

# Perpetuating Inequality: Barriers and Legal Safeguards for Women in Domestic Violence Situations

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## ABSTRACT

*This article endeavors to conduct a comparative and gender-equality-focused analysis of legal policies safeguarding women facing domestic violence in Indonesia and Malaysia. Employing a normative juridical research approach, the study utilizes legal comparison as its methodological framework. Primary, secondary, and other relevant literature data are employed for a descriptive and analytical analysis. The study reveals that Indonesia addresses gender equality in protecting women through Law Number 23 of 2004, while Malaysia relies on the 1994 Domestic Violence Act (Act 521). These legal frameworks not only prescribe criminal sanctions for domestic violence perpetrators but also encompass provisions for victims' psychological, physical, and social recovery. Despite the existence of legal safeguards in both countries, instances of domestic violence persist. Women, often the primary victims, face barriers in reporting or seeking protection due to ingrained social structures, educational factors, economic disparities, and a prevailing patriarchal culture. This phenomenon underscores persistent gender inequality in society. The article contributes by shedding light on the societal reality of ongoing gender inequality, perpetuating domestic violence against women in Indonesia and Malaysia. It advocates for the revision of legal policies pertaining to the protection of women facing domestic violence, grounded in gender equality, to ensure comprehensive safeguarding within the realms of social structure, education, economics, and socio-cultural factors.*



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## 1. Introduction

Marriage is a valuable gift that guides individuals on a significant life journey. Marriage allows individuals to find happiness, emotional support, and the chance to develop together in love and commitment. Marriage offers a basis for shared comprehension, assistance, and growth, establishing a strong groundwork for building a family and future offspring. Marriage in Islam is to establish a joyful, successful, and everlasting family. Marriages can face challenges leading to divorce due to several negative causes. Divorce in the KHI is governed by article 115, allowing it to take place before the Religious Court if mediation has been attempted but no agreement has been reached by the couple. Divorce can also result from further factors (Surinto, 2018).

Domestic violence contributes to divorce in marital partnerships between spouses. Violence encompasses not just physical harm but also emotional, psychological, and economic damage. Victims of domestic violence may feel stuck in a challenging circumstance, but recognizing their entitlement to a violence-free life might motivate them to terminate the marriage as a means of self-protection. Divorce is frequently viewed as a beneficial action to break the pattern of violence and establish a healthy family environment for oneself and children (Andang Sari & Haryani Putri, 2020).

The Indonesian government issued regulations as a form of protection and elimination of domestic violence cases. Law Number 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT). The PKDRT Law is not intended to require divorce. The PKDRT Law is designed to maintain the continuity of prosperous, harmonious households by preventing various forms of violence. Then, provide legal protection for victims and take action against perpetrators of domestic violence. This is based on the fact that there are still many cases of domestic violence that continue to occur, women and children being the main victims (Harefa, 2021).

According to Alex Kusmaridi, et al, there are several factors that cause divorce, including nusyuz, economics, incompatibility (shiqaq), forced marriage, and husband's unfaithfulness to his wife. (Kusmardani et al., 2022) However, even though wives are victims of domestic violence, there are still many who persist. According to Andang and Anggreany, the reason the victim remained in the marriage was because the perpetrator built a mechanism that made the victim helpless so that the patriarchal system in society persisted. Apart from that, economics is also a factor that causes victims to become dependent on the perpetrator. In some situations this is because the victim does not have sufficient education and does not have a source of income or employment (Andang Sari & Haryani Putri, 2020).

Based on 2023 Indonesian Statistics data, the divorce rate in Indonesia in 2022 was 516,334, an increase of 15% compared to 2021, which was 447,734 cases. Divorce lawsuits are dominated by contested divorce filed by the wife, namely 338,358 or 74.21% of cases and only 127,986 or 24.79% of talak divorce cases. From this data, the main factors in divorce were quarrels and disputes in 284,169 cases or 63.41%. Other factors are economic, neglect, polygamy and Domestic Violence (Rizaty, 2023).

A similar thing also happened in Malaysia, based on a report from the Department of Statistics Malaysia (DOSM), the divorce rate in Malaysia has increased from 2021 to 43,936 divorce cases then in 2022 there was an increase to 62,890 cases. In the DOSM report, divorce among Muslim men increased to 10.4% in 2022 from 7.1% in 2021. Then for Muslim women in 2022 it increased to 6.1% from 4.4% in 2021. In among non-Muslim men in 2022 it will increase to 6.1% from 4.4% in 2021. Then, among non-Muslim women in 2022 it will increase to 6.1% from 4.5% in 2021 (Setyorini, 2023).

