

Implementation of Legal Protection for Victims of Domestic Violence in the Decision of the Probolinggo Religious Court Number 55/Pdt.G/2024/PA.Prob

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Abstract

This study discusses the implementation of legal protection for victims of Domestic Violence (KDRT) within the framework of Satjipto Rahardjo's Progressive Law Theory, through a case study of Decision No. 55/Pdt.G/2024/PA.Prob of the Religious Court of Probolinggo. The focus of this research is to examine how the judges applied the principle of substantive justice by determining retroactive child support payments as a form of legal protection for victims of domestic neglect. This research employs a normative juridical method with a case approach, analyzed qualitatively through the study of statutory regulations, legal doctrines, and court decisions. The findings show that the judge implemented repressive legal protection by obliging the father to pay retroactive child support for fourteen months, amounting to Rp18,000,000.00. This decision demonstrates a judicial stance favoring children and mothers as victims of neglect, while also reflecting the realization of substantive justice. Nevertheless, the protection provided is not yet comprehensive, as it does not cover preventive aspects such as family counseling, post-judgment protection, or rehabilitation for the perpetrator. Within the framework of Progressive Law, law should not merely focus on punishment or formal compliance, but should also serve as an instrument of restoration and human emancipation from social suffering. Therefore, there is a need for integration between preventive and repressive protection, as well as synergy among legal, social, and psychological institutions, to ensure that legal protection for victims of domestic violence within the Religious Courts becomes more just and sustainable.

Keywords: Domestic Violence, Legal Protection, Progressive Law, Religious Court.



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INTRODUCTION

Domestic Violence (KDRT) remains a persistent social issue that continues to receive serious attention in Indonesia. Although the state has established legal protection through Law Number 23 of 2004 concerning the Elimination of Domestic Violence, cases of domestic violence remain high and occur in various forms, including physical, psychological, sexual violence, as well as economic neglect (Aprita, 2022). The 2024 Annual Report (Catahu) of Komnas Perempuan notes that throughout 2023 there were 289,111 cases of gender-based violence against women. This figure increased from the previous year and indicates that the personal sphere particularly Wife Abuse (KTI) still dominates, with 674 reported cases. These findings demonstrate that the mere existence of legislation is not sufficient to reduce domestic violence in the household sphere.

In legal practice, jurisprudence plays an important role as a source of law that clarifies the interpretation and application of statutory provisions in real cases. Court decisions on domestic violence cases have formed precedents that serve as references for judges in handling

similar cases in the future (Fitriyani, 2021). However, several studies show that although judges refer to the Domestic Violence Law, substantive injustices continue to be experienced by victims, particularly women. This indicates that court decisions are not always sensitive to gender dimensions or to the comprehensive needs of victim recovery.

This situation demonstrates that legal protection for domestic violence victims has not yet functioned optimally. The protection provided tends to be repressive, while the preventive, curative, and rehabilitative aspects have not received adequate attention. As a result, the restoration of victims' rights is not fully achieved. In this context, the study of domestic violence jurisprudence becomes significant to assess the extent to which the courts implement principles of substantive justice, as emphasized by progressive legal theory, which positions law as a means of protection and liberation rather than merely a rigid normative instrument (Abdurrachman, 2010).

Previous studies reveal several serious obstacles in the implementation of legal protection for victims. Fitriyani (2021b) found that many judicial decisions do not sufficiently consider gender perspectives, making substantive justice difficult to achieve. Meanwhile, Bernad Arif Sipahutar (2022) shows that weak legal protection in practice is caused by economic factors, patriarchal cultural norms, and the limited understanding victims have of their rights. Other findings from Undang Abdul Mutolib et al. (2023) indicate that law enforcement against perpetrators of domestic violence is often hindered by strong patriarchal values and the lack of deterrent effects from criminal sanctions.

These various findings reveal a gap between the ideal legal norms and their implementation at the judicial level. Until now, no study has specifically analyzed domestic violence jurisprudence within the religious court system using Satjipto Rahardjo's progressive legal theory. Therefore, this research aims to fill this gap by examining how legal protection for victims of domestic violence and children affected by economic neglect is applied in the Decision of the Probolinggo Religious Court Number 55/Pdt.G/2024/PA.Prob, and how the judges' considerations reflect or fail to reflect principles of substantive justice.

