



The role of advocates in handling cases of wives as victims of domestic violence in Indonesia

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Abstract

Time has passed swiftly, and it has now been over two decades since the enactment of Law No. 23 of 2004 concerning the Elimination of Domestic Violence, commonly referred to as the Domestic Violence Act (UU PKDRT). This law was officially enacted on 22 September 2004. One of its most significant breakthroughs was the legal recognition of a victim's right to receive legal assistance and advocacy—something that had not been provided for under the previous Criminal Procedure Code (KUHAP), which lacked any provisions for victims to access legal support. Nevertheless, many advocates still do not fully understand their role in supporting and assisting wives who are victims of domestic violence. This is partly due to the continued influence of patriarchal values among some advocates, which often leads to victims feeling blamed rather than protected. It is essential that advocates recognise their critical role in addressing cases where wives are subjected to domestic violence.

Keywords: Advocates, domestic violence, legal assistance

Introduction

The concept of the *Rechtstaat* is fundamentally rooted in the Continental European legal tradition, which began to emerge in the 17th century as a response to the prevailing political conditions of the time, marked by the dominance of absolute monarchy. The development of the *Rechtstaat* was not the result of the sovereign's benevolent intentions, but rather the outcome of a long historical struggle within evolving social systems^[1].

According to Jimly Asshiddiqie^[2], the idea of a state governed by law is not only linked to the concepts of *Rechtstaat* and the rule of law, but also to the notion of *nomocracy*, derived from the term's *nomos* and *cratos*. The term *nomocracy* can be compared to *demos* and *cratos* or *kratien* in the context of democracy. *Nomos* signifies norms, while *cratos* refers to power. Thus, within a *nomocracy*, it is the norms or laws that determine the exercise of power, meaning that law is upheld as the highest authority.

Several legal scholars, including Immanuel Kant and Friedrich Julius Stahl, have developed the concept or theory of *Rechtstaat*, while the theory of the rule of law became prominent in the Anglo-Saxon legal system in 1885 after Albert Venn Dicey published his book *Introduction to the Study of the Law of the Constitution*. Over time, the concept of the rule of law has been anchored in two legal systems: the Anglo-Saxon Law System and the Common Law System^[3]. In addition to *Rechtstaat* and the rule of law, the concept of a state governed by law is also referred to by other names, such as *nomocracy* in Islam, applied in countries with communist ideologies, and the *Pancasila* legal state, which is known in Indonesia.

Immanuel Kant argued that the concept of the rule of law functions to maintain public order and security (*rust en order*), commonly referred to as the 'night-watchman state' (*nacht wakerstaat*). According to Ferdinand Lassalle, this theory is purely negative and focuses solely on preventing disorder in society, stemming from power as seen in the absolutist rule of the monarch. As such, it does not yet Reflect the true theory of the rule of law, which emerged from the desire to free society from the unchecked power of the sovereign (*absolutism*)^[4]. The concept of the rule of law

was more clearly articulated by Julius Stahl (Germany), who outlined the characteristics of a rule-of-law state: the protection of human rights, the separation of powers to prevent centralisation in a single individual or body, governance based on law (*wetmatig bestuur*), and the provision that any government violations of human rights should be addressed through an administrative court (State Administrative Court)^[5]. A.V. Dicey represents the concept of the rule of law (Anglo-Saxon Law System) in his book *Introduction to the Study of the Law of the Constitution*, stating:

"...first and foremost, the absolute supremacy or predominance of regular law, as opposed to the influence of arbitrary power, excluding the existence of arbitrariness, prerogative, or even extensive discretionary authority on the part of the government. It also signifies equality before the law, meaning that all classes are equally subject to the ordinary law of the land, as administered by the regular courts. Finally, it can be used as a formula to express the fact that, in our system, constitutional law—the rules which, in other countries, naturally form part of the constitutional code—are not the source but the consequence of individual rights, as defined and enforced by the courts.^[6]

