

## Legal Protection of Children as Victims of Domestic Violence According to Positive Law

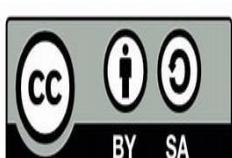
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**Abstract:** The legal protection of children who are victims of domestic violence must be carefully considered by all relevant parties, from the surrounding community to the state. The state basically has an obligation to protect the rights of children as victims of domestic violence. This includes the provision of physical and psychological rehabilitation services, counseling, legal assistance, and social reintegration programs. The purpose of this research is to see from the point of view of positive law in Indonesia in an effort to protect children who are victims of domestic violence and how the state in carrying out its obligations in providing services to children as victims of domestic violence. This research method uses normative juridical research with a statutory approach and conceptual approach by looking at several relevant laws, books and literature. The results show that children who are victims of domestic violence have been fully protected by the Indonesian legal system. The protection of children from domestic violence is not only the responsibility of the government, but the whole community is also involved. In the context of positive law, it is important to see how existing laws can be optimized to protect children more effectively. However, the implementation still faces several challenges, such as low public awareness, less than optimal coordination between institutions, and limited rehabilitation facilities. Therefore, sustainable efforts are needed to improve legal protection for child victims of domestic violence. Several strategies can be carried out starting from improving legislation, increasing public awareness and strengthening institutional cooperation.

**Keywords:** Violence; Child; Legal Protection.



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## I. INTRODUCTION

Domestic violence (DV) is a serious and complex social problem that affects every family member, especially children. Domestic violence often appears in various forms in Indonesia, ranging from physical, psychological, to sexual violence. Children are often witnesses or even direct victims of these atrocities. The long-term impact of domestic violence on children is significant, including impaired mental, emotional and social development that can interfere with their quality of life in the future. In addition, this phenomenon has negative effects not only on the victims, but also on society as a whole.<sup>1</sup>

Children are God's gift and mandate from birth as a whole human being. Without having to ask, children must get their rights.<sup>2</sup> Within the family, especially for parents, children are not only a source of pride and great hope, but also seen as a generation that will continue the journey of this nation. From a religious point of view, the presence of children is a blessing that should be thanked as a sustenance from the Almighty. The existence of children plays a crucial and inseparable role in ensuring the sustainability of mankind and the future of the nation.<sup>3</sup>

Violence against children, both criminal and non-violent, has become a public concern. This is one of the shortcomings of the current child protection law.<sup>4</sup> One aspect of community protection is the legal protection of victims of crime, which can be achieved through various efforts such as restitution and compensation, as well as legal protection for victims of criminal acts. If verbal abuse continues to be given to children, they will unwittingly stunt their growth. Children who feel alienated, not needed and eventually feel inferior will experience developmental problems.<sup>5</sup>

Domestic violence is a crime committed in the context of an intimate relationship. In this relationship, violence accompanied by power and coercion is used against a person without their consent and with the aim of control. This violence often shows signs of dominance over another person in visual, verbal, moral, or physical forms. Manipulation, violence, slander, unpleasant situations, demeaning words, and humiliation are some of the forms of violence in the use of violence.<sup>6</sup>

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<sup>1</sup> Sumy Hastry Purwanti, *Kekerasan Seksual Pada Perempuan: Solusi Integratif Dari Forensi Klinik* (Jakarta: Rayyana Komukasindo, 2021), 15.

<sup>2</sup> Anis Mohamad and Siti Afiyah, "Putusan Hakim Berupa Pemidanaan Perkara Tidak Pidana Perbuatan Cabul Terhadap Anak dibawah Umur," *Jurnal Mimbar Yustitia*, Vol. 2, No. 2 (Juni, 2018), 80.

<sup>3</sup> Ahmad Syakirin, "Formulasi/Model Sistem Pemidanaan Anak di Indonesia," *Jurnal Mimbar Yustitia*, Vol. 2, No. 2 (Desember, 2018), 124.

<sup>4</sup> Vivin Restia, "Perlindungan Hukum Bagi Anak Sebagai Korban Kekerasan Dalam Rumah Tangga," *Nurani Hukum : Jurnal Ilmu Hukum*, Vol. 2, No. 1 (Juni, 2019), 28.