Based on the aforementioned background, this study focuses its analysis on three interrelated key issues. First, Dynamics of Domestic Violence and the Legal Foundations of Victim Protection, which explores how domestic violence occurs within socio-legal contexts and how existing legal frameworks function in providing protection to victims. Second, The Role of Jurisprudence in Strengthening Victim Protection: Analysis of the Probolinggo Religious Court Decision No. 55/Pdt.G/2024/PA.Prob, which analyzes how jurisprudence particularly the Probolinggo Religious Court decision contributes to strengthening legal protection and developing justice-oriented precedent. Third, Legal Protection Analysis Based on Satjipto Rahardjo's Theory: Realizing Substantive Justice for Victims of Domestic Violence, which examines the extent to which judicial considerations in this case align with principles of progressive legal theory and are capable of achieving substantive justice for victims. Through this analysis, the study is expected to provide a deeper understanding of the relationship between legal norms, jurisprudence, and progressive legal theory in the protection of domestic violence victims.

RESEARCH METHODS

This study employs a library research method, which focuses on collecting data from various literature sources to construct a comprehensive theoretical foundation and legal analysis. The approach used is a normative juridical approach, which examines the law based on norms, principles, and provisions contained in legislation as well as the opinions of legal scholars. All data utilized in this research are derived from secondary sources, including statutes, scholarly journals, legal textbooks, and court decisions, such as the Decision of the Religious Court of Probolinggo Number 55/Pdt.G/2024/PA.Prob. The collected data are then qualitatively analyzed using a descriptive-analytical method, which involves describing, outlining, and explaining legal issues based on relevant theories and applicable regulations. This method was chosen to ensure that the discussion regarding the implementation of legal protection for victims of domestic violence can be examined thoroughly and systematically in accordance with the approaches recommended in legal literature (Hibbett, 2024).

RESULTS AND DISCUSSION

Dynamics of Domestic Violence and the Legal Foundations of Victim Protection

Domestic Violence (KDRT) as defined in Article 1(1) of Law No. 23 of 2004 is any act against an individual particularly women that results in physical, sexual, psychological suffering, and/or household neglect, including threats, coercion, or unlawful deprivation of liberty within the household sphere (Mutolib et al., 2023). Domestic violence constitutes a serious violation of human rights and a manifestation of gender-based discrimination that undermines human dignity. Instead of functioning as a space of protection and emotional security, the home frequently becomes a site of recurring violence (Arrasyid et al., 2025). WHO data from 2018 indicates that one in three women worldwide has experienced physical or sexual violence from an intimate partner, while more than 275 million children have witnessed domestic violence (Ghoul & Benferhat, 2022). These facts underscore that domestic violence is not merely a private issue, but a structural problem rooted in social, cultural, and legal inequalities.

The forms of domestic violence under Law No. 23 of 2004 include physical, psychological, sexual violence, and household neglect. Physical violence under Article 6 comprises actions causing pain or injury such as hitting, kicking, or choking, with 2,081 reported cases in 2023 (Arif Sipahutar, 2022). Psychological violence regulated under Article 7 involves actions such as humiliation, intimidation, and threats that erode self-confidence and induce helplessness, becoming the most dominant form with 3,498 cases (Fourmanov, 2020). Sexual violence in the household, as regulated in Article 8, accounted for 2,078 cases (Widiani et al., 2022), while household neglect including economic abuse reached 762 cases. These variations reveal that domestic violence manifests not only in physical harm but also through emotional, economic, and sexual abuse that has long-term impacts on victims' mental health and socioeconomic stability. The distribution of cases also reflects the deep-rooted power imbalance within households, where perpetrators utilize different forms of violence to exert control over victims (Allanova, 2023).

