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# Implementation of a Restraining Order on Domestic Violence Crimes

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## Abstract

This research examines the application of the Restraining Order mechanism to the crime of Domestic Violence. Restraining Orders can be the first step to provide protection to victims before further violence occurs, even though the Restraining Order mechanism does not literally <sup>30</sup> exist in Indonesia, there are protection orders for victims that can be given by the police or court as explained in Law Number 23 of <sup>31</sup> 2004 concerning the Elimination of Domestic Violence, although it has not been fully implemented properly. The research method used is a normative juridical type with a statute approach and a comparative approach supported by primary, secondary and tertiary legal materials. The results of this research <sup>26</sup> show that in Indonesia it does not use the Restraining Order mechanism and only relies on Law Number 23 of 2004 concerning the Elimination of Domestic Violence to be the <sup>12</sup> first protection for victims of domestic violence, but efforts must still be made to strengthen protection. <sup>19</sup> punish victims of domestic violence in Indonesia through revision of laws and other policies so that there are no more victims as a result of criminal acts of domestic violence

**Keywords:** Restraining Order; Domestic Violence; Violence

## 1. INTRODUCTION

Domestic violence cases that occurred in Indonesia are increasingly troubling, many victims of violence are reporting from all over the region regarding domestic violence crimes every day. Domestic violence is a form of discrimination as well as crime against human dignity, therefore, even a small number of acts committed <sup>8</sup> can be reported as criminal acts that can be processed by applicable laws.<sup>1</sup> As described in Article 1 figure 1 of Law No. 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT), domestic violence is any act against a <sup>7</sup> person that results in physical, sexual, psychological, and neglect of households including the threat of conduct, coercion, or unlawful deprivation of independence within the homesteads.<sup>2</sup>

Anyone can be a victim of Domestic Violence, victims of repeated injury such as domestic violence desperately need protection to be kept away from the perpetrators, one of which is with the Restraining Order mechanism.<sup>3</sup> In Common Law countries, they have a mechanism to provide the first protection against victims of violence, the Restraining Order. The Restraining Order is an order of the perpetrator of violence to distance himself from the victim within a certain distance and time.<sup>4</sup> There are four types of Restraining Orders used in

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<sup>1</sup> Qhori Annissa and others, 'ANALISIS YURIDIS TERHADAP SANKSI TINDAK PIDANA PERSPEKTIF TEORI KEMASYARAKATAN DAN HUKUM ISLAM', 3 (2024), pp. 29–38.

<sup>24</sup> Undang-Undang Republik Indonesia Nomor 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga, 'Presiden Republik Indonesia Peraturan Presiden Republik Indonesia', *Demographic Research*, 2004, pp. 4–7.

<sup>19</sup> Nilpa D. Shah and others, 'Factors Influencing the Use of Domestic Violence Restraining Orders in Los Angeles', *Violence Against Women*, 29.9 (2023), pp. 1604–22, doi:10.1177/10778012221120442.

<sup>16</sup> <sup>4</sup> Christopher T. Benitez, Dale E. McNiel, and Renée L. Binder, 'Do Protection Orders Protect?', *Journal of the American Academy of Psychiatry and the Law*, 38.3 (2010), pp. 376–85.

the United States: 1) Emergency Protective Order (EPO), 2) Temporary Restraining Order (TRO), 3) Permanent Restraining Order, and 4) Criminal Protective Order or Stay-Away.<sup>5</sup>

This study is inseparable from similar studies that have been carried out earlier. First, research on the Legal Protection on Women Victims of Domestic Violence.<sup>6</sup> The research result is found in the form of a suggestion to reform the PKDRT law in Indonesia so that it can provide counseling services, and guidance for domestic violence perpetrators and victims as applied in Malaysia. Second, research on Fulfillment of Rights of Domestic Violence Victims.<sup>7</sup> The research resulted in the fulfillment of the rights of the victims of domestic violence can be carried out in accordance with the mandate contained in the PKDRT law. Third, research on Domestic Violence against Women.<sup>8</sup> The result of the study showed that the perpetrator could not be punished if there were no reports from the victims and the law would be better implemented if there were clear boundaries of issues that fled against victims is not impossible with various forms of violence. Domestic violence that occurs against victims is not impossible to continue to occur with various forms of violence. The purpose of the Restraining Order mechanism itself is to limit and prevent the perpetrator from doing certain actions against the victim. In Indonesia, protection against domestic violence victims has not been effective, so the rights that should be obtained by the victims cannot be fulfilled.