Malaysia regulates the legal protection of domestic violence victims in the Domestic Violence Act 1994 (Act 521). This law prohibits all forms of domestic violence, whether physical, sexual, psychological or domestic neglect, against people in the household. In this case, women or wives are the ones who are more likely to become victims of domestic violence. According to Rinanda, in her research, there are many similarities between the PKDRT Law and the 1994 Domestic Violence Act (Deed 521). The difference is that the

imposition of criminal sanctions in Indonesia is regulated in the PKDRT Law, while in Malaysia it still refers to the Malaysian Tort Code or Penal Code (act 574). The advantage of AKRT compared to the PKDRT Law is the wider scope of protection for victims. The disadvantage of this regulation is that there is no protection for Domestic Workers (Army, 2017).

According to Evi and Heni, their research revealed that referring to protection for victims of domestic violence in Malaysia, one of which is providing counseling and advice/guidance services, it is very necessary to reformulate the PKDRT law in Indonesia to provide counseling and advice services. and guidance for victims and perpetrators of domestic violence so they can face problems in the household (Yanti & Susanti, 2023).

Based on the problems above, it is necessary to formulate a legal policy for the protection of women victims of domestic violence that is based on gender equality. This is due to developments in times that continue to change and factors in domestic violence cases continue to change from the family level to social, educational, economic and cultural structures. The legal protection policy must reflect gender equality so that the protection provided can be maximized, especially to women who are victims of domestic violence.

This research examines legal policies for the protection of women victims of domestic violence by conducting a comparative study between the Law on the Elimination of Domestic Violence (UU PKDRT) and the 1994 Domestic Violence Act (Deed 521). This comparison aims to find out and analyze legal policies that can be implemented to provide effective legal protection for women who are victims of domestic violence. This legal protection policy is important because it aims to achieve the values of justice and gender equality.

## **2. Research Method**

To answer the above problems, this research is normative juridical research, with a comparative legal approach. (Peter Mahmud Marzuki, 2019) The comparative approach aims to find similarities and differences between one legal entity and other legal entities (Suhaimi, 2018). The primary legal sources used in this research are Law Number 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT) and the Domestic Violence Act (Akta 521). Secondary legal sources are obtained through books, scientific articles and other literature. Data was collected using the library study method (library approach), namely by collecting data or legal materials and various other information based on books, documents and notes. The data was then analyzed using descriptive analysis methods. (Soekamto, 2006)

## **3. Results and Discussion**

### **a. Legal Policy for the Protection of Women Victims of Domestic Violence in Indonesia and Malaysia**

Protection of women from violence and criminal acts has been regulated through Law Number 7 of 1984 concerning ratification of the Convention On The Elimination Of All Forms Of Discrimination Against Women. The basis of this law comes from: 1) The principle that all citizens have an equal position in the eyes of the law, all kinds of discrimination against women must be eliminated because it is contrary and not in line with Pancasila and the 1945 Constitution; 2) The provisions of the CEDAW convention are in accordance with Pancasila values, the 1945 Constitution and other regulations in Indonesia; 3) On July 29 1980, the government of the Republic of Indonesia officially signed the convention at a world-level conference held in Copenhagen.

In creating a safe and supportive environment for victims of domestic violence, legal policies for domestic violence protection are an important and fundamental factor. In Indonesia, the government has issued Law Number 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT). This law includes prohibitions, criminal sanctions, and

rehabilitation efforts for perpetrators of violence, while providing legal instruments to support victims, such as protection orders and shelter facilities. The existence of the PKDRT Law shows the Indonesian government's commitment to ensuring the fulfillment and protection of human rights for all individuals, both women, men, children and adults, to ensure comfort, peace, justice and equality in society (Badruzaman, 2020)

The definition of domestic violence is formulated in article 1 letter (a) of the PKDRT Law as "domestic violence is any act against someone, especially women, which results in physical, sexual, psychological misery or suffering, and/or domestic neglect including threats to carry out unlawful acts, coercion or deprivation of liberty in the household."