The underlying causes of domestic violence are layered and complex, beginning with patriarchal culture that positions husbands as dominant decision-makers and perpetuates women's vulnerability (Mandala, 2019). Unequal power relations create social legitimacy for

coercive and controlling behavior. Economic dependency further increases women's vulnerability, particularly in households where cultural expectations reinforce the notion that wives must rely financially on their husbands. Violence is also frequently used as a conflict resolution tool when expectations fail to match reality. Competition within the household related to education, employment, or economic control exacerbates tensions and heightens the risk of violence. Psychological factors such as frustration and inability to manage stress also play a significant role. Moreover, women often have limited opportunities to disclose abuse during legal proceedings. These intertwined factors demonstrate that domestic violence is not solely an individual problem but a socio-structural phenomenon requiring comprehensive interventions spanning legal, cultural, and economic domains.

Legally, subjects of domestic violence include husbands, wives, children, other co-residing relatives, and household workers, as stipulated in Article 2 of Law No. 23 of 2004. The statute provides criminal sanctions for perpetrators of physical, psychological, sexual violence, and neglect, with penalties reaching up to 15 years' imprisonment or fines up to Rp300 million depending on the gravity of the act (Arrasyid et al., 2024). These provisions reflect the state's recognition that domestic violence constitutes a public crime warranting formal legal intervention. Nevertheless, the effectiveness of these sanctions depends largely on the capacity of law enforcement to identify, substantiate, and handle cases with a victim-sensitive approach.

Victim protection mechanisms are regulated under Articles 10–38 of the Domestic Violence Law, granting victims the right to receive protection from family, police, prosecutors, courts, lawyers, and social institutions. Police are required to request court-issued protection orders within 24 hours of providing initial protection (Laurika, 2016). Protective orders may include prohibitions against committing violence, requiring perpetrators to leave the home, or establishing safe-distance parameters for victims. Although the legal framework is comprehensive, its implementation often faces challenges, including slow response by law enforcement, insufficient availability of safe houses, and limited funding for survivor support services. These challenges demonstrate a gap between normative protection and practical enforcement (Hadi, 2022).

Law enforcement efforts continue to face intertwined obstacles. Cultural barriers—particularly the belief that domestic violence is a private family matter discourage victims from reporting abuse. Economic dependency, combined with psychological trauma and societal stigma such as victim-blaming, further traps victims within cycles of violence (Ramadhon & Gorda, 2020). Legal challenges arise due to evidentiary difficulties, as incidents typically occur in private settings with no witnesses, resulting in lengthy and complex legal procedures that are often discouraging for victims. These compounded obstacles illustrate that combating domestic violence requires multidimensional strategies that extend beyond criminal sanctions and incorporate structural, social, and economic reforms (Pisillo Mazzeschi, 2021).

Within this multidimensional framework, support institutions play a critical role in providing comprehensive victim protection. Article 22 of the Domestic Violence Law mandates social institutions to deliver integrated services, including trauma counseling, legal assistance, healthcare services, safe-house accommodation, and economic empowerment through skills training and financial support (Yefremova & Tereshchuk, 2022). These institutions do not

merely assist victims during legal processes but also promote psychological recovery and economic independence, enabling victims to permanently exit cycles of abuse. The critical role of support institutions shows that the effectiveness of domestic violence handling relies heavily on synergy between legal actors, support services, and community networks. Without psychological healing and economic resilience, legal protection alone cannot ensure sustainable victim recovery.

The Role of Jurisprudence in Strengthening Victim Protection: Analysis of the Probolinggo Religious Court Decision No. 55/Pdt.G/2024/PA.Prob

Jurisprudence, derived from the Latin words “*yuris*” (law) and “*prudencia*” (knowledge), refers to court decisions that have obtained permanent legal force and are subsequently used as a guiding reference for resolving similar cases. In Indonesia’s civil law system, jurisprudence is not a strictly binding legal source, but it possesses persuasive authority that significantly influences judicial practice (Simanjuntak, 2019). Its persuasive nature allows it to function as a complementary source of law, especially when statutory provisions are limited or require contextual interpretation.

