

## **LEGAL REVIEW OF PROTECTION ORDERS FOR VICTIMS OF DOMESTIC VIOLENCE**

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### Abstract

Domestic violence is a form of human rights violation that causes physical, psychological, sexual, and economic suffering for victims. In order to provide protection for victims, the state enacted Law Number 23 of 2004 concerning the Elimination of Domestic Violence, which regulates the issuance of a Protection Order as one of its legal mechanisms. This legal instrument aims to provide preventive protection for victims from the risk of repeated violence and to ensure their safety during the law enforcement process. This study aims to analyze the regulation of protection orders for victims of domestic violence under Law Number 23 of 2004 and their implementation in law enforcement practices in Indonesia. This research employs a normative legal research method with a statutory approach and a conceptual approach. The legal materials used consist of primary, secondary, and tertiary legal materials which are analyzed qualitatively through legal interpretation and juridical reasoning. The results of this study indicate that the regulation of protection orders in the Domestic Violence Law plays an important role as a preventive legal protection instrument for victims. Protection orders can be granted in the form of temporary protection provided by law enforcement officials as well as permanent protection determined by the court. However, in practice, the implementation of protection orders still faces several challenges, including the low level of public legal awareness, limited access of victims to protection services, and the lack of optimal coordination among law enforcement agencies. Therefore, it is necessary to enhance the capacity of law enforcement officials, strengthen coordination among relevant institutions, and increase legal awareness through public education so that the protection of domestic violence victims can be implemented effectively.

**Keywords:** Domestic Violence, Protection Orders, Legal Protection, Domestic Violence Victims

**INTRODUCTION**

Domestic violence (DV) is a form of human rights violation that directly impacts an individual's safety, dignity, and physical and psychological integrity. Domestic violence not only reflects internal family conflict but also manifests unequal power relations that leave victims vulnerable. Victims are often trapped in emotional, economic, or social situations that make it difficult to escape the violence they experience. These conditions make domestic violence no longer merely a private matter but a legal, social, and humanitarian issue that requires state intervention.

Domestic violence has its own characteristics compared to other crimes because it occurs within the family, which should be the safest place for a person. However, in fact, many cases show that the home has become a space that threatens the physical and psychological safety of certain family members, especially women and children. The National Commission on Violence Against Women noted that many cases of domestic violence go unreported because victims experience economic dependence, social pressure, and fear of leaving a dangerous relationship. This condition often causes victims to live in a cycle of violence that continues to repeat itself without adequate protection. Recognizing the urgency of this problem, the state then established Law Number 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT Law) as a concrete step to provide legal protection for victims. This law expressly categorizes domestic violence as a crime and positions victims as legal subjects who must be protected. One of the protection measures provided is a Protection Order, which is intended to prevent recurrence of violence and provide a safe space for victims.

Protection orders in the Domestic Violence Law hold a crucial position because they impose legal restrictions or prohibitions on perpetrators from contacting or approaching victims. This instrument is essentially a preventative legal protection measure, protecting victims before the violence progresses to a more severe stage. This means this mechanism provides immediate physical and psychological protection, even before the criminal process is completed. In the context of domestic violence that has the potential to recur, the existence of a protection order is an essential legal instrument for the safety of victims.

The uniqueness of a protection order can be seen in its responsive nature and immediate safety-oriented nature. With a protection order, victims do not have to wait for a lengthy legal process to feel secure. This differs from common crimes, where protection is usually only obtained after the perpetrator has undergone legal proceedings. Protection in domestic violence cases can be granted earlier, even through a relatively quick court decision (Hamzah, 2017). Thus, the concept of protection in domestic violence cases has a preventative and protective character that distinguishes it from other law enforcement mechanisms.

Furthermore, the protections in the Domestic Violence Law align with the principles of the rule of law as enshrined in the 1945 Constitution, which guarantees citizens' rights to be free from threats of violence and degrading treatment. Protection orders are a concrete implementation of this constitutional mandate. By providing access to protection, the state plays a role in preventing further victims from falling into situations that pose physical and mental danger. Therefore, the regulation of protection orders is not merely a technical policy, but rather a realization of the state's responsibility to guarantee a sense of security for individuals threatened within the family structure.

