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FEMINIST LEGAL THEORY PERSPECTIVE ON LEGAL PROTECTION FOR WOMEN VICTIMS IN THE CRIMINAL RESOLUTION OF DOMESTIC VIOLENCE

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Abstract

This study examines legal protection for women victims of Domestic Violence (DV) through the lens of feminist legal theory. It is grounded in the premise that Indonesia's conventional criminal justice system upholds the principle of equality before the law with a formally gender-neutral stance. However, in practice, it fails to deliver substantive justice to female DV victims. Using a normative juridical method with a conceptual and statutory approach, the study analyzes relevant laws and their enforcement. Findings reveal that, despite existing legal provisions for victim protection, implementation lacks gender sensitivity. Feminist legal theory emphasizes the need for legal reform that not only ensures formal protection but also responds to victims' sociocultural experiences. The deeply rooted patriarchal paradigm remains a major barrier. Therefore, integrating a stronger gender perspective into the criminal justice system is essential for achieving genuine protection for women victims.

Keywords: Domestic violence; Feminist law; Female victims; Justice; Legal protection.

Abstrak

Penelitian ini mengkaji perlindungan hukum bagi perempuan korban kekerasan dalam rumah tangga (KDRT) melalui perspektif teori hukum feminis. Penelitian ini didasarkan pada premis bahwa sistem peradilan pidana di Indonesia menjunjung tinggi asas kesetaraan di depan hukum dengan pendekatan yang secara formal netral gender. Namun, dalam praktiknya, sistem ini belum mampu memberikan keadilan yang substantif bagi korban perempuan. Dengan menggunakan metode yuridis normatif dan pendekatan konseptual serta peraturan perundang-undangan, penelitian ini menganalisis regulasi terkait serta praktik penegakannya. Hasil menunjukkan bahwa meskipun norma hukum telah mengatur perlindungan korban, pelaksanaannya belum sepenuhnya sensitif gender. Teori hukum feminis menekankan pentingnya reformasi hukum yang tidak hanya menjamin perlindungan secara formal, tetapi juga responsif terhadap pengalaman sosiokultural korban. Paradigma patriarki yang masih mengakar kuat menjadi hambatan utama. Oleh karena itu, penguatan perspektif gender dalam sistem peradilan pidana menjadi sangat penting.

Kata Kunci: Kekerasan dalam rumah tangga; Hukum Feminis; Korban Perempuan; Keadilan; Perlindungan Hukum.

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INTRODUCTION

Domestic violence remains one of the most pervasive forms of criminal behaviour within contemporary societies. It encompasses a wide spectrum of abusive acts—physical, psychological, sexual, and forms of neglect—committed by individuals within the household. Although domestic violence is clearly regulated under criminal law and requires formal legal intervention, many incidents continue to go unreported. In numerous communities, such violence is still perceived as a private matter, concealed as a "family secret" that is difficult to disclose. This dynamic is evident in Makassar, where, despite a substantial number of cases reaching final judicial decisions, many others never progress to prosecution or adjudication. Social norms and entrenched cultural expectations often inflict deeper psychological harm, discouraging victims from seeking help or engaging with the justice system.

Given these realities, stronger legal protection for women as victims of domestic violence is urgently required. The legal system must be critically assessed to determine whether existing mechanisms genuinely provide women with safety, dignity, and justice. This assessment must also extend to situations in which women are the perpetrators, ensuring that legal protections and procedures operate fairly regardless of gender. To evaluate whether the law functions equitably from a woman's perspective, feminist legal theory offers a valuable analytical framework. Feminist legal theory interrogates the claim of legal neutrality—not to privilege one gender over another, but to illuminate how laws shaped by positivist traditions often fail to capture women's lived experiences. As Wulansari (2013) argues, legal interpretations influenced by dominant patriarchal ideologies may marginalise women's voices and produce outcomes lacking gender sensitivity.