<sup>5</sup> Wadjo and Astuti Nur Fadillah, "Perlindungan Hukum Terhadap Perempuan Dan Anak Yang Mejadi Korban Kekerasan Dalam Rumah Tangga Di Desa Klis," *Community Development Journal* 2, no. 2 (Juni, 2021), 226.

<sup>6</sup> Vinita Susanti, *Perempuan Membunuh? : Istri Sebagai Korban dan Pelaku KDRT* (Jakarta Timur: PT. Bumi Aksara, 2020), 16.

If self-control and quality cannot be controlled, the integrity and harmony of the household can be threatened. In the end, domestic violence will occur and cause injustice or inequality for those who live within the scope of the household. The crime of domestic violence is in fact one of the types of crime that is less monitored by the community and law enforcement. Victims often feel unsafe and scared, so they need legal protection from harm.

With the enactment of Law No. 23/2004 on the Elimination of Domestic Violence, the government and the community have attempted to address the issue of domestic violence by enacting a number of laws and regulations. This law provides an appropriate legal framework to protect victims of domestic violence and stop criminal acts of violence in the family. Protection of children who are victims of domestic violence has been regulated in law, in its implementation there are still several obstacles that hinder its implementation.<sup>7</sup>

Protecting children from domestic violence is not only the responsibility of the government, but the entire community is also involved. In the context of positive law, it is important to see how existing laws can be optimized to protect children more effectively. The government has issued Law No 23 of 2002 on Child Protection which has been updated with Law No 35 of 2014 on Child Protection and Law No 11 of 2012 on the Juvenile Justice System.

## II. METHODS

The research method in this journal article uses normative juridical research, which is legal research that relies on secondary data or library materials. The approach in this research uses a statutory approach including Law Number 23 of 2004 concerning the Elimination of Domestic Violence, Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection and Law Number 12 of 2011 concerning the Child Criminal Justice System. The data collection technique in this journal article uses a literature study, namely reviewing a number of regulations, books and other relevant literature. The data analysis method is carried out by collecting data through a review of library materials or secondary data which includes primary legal materials, secondary legal materials and tertiary legal materials, both a number of journals, books and laws and regulations.

## III. ANALYSIS AND DISCUSSION

### Household Violence

Violence that includes verbal abuse, physical emotional and sexual acts is called domestic violence. Everyone can be a victim of domestic violence regardless

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<sup>7</sup> Sutiawati and Nur Fadhilah Mappaselleng, "Penanggulangan Tindak Pidana Kekerasan dalam Rumah Tangga Di Kota Makassar," *Jurnal Wawasan Yuridika*, Vol. 4, No. 1 (Maret, 2020), 18.

of gender, race, age, and sexual orientation.<sup>8</sup> Chapter 1 Article 1 of Law No. 23/2004 on the Elimination of Domestic Violence explains that domestic violence is any act against a person, especially women, which results in physical, sexual, psychological misery or suffering, and/or domestic neglect including threats to commit acts, coercion, or unlawful deprivation of independence within the scope of the household.<sup>9</sup>

In one case, a 14-year-old girl experienced domestic violence in the form of psychological abuse from her parents. The violence Mala experienced included intimidation through words, neglect of emotional needs, and various forms of threats. This case was identified after the school counselor detected symptoms of depression and anxiety in Mala, which subsequently led to Mala being referred to the Psychology Service Center for expert treatment.

The psychological abuse experienced had a serious impact on Mala's condition, which was shown through several indicators such as the emergence of anxiety disorders, depressive conditions, self-harming behavior, and inability to build social relationships. Mala often isolated herself from her social environment and had difficulty expressing her emotions. The demeaning words she often receives have also formed a negative mindset about herself.

The occurrence of domestic violence is essentially an attempt by a partner to gain control of the family. The perpetrator tries to take over the household by using rights, freedoms, and other things. Often people are aware of domestic violence, generally in the form of physical violence. However, domestic violence is not only in the form of physical violence, but also in the form of non-physical violence.<sup>10</sup> Domestic violence can have negative effects, such as physical and psychological health problems on the victims, who are often children. Children usually witness domestic violence, but children often fail to understand the behaviors that should not be done in front of them so that the actions will create a deep memory for the child.<sup>11</sup>

Some forms of verbal abuse experienced by children include:

1. Intimidation: in the form of bullying, yelling, screaming and threatening the child.
2. Reproaching the child: telling the child that everything that happens is the child's fault.
3. Unaffectionate and cold to the child: not showing affection to the child, such as hugging or saying affectionate words.