In domestic violence (KDRT) cases, jurisprudence plays an essential role in shaping the development and application of legal norms. Through binding precedents, courts provide interpretive guidance on the implementation of the Domestic Violence Eradication Law (UU PKDRT), ensuring that legal provisions are applied effectively in concrete situations. Jurisprudence also fills normative gaps when statutory regulations do not sufficiently address specific case complexities, thereby offering judges a stronger legal basis for their decisions. Moreover, by serving as a consistent reference across similar cases, jurisprudence enhances certainty and uniformity in judicial rulings, ultimately promoting fairness and predictability in the legal system (Ramadhon & Gorda, 2020). This consistency also helps establish evidentiary standards and judicial reasoning patterns that reinforce legal protection for victims. Importantly, jurisprudence ensures that judicial decisions prioritize not only punishment for perpetrators but also restoration, safety, and justice for victims of domestic violence.

The importance of jurisprudence can be observed in the Probolinggo Religious Court Decision No. 55/Pdt.G/2024/PA.Prob, which demonstrates how judges apply substantive justice and legal protection within a divorce proceeding arising from prolonged household conflict. In this case, the husband filed for divorce (*cerai talak*) on the grounds of persistent disputes, more than one year of living separately, lack of communication, and the absence of marital obligations being carried out. After examining the case, the panel of judges concluded that the marriage was no longer sustainable because the spiritual and physical bonds, which constitute the foundation of marital objectives, were no longer fulfilled. The court emphasized that a marriage that no longer embodies *sakinah*, *mawaddah*, and *rahmah* should not be forced to continue. This judicial reasoning aligns with the fiqh maxim *dar’ul mafasid muqaddamun ‘ala jalbil mashalih* (preventing harm takes precedence over obtaining benefit) (Sipahutar, 2022).

A notable aspect of this case is the respondent wife’s reconventional claim demanding unpaid child support for three children, which the husband had neglected since January 2023. The court not only granted the divorce petition but also partially granted the reconventional claim by ordering the husband to pay Rp 18,000,000 in unpaid support. In determining the

appropriate amount, the judge applied a proportional family economic formula, taking into consideration the husband's limited income of only Rp 100,000 per day. This approach reflects a progressive judicial stance, emphasizing that divorce decisions must not solely terminate marital status but must also strengthen social justice and child protection. The ruling illustrates how jurisprudence, through concrete judicial reasoning, upholds children's welfare and ensures that economic responsibilities remain enforceable despite marital dissolution.

Legal Protection Analysis Based on Satjipto Rahardjo's Theory: Realizing Substantive Justice for Victims of Domestic Violence

Legal protection for victims of domestic violence (KDRT) is a fundamental element in realizing substantive justice, as emphasized in Satjipto Rahardjo's progressive law theory. According to Rahardjo, the law is created not to serve rigid legal texts, but to protect human beings and their inherent dignity (Hadi, 2022). In the context of domestic violence, the law must not appear merely as a device that operates after a violation has occurred; rather, it should be capable of providing comprehensive protection both before and after violence takes place. This approach places human beings as the core essence of the law, ensuring that every legal mechanism is directed toward delivering safety, justice, and recovery for victims.

Within this framework, preventive legal protection plays a crucial role in preventing the occurrence of violence. Law No. 23 of 2004 on the Elimination of Domestic Violence explicitly mandates the state to provide education, socialization, training, and protection orders that enable victims to obtain safety even before violence escalates. Provisions under Articles 28–38 of the KDRT Law regarding protection orders embody the spirit of progressive law, which urges the state to be proactive rather than reactive. However, the case reflected in the decision of the Probolinggo Religious Court demonstrates that this preventive function has not operated effectively, as legal intervention only occurred after the family conflict had reached its peak. This condition affirms Rahardjo's critique that the law often arrives too late to offer meaningful protection (Khotim, 2025).

Beyond prevention, repressive legal protection becomes essential in restoring the rights of victims after violence has occurred. In Decision Number 55/Pdt.G/2024/PA.Prob of the Probolinggo Religious Court, the judge provided repressive protection by ordering the husband to pay child support arrears for 14 months totaling Rp18,000,000.00 to the wife as the children's caregiver. This approach does not merely resolve the dispute but also guarantees the restoration of children's economic rights as indirect victims of domestic conflict (Jaftoran & Alputila, 2019). It exemplifies a progressive legal character that prioritizes victim recovery, consistent with Rahardjo's assertion that the law must "humanize humans" through substantive justice (Fadah et al., 2025). Nonetheless, this repressive protection remains limited. The judge did not include non-material recovery efforts such as psychological compensation or post-decision protection orders. Furthermore, no counseling or rehabilitation program was mandated for the husband to prevent repeated negligence and foster parental responsibility. These shortcomings indicate that the protection provided is still partial and has not fully adopted a holistic victim-recovery orientation.