The urgency of examining the legal aspects of protection orders arises primarily because victim protection is part of a victim-oriented justice system. The legal focus is no longer solely on punishing the perpetrator, but also on the victim's recovery and rescue. Protection orders are a manifestation of a new, more humanistic legal paradigm, where victims are not merely accessory to criminal proceedings but rather possess rights that must

be fulfilled. Therefore, a study of the regulation of protection orders is necessary to understand how norms are formed and the limits of the authority granted to authorities to issue such protection.

A legal study of protection orders is also important to understand how the Domestic Violence Law defines, scopes, and legal basis for granting such protection. The law explains that protection orders can be either court-ordered or temporary orders issued by authorized authorities. This structure demonstrates that the law provides two forms of protection that can be tailored to the victim's situation, both in urgent situations and during ongoing legal proceedings.

Furthermore, a discussion of protection orders is crucial for understanding who is eligible to file, the procedures, and the rights of victims protected by these instruments. This aspect is relevant because understanding legal mechanisms often determines a victim's success in accessing protection. For example, victims can apply for protection directly or through family members, advocates, or specific protection agencies. Therefore, the more comprehensive the understanding of legal norms, the greater the victim's chances of obtaining real protection.

Based on the above explanation, it is clear that the protection order provisions in the Domestic Violence Law are highly significant in providing a sense of security for victims of domestic violence. This study is crucial for fully describing how the law regulates protection through formal legal instruments that are preventative, expeditious, and aimed at saving victims from continued threats. Therefore, this study places a legal review of the protection order in Law No. 23 of 2004 as the primary focus of the study, with the aim of providing a comprehensive overview of the concept, legal basis, and substance of the norms governing victim protection in situations of domestic violence.

In the context of developing the national legal system, the position of protection orders in the Domestic Violence Law represents a modernization of criminal law that no longer merely regulates punishment but also provides protection. This reform approach demonstrates that the law is not merely a reactive mechanism after a crime occurs, but rather an early intervention to prevent further violence. Through protection orders, victim protection is concretely realized by limiting the perpetrator's interaction with the victim. Thus, the Indonesian legal system is moving toward a victim-centered criminal law orientation, placing the victim's interests as the primary parameter in handling domestic crimes.

Theoretically, the existence of protection orders also demonstrates a shift in the paradigm of criminal law, which no longer focuses solely on retaliation (retributive) but also on protection and prevention. This instrument demonstrates the application of the *primum remedium* principle for victims, namely ensuring their safety and well-being before considering long-term legal proceedings. This further emphasizes that the Domestic Violence Law focuses not only on punishing perpetrators but also on safeguarding the social, psychological, and existential well-being of victims (Muladi & Arief, 2010). Therefore, the study of protection order regulations has an important theoretical dimension that needs to be clearly established in scientific research.

The regulation of protection orders also does not stand alone, but is closely related to the role of judicial institutions, law enforcement officials, and other state apparatus as implementers of the statutory mandate. In this context, a legal review is necessary to understand how the law establishes the authority, procedures, and limits for the use of protection orders. Understanding the legal aspects provides the foundation for comprehensively understanding the implementation of protection orders and avoiding multiple interpretations. In other words, this academic study plays a crucial role in establishing a basic understanding of how the law protects victims of domestic violence through protection orders.

By considering these various foundations, research on the legal review of protection orders for victims of domestic violence is not only relevant but also strategic. It provides an in-depth understanding of how the state builds a protection system through legal norms, as well as how these instruments become an important part of humanitarian protection in the domestic environment. Thus, this research has a high urgency value both scientifically and ethically, because protection of human dignity is the core of a just legal system. Based on this background, the problem formulation in this study is structured as follows: 1. How are protection orders regulated for victims of domestic violence according to Law Number 23 of 2004?, How is the implementation of protection orders for victims of domestic violence in law enforcement practices in Indonesia?

## **RESEARCH METHODS**

In this paper, the author uses the normative legal research method (Subagyo, 2004). Normative legal research, or library legal research, is legal research conducted by examining library materials or secondary data alone. Normative legal research or library legal research includes research on legal principles and research on the level of vertical and horizontal synchronization (Soekanto, 2001). This means that existing problems are examined based on existing laws and regulations. Normative legal research uses normative case studies in the form of legal behavioral products, for example, reviewing laws. The main focus of the study is law conceptualized as norms or rules that apply in society and become a reference for each person's behavior. Therefore, normative legal research focuses on the inventory of positive law, legal principles and doctrines, legal discoveries in concrete cases, legal systematics, levels of synchronization, legal comparisons, and legal history (Muhammad, 2004).