<sup>8</sup> Ayu Setyaningrum and Ridwan Arifin, "Analisis Upaya Perlindungan Dan Pemulihan Terhadap Korban Kekerasan Dalam Rumah Tangga (KDRT) Khususnya Anak-Anak Dan Perempuan", *Jurnal Muqoddimah : Jurnal Ilmu Sosial, Politik dan Hummaniora*, Vol. 3 No. 1 (2019), 12-13”

<sup>9</sup> Pasal 1 angka 1 Undang-Undang Nomor 23 Tahun 2004 tentang Penghapusan Kekerasan Dalam Rumah Tangga.

<sup>10</sup> Malahayati, *Seputar KDRT Hingga Karir* (Bandung: Hikam Pustaka, 2021), 2.

<sup>11</sup> Setyaningrum and Arifin, "Analisis Upaya Perlindungan Dan Pemulihan Terhadap Korban Kekerasan Dalam Rumah Tangga (KDRT) Khususnya Anak-Anak Dan Perempuan", 14.

4. Ignoring or rejecting the child: not responding to the child, being cold, uncaring.
5. Extreme punishment: keeping the child in the bathroom, locking the child in a dark room, and tying the child to a chair for a long time.
6. Ostracizing or humiliating the child: putting the child down in front of people, calling them names and making negative distinctions between children.

There are things that become factors for parents to commit verbal violence against children, namely:

1. Internal factors

- a. Parents' knowledge level

Parents usually do not know what children need to develop.

For example, when the child is asked to do something and it turns out that the child cannot, the parents will be angry and make the child sad for the words of the parents who will become a scourge for the child.

- b. Parental experience

Parents who treat children in the wrong way usually received the same treatment as a child, so it becomes an imprinted experience that encourages them to do the same thing. The actions received by the child will be recorded in the child's subconscious and will last until they grow up. Aggressive parents will also give birth to children who are aggressive and have a mentality related to the bad treatment they received as children.

2. External factors

- a. Economic factors

Economic factors, poverty and life pressures are the main causes of domestic violence. Parents vent their emotions to others because of economic demands that are not sufficient to meet their needs. As weak individuals, children are often victims of their parents' selfishness and feel that they can behave arbitrarily with their children at any time.

- b. Environmental factors

The environment can be a factor that causes verbal abuse in children. A healthy environment will have a good impact too, with no quarrels and a calm atmosphere and a harmonious family will affect the people in that environment.<sup>12</sup>

Children who get verbal violence from parents do not have physical consequences, but will have psychological effects on children that will have a long-term impact. The psychological consequences referred to from the actions of

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<sup>12</sup> Erniwati and Wahidah Fitriani, "Faktor-Faktor Penyebab Orang Tua Melakukan Kekerasan Verbal Pada Anak Usia Dini," *Jurnal Pendidikan Anak Usia Dini*, Vol. 4, No. 1 (2020), 4-5.

parents are such as the child's feeling insensitive to others, disturbing their development, the child becomes aggressive, emotional disturbances, social relationships are disturbed.<sup>13</sup> Victimized children will have a mental impact that interferes with the child's growth. This impact will last for a long time or even a lifetime, thus instilling a negative mindset regarding a relationship or violence and difficulty in establishing healthy relationships with people around them.<sup>14</sup>

### **Elimination of Domestic Violence**

Many cases of domestic violence, often involving children, are no longer an open secret. Positive law specifically regulates in legislation relating to the prevention of domestic violence. The responsibility to prevent domestic violence lies with the government and the community.<sup>15</sup> Law No. 23/2004 on the Elimination of Domestic Violence is a law that provides guarantees to the government or state to prevent and overcome domestic violence. In addition to making prevention efforts, the government also takes firm action against those who commit domestic violence. In addition, legal protection for victims in the form of law enforcement and victim recovery efforts is needed by victims.<sup>16</sup>

The state has an obligation to protect the rights of children from domestic violence. This includes providing physical and psychological rehabilitation services, counseling, legal assistance, and social reintegration programs. The state in carrying out protection must consider the special vulnerability of children, the trauma they have experienced, and their developmental needs to protect children from all forms of violence.