A.V. Dicey outlined at least three criteria for the concept of the rule of law. First, the requirement for the absolute supremacy or primacy of law to limit government (sovereign) power and prevent any arbitrary actions by the government. Second, the principle of equality before the law, which applies equally to all members of society, including those in positions of governmental power. Third, the constitution is not the source but the consequence of individual rights, which are inherent from birth (human rights). According to Mukhtie Fadjar, an essential element of a state governed by law is the recognition and protection of human rights (HR), the principle of legality, the Separation of powers, an independent and impartial judiciary, the sovereignty of the people, democracy, and constitutionalism. these seven characteristics are fundamental requirements for a material rule-of-law state. the objective of a welfare state cannot be achieved unless

these principles are fulfilled^[7]. law serves as the key guide in the governance of the state. in essence, it is the law that directs state governance, not individuals or specific bodies (the rule of law, not of man). law must be constructed and enforced in accordance with democratic principles, as the supremacy and sovereignty of law ultimately stem from the sovereignty vested in the people^[8].

The concept of a state governed by law has been an inseparable part of indonesia's political development since independence. although the idea of a rechtsstaat was not explicitly formulated in the articles of the pre-amendment 1945 constitution, the explanation made it clear that indonesia embraced the idea of rechtsstaat, not machtsstaat. in the 1949 constitution of the republic of the united states of indonesia (ris), the idea of a state governed by law was explicitly included. similarly, in the 1950 constitution of the republic of indonesia (uuds 1950), the formulation that indonesia is a state based on law was firmly stated. this was because both the ris constitution and the 1950 uuds were drafted after the adoption of the universal declaration of human rights in 1948. therefore, in the third amendment of the 2001 1945 constitution, this provision was reiterated in article 1, paragraph (3), which reads the state of indonesia is a state based on law

The concept of indonesia as a state governed by law, based on pancasila and the 1945 constitution, can be viewed from both a material and a formal juridical perspective. materially, the pancasila state of law is grounded in the paradigm of the indonesian nation, which is based on the principle of familyhood. this implies prioritising the welfare of the people, respecting human dignity, and upholding the law, which serves to protect the establishment of democracy, social justice, and human rights.

Realising the ideals of a state governed by law in indonesia is no easy task. similarly, the existence of law no. 23 of 2004 on the elimination of domestic violence (uu pkdrt) presents a challenge when looking at the numerous cases that remain unresolved, and the state's inability to provide protection against violence committed by citizens, particularly against women who suffer abuse both within the country and abroad. to address this, the government, together with the people's representative council, has taken steps.

The establishment of the uu pkdrt was based on several considerations, including the belief that every citizen has the right to feel safe and free from all forms of violence. therefore, any form of violence, particularly domestic violence, constitutes a violation of human rights. the uu pkdrt was enacted on 22 september 2004, born from the state's desire to protect human rights within the domestic sphere, particularly for women. any form of violence, especially domestic violence, is regarded as a violation of human rights and a crime against humanity, as well as a form of discrimination.

The introduction of this law provided a breath of fresh air to the general public, signalling that the state protects its citizens even in their private lives, specifically within the household. the consequence of this law's implementation is that acts once considered taboo and shameful to discuss outside the home can now lead to criminal charges. perpetrators can face prison sentences to deter future offences. the spirit of the uu pkdrt is to focus on protecting women or wives, as they are the most frequently harmed by the actions of men or husbands.

Since its inception, the uu pkdrt has faced numerous challenges and issues. this is understandable due to the indonesian cultural context, where many ethnic groups follow a patrilineal family system. such perspectives and cultural practices place women in a subordinate position to men. the strength of the patriarchal culture and the prevalence of the patrilineal family system have been obstacles in raising public awareness that domestic violence is a violation of human rights.