## **RESULT AND DISCUSSION**

### **A. Regulation of Protection Orders for Victims of Domestic Violence According to Law Number 23 of 2004**

A protection order is a legal instrument specifically regulated in Law Number 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT Law) as an effort to provide direct protection to victims of domestic violence. This regulation demonstrates a shift in the paradigm of criminal law in Indonesia, which no longer solely focuses on punishing perpetrators but also pays serious attention to the safety and recovery of victims. In this context, the state acts not only as a law enforcer against perpetrators of crimes but also as a party obligated to protect citizens from the threat of violence occurring within the domestic sphere.

Normatively, the concept of victim protection in the Domestic Violence Law stems from the recognition that domestic violence constitutes a violation of human rights and a crime against human dignity. This is reflected in Article 1 of the Domestic Violence Law, which defines domestic violence as any act against a person, especially women, that results in physical, sexual, or psychological suffering, or neglect within the family. Therefore, this law not only regulates criminal sanctions against perpetrators but also provides protection mechanisms for victims to avoid the threat of repeated violence.

One such protection mechanism is a protection order, which is regulated in several provisions of the Domestic Violence Law, specifically Articles 28 through 38. Through this mechanism, victims can obtain legal protection in the form of a prohibition on the perpetrator from approaching the victim, communicating with them, or engaging in actions that could potentially lead to further violence. This protection can be provided either in the form of temporary protection granted by law enforcement officials or permanent protection determined by a court decision.

The provisions regarding protection orders demonstrate that the Domestic Violence Law differs from the criminal provisions in the Criminal Code. In the Criminal Code, criminal proceedings generally focus on imposing criminal sanctions after an unlawful act has occurred. Meanwhile, the Domestic Violence Law provides a preventative protection mechanism, protecting victims before the violence progresses to a more serious stage. Thus, protection orders serve as a preventative measure, providing victims with a sense of security during the legal process.

When linked to the Criminal Code and the new National Criminal Code (Law Number 1 of 2023), provisions regarding violence against others are actually regulated through articles concerning abuse, threats, and physical violence. However, the Criminal Code does not specifically regulate victim protection mechanisms in the context of domestic relations. Therefore, the existence of the Domestic Violence Law is important as a special law (*lex specialis*) that provides more comprehensive protection for victims of domestic violence. This *lex specialis* principle emphasizes that the provisions in the Domestic Violence Law have a special status that complements the general criminal provisions in the Criminal Code.

The protection order provisions in the Domestic Violence Law can also be analyzed through feminist theory, which positions women as a group that frequently experiences inequality within the social structure. From a feminist perspective, domestic violence is understood not only as a personal conflict between family members but also as a manifestation of unequal power relations between men and women within a patriarchal system. Therefore, legal protection for victims of domestic violence needs to be specifically designed to address this inequality. Protection orders, in this case, are one form of state intervention to protect victims from the perpetrator's domination in domestic relations.

Furthermore, the existence of protection orders can also be understood through victim protection theory, which emphasizes that victims have the right to protection, reparation, and security guarantees from the state. In the modern criminal justice system, victims are no longer viewed as passive parties merely providing testimony in the judicial process, but as legal subjects with rights that must be protected. With a protection order, victims receive security guarantees, allowing them to undergo the legal process without pressure or threats from the perpetrator.

The regulation of protection orders is also related to Lawrence M. Friedman's legal system theory, which states that the success of a legal system is influenced by three main components: legal structure, legal substance, and legal culture. In the context of protection orders, legal substance is reflected in the provisions of the Domestic Violence Law, which provides a normative basis for victim protection. The legal structure is reflected in the role of law enforcement officials, such as the police and courts, who have the authority to issue protection orders. Meanwhile, legal culture relates to the attitudes of society and law enforcement officials toward handling domestic violence cases.