There are four main principles in the PKDRT Law as the basis for eliminating domestic violence, namely: 1) gender equality and justice; 2) respect for human rights; 3) victim protection; and 4) non-discrimination. Then, the resolution of domestic violence acts is divided into five parts, namely: 1) obligations of society and government; 2) the rights of domestic violence victims; 3) recovery of victims; 4) victim protection; and 5) implementation of legal sanctions for perpetrators of domestic violence. (Yanti & Susanti, 2023)

The forms of legal protection for women in the PKDRT Law are: 1) temporary protection before there is an order to determine protection from the court; 2) provision of a Special Service Room (RPK) at the police station; 3) provision of safe houses; 4) providing consultations by advocates to victims at the investigation, prosecution and examination levels at court hearings. (Mestika, 2022) The criminal provisions for domestic violence are regulated in article 44 of the Law with a maximum penalty of 15 years in prison, while additional criminal sanctions are regulated in article 50, namely limiting the movement of the perpetrator within a certain time and distance and determining to undergo counseling under supervision.

In Malaysia, legal protection for women victims of Domestic Violence (KDRT) is regulated in the 1994 AKRT. Section 2 of the 1994 AKRT (act 521) defines domestic violence as the act of: 1) intentionally or knowingly stating, or attempts to place, the victim in fear of physical harm; 2) causes physical injury to the victim by actions that are known or should be known to cause physical injury; 3) forcing the victim by force or threats to carry out any behavior or action, sexual or otherwise, which the victim has the right not to do; 4) confining or detaining the victim without the victim's consent; 5) committing treason or destruction or damage to property with the intent to cause or with the knowledge that it may cause grief or hatred to the victim;. The forms of legal protection in AKRT 1994 are: 1) temporary protection; 2) protection order 3) special services at the police station; 4) refuge; 5) legal consultation; and 6) spiritual guidance. (Amalia et al., 2021)

Section 2 of the 1994 Domestic Violence Act not only regulates the protection of victims of domestic violence (KDRT) consisting of husband or wife, but also includes children, elderly parents or other vulnerable family members. Vulnerable parents are defined as individuals who are wholly or partly physically or mentally weak, unhealthy, or elderly, and live as members of the victim's family.

A person who is a victim of domestic violence must be given protection in terms of education, recovery and the economy (employment). The victim's fear and economic dependence on the perpetrator are the main factors in not reporting the acts of domestic violence they experienced. Apart from that, the existence of a party system that is still deeply rooted in society is a reason for victims to think long and hard before reporting. The public's distrust, including victims of domestic violence, towards the legal system in Indonesia is caused by the situation before the enactment of the PKDRT Law. In the period before the enactment of the Domestic Violence Law, reports of domestic violence were not thoroughly investigated against the perpetrators. This reinforces the victim's view that even if they report the incident, they are not sure they will receive protection from law enforcement, especially the police (La, 2014).

According to Nunung et al, in a society that adheres to a patriarchal culture, gender norms, values and roles are passed on from generation to generation. This condition

creates the view that beating women is commonplace, reflecting men's dominance over women. Education that promotes the values of gender equality tries to reject old norms that are discriminatory. Violation of gender roles, by both men and women, is considered a reason for acts of violence in the context of a patriarchal society. Domestic violence (KDRT) is considered a form of sanction for non-compliance with gender roles, with more women becoming victims. Unbalanced gender relations and restrictions on women's roles within the family sphere create less positive self-perceptions of women (Nunung Nurjanah et al., 2020).

According to Abdul Manaf (2023), Financial waste contributes to the occurrence of domestic violence. Another factor is that the perpetrator does not have an income that can support the family's needs, thus forcing the victim to work to meet the family's needs. Financial problems in the household can trigger perpetrators or husbands to carry out various forms of violence against their wives, who then become victims of domestic violence. Then, the victim is economically dependent on her husband or perpetrator, so that the victim is forced to accept any action from the perpetrator. Financial waste also has a negative impact on victims of domestic violence. These impacts include difficulty in getting or maintaining work, difficulty supporting oneself, and affecting the victim's mental and psychological health, causing an increase in depressive symptoms. Other impacts are decreased household stability, poor parenting practices and problematic behavior towards children (Yusof et al., 2020).

