

**REVIEW ARTICLE**

**PROTECTION OF VICTIMS OF DOMESTIC  
VIOLENCE (STUDY DECISION NUMBER:  
2660/PID.SUS/2015/PN MDN)**

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**ABSTRACT**

The purpose of this research is, first, to know what is a form of legal protection for domestic violence victim in crime. Second, what is the legal consequences for perpetrators of domestic violence. Thirdly, what is the judge of consideration for making determination in the decision of number: 2660 / Pid.SUS / 2015 / PN Mdn. The method used in this research is the Normative and Empirical. With research literature sourced from legislation, books, official documents, and research results and legal research methods that serve to see the law in a real sense and examine how the work of law in the community. The results of the research in this research that Victims of Domestic Violence Suffered severe injuries on the left eyelid, left chest and Also the left arm. Therefore, perpetrators of Domestic Violence are sentenced to 8 (eight) years Imprisonment.

**Keywords:** *Domestic Violence, Protection, Victim, Victim Protection*

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## INTRODUCTION

Domestic Violence is any act against someone, especially women, misery or suffering physical, sexual, psychological, and / or negligence of household including threat to commit acts, coercion, or deprivation of liberty unlawfully within the domestic sphere (Law No. 23 of 2004 concerning the Elimination of Domestic Violence).

Domestic Violence is a complex problem to solve. There are many reasons, which may be the cause, namely: Actors Violence in the home (domestic violence) really do not realize that what he has done is an act Violence in the home (domestic violence), Or it could be also the perpetrator was aware that the act of doing an act Violence in the home (domestic violence), Only offenders ignore it because shelter themselves under certain norms that already exist in society. Hence the perpetrator considers action Violence in the home (domestic violence) as a natural thing. Violence does not only arise due to no power but also because of their power. Therefore, oftentimes a person considers his actions are reasonable (Martha, 2003).

Included in the scope of the household are:

1. Husband, wife and children (including adopted children and stepchildren)
2. People who have a family relationship by blood, marriage, dairy, care, and guardianship, were living in the household.
3. People who are working to assist the household and living in the household, in the period while the household concerned (Law No. 23 of 2004 concerning the Elimination of Domestic Violence).

Forms of domestic violence are as follows:

1. All forms of violence within the family regarding the misuse of power.
2. Their levels of violence, from mild to very severe or fatal.
3. Violence done many times. If the controls to do violence to weaken or disappear, the violence will continue and gain weight. The target was increased to expand.

4. Family violence generally takes place in the context of psychological abuse and exploitation. Verbal humiliation in the form of ridicule or profanity often initiate physical violence.
5. Violence in the family has a negative impact on all members of the family or household, whether involved in violence or not. Everyone in this family feel at ease. This issue is a very destructive element of family life. Some of the consequences of this problem is fear, mistrust, emotional and physical gap, lack of communication and disagreements (Huraerah, 2012).

Based on the explanation of the things to be underlined is the family violence occurred because of misuse of power by the strong against the weak.

Violence can also occur due to several factors triggering or driving as follows:

1. Finance. Money is often the triggers of dispute between husband and wife. Salaries are not enough to meet the needs of households of each month, the demands of the high cost of living, triggering a fight that resulted in violence.
2. Jealousy can also be one of misunderstanding, conflict, even violence.
3. One trigger disputes between husband and wife is a problem child. Disputes can be more pointed if there are differences in the pattern of education for children between husband and wife.
4. The parents of the husband or wife can trigger fighting and causing a rift in the relationship between husband and wife. Parents who interfered in his household, such as financial problems, children's education or employment, often triggering a fight that ended with violence. It can be triggered due to differences in attitudes toward each parent.
5. Brothers who live under one roof or not, can trigger a rift in the family and marital relationship. Interference of relatives in domestic life, especially with the painful words or denigrate their respective families.
6. Politeness. Between husband and wife must be mutual respect and understanding. If this is ignored consequently misunderstanding that triggered quarrels and psychological violence. There is possibly lead to physical violence.
7. Misunderstand. The husband and wife are like two different poles. Therefore, the effort of adjustment and mutual respect the opinions of each party needs to be maintained. If not, there will be misunderstandings. This condition is often triggered by trivial things, if allowed to continue will not be obtained intersection. Misunderstandings are not immediately find a way out or completed, would lead to fights that can also lead to violence.
8. No cooking. There husband who says his wife would only eat cuisine so if the wife does not cook will riot. Husband attitude shows the dominant attitude. The husband act shows the attitude is still expecting wife is in the domestic domain, or only in the household. Wife who felt pressured by this attitude will fight the consequences arising mouth quarrel ended in violence.
9. Selfish husband. Everyone who lives in the house should submit to their husbands. If there is resistance from the wife or the other occupants of the house, then there will be a fight that followed the violence (Soeroso, 2010).