Another complicating factor is the lack of certainty for women victims to receive fair treatment under the law. when they report incidents, instead of receiving protection and justice, many wives or victims of domestic violence are often criminalised by their husbands, who counter-report the victim. several articles are used to make counterclaims against the wife, such as charges of theft in the household, child neglect, and the most frequently used: defamation. it is no coincidence that women become frustrated and fail in their pursuit of justice, as many law enforcement officers lack sensitivity and responsiveness to the victims.

The complicated procedures for obtaining legal assistance, especially for economically disadvantaged women who are further weakened by the lack of financial support from their husbands, also present significant problems. the implementation of the uu pkdrt is faced with issues related to culture, law, and the neglect of law enforcement agencies in overseeing the law's enforcement.

One of the breakthroughs in the uu pkdrt is the right of victims to receive legal assistance and representation from an advocate. before the enactment of the uu pkdrt, the criminal procedure code (kuhap) stipulated that only suspects or defendants were entitled to legal assistance. the rights of victims and witnesses to receive legal assistance were not regulated in the kuhap, so when an advocate tried to assist a victim in filing a police report, conducting a victim's examination, or preparing witness statements, investigators would often not allow it, citing the lack of a legal basis in the kuhap. however, some investigators accepted the presence of an advocate, explaining that their role was to assist in facilitating the victim or witness's examination, as the presence of an advocate would make the victim feel more comfortable and protected psychologically. This situation led women's activists and the national commission on women to urge the government to issue a law that would provide victims with the right to legal assistance. although article 25 of the uu pkdrt outlines the obligations of advocates, not all advocates are capable of assisting and providing legal help to wives who are victims of domestic violence. this is because domestic violence is a form of gender-based violence, and advocates who assist victims must have a perspective that supports the victim and understands their needs. based on the background outlined above, the researcher is interested in conducting a study titled the role of advocates in handling wives as victims of domestic violence

Research Method

This research will employ a normative legal research method, focusing on the analysis of legal norms and Regulations related to domestic violence, specifically law no. 23 of 2004 on the elimination of domestic violence (uu pkdrt) and its implementation in protecting victims, particularly women. the study will examine the legal framework, including the rights of victims to receive legal

assistance from advocates, as outlined in the uu pkdrt, and assess how these rights are realised in practice. the research will analyse statutory provisions, judicial decisions, and legal literature to understand the effectiveness of the law in ensuring the protection and legal support for women victims of domestic violence within the indonesian legal system. furthermore, the study will explore the challenges faced by advocates in handling domestic violence cases, considering both legal and cultural factors^[10].

Result and discussion

Definition and Scope of Domestic Violence.

Domestic violence is defined as: any act directed towards an individual, particularly women, resulting in physical or psychological suffering and/or neglect within the household, including threats of such acts, coercion, or unlawful deprivation of liberty within the domestic sphere (article 1, paragraph (1) of law no. 23 of 2004).

Article 2 of law no. 23 of 2004 outlines the scope of domestic violence within this legislation, which includes the following:

The scope of domestic violence under this law covers the husband, wife, and children individuals who are related to the person as mentioned above through blood relation, marriage, breastfeeding, guardianship, or representation, and who reside within the household and individuals who work to assist the household and reside within the household.

individuals working as described above are regarded as family members for the duration of their stay in the household concerned.

As previously mentioned, women have the same human rights as men. gender equality refers to a state where women and men enjoy equal status and have the same opportunities to fully realise their human rights and potential for the integrity and continuity of the household in a proportional manner. furthermore, the third principle is non-discrimination. with the ratification of the convention on the elimination of all forms of discrimination against women, which was incorporated into law no. 7 of 1984, it is hoped that society will refrain from discriminating against women, both in the domestic and public spheres. discrimination against women is defined as: any distinction, exclusion, or restriction made on the basis of sex, which has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise of human rights and freedoms in the political, economic, social, cultural, or civil fields, or any other fields by women, irrespective of their marital status, based on the principle of equality between men and women. domestic violence is a social issue, not a family matter that needs to be hidden. it is a social problem, and thus, everyone who hears, sees, or knows about domestic violence is required to take appropriate actions within their capabilities to: (1) prevent the commission of a criminal act(2) provide protection to the victim;(3) offer emergency assistance (4) assist in the process of submitting a protection order request (article 15 of law no. 23 of 2004).