The purpose of this writing is to supplement the shortcomings of previous studies that ignore construction thinking how important it is to apply the Restraining Order to Domestic Violence Crimes. In particular, this writing describes how the concept of implementing the Restraining Order in handling domestic violence cases and provides an explanation regarding the importance of forming implementing regulations related to the mechanism of implementing article 31 paragraph 1 letter a and article 50 letter a of the PKDRT Law. In addition, the purpose of this writing is also to examine further efforts to fulfill the rights to protect victims of domestic violence which have been stated in Article 31 Paragraph 1 letter a of the PKDRT Law

However, until now there has been no implementing regulation regarding the implementation mechanism of Article 31 paragraph (1) letter a and Article 50 letter a of the PKDRT Law. Domestic violence that occurs against women is not impossible to continue to occur with various forms of violence mentioned in the PKDRT Law such as physical violence, psychic violence, sexual violence, and also domestic neglect. Based on this background, the author will examine the importance of implementing the Restraining Order on Domestic Violence Crimes in Indonesia.

<sup>5</sup> Carolyn N. Ko, 'Civil Restraining Orders for Domestic Violence: The Unresolved Question of "Efficacy"', *Southern California Interdisciplinary Law Journal*, 11.1994 (2002), pp. 361–90.

<sup>6</sup> Evi Yanti, 'Study Komparatif: Perlindungan Hukum Pada Perempuan Korban Kekerasan Dalam Rumah Tangga Di Indonesia Dan Malaysia', *UJRLawReview*, 7.2 (2023), pp. 13–27.

<sup>7</sup> Dominggus Steven Djilarpoin and Sherly Adam, 'Pemenuhan Hak-Hak Korban Kekerasan Dalam Rumah Tangga (Studi Pada Polres Kepulauan Aru)', *SANISA: Jurnal Kreativitas Mahasiswa Hukum*, 1.1 (2021), pp. 14–23  
<[https://fhukum.unpatti.ac.id/jurnal/sanisa/article/view/513%0Ahttp://files/1785/Djilarpoin dan Adam - 2021 - Pemenuhan Hak-Hak Korban Kekerasan Dalam Rumah Tangga.pdf](https://fhukum.unpatti.ac.id/jurnal/sanisa/article/view/513%0Ahttp://files/1785/Djilarpoin%20dan%20Adam%20-%202021%20-%20Pemenuhan%20Hak-Hak%20Korban%20Kekerasan%20Dalam%20Rumah%20Tangga.pdf)>.

<sup>8</sup> Mahfud Mahfud and Rizanizarli Rizanizarli, 'Domestic Violence against Women in Indonesia: The Recent Domestic Violence Elimination Law Analysis', *Fiat Justitia: Jurnal Ilmu Hukum*, 15.4 (2021), pp. 385–98, doi:10.25041/fiatjustitia.v15no4.2276.

## 2. METHOD

The technique used in this writing is a normative legal study that uses statute approach and comparative approach. This type of normative research aims to analyze and know the mechanism of the Domestic Violence Crime Act in dealing with existing domestic violence cases.<sup>9</sup> This study is based on analysis of legal sources such as laws, government regulations, court rulings, and other legal documents related to Domestic Violence Crimes. This type of normative research provides legal analysis and understanding of the urgency of the regulation of the Restriction Warrant in domestic violence cases in Indonesia. Through a normative approach, this writing will identify challenges and weaknesses and provides recommendations that can be used for the prevention and management of domestic violence crimes in Indonesia.