In general, physical violence is always preceded by verbal abuse, such as each lash, swearing, bring leverage past or remove words that offend either party (Jamaludin, 2016).

Legal protection of the victims of the Crime Violence in the home (domestic violence) still poses problems, especially regarding provisions in criminal law which requires that a Crime can only be done prosecution for their complaints. The problem of complaints is a very difficult thing because they do by the victim to report the crime of violence against him would cause embarrassment if disgrace in the family will be known by the public (Mansur & Gultom, 2009).

This paper examines there main points, *first*, how the legal protection of victims in the criminal act of violence in the home (domestic violence), *second*, how legal consequences for perpetrators of criminal acts of violence in the home (domestic violence), and *third*, how to Judge a consideration in sentencing on convictions Number: 2660/Pid.SUS/2015/PN Mdn

## METHOD

This type of research in this paper is normative (literature), which comes from the legislation, books - books, official documents, and the results are solely used to obtain complete data as the basis of this scientific writing. This research is descriptive Analytical, which revealed the legislation related to legal theories as research objects. Likewise, the law in its implementation in the community with regard to the object of research. To obtain the necessary data in this study, the authors conducted research in the Medan District Court is located at the Court of 8 Medan North Sumatra and the case was also settled in the Medan District Court. The data collection techniques performed in the following way:

### 1. Research Library (Library Research)

This method is done by conducting research on a variety of reading materials written by scholars such as books on legal theory and study materials as well as legislation on the legal protection of victims of domestic violence (domestic violence). As for other data collection techniques in this study conducted in the following manner:

#### a. Secondary Data

Secondary data is data including official documents, books - books (reading materials) research results in the form of reports, diaries and so on. The secondary data in the writing of this thesis proposal is a source of reading such books by scholars, Legal Experts and Academics who are Scientific and Data Decision No. 2660/Pid.SUS/2015/PN Mdn. The State Court of Medan relates the problem discussed in this paper.

#### b. Data Tertiary

Tertiary data are materials that provide guidance and explanation of secondary data above. The data tertiary in this paper is through the Internet, kemus Indonesian, legal dictionaries and encyclopedias.

## 2. Research Field (Field Research)

Research Field (Field Research) that research by examining directly into the field. In this case the researchers to conduct their research directly on the Medan District Court.

Objective data analysis in research is to narrow and restrict the data with hopes of becoming a well-structured data. Therefore, methods of analysis in accordance with the descriptive research is qualitative analysis method, ie an analysis derived either from observation, and literature study then poured in narrative form a logical and systematic, and further analyzed to gain clarity studied.

The process of data analysis in this study using an interactive model. Researchers first step is to do a good data collection in the field and literature studies. The data obtained are arranged in the form of the preparation of the data and then do the data processing and so conclude, which do interviewed with the process of data collection. If the conclusion is less accurate, the researchers verify and re-collect data in the field, the goal is to ensure the validity of the data.

## LEGAL PROTECTION FOR VICTIMS IN DOMESTIC VIOLENCE CASES

Wholeness and harmony a happy home, safely, securely, and peace is everyone's dream. Thus, every person within the scope of the household in exercising its rights and obligations should be based on religion. It needs to continue to be cultivated in order to build domestic unity (Amiur & Azhari, 2004).

Household intactness and harmony can be disturbed if the quality of self-control can not be controlled, which in turn can occur domestic violence causing inconvenience or unfairness to different people within the scope of the household. To prevent, protect victims, and prosecute perpetrators of domestic violence, the State and society shall implement the prevention, protection and prosecution perpetrators in accordance with the philosophy of Pancasila and the 1945 Constitution (Mursyidah, 2000). Everyone has the right to protection of self, family, honor, dignity, and property under his control, and has the right to feel secure and protected from the threat of fear to do or not to do something is a human right (The 1945 Constitution of Indonesia).