From this perspective, feminist legal theory encourages deeper awareness and critical reflection on how the law operates in practice, particularly in cases involving violence against women. Although legal systems frequently assert impartiality, they may overlook the specific vulnerabilities and relational contexts that shape women's experiences of harm. This is especially relevant in domestic violence cases, where victims often share close familial or household ties with their abusers—whether as wives, children, or domestic workers. Such relational proximity creates additional layers of dependency, fear, and social pressure that complicate the pursuit of justice. Understanding these complexities is essential for evaluating whether legal responses to domestic violence truly uphold fairness, protection, and meaningful access to justice for women.

METHOD

This study employs a combined normative and empirical legal research design, allowing for a comprehensive examination of domestic violence law and its practical implementation in Indonesia. The normative component focuses on analysing legal norms, statutory provisions, and doctrinal writings, drawing primarily on secondary data obtained through an extensive review of academic literature, legislation, judicial decisions, and relevant policy documents. This approach aligns with the traditional method of legal scholarship, which seeks to interpret and evaluate the coherence, adequacy, and theoretical foundations of the legal framework governing domestic violence (Soekanto 2014).

Complementing the normative analysis, the empirical component of this research is grounded in primary data collected through fieldwork. This includes interviews with legal practitioners, law enforcement officials, and community members; direct observations of legal processes; and surveys designed to capture public perceptions and experiences related to domestic violence. Empirical legal research enables the study to assess how legal norms operate in practice, revealing gaps between formal regulation and lived realities (Banakar & Travers 2005). Through this dual approach, the research aims to understand not only what the law prescribes but also how it is implemented and experienced by those affected.

In its methodological execution, the study adopts both a statutory approach and a sociological approach. The statutory approach involves systematic analysis of legal rules, including Law No. 23 of 2004 on the Elimination of Domestic Violence, related criminal provisions, and implementing regulations. This method facilitates a doctrinal understanding of the legal obligations, rights, and procedures relevant to domestic violence cases. Meanwhile, the sociological approach examines the interaction between law and society, focusing on cultural norms, social structures, and institutional practices that influence the reporting, handling, and resolution of domestic violence cases (Irianto 2012). By integrating these approaches, the research captures both the formal legal architecture and the socio-legal dynamics that shape its effectiveness.

RESULT AND DISCUSSION

1. Principles of Feminist Legal Theory in Addressing Domestic Violence Crimes

In its analysis, feminist legal theory upholds fundamental principles that are essential and necessary for the application of law to ensure fair resolution of cases, regardless of gender. The core indicators of this theory are the principle of non-discrimination based on gender and law that is grounded in women's lived experiences. The principle of gender non-discrimination aligns with the notion of *equality before the law*, which is a foundational characteristic of the Indonesian legal system. In enforcing the law—particularly in cases of domestic violence—this principle must be prioritized. As a state based on law (*rechtstaat*), Indonesia emphasizes this value through Article 3(2) and (3) of the Human Rights Law, which prohibits any form of gender-based discrimination. Furthermore, several regulations explicitly address and protect against gender discrimination, particularly in the context of domestic violence.

The second principle, law based on women's experiences, is particularly critical. Most victims in domestic violence cases are women—especially wives—highlighting the need for legal frameworks that consider victims' perspectives to improve justice outcomes. The Law No. 23 of 2004 on the Elimination of Domestic Violence incorporates philosophical, sociological, and juridical aspects, acknowledging the need for dynamic, responsive legal processes.

a. Legal Resolution Through Restorative Justice

Restorative justice offers an alternative pathway for resolving domestic violence cases by focusing on repairing harm, restoring relationships, and addressing the underlying causes of violence. Unlike conventional criminal justice processes—which emphasise prosecution, punishment, and deterrence—restorative justice prioritises dialogue, accountability, and the needs of victims. It seeks to create a space where victims, offenders, and sometimes community representatives can participate in

structured discussions aimed at acknowledging harm, promoting responsibility, and developing mutually agreed solutions (Zehr 2002).