## 3. RESULTS AND DISCUSSION

### 3.1 What about the setting of the Restraining Order in domestic violence crime?

The PKDRT Act has stipulated that domestic violence is any action against a person that results in physical, sexual, psychological and or domestic abuse including threats and coercion. The repeal of independence by law within the household sphere also includes forms of violence, especially domestic violence, which are human rights violations and forms of discrimination that must be abolished.<sup>10</sup>

Violence in domestic relations can involve various forms of crime and harmful behaviors such as physical violence, sexual abuse, and domestic neglect.<sup>11</sup> All forms of domestic violence have a serious impact, not only on victims but also on their immediate family or relatives. Anyone who is a victim of domestic violence must receive protection from the state and society to avoid violence or threats of violence, torture, and treatment that demeans human dignity. The Restraining Order mechanism is one of the important steps to become the first step in dealing with violence cases that occur in households.<sup>12</sup>

There is a term that can be a first step in providing protection before further violence occurs, namely the Restraining Order. The Restraining Order itself is an order that prohibits the perpetrator from doing anything for the purpose of protecting the victim of a violation, or anyone else mentioned in the order, from further acts that are harassment or will cause fear and violence. These orders are valid for a certain period of time or until further orders are issued.<sup>13</sup>

Laws with protective orders have allowed courts to instruct suspected violent offenders to keep a certain distance from someone, such as a home, workplace, or school, and not contact them. Articles 1 point 5 and 6 of the PKDRT Law state that temporary protection is a protection directly provided by the police and/or social institutions or other parties, before the court's order

<sup>9</sup> Peter Mahmud Marzuki, 'Materi Kuliah Tentang Penelitian Hukum', 2016, pp. 1–167.

<sup>10</sup> Rochmat Wahab, 'Kekerasan Dalam Rumah Tangga : Pada Dasarnya Setiap Keluarga Ingin', *Unisia*, 61.3 (2012), pp. 247–56.

<sup>11</sup> Maisah Maisah and Yenti SS, 'Dampak Psikologis Korban Kekerasan Dalam Rumah Tangga Di Kota Jambi', *ESENSIA: Jurnal Ilmu-Ilmu Ushuluddin*, 17.2 (2016), p. 265, doi:10.14421/esensia.v17i2.1292.

<sup>12</sup> Rosalia Dika Agustanti and Bambang Waluyo, 'Konsep Sistem Peradilan Pidana Khusus Perempuan Korban Kekerasan', *Masalah-Masalah Hukum*, 52.1 (2023), pp. 42–51, doi:10.14710/mmh.52.1.2023.42-51.

<sup>13</sup> Nora Almosaed, 'Violence against Women: A Cross-cultural Perspective', *Journal of Muslim Minority Affairs*, 24.1 (2004), pp. 67–88, doi:10.1080/1360200042000212124.

of protection is issued. The protective order in question <sup>11</sup> is a determination issued by the court to provide protection or a sense of security to the victim.

The standards of proof required to obtain a restraining order may vary, but are generally lower than those required in criminal trials.<sup>14</sup> In countries that adhere to the European Union's Common Law system, one of which is Finland has a mechanism for regulating the Restraining Order. The law on his restraining order regulates most protective orders and the result is not just a criminal order. The order can be obtained through procedures that are not necessarily related to his criminal charges. Victims, police, public prosecutors, and social workers can file orders under the law.<sup>15</sup>

Police are required to conduct a necessary or unnecessary investigation of the order, in case of an emergency police <sup>3</sup> may issue a temporary protective order.<sup>16</sup> And violation of the protective order is a felony. In some European Member State <sup>3</sup> there are many gaps in victim protection laws, such as the absence of protection in both pre-trial and post-trial criminal proceedings or because restriction orders are not available.