This phenomenon illustrates that violence in the household is not only limited to internal family issues, but is also related to the socio-cultural structure of society. The patriarchal cultural system, which separates roles, functions and responsibilities between men and women, by placing men in the public sphere and women in the private sphere, creates inequality which is the root of the problem of domestic violence. (Nunung Nurjanah et al., 2020) Domestic violence can be classified as part of violence that originates from gender differences. Such acts of violence arise as a result of an imbalance in power dynamics between men and women, which is often recognized by national laws and gender-biased interpretations of religious texts. (Imran Siswadi<sup>1</sup>, 2023)

Research conducted by Nuruaslizawati and Siti Hajar (Nuruaslizawati Binti Ayob & Rauf, 2019) found that society has not fully mastered the explicit meaning behind domestic violence. The need for intervention is important in reducing the risk of violence and improving their well-being. The public's minimal understanding of domestic violence can affect the welfare of a household. From a gender equality perspective, both wives and husbands have the same rights and responsibilities, so that when one of the parties, especially the wife, experiences domestic violence, they can defend themselves or seek legal protection.

#### ***b. Legal Protection Policy for Women Victims of Domestic Violence in Indonesia and Malaysia from a Gender Equality Perspective***

Gender-based violence is a reality that continues to occur and is experienced by many individuals in various areas of life. These forms of discrimination occur in various sectors, including education, work, family, health services and community life. Several factors supporting gender discrimination include the role of culture and traditions, social and structural factors, gender norms and stereotypes, and the influence of mass media and technology. The challenges faced in achieving gender equality involve legal injustice, changes in people's behavior and mentality, economic inequality, gaps in political participation, and the need for education and awareness as the key to change (Pahlevi & Rahim, 2023).

Discrimination in the form of gender is a catalog that is still added by society to the fabric of life. Various forms of discrimination against minors can be found in almost every area of daily life, including education, the workplace, family life, access to health services, and social life. Several factors that contribute to the emergence of gender stereotypes include social and structural factors, gender norms and stereotypes, mass media, and the influence of technology. Things faced in achieving gender include changes

in people's behavior and mentality, economic inequality, gaps in political participation, and the need for education and training as the key to change.

Legal protection for women who are victims of domestic violence from a gender equality perspective aims to create policies, regulations and legal practices that are impartial and do not discriminate based on certain gender. This includes basic educational rights, employment rights, reproductive rights and other rights that should not depend on a person's gender. Women's empowerment is carried out in accordance with government policy to actualize socio-cultural development, with the aim that women's potential can be used in the development process (Iskandar et al., 2016).

The principle of gender equality is the belief that all individuals, regardless of gender, should be given the same rights and opportunities in society. This principle is based on the view that gender should not be a determining factor in a person's abilities, qualities or worth. Gender equality is recognized as a fundamental right for every member of society, regardless of their social class, whether upper, middle or lower class. Gender equality must be implemented in all aspects of life, ensuring that every individual has equal access in various fields (Sulistyowati, 2021).

In the context of legal policies, protection based on gender equality requires a lot of active roles from both women's rights activists and feminists as well as policy makers. In addition, policy makers and legal protection programs require special attention to ensure that every policy or program proposed contributes significantly to the fulfillment of women's rights and gender equality. This includes aspects of planning, providing resources, implementation and strict supervision including selecting policies and activities that suit community needs (Esquivel & Sweetman, 2016).

The PKDRT Law is a concrete manifestation of the Indonesian government's efforts to protect women from acts of domestic violence. However, even though this law has been established, domestic violence cases still continue to occur and have even increased. To achieve Goal 5 of SGDs the Indonesian government needs to formulate new policies that can protect women victims of domestic violence. The policy formulation must be based on gender equality in an implementable manner with strict supervision and guidance.

The formulation of legal protection policies covers economic, political, educational and social aspects. Thus, this formulation can overcome the factors that domestic violence victims are afraid to report the violence they have experienced. In making this policy, the government must synergize with women's organizations and various other parties. Public policy in the legal protection of victims of domestic violence must aim to improve the welfare of women in society (Rahpaymaelizehee et al., 2015).

Public policy plays an important role in addressing gender inequality and removing barriers that prevent women from being fully equal to men and realizing their rights. Gender-sensitive initiatives and policy frameworks are essential to address gender inequality. Public policy can influence various stages of the policy process, including problem definition, agenda setting, policy formulation, adoption, implementation, and evaluation.