Domestic Violence as a Form of Gender-Based Violence.

Patriarchal culture has a strong influence in indonesia and contributes to gender inequality. this cultural system has been deeply rooted in the social structure of indonesian society for a long time and continues to persist today, with men dominating key roles in various aspects of public life. according to nurmila^[11], patriarchal culture is a social system that places men as the primary holders of power and dominates important roles in society. this statement is

supported by arifin's findings, which affirm that the patriarchal social system positions men as the primary and dominant holders of power in significant societal roles^[12]. patriarchal culture influences family dynamics, where the husband is often regarded as the head of the household with the highest authority. the wife and children are expected to be submissive and obedient to the decisions and rules set by the husband. handayani's^[13] findings indicate that patriarchal culture in the family context makes the husband the head of the household with the highest authority, while the wife and children are expected to submit to the decisions and rules established by the husband.

As a result, significant gender inequality occurs both within the household and in society. women are often confined to traditional roles and have little power in decision-making, as fajarwati (2021)^[14], this condition creates significant gender inequality, where women are often limited to traditional roles and have little power in decision-making. patriarchal culture also influences rigid gender role divisions and stereotypes in society. women are often positioned in domestic roles, such as managing the household and caring for children, while men are seen as the primary breadwinners and those in control of the family. this division of roles reinforces gender inequality and limits women's potential for full development, as found by [author's name]^[15].

Moreover, patriarchal culture legitimises male dominance in various aspects of societal life, including politics, economics, and socio-cultural domains. women are often underrepresented in public decision-making processes and have limited access to resources and opportunities, as indicated by [researcher's name]^[16]. these findings highlight the persistent strength of patriarchal culture in indonesia and its contribution to significant gender inequality. this social system places women in subordinate positions, restricts their roles and authority, and creates barriers to their participation across multiple spheres of society.

The relationship between patriarchal culture and the high incidence of domestic violence in indonesia can be explained through several interconnected cultural and structural aspects. firstly, patriarchal culture has instilled the belief that men possess greater authority within the household and society. this belief is deeply rooted in traditions and social norms passed down through generations. the concept of the head of the household or the husband's authority over the wife and children has become a widely accepted social construct. furthermore, patriarchy shapes unequal power relations between men and women in the domestic sphere. women are often positioned at a lower status—economically, socially, and politically. this creates dependency on men and limits women's ability to defend themselves or escape harmful situations. such conditions facilitate the misuse of power and the perpetration of violence by those who dominate^[17].

Furthermore, patriarchal culture is deeply rooted through rigid and stereotypical gender role divisions. women are often associated with domestic roles and are less involved in decision-making processes in the public sphere, whereas men are regarded as the primary breadwinners and the ones in control of the family. This division of roles reinforces gender inequality and limits women's opportunities to develop their potential^[18].

The research findings indicate a strong correlation between patriarchal culture and the high incidence of domestic

violence in Indonesia. A patriarchal system that positions men as the ultimate authority within the household often leads to violence against women, whether physical, psychological, sexual, or economic. This aligns with the findings of Sakina (2019)^[19], who state that such conditions frequently trigger violence against women in various forms, including physical, psychological, sexual, and economic abuse. Similar findings were also highlighted by Kuswardani (2021)^[20], who asserts, A patriarchal culture that places men as the highest authority in the household often leads to violence against women, whether physical, psychological, sexual, or economic.