From the perspective of proportionality, the court's decision demonstrates consideration of both the father's economic capacity and the children's needs. The judge assessed the father's daily income of Rp100,000.00 and determined that the Rp18,000,000.00 arrears were

proportionally reasonable under Article 41(b) of the Marriage Law and Article 156(d) of the Compilation of Islamic Law. This reflects the progressive legal spirit that prioritizes not only normative legality but also factual conditions of the parties. However, substantively, the amount remains insufficient to support three children over fourteen months, suggesting that economic protection for the children still falls short of addressing their real needs. Thus, substantive proportionality must be strengthened to better reflect humane and sustainable justice.

Further analysis shows that the decision primarily illustrates repressive protection, while preventive measures are not adequately incorporated. The ruling does not include directives for the husband to undergo family counseling, financial education, or moral development programs, as encouraged in progressive legal approaches (Afifah, 2018). Yet, integrating preventive and repressive protection is crucial so that the law not only responds to violations but also cultivates social responsibility within the family. In Rahardjo's view, ideal law functions as an instrument of social engineering that cultivates moral awareness within society. Thus, religious courts should not confine themselves to formal dispute resolution but also function as agents of social protection ensuring that victims' psychological, social, and economic conditions are restored sustainably.

In a broader context, the state bears a constitutional duty to ensure legal protection for children and women as mandated by Article 28B (2) and Article 28G (1) of the 1945 Constitution, as well as the Child Protection Law. Through this court decision, the state has fulfilled part of its judicial function in securing children's rights to financial support. However, the role of executive institutions such as social services or child protection agencies remains absent, particularly in providing psychological or social assistance. The lack of inter-institutional synergy results in protection that is predominantly legal-formal and fails to address victims' psychological and social needs. Referring to Satjipto Rahardjo's ideas, the state must not merely regulate but ensure that the law truly protects human beings from suffering and reinforces humanitarian values. Therefore, stronger institutional collaboration is required so that post-divorce legal protection becomes comprehensive, continuous, and substantively just.

CONCLUSION

Based on the findings of the analysis of the Decision of the Probolinggo Religious Court Number 55/Pdt.G/2024/PA.Prob, it can be concluded that the judge has made efforts to apply the principle of substantive justice through the determination of past child support for fourteen months amounting to Rp18,000,000.00. This decision is not merely an administrative settlement of a divorce petition but also represents a concrete form of repressive legal protection for victims of domestic neglect, particularly children and mothers as the most affected parties. The ruling demonstrates that Islamic law, as applied in the religious court system, can be practiced progressively prioritizing humanistic values rather than enforcing norms solely in a textual manner.

Nevertheless, the legal protection provided in this decision cannot yet be considered comprehensive. Preventive aspects such as counseling services, perpetrator rehabilitation, and post-decision protection mechanisms are not explicitly regulated, leaving the law functioning predominantly within a repressive framework. This condition shows that the social and psychological dimensions of victims have not been fully addressed, even though Satjipto

Rahardjo's theory of progressive law emphasizes that an effective legal system should not only punish perpetrators but also restore the dignity and well-being of victims.

In terms of proportionality, the amount of support determined by the judge reflects the perpetrator's economic capacity, yet it does not fully correspond to the real needs of the three children under his responsibility. This indicates that economic protection in domestic violence cases within the religious court system remains minimalistic and formalistic. Moreover, the lack of synergy between judicial institutions, executive agencies, and social services weakens efforts toward comprehensive victim protection. In line with the vision of progressive law, Islamic family law should evolve into an instrument that promotes social and psychological recovery for victims and ensures that substantive justice is genuinely realized in a more humane and equitable judicial practice.

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