Indonesia as a nation of laws shows a strong dedication to protecting children. The government has a fundamental responsibility to ensure that children are free from domestic violence. In this case, the state is required to take proactive measures in preventing, providing protection, and assisting the recovery of victims of human rights violations, especially those that occur within the family sphere.<sup>17</sup> In addition, based on the Convention on the Rights of the Child, the state is obliged to implement various comprehensive policies ranging from legal, administrative, social, to educational aspects. This commitment is reinforced by the principle of prioritizing the best interests of children in every policy related to them.

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<sup>13</sup> Endik Wahyudi and Gerry Joe, "Kebijakan Formulasi Sanksi Kebiri Kimia di Indonesia di Tinjau dari Peraturan Pemerintah Pengganri Undang-Undang Nomor 1 Tahun 2016 tentang Perlindungan Anak", *Jurnal Mimbar Yustitia*, Vol. 3 No. 2 (Desember, 2019), 146.

<sup>14</sup> Nurfaizah, "Dampak Kekerasan Dalam Rumah Tangga (KDRT) Terhadap Kesehatan Mental Anak", 102.

<sup>15</sup> Sulastri, Sutino, and Yuli Yuliana W, "Perlindungan Hukum Terhadap Isteri Sebagai Korban Kekerasan Dalam Rumah Tangga," *Jurnal Yuridis*, Vol. 6, No. 2 (Desember, 2019), 85.

<sup>16</sup> Setyaningrum and Arifin, "Analisis Upaya Perlindungan Dan Pemulihan Terhadap Korban Kekerasan Dalam Rumah Tangga (KDRT) Khususnya Anak-Anak dan Perempuan, 15.

<sup>17</sup> Nurhadi dan Rizizhco Ardianto Murti, "Hak Azazi Manusia Anak dalam Perspektif Hukum Islam", *Jurnal Mimbar Yurititia*, Vol. 2, No. 1, (Juni, 2018), 22.

The state has several important obligations in addressing domestic violence. First, in terms of prevention, the government must build an effective legal system to sanction perpetrators of domestic violence, organize socialization programs for the community, and provide training to authorities and social workers. Second, for the protection aspect, the state is responsible for providing a reporting system that is easily accessible to the community, safe shelters, and various forms of assistance for victims. Third, when a case of domestic violence occurs, the state is obliged to conduct a thorough investigation, process the perpetrator legally, and ensure the victim obtains appropriate justice.

The state's responsibility also includes a comprehensive victim recovery process. This includes various services such as physical and mental recovery assistance, counseling guidance, legal assistance, and programs to help victims return to society. In its implementation, the state needs to apply a comprehensive approach and prioritize the interests of children. This means that every policy and program must consider children's vulnerability, the impact of trauma, and their developmental needs. In addition, it is important to involve children in the process of developing and evaluating protection programs so that efforts can be effective and sustainable.<sup>18</sup>

With Law No. 23/2004 on the Elimination of Domestic Violence, all domestic violence cases will be resolved by law. This is a positive legal breakthrough in the Indonesian constitution, as it brings private matters into the public domain. All types of domestic violence that occurred before the existence of Law No. 23/2004 on the Elimination of Domestic Violence were enforced using the criminal provisions in the Criminal Code. The government or state is responsible for preventing and overcoming domestic violence through Law No. 23/2004 on the Elimination of Domestic Violence. The countermeasures provided protect victims from acts of violence and protect both the defendant, the sanction, and the defense. Law enforcement and victim recovery efforts are also needed to protect victims of violence.<sup>19</sup>

Chapter VIII, specifically Articles 44 to 50 of Law No. 23/2004 on the Elimination of Domestic Violence, regulates the penalties given to perpetrators. The penalties generally consist of imprisonment and fines as the main sanctions. However, the size of imprisonment and fines differ depending on the type of violence committed and the impact experienced by the victim. Law No. 23/2004 on the Elimination of Domestic Violence also stipulates additional penalties if deemed necessary by the judge. Although the passing of this law has increased public

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<sup>18</sup> Imelda Aprilia Putri dan Asep Suherman, "Faktor-Faktor Penyebab Anak Menjadi Korban Kekerasan dalam Rumah Tangga dan Tanggung Jawab Negara", *Jurnal Kajian Hukum dan Kebijakan Publik*, Vol. 2, No. 1, (2024), 176.