If these three components are implemented in a balanced manner, a protection order can effectively serve as a victim protection instrument. However, if one component fails to function effectively, for example, if law enforcement officials are unresponsive to victims' reports or if the public still views domestic violence as a private matter, the implementation of the protection order may face obstacles. From a criminal justice theory perspective, a protection order is also part of the protection mechanism within the law enforcement process. The criminal justice system comprises several interconnected institutions: the police, prosecutors, courts, and correctional institutions. In cases of domestic violence, the victim protection process typically begins with the victim's report to the police. Once the report is received, the police can provide temporary protection to the victim until the case is further processed in court. Furthermore, the court has the authority to issue a permanent protection order as part of the judicial process.

The protection order provisions in the Domestic Violence Law can also be analyzed through the theory of dignified justice, which emphasizes that the law must uphold human dignity. Domestic violence is an act that degrades human dignity because it involves torture or inhumane treatment of family members. Therefore, the law must provide adequate protection so that victims can experience a sense of security and justice. Protection orders in the Domestic Violence Law represent a concrete application of the principle of dignified justice because they aim to safeguard the safety and dignity of victims.

Furthermore, the regulation of protection orders is also in line with the principle of a state based on the rule of law, which guarantees the protection of human rights. The 1945 Constitution, specifically Article 28G paragraph (1), states that everyone has the right to protection for themselves, their family, their honor, and their dignity. Protecting victims of domestic violence through protection orders is a direct implementation of this constitutional principle.

Thus, it can be concluded that the protection order provisions in Law Number 23 of 2004 hold a crucial position in the legal protection system for victims of domestic violence. This instrument not only serves as a mechanism to prevent recurrence of violence but also serves as a form of state recognition of victims' rights to live in safety and dignity. Through protection orders, criminal law no longer focuses solely on punishing perpetrators but also on protecting and rehabilitating victims as part of a more humanistic criminal justice system.

## **B. Implementation Of Protection Orders For Victims Of Domestic Violence In Law Enforcement Practices In Indonesia**

The implementation of protection orders in law enforcement in Indonesia is a crucial part of the state's efforts to provide concrete protection to victims of domestic violence. Although Law Number 23 of 2004 concerning the Elimination of Domestic Violence provides comprehensive victim protection mechanisms, the implementation of these protections in practice often faces various challenges. Therefore, analyzing the implementation of protection orders is crucial to determine the extent to which these protection mechanisms operate effectively within the Indonesian legal system.

In law enforcement practice, the implementation of a protection order typically begins with a victim's report to the police. The police, as the frontline in the criminal justice system, have the authority to receive reports, conduct initial investigations, and provide temporary protection to victims if there are indications of a threat endangering their safety. This temporary protection aims to provide a sense of security to victims before the legal process progresses to a more formal stage through the courts. Afterward, the court can issue a permanent protection order, which is legally binding on the perpetrator.

In practice, a protection order can prohibit the perpetrator from approaching the victim, communicating with them, or entering their residence. Furthermore, the court can order specific measures to ensure the victim's safety, such as placement in a safe house or assistance from a women's and child protection agency. With this protection, the victim is expected to be able to undergo the legal process without pressure or threats from the perpetrator.

When analyzed through criminal justice theory, the implementation of protection orders involves more than just one law enforcement agency, but rather the result of collaboration between various institutions with distinct roles in the law enforcement process. The police are responsible for receiving reports and conducting initial investigations; the prosecutor's office is responsible for the prosecution; the courts examine and decide cases; and correctional institutions carry out the sentences imposed on perpetrators. In the context of protecting victims of domestic violence, this system also involves other institutions, such as

the Witness and Victim Protection Agency (LPSK) and social service agencies that provide assistance to victims.

The successful implementation of a protection order depends heavily on effective coordination between these various institutions. If any component of the criminal justice system is not functioning optimally, victim protection can be ineffective. For example, if the police fail to promptly respond to a victim's report or the court delays in issuing a protection order, the victim remains in a situation that could potentially endanger their safety.

Furthermore, the implementation of protection orders can also be analyzed through Lawrence M. Friedman's legal system theory, which states that legal effectiveness is determined by three main components: legal structure, legal substance, and legal culture. Legal substance in this context refers to the provisions of the Domestic Violence Law, which clearly regulates victim protection, including the protection order mechanism. Legal structure refers to the law enforcement agencies tasked with implementing these provisions, such as the police, prosecutors, courts, and victim protection agencies. However, legal culture is often an obstacle to the implementation of protection orders. In many cases, society still views domestic violence as a private matter that should be resolved within the family. This view often makes victims reluctant to report the violence they experience for fear of being seen as exposing the family's shame. Furthermore, some law enforcement officials still hold similar views, resulting in a lack of responsiveness in handling reports of domestic violence victims.