Definition of Domestic Violence is any action against someone, especially women, misery or suffering physical, sexual, psychological, and / or negligence of household including threat to commit acts, coercion, or deprivation of liberty unlawfully in the domestic sphere (Art 1 (1) Law No. 23 of 2004).

In Indonesia that legally, this provision entered into force in 2004. The mission of this Act is an attempt (effort) to prevent, reduce or eliminate acts of violence in the home (domestic violence). With the existence of this provision, the State could seek to prevent violence in the home (domestic violence), cracking down on violence in the home (domestic violence), and protect victims of domestic violence.

As the law requires a special arrangement, in addition to containing the settings criminal sanctions, this legislation also regulates procedural law, the obligation of the state to provide immediate protection to victims who report. Thus, it can be argued that this provision is a very important breakthrough for the law enforcement efforts of Human Rights, especially the protection of those who have been harmed in a family or household order.

Another legal breakthrough is important and forth in the Law on the Elimination of Domestic Violence is to identify people who are potentially involved in the violence in the home (domestic violence).

Household scope includes:

- a) husband, wife, and children.
- b) people who have a family relationship referred to in subparagraph (a) by blood, marriage, dairy, care, and guardianship, were living in the household or
- c) people who are working to assist the household and living in the household, so it is seen as family members. (Art 2 (2) Law No. 23 of 2004).

Identification of violence against domestic workers as domestic violence had invited controversy because some have argued that the case should be seen within the framework of employment relations (between workers and employers). Nevertheless, the Law on the Elimination of Domestic Violence (domestic violence) fill the gap of legal protection due to the current labor laws in Indonesia does not cover domestic workers. So that victims of domestic violence (domestic violence) are people who have experienced violence and or threats of violence in the domestic sphere (Art 1(1) Law No. 23 of 2004).

Law on the Elimination of Domestic Violence is a positive breakthrough in the constitutional law of Indonesia. Where personal issues have been entered into the public domain. In the years before the Law on the Elimination of Domestic Violence there, cases of domestic violence is difficult to be resolved legally.

Indonesian Criminal Law does not recognize domestic violence (domestic violence), even words of violence is not found in the Code of Penal (Indonesian Penal Code). Cases of the husband beating the wife or parents of children solved using the articles about the persecution, which is then difficult once filled with elements of proof, so that the case is no longer followed up.

Based on Act Elimination of Domestic Violence as for other forms of protection for victims of domestic violence are as follows:

1. Within 1 x 24 (one time twenty-four) hours commencing from knowing or receiving a report of domestic violence, the police must immediately provide temporary protection to the victims.
2. Temporary protection referred to in paragraph (1) shall be issued within seven (7) days after the victim received or handled.
3. Within 1 x 24 (one time twenty-four) hours commencing from the protection referred to in paragraph (1), the police are required to request the determination letter from court protection orders.

4. In providing temporary protection, the police can cooperate with health workers, social workers, volunteer, and/or spiritual director to assist victims (Art 16 Law No. 23 of 2004).

Victims of domestic violence are entitled to the protection of the family, kepolisiasn, prosecutors, courts, lawyers, social agencies, or other parties legally defined (Alimuddin, 2014). Victims are entitled to the protection of the family, the police, prosecutors, courts, lawyers, social institutions, and other parties have been temporarily or by the establishment of a protective order from the court, health care in accordance with medical needs, special handling related to the confidentiality of victims, assistance by workers social and legal assistance to any inspection process in accordance with the provisions of the legislation and service of spiritual guidance (Samadani, 2013).

In granting the additional condition of a protective order, the court shall consider the testimony of the victim, the health worker social worker, volunteer, and/or spiritual guide (Khaleed, 2015).

National Commission on Violence against Women (*Komnas Perempuan*) is an independent state institution in Indonesia which was established as a national mechanism to eliminate violence against women (Khaleed, 2015). Interest of *Komnas Perempuan*:

1. Develop conditions conducive to the elimination of all forms of violence against women and the enforcement of human rights of women in Indonesia;
2. Improving prevention and control Segal forms of violence against women and protection of women's rights.