Furthermore, Bulgaria also has a legal system that allows courts to impose penalties restricting the free movement of perpetrators, mentioned in article 42a of the Bulgarian Criminal Code there are three acts of prohibition: 1) a ban on attending <sup>3</sup> the area, and a ban is allowed. location or specific place., 2) a ban on leaving one's home for more than 24 hours without the permission of the public prosecutor or probation officer., 3) p<sup>3</sup>hibition against leaving one's home at a certain hour, day or night. However, this prohibition intended as a way to punish the perpetrators, not to be used as a means of protection for victims.<sup>17</sup>

Domestic violence is still a serious habit that affects many families in people's lives. In the United States, an estimated one million women are physically abused by ex-partners, or unmarried couples but live together each year. Domestic violence results in more than four hundred and fifty hospital visits each year, and nearly half of all patients are killed by their spouses.<sup>18</sup>

The fact that the Restriction Orders serve to provide first protection by instructing the criminal not to do commit further violence. The term "Restriction Order" itself may vary from country to country; the types and procedures used by each country also differ depending on the provisions of the country <sup>21</sup> own laws. For example, in the State of California, a protective order is issued under Article 136.2(g), generally a protective order only survives until the case is

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<sup>13</sup> Kate Barnes, 'Domestic Violence Protective Orders Are Effective in Reducing Homicides, Study Finds', *News Article* (10 November 2023) <<https://news.umich.edu/domestic-violence-protective-orders-are-effective-in-reducing-homicides-study-finds/>>.

<sup>18</sup> Renee speyer Cordier Reinie, Donna Chung, Sarah Wilkes, 'The Effectiveness of Protection Orders in Reducing Recidivism in Domestic Violence: A Systematic Review and Meta-Analysis', 22.4 (2019) <<https://journals.sagepub.com/doi/10.1177/1524838019882361>>.

<sup>39</sup> Bambang Waluyo, 'Viktologi Perlindungan Korban Dan Saksi', *Sinar Grafika*, 2011, p. 1.

<sup>5</sup> Suzan Van der Aa, 'Protection Orders in the European Member States: Where Do We Stand and Where Do We Go from Here?', *European Journal on Criminal Policy and Research*, 18.2 (2012), pp. 183–204, doi:10.1007/s10610-011-9167-6.

<sup>20</sup> Mary Spooner, 'Does Eligibility for Protection Orders Prevent Repeat Abuse of Domestic Abuse Victims in Caribbean States?', *Journal of Family Violence*, 24.6 (2009), pp. 377–87, doi:10.1007/s10896-009-9238-3.

solved and the defendant is no longer under the prohibition of approaching the victim. But the judge has the power to change his order or terminate it at any time.<sup>19</sup>

There are six types of Restraining Orders used in the Common Law, the first being the 1) Emergency Protective Order (EPO). The EPO itself is a type of emergency restraining order proposed by the police if they think that victims of violence in domestic relations are in language and need to receive protection immediately and the EPO can be enforced for up to seven days; 2) Temporary restraining order (TRO), victims may apply for a longer period of protection using TROs that may be valid between 20-15 days; 3) Permanent Restraining Order, This permanent restraining order cannot actually be enforced permanently, usually up to a maximum of five years and after the expiration of the period the victim may reapply; 4) Criminal Protective Order or Stay-Away, such protective order may be filed when the victim has reported the case to the police. Then the court can establish a protective order for a period of time from the case to three years after the defendant has been found guilty; 5) No-Contact Order, this type of Restraining Order prohibits the perpetrator from making physical contact or communication with the victim in any form including via social media, text messages, and text messages. or telephone; 6) Residence Exclusion Order, this type of Restraining Order can authorize victims to admit perpetrators from the same residence, usually through assistance from law enforcement authorities.<sup>20</sup>

The detention warrant in Indonesia has not been comprehensively regulated as in some European Union countries that have had the above-mentioned diseases. The detention warrant by the Indonesian government is under further law regarding the implementation mechanism for the detention warrant to be carried out by the Indonesian government.

### 3.2 How do handle domestic violence cases with the Restraining Order mechanism?

The Restraining Order mechanism is not the only solution available for handling domestic violence cases. The Restraining Order mechanism is only at the forefront when violence in domestic relations victims need protection as soon as possible, the Restraining Order mechanism can be the first step in providing further protection to victims before the trial takes place so that violence does not occur further.