From a feminist theoretical perspective, this situation demonstrates that social structures still influenced by patriarchal values can impact the implementation of legal protection for victims of domestic violence. In societies still strongly influenced by patriarchal culture, women often find themselves in a weaker position within family relationships. This results in women who are victims of violence often having difficulty obtaining adequate legal protection. Therefore, the implementation of protection orders is crucial as a form of state intervention to protect victims from unequal power relations within the household.

The implementation of protection orders can also be examined through the theory of criminal responsibility, particularly in the context of law enforcement against perpetrators who violate the protection order. If the perpetrator persists in engaging in the prohibited acts in the protection order, they may be subject to additional criminal sanctions for violating the court order. In this case, the perpetrator is not only responsible for the violence they committed, but also for violating the protection order established by the court.

Furthermore, the implementation of protection orders is also related to the theory of punishment, which emphasizes that the imposition of criminal sanctions is not only intended to retaliate against the perpetrator, but also to protect society and prevent future criminal acts. By providing protection for victims and sanctions for perpetrators who violate protection orders, the law is expected to create a deterrent effect while providing security guarantees for victims. In a broader context, the implementation of protection orders can also be analyzed through the theory of dignified justice, which emphasizes that the law must uphold human dignity. Domestic violence is an act that degrades the dignity of the victim because it involves physical, psychological, and sexual violence in family relationships that should be based on mutual respect. Therefore, protection for victims through protection orders is a form of respect for human dignity that must be maintained by the state.

However, in Indonesia, law enforcement practices still face several obstacles in implementing protection orders. One major obstacle is the public's lack of understanding of the protection mechanisms available to victims of domestic violence. Many victims are unaware that they have the right to apply for protection in court. Furthermore, limited access to legal services and assistance can also hinder victims from obtaining optimal protection.

In addition to these factors, limited resources within law enforcement agencies can also impact the effectiveness of protection order enforcement. In some cases, police or courts are overloaded, resulting in delays in case handling. This undoubtedly impacts victim protection, which should be provided quickly and effectively. Therefore, it can be concluded that the implementation of protection orders for victims of domestic violence in law enforcement practice in Indonesia has a strong legal basis, established through the Domestic Violence Law. However, the effectiveness of its implementation depends heavily on coordination between law enforcement agencies, public legal awareness, and the state's commitment to providing protection to victims. Therefore, ongoing efforts are needed to improve the effectiveness of victim protection by strengthening the criminal justice system to be more responsive to the needs of victims of domestic violence.

## **CONCLUSIONS**

Based on the research results, it can be concluded that the regulation of protection orders for victims of domestic violence in Indonesia is regulated by Law Number 23 of 2004, which provides a mechanism for temporary protection and protection through court orders. Protection orders function as a preventive instrument to prevent recurrence of violence by limiting the perpetrator's actions, while also emphasizing that victims are legal subjects who must be actively protected within a legal system based on human rights. In practice, the implementation of protection orders involves coordination between the police, prosecutors, courts, and victim protection agencies. However, their effectiveness still faces obstacles, such as low public awareness, limited access to legal services, and a culture that considers domestic violence a private matter. Therefore, the success of the implementation of protection orders depends heavily on synergy between law enforcement agencies and increased public legal awareness.

Based on the research results, it is recommended that law enforcement officers, especially the police, increase their professionalism and sensitivity in handling domestic violence cases, including in providing temporary protection to victims in accordance with the provisions of Law Number 23 of 2004. Increasing the capacity and understanding of officers is also necessary so that the mechanism for handling and implementing protection orders can be implemented quickly, appropriately, and in accordance with applicable laws.

Furthermore, the police need to strengthen coordination with relevant institutions such as the courts, prosecutors, the Witness and Victim Protection Agency (LPSK), and women's and children's protection services to ensure effective and integrated victim protection. Furthermore, increased public awareness and legal education are needed to raise legal awareness and prevent domestic violence from being viewed as a private matter. This will ensure optimal and sustainable protection for victims of domestic violence.

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