The mandate and authority of the *Komnas Perempuan*:

1. Disseminating understanding of all forms of violence against women in Indonesia and efforts of prevention and control, as well as the elimination of all forms of violence against women;
2. Carry out studies and research on various laws and regulations that apply, as well as relevant international instruments for the protection of women's rights;
3. Implement monitoring, including fact-finding and documentation of violence against women and violations of women's human rights, and the dissemination of monitoring results to the public and taking measures that encourage accountability and handling;
4. Provide advice and judgment to the government, the legislature, and the judiciary, as well as community organizations to encourage The preparation and validation of legal and policy framework that is conducive to preventing and addressing all forms of violence against women, and the protection, enforcement and promotion of rights women's (human rights); and
5. Develop a regional and international cooperation in order to improve prevention efforts and addressing all forms of violence against women in Indonesia, and the protection, enforcement and promotion of women's rights.

A form of protection that can be done by public assistance can be implemented, as highlighted by Martha (2012), as such:

a. Support victims

Protection of victims by organizations Handling Abused Women and Children as Community for Women and Children (KPPA), Groups Struggle Equality of Women (KPKP-ST), as well as similar organizations that have a protective, director or adviser, chairman, chief executive of the will relate to government agencies, community organizations, observer organizations made victims of violence other institutions engaged in the protection force. Such institutions will assist victims in completing its case law as well as the rehabilitation of completion when the victim suffered psychological disorders. The agency aims to protect victims of violence in this case are often the victims are women and children.

b. Counseling

This protection is given to the victim as a result of the emergence of a negative impact, the psychological nature of violence in the home (domestic violence) is. Which cause prolonged trauma to the victim, usually the victim who suffered physical, mental and social. In addition to the physical suffering, the victim also suffered mental distress, such as the victim feel her shame uncovered or feel guilty. By paying attention to the condition of the victim, forms that are psychological counseling, more suitable given to the victim rather than just with reimbursement to the victim.

c. The establishment of a safe place to stay

Safe house is a temporary shelter for women and children who are victims of violence, which will provide protection, welfare, and aid in order to avoid violence victims were able to finish the problems. In general, the victim was taken to a safe house, because the victim did not feel safe in her own home. The safe house is not just a place to stay or boarding alone. However, it is very important for victims who experience violence in the home (domestic violence) very long, or through a process of long and traumatic experience psychic suffering. Victims like this are very helpless, therefore a safe house built by non-governmental organizations have a vision of a clear mission, which is to protect and restore the victim's condition and have alignments to the victim and not to blame the victim, and where should try to understand the circumstances and the victim's condition, especially women. This issue is a serious concern not only among legal practitioners but also all the good humanitarian observers Governmental Organization (NGO) and International Non-Governmental Organization (NGO) in the country. Countermeasures like this is usually done by social institutions and religious for example, boarding schools, churches and monasteries.



## THE LEGAL CONSEQUENCES FOR THE PERPETRATORS OF CRIMINAL ACTS OF DOMESTIC VIOLENCE

Every act of a criminal act must have legal effect in accordance with the criminal acts that have been carried out. The legal consequences for perpetrators of domestic violence as follows:

### Article 44

- (1) Anyone committing acts of physical violence within the domestic sphere as referred to in Article 5 letter a shall be punished with imprisonment for a period of 5 (five) years or fine of not more Rp15,000,000.00 (fifteen million rupiah).
- (2) In terms of the act referred to in paragraph (1) resulted in the victim got sick or seriously injured, shall be punished with imprisonment of ten (10) years or a maximum fine of Rp 30.000.000,00 (thirty million rupiah).
- (3) In terms of the act referred to in paragraph (2) resulted in the death of the victim, shall be punished with imprisonment for a period of 15 (fifteen) years or fine of not more Rp45,000,000.00 (forty-five million rupiah).
- (4) In terms of the act referred to in paragraph (1) committed by a husband against his wife or vice versa that does not cause disease or an obstacle to running the job position or livelihood or daily activities, shall be punished with imprisonment for a period of 4 (four) months or a fine Rp 5,000,000.00 (five million rupiah).