The Role of Advocates in Handling Domestic Violence Cases

The enactment of Law Number 23 of 2004 concerning the Elimination of Domestic Violence (commonly referred to as the Domestic Violence Law or UU PKDRT) has been in force for more than 20 years. As a *lex specialis* or special law, it introduced a number of significant legal breakthroughs. One of the most important advances is the regulation of victims' rights, including the right to legal assistance or advocacy throughout every stage of legal proceedings, in accordance with prevailing laws and regulations.

Before the enactment of the Domestic Violence Law, based on the provisions of the Indonesian Criminal Procedure Code (KUHAP), only suspects or defendants were entitled to legal assistance from a lawyer. Victims and witnesses were not granted such a right under KUHAP. Consequently, when an advocate attempted to assist a victim in filing a police report, or to accompany them during the drafting of the victim's or witness's statement of examination (Berita Acara Pemeriksaan), investigators would typically refuse on the grounds that there was no legal basis for such accompaniment under KUHAP. However, some investigators have gradually accepted the presence of advocates after being informed that the purpose of legal accompaniment is to support the examination process and ensure that victims or witnesses feel psychologically safe and protected during their testimony.

This situation became one of the driving forces behind the efforts of women's rights activists and the National Commission on Violence Against Women (Komnas Perempuan) to push the government to issue a law that, among other things, grants victims the right to receive legal assistance. As a result, victims' rights are stipulated in Article 10 of Law Number 23 of 2004 on the Elimination of Domestic Violence (UU PKDRT), which states that victims are entitled to: (a). Protection from family members, police, prosecutors, courts, advocates, social institutions, or other parties, either temporarily or by court-issued protection orders (b). Health services according to their medical needs (c). Special handling related to the confidentiality of the victim (d). Assistance from social workers and legal aid throughout all stages of examination in accordance with statutory regulations and (e). Spiritual counselling services.

Furthermore, Article 25 of the Law on the Elimination of Domestic Violence (UU PKDRT) stipulates that, in providing protection and services, an advocate is obliged to: (a). Provide legal consultation, including information on the rights of the victim and the judicial process (b). Accompany the victim at all stages—investigation, prosecution, and court hearings—and assist the victim in fully disclosing the

domestic violence they have experienced (c). Coordinate with fellow law enforcers, support volunteers, and social workers to ensure the judicial process runs appropriately.

Referring to this mandate, what should an advocate do when handling domestic violence cases? LBH Apik, which has long focused on assisting women—including survivors of domestic violence—offers several key recommendations^[21].

Firstly, Empowerment of the Victim. Uli Pangaribuan, the Coordinator of the Legal Services Division at LBH Apik, stated that there are many ways to empower victims, such as through counselling services. LBH Apik has long collaborated with pro bono psychologists to provide support for victims. "There are also victims who do not wish to take their case through legal proceedings they simply need a psychologist or counselling, said Uli Pangaribuan during the KONEKSI Advocate Training discussion, a collaboration between LBH Apik and Justika.com, held on Friday, 6 November 2020.

Secondly, Building Trust and Safety for the Victim to Share Their Case. Uli mentioned that it is not easy for victims to talk about the events they have experienced. When the victim is ready to share their story, the advocate must be a good listener and provide the victim with the opportunity to speak. Thirdly, Not Blaming the Victim. Fourthly, Providing Information to the Victim Regarding the Legal Aspects of the Case. Fifthly, Respecting the Victim's Choices. Uli reminded that every decision should be based on mutual agreement between the victim and the advocate. The advocate must understand the victim's emotions, as it is not uncommon for victims to pressure for immediate reporting to the police. There are also victims who, despite visible bruises, may not wish to report the perpetrator. Therefore, the victim must continue to receive support and guidance, allowing them to choose the decision that is best for them.

Sixth, Contacting and Accompanying the Victim to a Shelter for the Purpose of Safety and Trauma Recovery, which Typically Requires Specific Time. Uli reminded that there are various requirements that must be fulfilled for the victim to access a government-run safe house, including proof of a police report.

