to create a deterrent effect, but rather on efforts to make both parties understand each other's situation and restore what has been harmed by this domestic violence issue.

As an alternative to resolving cases through a litigation mechanism, there must be a non-litigation settlement mechanism, one of which is through penal mediation. So far, penal mediation is limited to being regulated in Police Regulation No. 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice, specifically in Article 14 paragraph (1), which basically states that the police are obliged and have the right to invite, facilitate, and make reports on the results of mediation, especially for minor crimes. Basically, it is necessary to first investigate whether the crime of domestic violence committed by a husband, or a father, against his child or wife is classified as a minor or major crime. If the domestic violence committed is classified as a minor crime, then Police Regulation No. 8 of 2021 emphasizes that the perpetrator must make a peace statement and document evidence that efforts have been made to restore the victim's rights. This is as stipulated in Article 13, paragraph (3).

In general, the Law of Elimination of Domestic Violence emphasizes the rights and protection of victims. The regulation also emphasizes mechanisms for victim recovery, which can be achieved through services from health workers, social workers, volunteer companions, or spiritual mentors. Substantially, victim recovery encompasses all efforts to empower victims of domestic violence, both physically and psychologically. Recovery is achieved through services and support for victims of domestic violence. Support can be provided through counseling, psychological therapy, advocacy, and spiritual guidance to empower victims of domestic violence to resolve and make peace with their problems (Suartini & Hidayati, 2023).

3. Overview of Feminist Legal Theory in Providing Legal Protection for Victims of Domestic Violence

The emergence of Feminist Legal Theory in the 1970s was closely linked to the Critical Legal Studies (CLS) movement in the United States, which challenged the view of law as neutral and value-free. The development of this theory was also influenced by the critical theory, which emphasized the importance of uncovering power relations in society. Thomas Kuhn's critique of rigid scientific views, along with debates on legal positivism and the concept of falsification proposed by Karl Popper, were important factors driving the emergence of more critical, progressive, and social

justice-oriented legal approaches, including Feminist Legal Theory. Deborah L. Rhode explains that Feminist Legal Theory and Critical Legal Studies have common ground in their efforts to fight for equality and critique social and legal structures that are considered to maintain inequality. Both approaches are based on the belief that gender equality cannot be optimally realized if it relies on institutions, structures, and ideologies that have been built within a system rife with power relations. Therefore, both seek to reveal that various legal rules that appear neutral, objective, and universal often contain particular interests and produce unequal impacts in practice. In this context, Critical Legal Studies seeks to challenge and reconstruct the existing distribution of power, while Feminist Legal Theory specifically highlights how law can reproduce gender-based injustices despite normatively claiming to uphold the principle of equality (Setiawan, 2024).

Regarding the causes of the rise in domestic violence against wives and children, there are several underlying factors that stem from a patriarchal societal structure. For example, when a husband feels he has more power than his wife, and the wife feels she must do what he wants. Such ideas are constructed through socialization within the family, that a woman is a sex object, and a wife is her husband's servant. This is so deeply ingrained in the husbands' views that regulations in criminal law and moral norms feel defeated. Furthermore, economic dependence on the husband is a dominant factor in the occurrence of husband-to-wife violence (Rismayadi et al., 2025). This significantly influences the wife's understanding of her husband's harsh actions within the family and forces her to accept his violent behavior, making her unwilling to report it to legal institutions or other parties, such as non-governmental organizations or marriage counseling institutions.

Unlike adult women, children are protected not because of their marital relationship, but because they are physically and mentally immature and highly dependent on the adults around them. The primary basis for child protection is Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. This law emphasizes that children have the right to be protected from violence and neglect, and the state is obliged to provide special protection because children are unable to defend themselves. Because of this vulnerability, the law increases the criminal penalties for those who violate children's rights, as seen in the provisions on increasing penalties in the Criminal Code and the Child Protection Law (Afiyah et al., 2025). However, the form of protection for children so far has mostly consisted of increasing penalties for perpetrators, rather than providing rehabilitation for the child. Yet, children who witness or experience violence require long-term psychological support to ensure their development is not impaired. This demonstrates that children's rights demand an approach that emphasizes long-term recovery.

The consequences of acts of domestic violence motivated by patriarchal societal factors include physical, sexual, and psychological misery or suffering; and/or domestic neglect, including threats to commit acts, coercion, or unlawful deprivation of liberty. The physical impacts of domestic violence can include injuries, health problems, physical disability, and even death for the victim. Psychologically, victims often experience trauma, anxiety, depression, and a loss of sense of security in their daily lives. Domestic violence can also disrupt the victim's social relationships due to decreased self-confidence and a tendency to withdraw from their surroundings. Furthermore, economic impacts can arise due to the victim's reduced ability to work or meet their

living needs. In the long term, domestic violence can affect the development and well-being of all family members, especially children who witness or experience such violence (Johnson et al., 2022).

In terms of reparations for victims' experiences, feminist legal theory is inherently closely linked to the restorative justice approach. Both critique criminal justice models that are overly focused on punishing perpetrators and underrepresent the needs of victims. Feminist legal theory emphasizes the importance of listening to the experiences of victims, especially women and children, who are often in vulnerable positions. Meanwhile, restorative justice seeks to restore social relationships disrupted by criminal acts through dialogue and the participation of all parties involved. Both approaches also place victim recovery as a crucial goal in resolving cases. Furthermore, both recognize that justice can be achieved not only through criminal sanctions but also through processes that provide recognition, restoration, and empowerment to victims. Therefore, feminist legal theory and the principles of restorative justice can be viewed as complementary approaches to realizing a more just and humanitarian-oriented legal system.

Conclusion

Based on the analysis that has been conducted, it can be concluded that legal protection for the rights of women and children as victims of domestic violence has actually been regulated well and in detail, especially in the Elimination of Domestic Violence Law. However, this study found that this protection is not fully optimal for two main reasons: First, in terms of the weakness of its norms, protection given within the Elimination of Domestic Violence Law only works after the violence occurs and is given only for a certain period, namely seven days for temporary protection and a maximum of one year for a protection order; and Second, there is a weakness in the Domestic Violence Law because it does not regulate long-term recovery mechanisms. Viewed from feminist legal theory, this situation shows that the law and judicial practices are still influenced by patriarchal structures that make the experiences of women and children as victims of domestic violence parties that are not fully accommodated and represented.

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