### Article 45

- (1) Anyone committing acts of emotional violence within the domestic sphere as referred to in Article 5 letter b shall be punished with imprisonment of three (3) years or a fine of not more Rp9,000,000.00 (nine million).
- (2) In terms of the act referred to in paragraph (1) committed by a husband against his wife or vice versa that does not cause disease or an obstacle to running the job position or livelihood or daily activities, shall be punished with imprisonment for a period of 4 (four) months or a fine Rp 3,000,000.00 (three million rupiah).

#### Article 46

Everyone who commit acts of sexual violence as referred to in Article 8 letter a shall be punished with imprisonment of twelve (12) years or a maximum fine of Rp 36,000,000.00 (thirty-six million rupiah).

#### Article 47

Everyone who forced people who lived in the household had sexual intercourse as referred to in Article 8 (b) shall be punished with imprisonment for a minimum of 4 (four) years and a maximum imprisonment of 15 (fifteen) years or a fine of Rp 12,000,000.00 (twelve million rupiah) or fine of not more Rp300,000,000.00 (three hundred million rupiah).

#### Article 48

In the case of acts as referred to in Article 46 and Article 47 resulted in the victim received injuries not give hope will recover completely, disorder or psychiatric thinking for at least four (4) weeks of continuous or 1 (one) year are not consecutive respectively, fall or death of a fetus in the womb, or cause malfunction of reproduction, shall be punished with imprisonment of at least five (5) years and a maximum imprisonment of 20 (twenty) years or a fine of Rp 25,000,000.00 (two twenty five million rupiah) and a maximum fine of Rp 500,000,000.00 (five hundred million rupiah).

#### Article 49

Shall be punished with imprisonment of three (3) years or a fine of not more Rp15,000,000.00 (fifteen million), for every person who:

- a. Abandoning others within the scope of the household as defined in Article 9 paragraph (1);
- b. Neglect others referred to in Article 9 paragraph (2).

#### Article 50

Besides crime referred to in this Chapter judge can impose additional punishment in the form of:

- a. limitation of movement of the perpetrator intended to keep the perpetrator from the victim in the distance and time, as well as the restriction of certain rights of the perpetrator;

- a. determination perpetrator to undergo counseling program under the supervision of specific institutions.

## Indonesian Penal Code (KUHP)

### Article 351

1. Persecution threatened with a maximum imprisonment of two years and eight months or a maximum fine of four thousand five hundred rupiah,
2. If the act results in serious injuries, the guilty is punishable by imprisonment up to five years.
3. If resulted in death, punishable by a maximum imprisonment of seven years.
4. With likened persecution deliberately damaging to health.
5. Attempt to commit this crime is not punished.

### Article 352

1. Unless mentioned in articles 353 and 356, the persecution does not cause disease or an obstacle to run the job title or search, threatened, as light maltreatment, with a maximum imprisonment of three months or a maximum fine of four thousand five hundred rupiah. Crime can be added a third for the person who committed the crime against the people who work on it or be subordinate.
2. Attempt to commit this crime is not punished.

### Article 353

1. Persecution to plan in advance, is threatened with a maximum imprisonment of four years.
2. If the action was caused serious injuries, the guilt imposed maximum imprisonment of seven years.
3. If the act is guilty of death caused threatened with a maximum imprisonment of nine years.

### Article 354

1. Anyone who intentionally injures another person weight, punishable for committing aggravated assault to imprisonment for eight years.
2. If the act results in death, the guilty shall be sentenced to imprisonment of ten years.

### Article 355

1. Severe persecution carried out with a plan first, punishable by a maximum imprisonment of twelve years.

2. If the act results in death, the guilty shall be sentenced to imprisonment for fifteen years LAMS.

#### Article 356

The penalties set forth in section 351, 353, 354 and 355 can be coupled with a third:

1. those who committed the crime against the mother, the father of a legitimate, his wife or his son;
2. if the crime was committed against official when or as a legitimate exercise of his office;
3. if the crime was committed by providing materials that are hazardous to life or health to eat or drink.

#### Article 357

In terms of sentencing for one of the crimes under articles 353 and 355, can be dropped revocation of rights under article 35 No. 1-4.