<sup>19</sup> Setyaningrum and Arifin, "Analisis Upaya Perlindungan Dan Pemulihan Terhadap Korban Kekerasan Dalam Rumah Tangga (KDRT) Khususnya Anak-Anak Dan Perempuan", 14.

awareness to report domestic violence, it does not guarantee that domestic violence can be eliminated.<sup>20</sup>

The elimination of domestic violence is a form of guarantee provided by the government or state to prevent and overcome domestic violence. In addition to making prevention efforts, the government also takes firm action against those who commit criminal acts of domestic violence. In addition, law enforcement and recovery efforts for victims are needed to protect victims from potential violence.

### **Efforts to Protect Children as Victims of Domestic Violence**

Children can usually record family violence through their five senses, meaning that children indirectly witness and become witnesses to violence committed in their family.<sup>21</sup> Victimized children can experience developmental problems, especially mental problems that have a long-term impact or can even last a lifetime. Children will have a negative mindset about relationships or violence making it difficult to establish relationships with others and ongoing mental problems.

Crimes that come to the public's attention are often committed by those closest to the child. Therefore, child protection in Indonesia is considered inadequate. The state, government, community and parents are considered responsible for protecting children. Although the regulations governing child protection are generally quite complete, there are still many children in the community who need legal protection. All parties are responsible for protecting children considering that they are the next generation of the nation who are responsible for creating the ideals of the nation. Therefore, children must receive adequate guidance and protection to be able to grow and develop properly.<sup>22</sup>

The government can take important steps by enacting regulations aimed at protecting children. These regulations include the protection of their rights as citizens and other civil rights, while ensuring their safety from violence and discriminatory treatment.<sup>23</sup> In Law No. 35/2014 on the Amendment to Law No. 23/2002 on Child Protection, child protection is based on the basic principles found in the Convention on the Rights of the Child as described in Article 2 and Article 3.

Based on the explanation above, the perpetrator can face criminal sanctions as stipulated in Article 80 which states that every person who violates the provisions of Article 76C shall be punished with imprisonment of 3 years and 6 months and/or a maximum fine of Rp. 72,000,000. If it results in serious injury, the

<sup>20</sup> Niken Wahyuning Retno Mumpuni and Silvia Diah Puspitaningrum, "Pencegahan Permasalahan Kekerasan Dalam Rumah Tangga (KDRT) Di Dusun Sembur Desa Tirtomartani," *Jurnal Pengabdian Masyarakat*, Vol. 5, No. 2 (2022), 99.

<sup>21</sup> Ifa Nurfaizah, "Dampak Kekerasan Dalam Rumah Tangga (KDRT) Terhadap Kesehatan Mental Anak," *Gunung Djati Conference Series*, Vol. 19 (Februari, 2023), 102.

<sup>22</sup> Agung Budi Santoso, "Kekerasan Dalam Rumah Tangga (KDRT) Terhadap Perempuan : Perspektif Pekerjaan Sosial," *Jurnal Pengembangan Masyarakat Islam*, Vol. 10, No. 1 (2019), 49.

<sup>23</sup> Harista Asbar, "Penerapan Sanksi Pidana Anak Terhadap Asas *Ultimum Remedium* dalam Sistem Peradilan Pidana Anak di Gorontalo," *Jurnal Mimbar Yustitia*, Vol. 5, No. 1 (Juni, 2021), 2.

perpetrator can be sentenced to imprisonment for a maximum of 5 years and / or a maximum fine of Rp. 100,000,000.00. If it results in death, the perpetrator can be sentenced to imprisonment for a maximum of 15 years and/or a maximum fine of Rp. 3,000,000,000.00. If all of these provisions are carried out by their own parents, the penalty is 1/3 of the provisions.<sup>24</sup>

Article 20 of Law No. 23/2002 on Child Protection states that the state, government, community, family and parents are responsible for protecting children. Article 21 and Article 25 stipulate additional responsibilities related to child protection.<sup>25</sup> The contents of Article 20 as set out in Articles 21-24.