Why does a wife, as a victim of domestic violence, require legal assistance, especially when the victim chooses to pursue legal action in resolving her case? Based on the experiences of lawyers in providing legal support, the presence of a lawyer is crucial for both the victim and law enforcement in uncovering the events of the violence. The needs for such support are as follows:

1. To strengthen the psychological condition of the victim. In general, the victim feels that her dignity has been shattered and that she is blamed for contributing to the violence against her. The presence of a lawyer during every stage of the investigation will help the victim feel safe and comfortable.
2. To give the victim a glimmer of hope that the legal system can alleviate her suffering. Having a legal system that supports her makes the victim feel that her goal of seeking justice for the perpetrator is recognised legally, with support from the legal system.
3. To make the victim feel they have a companion who understands their situation and believes in their story of the violence they've experienced. Generally, female victims of violence fear that others will not believe their accounts of the violence, especially when society

- perceives the perpetrator as unlikely to have committed the alleged acts. The presence of a lawyer helps the victim feel believed and recognised as a true victim.
4. To ensure the victim doesn't feel blamed or cornered during the investigation process. Victims who are accompanied during every stage of the investigation will feel that their lawyer supports them as a genuine victim of violence, not as the person responsible for the violence that occurred.
 5. To assist law enforcement in understanding the suffering of the victim caused by the violence she has endured.
 6. To help law enforcement present the case clearly and accurately. The presence of a lawyer helps the victim explain the events she experienced clearly and correctly. The victim will also be able to overcome any fear of threats or retaliation from the perpetrator, their family, or others close to the perpetrator.
 7. To assist the victim in managing the emotions related to the violence she experienced. By managing her emotions, the victim will be able to appreciate the work and efforts that law enforcement has undertaken to uncover and prove the violence she endured.
 8. To help the victim understand the legal system applied to her case so she can recognise any obstacles or challenges encountered during the judicial process.
 9. To assist the victim in understanding that the violence she experienced is a broader issue for women in general, and not just a personal problem she alone faces. This understanding will help the victim overcome feelings of shame and low self-worth that often accompany the experience of violence.

In order to establish an equitable, mutually respectful relationship with the victim they are assisting, a lawyer must first examine and be aware of their own values or perspectives regarding acts of violence. Some important points that need to be considered are: (1) No woman deserves to experience violence. There is no action that justifies abuse or assault as a form of retaliation, punishment or response. (2) Violence is the responsibility of the perpetrator.

In this case, the woman is the victim, and she is not complicit. (3) No woman likes or desires acts of violence. A lawyer aiding a wife who is a victim of domestic violence must approach the support holistically, addressing various aspects, including medical, social, psychological, and legal. Assistance cannot be provided in just one aspect, as violence against women impacts every facet of life in society. The responsibility of offering support to female victims of violence is not solely that of institutions providing services to such women, but a collective responsibility shared by all parties, including the state/government and civil society/communities of victims. Every party plays a role in fulfilling the responsibility to eliminate violence against women.

Conclusion

Law No. 23 of 2004 on the Elimination of Domestic Violence (UU PKDRT) has been in effect for more than 20 years. As a special law (*lex specialis*), the UU PKDRT contains many breakthroughs. One of the most important breakthroughs is the regulation of victims' rights, including the right of victims to receive legal assistance during each

stage of the investigation process in accordance with applicable legal provisions. In carrying out the role of assisting a wife who is a victim of domestic violence, a lawyer must possess specific knowledge and skills, as domestic violence cases perpetrated by a husband against his wife are gender-based violence.

Recommendation

Every lawyer should undergo training in handling cases of violence against women. On the other hand, the material on handling cases of violence against women should be included in the curriculum of the Professional Advocate Education Programme provided by all Advocate Organisations. This ensures that a wife who is a victim of domestic violence is protected from discriminatory attitudes and words, and that her rights as a victim, as guaranteed by the Domestic Violence Elimination Law (UUPKDRT), are fulfilled.

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