In domestic violence cases, restorative justice is typically implemented through mechanisms such as mediation, family group conferences, or facilitated meetings between victims and offenders. These processes aim to empower victims by giving them a voice in determining outcomes, while encouraging offenders to recognise the impact of their actions and commit to behavioural change. When applied carefully and with proper safeguards, restorative justice can provide victims with emotional validation, a sense of control, and opportunities for healing—outcomes that are often limited in traditional adversarial proceedings (Daly & Stubbs 2006). However, restorative justice in domestic violence cases is highly contested and must be approached with caution. Critics argue that domestic violence involves power imbalances, coercion, and patterns of control that may compromise the safety and autonomy of victims. Without strong procedural safeguards, restorative processes risk reproducing these inequalities, enabling perpetrators to manipulate outcomes or pressure victims into reconciliation. For this reason, many scholars emphasise that restorative justice should never replace formal legal protections but should operate as a complementary mechanism under strict supervision, clear eligibility criteria, and trained facilitators (Braithwaite & Strang 2020).

In Indonesia, restorative justice is often perceived as a practical and culturally familiar method for resolving domestic violence cases, particularly because many victims share close familial ties with perpetrators. This relational context can make formal prosecution emotionally and socially challenging. As a result, restorative pathways are frequently chosen for reasons of expediency, family harmony, or social pressure. Yet this trend also reveals weaknesses in law enforcement: when restorative justice becomes the default resolution, it may undermine the deterrent function of criminal law and limit the effectiveness of statutory protections for victims. Ultimately, restorative justice can contribute meaningfully to domestic violence resolution only when implemented with strong safeguards, victim-centred principles, and clear integration with the formal legal system. It must ensure that victims' rights, safety, and autonomy remain paramount, and that outcomes do not reinforce patriarchal norms or diminish accountability. When these conditions are met, restorative justice can serve as a valuable complement to judicial processes, offering more holistic and humane pathways to justice.

This research reveals that the Gowa Police Department often employs mediation and restorative justice approaches in domestic violence cases. The rationale behind this preference includes time efficiency, reduced caseloads, and the fact that many victims are women who are often more open to peaceful settlements. However, it is important to note that public understanding of restorative justice remains limited. Many believe it is a method to avoid punishment entirely, interpreting it solely as a peaceful resolution. A significant issue with this approach is that victims often fear recurrence of abuse, which in many cases leads them to seek divorce as a safer alternative. This suggests that restorative justice, in practice, may fail to adequately protect victims, especially if not accompanied by long-term support and monitoring.

b. Legal Resolution Through the Courts

Legal resolution through the courts represents the formal, state-centred mechanism for addressing domestic violence, grounded in statutory provisions, procedural safeguards, and judicial oversight. Unlike restorative justice, which emphasises reconciliation and harm-repair, court-based resolution is anchored in the principles of legality, accountability, and the protection of victims' rights. Domestic violence cases that proceed through the courts typically involve investigation by law enforcement,

prosecutorial decision-making, judicial examination of evidence, and the imposition of criminal sanctions where guilt is established. Court processes play a crucial role in affirming the seriousness of domestic violence as a criminal offence. By subjecting perpetrators to formal prosecution, the judicial system reinforces the message that domestic violence is not a private matter but a violation of public law and social order. This aligns with feminist legal scholarship, which argues that criminalisation is essential for recognising domestic violence as a structural harm rooted in gendered power relations (Dobash & Dobash, 1992). Through judicial proceedings, victims gain access to legal remedies such as protection orders, custody arrangements, and compensation, which may not be available through informal or restorative pathways.

However, court-based resolution also faces significant challenges. Domestic violence cases often involve complex evidentiary issues, including reluctance to testify, fear of retaliation, and the private nature of the violence. These factors can hinder prosecution and lead to case withdrawal or acquittal. Moreover, the adversarial nature of court proceedings may be emotionally taxing for victims, who must recount traumatic experiences in a formal and often intimidating environment. Scholars note that without adequate victim support—such as legal aid, counselling, and safe housing—the court process may inadvertently reproduce harm rather than alleviate it (Burton, 2008).