#### Article 358

Those who deliberately participate in the attack or fight in which involved several people, in addition to the responsibility of each to what is typically carried out by him, threatened:

1. with a maximum imprisonment of two years and eight months, if as a result of the attack or fight was no serious injuries;
2. with a maximum imprisonment of four years, if no one died as a result.

## CONSIDERATIONS IMPOSITION OF PENALTIES JUDGE IN THE DECISION NUMBER: 2660/PID.SUS/2015/PN MDN

The onset of this case, namely, on Monday 06 July 2015 at about 20:00 pm, or at least at some time in the month of July 2015, held at Valentine in Jalan Mangga Djamin Ginting Village district. Terrain Tuntungan Medan is still within the jurisdiction of the District Court of Medan, RONI Sahputra SEMBIRING have "Doing act of physical violence within the domestic sphere resulting in illness or serious injury" to the victim witness AFRIANINGSIH (the legal wife of the accused in accordance with the Marriage certificate dated October 22 2007), where the defendant works in the following way:

On Monday, July 6, 2015 around 14:00 pm, the defendant who is the husband of victim-witnesses coming to work his witnesses, then the defendant took the witness Hamida DAUGHTER (child victim witness and defendant) and witnesses the victims staying at the hotel, and upon arriving in the room Valentine hotel is located at Jalan Mangga Djamin Ginting Village district. Tuntungan Medan Medan, the next victim witness goes into the bathroom, but not long after the accused told the witness the victim out of the shower.

Then the witness victim and the accused fight where the victim witnesses at the time said the defendant "You're not jealous of times", then the defendant threatened the victim witness then took a screwdriver out of the back pocket of his pants and stuck a screwdriver it toward your chest to the left of the body of the victim witnesses but the witness victim tried to fight and parrying with both hands, so that the upper arm to the right and the accused also stabbed the screwdriver so that the left eye fence victim witness then fell onto the floor.

Consideration judge in the case is weighed, that the defendant based the indictment Public Prosecutor No. Reg. Case: PDM-1112/Ep.2/TPUL/MDN/09/2015, dated September 9, 2015 in which the accused have been charged and convicted of criminal acts within the scope of domestic violence that resulted in serious injuries and punishable as provided in Article 44 paragraph ( 2) Act No. 23 of 2004 on the Elimination of Domestic violence.

## CONCLUSION

Whereas the legal protection of victims of domestic violence (domestic violence) by Act No. 23 of 2004 on the Elimination of Domestic Violence (Law PKDRT) is in 1x24 (one twenty-four) hours commencing from knowing or receiving a report of Violence in the home (domestic violence)

That the legal consequences for the perpetrators of criminal acts of violence in the home (domestic violence) in the decision No. 2660 / Pid SUS / 2015 / PN Mdn in accordance with the provisions of the law in this case Article 44 paragraph (2) of Law No. 23 of 2004 on the Elimination Domestic violence (Law PKDRT), the defendant shall account for his actions in accordance with the decision handed down the judges are undergoing imprisonment for eight (8) years and pay a court fee of Rp. 1000, - (one thousand rupiah).

That consideration of the judge in the Decision Number: 2660 / Pid.SUS / 2015 / PN Mdn Judges considerations have quite a lot, from the demands of the public prosecutor, the facts found in the trial, such evidence and testimony, the fulfillment unsur- element in accordance with article indicted and things burdensome and ease. And there is no justification and forgiving so convicted and punished severely.

Based on the above conclusions, this paper suggests that because of there are many people who are less aware of the Act number 23 of 2004 on the Elimination of Domestic Violence, then the parties concerned with the protection of victims of domestic violence need to improve their performance in education and socialization to the various layers Public. So that women do not make up the majority of victims of

domestic violence (domestic violence), then they are expected to know about the rights and obligations as a wife. In addition, victims of domestic violence (domestic violence) which most women must also be more willing to tell and report on the violence that happened to him, and not looking at violence in the home (domestic violence) as a family disgrace that must be covered. The imposition of penalties on perpetrators of criminal acts of domestic violence (domestic violence) must be firm, so that the future can prevent, reduce or even eliminate all forms of violence in the home (domestic violence). In the verdict, the judges are also expected to consider the condition of the victim, and thus the judges will impose as severe verdict to the defendant in proportion to the suffering experienced by victims of criminal acts of violence in the home (domestic violence).

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