1. Provide support and facilities for the implementation of child protection. Respect and guarantee the human rights of every child regardless of religion, ethnicity, race, class, gender, ethnicity, culture, language, legal status, birth order, physical or mental condition.
2. Ensure that children can exercise and express their rights in accordance with their level of intelligence and age.
3. Ensure the protection, maintenance and welfare of every child in accordance with his or her age.<sup>26</sup>

In addition, Law No. 11/2012 on the Juvenile Justice System regulates the rights of children in conflict with the law and children as victims. Everyone involved in the problem should try to keep the child from experiencing trauma or fear. The life of a child who still needs to grow and develop must be protected so that they can live safely and prosperously in the social environment.

Although Law No. 35/2014 on the Amendment to Law No. 23/2002 and Law No. 11/2012 on the Juvenile Justice System have created a strong legal foundation for the protection of child victims of domestic violence, there are still some difficulties in implementing them. To properly protect children's rights, cooperation between various government agencies, civil society and government organizations is essential. In addition, socialization of children's rights and the complaint system must be improved so that parents and communities can better understand what to do when facing domestic violence cases.

Children who witness domestic violence or are abused are at risk of repeating the cycle of violence as adults as both perpetrators and victims of domestic violence. Children who are victims of physical, emotional or sexual abuse are also at risk of developing health problems as adults, including mental health

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<sup>24</sup> Auliya Hamida and Joko Setiyono, "Analisis Kritis Perlindungan Terhadap Anak Korban Kekerasan Dalam Rumah Tangga: Kajian Perbandingan Hukum," *Jurnal Pembangunan Hukum Indonesia*, Vol. 4, No. 1 (2022), 10.

<sup>25</sup> Andreas Eka Prasetya and Mariduk Leonardo Artonang, "Penegakan Hukum Terhadap Anak Yang Menjadi Korban Kekerasan Dalam Rumah Tangga Berdasarkan Undang-Undang No. 35 Tahun 2014 Tentang Perubahan Atas Undang-Undang No. 23 Tahun 2002 Tentang Perlindungan Anak (Studi Kasus : Putusan No. 322/Pid.Sus/2014/PN.Jkt.)," *Jurnal Ilmiah Ilmu Hukum*, Vol. 18, No. 2 (Oktober, 2020), 111.

<sup>26</sup> Restia, "Perlindungan Hukum Bagi Anak Sebagai Korban Kekerasan Dalam Rumah Tangga", 28.

issues such as depression and anxiety. Children who have successfully recovered from their trauma may not be able to forget what they have experienced or seen. However, as they mature, they can learn healthy ways to deal with their past emotions and memories. The sooner a child gets help as a victim of domestic violence, the more likely they are to become an adult with better mental health and physical health.<sup>27</sup>

Mala received legal protection in the form of psychological rehabilitation services handled by professionals. In the process, Mala followed the various stages of rehabilitation regularly, which resulted in a rapid recovery of her mental state characterized by reduced symptoms of depression and anxiety, as well as an increased ability to express emotions. Although she still faces some difficulties, Mala continues to receive intensive assistance through ongoing personal counseling sessions. The success of Mala's rehabilitation program is inseparable from the accuracy in identifying symptoms according to her age stage of development. In addition, the constant support from the surrounding environment contributed significantly to her recovery process.

## VI. CONCLUSION

A major problem that can affect children's physical and emotional development is the involvement of children as victims of domestic violence. This is due to the helplessness of parents in dealing with problems so that they often take their emotions out on their children. The elimination of domestic violence should be a top priority to protect children. The government or state provides guarantees in tackling violence that occurs in the household with the passing of Law No. 23/2004 on the Elimination of Domestic Violence. The existence of this law has increased public awareness to report domestic violence, but it cannot guarantee that domestic violence will disappear.

Child victimization can have long-term and disruptive effects on their mental and developmental well-being. Victimized children are often unable to verbalize what they experienced or saw during the violence, although they can successfully recover from the trauma. Child protection has not yet reached an optimal level. Therefore, children's rights must be protected and efforts to prevent domestic violence against children must be coordinated in a sustainable manner and ensure that the life of a child who still needs to develop is safe and prosperous.

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<sup>27</sup> Aghnis Fauziah, "Menyaksikan KDRT, Apa Efeknya Bagi Anak?," DP3AK Jatim, 2021.

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