Despite these limitations, judicial resolution remains essential for ensuring legal certainty, deterrence, and the enforcement of statutory protections. Courts provide structured procedures, evidentiary standards, and appellate mechanisms that safeguard fairness and prevent arbitrary outcomes. In Indonesia, the application of Law No. 23 of 2004 on the Elimination of Domestic Violence within the courts demonstrates the state's commitment to addressing domestic violence through formal legal channels. Yet the effectiveness of this approach depends on the capacity of law enforcement, the sensitivity of judicial actors, and the broader socio-cultural environment in which victims seek justice. Ultimately, legal resolution through the courts is indispensable for upholding the rule of law and ensuring accountability in domestic violence cases. It must, however, be complemented by victim-centred practices and socio-legal awareness to ensure that judicial processes genuinely protect and empower those affected by domestic violence.

Based on the analysis conducted by the author, court-based resolutions of domestic violence cases show a fluctuating trend, whereas restorative justice mechanisms are increasingly used. This trend reveals limitations in the effectiveness of legal enforcement. A law can only be considered effective when it is actively used and upheld. Despite the fact that domestic violence—whether physical or psychological—is a serious offense, many cases are still resolved outside the court system. This societal preference for non-judicial settlements demonstrates a gap between the law in theory and the law in practice, potentially undermining the severity of domestic violence as a criminal offense.

2. *The Effectiveness of Legal Protection for Women as Victims of Domestic Violence Crimes*

The effectiveness of legal protection for women who experience domestic violence is a central concern in socio-legal studies and feminist legal scholarship. Domestic violence is not merely a private conflict but a structural harm shaped by gendered power relations, cultural norms, and institutional responses. Therefore, assessing the effectiveness of legal protection requires examining how legal norms function in practice, how institutions respond to victims' needs, and how social and cultural contexts influence the implementation of the law. Legal protection encompasses all measures designed to safeguard victims' rights, ensure their physical and psychological security, and provide access to justice through authorised institutions. These measures include statutory guarantees, law enforcement

practices, victim support services, and community engagement. According to Soerjono Soekanto, a legal system is effective when its norms are obeyed and capable of shaping social behaviour in accordance with legal expectations (Soekanto, 1995). He identifies five interrelated elements that determine legal effectiveness: the substance of the law, the performance of law enforcement actors, supporting facilities and infrastructure, community participation, and cultural influences. These elements provide a comprehensive analytical framework for evaluating the protection afforded to women as victims of domestic violence.

a. Legal Factors

Indonesia's legal framework for addressing domestic violence is extensive and multi-layered. Key provisions are found in the Criminal Code, Law No. 39/1999 on Human Rights, Law No. 23/2004 on the Elimination of Domestic Violence, Government Regulation No. 4/2006 on victim recovery, Law No. 31/2014 on witness and victim protection, and Law No. 12/2022 on Sexual Violence Crimes. Together, these laws establish a strong normative foundation for state intervention, victim protection, and accountability. From a doctrinal perspective, Indonesia has made significant progress in articulating legal protections for victims. The statutory framework recognises domestic violence as a public offence, mandates state responsibility for victim protection, and provides mechanisms for reporting, investigation, and recovery. However, the existence of legal rules does not automatically translate into effective protection. Empirical studies show that many victims hesitate to report violence due to economic dependence on the perpetrator. After divorce, for example, child support obligations fall on the husband, but the woman herself may no longer receive financial support. This creates structural vulnerability that discourages reporting and limits victims' ability to pursue justice.

Moreover, legal guarantees for victims of domestic neglect remain insufficient. Once the legal process concludes, victims may face continued economic hardship, social stigma, or lack of access to support services. These gaps indicate that Indonesia's legal framework, while comprehensive, requires further strengthening to ensure meaningful protection for women—particularly those who remain economically or socially dependent on their abusers.

b. Law Enforcement Factors

Law enforcement actors—including police, prosecutors, judges, lawyers, and victim protection agencies such as P2TP2A—play a central role in implementing legal protections. Article 10 of Law No. 23/2004 affirms that victims are entitled to protection from family members, law enforcement institutions, and social organisations. Effective enforcement requires not only procedural compliance but also sensitivity to victims' needs and vulnerabilities. Despite the presence of these institutions, protection is not always realised in practice. Many individuals struggle to distinguish between litigation and non-litigation mechanisms, leading to confusion about available options. Law enforcement agencies often focus narrowly on case processing, while public education and socialisation about domestic violence remain limited. This gap reduces victims' willingness to engage with the justice system and reflects suboptimal implementation of legal protections.