Referring to protection for victims of domestic violence in Malaysia, one of which is providing counseling and advice/guidance services, it is very necessary to reformulate the PKDRT law in Indonesia to provide counseling, advice and guidance services for perpetrators of domestic violence. households and also victims of domestic violence, so that they are ready and better able to navigate the domestic ark (Yanti & Susanti, 2023).

In Malaysia, there are various counseling, advice and guidance services for victims of domestic violence. Some sources that provide this service include MyGOV, Selangor Official Portal, and Social Welfare Department. Services provided include general counseling, individual, group, career and family counseling, as well as conciliation committee sessions. Counseling and guidance centers also aim to help clients understand themselves and their situations, as well as provide guidance to parents regarding parenting skills and family development. Therefore, victims of domestic violence in Malaysia can seek support and

guidance through various government agencies and portals provided (My Government, 2023).

Providing counseling/advice and guidance to perpetrators and victims of domestic violence must be a reference for new formulations in providing legal protection to victims of domestic violence in Indonesia. By continuing to pay attention to the principles of gender equality which aims to provide a new understanding in society. Both men and women in all aspects of life have the same rights. The right to work, health, education and protection from violence (Dewi & Hayat, 2023).

In addition, the Indonesian government needs to pay attention to welfare aspects for victims of domestic violence, so that the wife is safer if domestic violence occurs which ends in divorce. Guidance and counseling must be responsive to gender issues and pay attention to gender inequality in society. A counseling paradigm with a gender perspective in cases of domestic violence also needs to be applied to overcome gender bias which can cause various problems, such as marginalization, subordination, stereotypes, workload and violence. The principle of gender equality must be upheld in order to create justice for society without exception.

According to Hilman in Yiyin, the Government has the responsibility to: 1) Develop a policy to eliminate domestic violence; 2) Carrying out communication, information and education related to domestic violence; 3) Carrying out outreach and advocacy regarding domestic violence; and 4) Organizing education and training programs that are sensitive to gender and domestic violence issues. (Elfridawati, 2019) Legal protection for victims of domestic violence is regulated in article 10 letter (a) of the PKDRT Law, namely "protection from the family, police, prosecutor, court, advocates, social institutions, or other parties, either temporarily or based on the determination of a protection order from the court. " Policies for the protection of domestic violence victims must be based on gender equality.

The principles of justice and gender equality in the PKDRT Law are the basis for the Indonesian government to create legal protection policies. However, various factors such as patriarchal culture, economics, education and social issues are still obstacles to gender equality. So, domestic violence cases will only be revealed if the victim reports it to the police. The Indonesian government has confirmed its commitment to the SDGs agenda. As the main policy maker, the government can take steps by formulating policies as a form of reconstruction or continuation of previous policies. Remembering that the Indonesian Government has issued several policies related to gender equality in the past (Ridhwani & Lestari, 2023).

Policies to protect victims of Domestic Violence (KDRT) in Indonesia and Malaysia, when viewed from a gender equality perspective, show that there are efforts to overcome and prevent inequality and unfair treatment of women as victims of domestic violence. The law exists to protect and guarantee the rights of everyone regardless of gender. Women have a weak position to obtain their full rights. This causes women to often become victims of discrimination in almost all aspects, including in the household sphere. (Diya Ul Akmal, Eka Pratiwi, 2021) The domestic violence victim protection policy reflects active efforts to understand and overcome gender inequality that can worsen domestic violence situations. While there remains room for improvement and more effective implementation, these measures reflect a determination to ensure equal rights and protection for all individuals, regardless of gender.

#### **4. Conclusion**

The legal basis for the protection of women who are victims of Domestic Violence (KDRT) in Indonesia and Malaysia is based on the principle of gender equality. In Indonesia, the government's commitment is manifested in Law Number 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT), which stipulates equal protection for women who experience domestic violence, covering economic, social and legal dimensions. Meanwhile, in Malaysia, the Domestic Violence Act 1994 (Act 521) provides legal protection through counseling, advice and guidance services.

Legal policies for the protection of domestic violence victims in these two countries reflect concrete steps in efforts to understand and overcome gender inequality. As an effort to evaluate and demand developments of the times. Policy makers must also synergize with women's organizations and involve active community participation to achieve the goals of gender equality and providing optimal legal protection

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