Furthermore, law enforcement officers may lack gender-sensitive training, resulting in responses that minimise victims' experiences or encourage reconciliation over prosecution. Feminist legal theory highlights that such responses can reproduce patriarchal norms and undermine victims' autonomy. Strengthening law enforcement capacity, improving public awareness, and ensuring gender-sensitive practices are therefore essential for enhancing effectiveness.

c. Facilities and Infrastructure Factors

Facilities and infrastructure are critical components of victim protection. Indonesian law mandates the establishment of Special Service Rooms (RPK) at police stations, safe houses for victims, and Integrated Service Centers providing legal, psychological, and medical assistance. These facilities are intended to create safe environments where victims can report violence, receive support, and access necessary services. In the research area, these facilities have shown positive results. The Gowa Police's Special Service Rooms, shelters operated by the Gowa Women's Empowerment and Child Protection Office, and integrated service centers such as P2TP2A demonstrate that institutional support can function effectively when properly implemented. These facilities help reduce barriers to reporting and provide victims with essential protection during the legal process.

However, the availability and quality of facilities vary across regions. In some areas, shelters may be underfunded, understaffed, or inaccessible. Ensuring consistent, high-quality facilities nationwide is essential for strengthening legal protection.

d. Social Factors

Community involvement significantly influences the effectiveness of legal protection. Public trust in the legal system is essential for encouraging victims to report violence and seek assistance. In recent years, public awareness of domestic violence has increased, particularly in cases that gain widespread attention through social media. Viral cases often generate empathy and curiosity, prompting discussions about victims' rights and available legal protections. Nevertheless, awareness alone is insufficient. Communities must actively support victims, challenge harmful norms, and engage with legal institutions to ensure that domestic violence is recognised as a public concern rather than a private matter. Strengthening community participation can enhance the overall effectiveness of legal protection mechanisms.

e. Cultural Factors

Cultural norms play a profound role in shaping responses to domestic violence. Patriarchal values remain deeply embedded in many communities, influencing perceptions of gender roles and household authority. Male dominance is often misinterpreted as a justification for controlling or abusive behaviour, contradicting religious principles that emphasise justice, compassion, and mutual respect. Socially, harsh or controlling behaviour by husbands is sometimes viewed as legitimate "discipline," reinforcing women's subordinate position within the household. Patriarchy operates across cultural, religious, and socioeconomic contexts, creating structural barriers that hinder victims from seeking help. These cultural dynamics not only perpetuate domestic violence but also undermine the effectiveness of legal protections.

CONCLUSION

The analysis demonstrates that core principles of feminist legal theory are reflected in Indonesia's positive legal framework, particularly in legislation addressing domestic violence. The principle of gender non-discrimination—consistent with the doctrine of equality before the law, a foundational element of Indonesia's legal system—and the principle that law must take women's lived experiences into account are both embedded in Law No. 23 of 2004 on the Elimination of Domestic Violence. The statute was drafted on the basis of philosophical, sociological, and juridical considerations, acknowledging the social realities in which women constitute the primary victims of domestic violence.

Despite this normative progress, implementation remains fraught with challenges across both restorative and judicial mechanisms. First, restorative justice is frequently misunderstood, often reduced to a peace-making process that enables perpetrators to avoid formal punishment, narrowly equated with imprisonment. Second, in the judicial process, many domestic violence cases continue to be channelled into restorative pathways because they are perceived as more practical and expedient, particularly in the context of family relationships. This trend signals weaknesses in law enforcement, as legal norms are effective only when properly applied and enforced. Although multiple legal measures have been introduced to strengthen victim protection, their effectiveness remains limited. Contributing factors include gaps within the legal framework—such as insufficient protection for victims of domestic neglect—weak public understanding of available resolution mechanisms, and the persistence of deeply rooted patriarchal norms within society. Together, these constraints hinder the full realisation of the feminist principles embedded in Indonesia's domestic violence legislation.

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