In 2023 precisely in Indonesia, there was a domestic violence case that led to a husband killing his wife. Before the victim was killed, the victim had reported her husband on charges of committing domestic violence against the victim, and the victim had also carried out a post-mortem related to the domestic violence report. A few months before the incident, the victim had indeed had an argument with the perpetrator and the victim made a complaint to the police station by attaching the visum evidence, However, the police admitted that they did not know the continuation of the victim's report because when the victim was asked to present the witness, the victim was unable to attend and it was known that the two returned to live together.

On September 7, 2023 at 22.00 WIB, the perpetrator with the initials (N) killed his wife at their rented house in Bekasi Regency. The police said the real motive was based on heartache and economic factors, Head of Criminal Investigation Unit of West Cikarang also said they

<sup>19</sup> Rosma Alimi and Nunung Nurwati, 'Faktor Penyebab Terjadinya Kekerasan Dalam Rumah Tangga Terhadap Perempuan', *Jurnal Penelitian Dan Pengabdian Kepada Masyarakat (JPPM)*, 2.2 (2021), p. 211, doi:10.24198/jppm.v2i2.34543.

<sup>20</sup> D. Kelly Weisberg, *Domestic Violence: Legal and Social Reality* (Wolters Kluwer Law & Business, 2012).

had been involved in an argument before the murder occurred and the perpetrator had surrendered himself to the police several hours after killing his wife, He turned himself in between his parents and for this, the perpetrator was threatened with life imprisonment.<sup>21</sup>

The Restraining Order had a lot of positive effects on the victims. Because in fact, the main purpose of the Restraining Order itself is to avoid further physical abuse, not to give punishment the perpetrators of violence. In the above case if when the victim has reported to the police and has attached strong evidence, the police should be able to immediately take action on the case and can provide direct protection before the court is issued a protective order before the case gets further away.

can be seen from the incident, the protection provided to victims of violence in domestic relations has not been fully implemented, because in fact, Articles 1 point 5 and 6 of the PKDRT Law it has been stated that victims of domestic violence can receive temporary protection that can be provided directly by the police prior to the establishment of a protective order to be issued from the court.

In the implementation of a protective order or detention mechanism that can be issued by the court, it often involves a two step process, first one usually involves the victim applying for a temporary restraining order or a Temporary Restraining Order (TRO).

The TRO itself is short-term in its restraining order, in his request the victim had to explain the actual condition so that the judge could consider the case well and give a temporary restraining order. The second step is to apply for a permanent detention order or commonly called Permanent Orders. As the name suggests, this permanent detention order has long-term detention and this permanent detention order is issued only after a trial where both the victim and the perpetrator are present to give their testimony. In general, trials can be held between 10 and 21 days after the TRO is issued.<sup>22</sup>

In countries that have a Restraining Order setting they also offer another types of detention orders, such as the Emergency Protection Order or Emergency Protective Order "EPO", the EPO itself can be obtained while the court is not in progress as at night as well as weekends. If the victim suffered serious injuries such as being battered, then the victim could show reasonable evidence to be trusted by the court clerk that he was in a dangerous situation in his household.<sup>23</sup>

These types are widely used in countries that run the Common Law system, which is also important to remember that the terminology and the type of the Restraining Order can vary between legal jurisdiction and their procedures. The effectiveness of the Restraining Order mechanism varies greatly depending on various factors, including the implementation of the law, the parties involved, and the support of the legal system. In many cases, the Restraining Order can help protect victims from violence or harassment, but there are also situations in which the system is not sufficient to prevent harmful acts occurring. In Indonesia, there is no

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<sup>21</sup> Abdurrobby Rahmadi, 'Cinta Nando Kepada Mega Berakhir Di Penjara', 2023 <<https://news.detik.com/x/detail/crimestory/20230915/Cinta-Nando-kepada-Mega-Berakhir-di-Penjara/>>.

<sup>22</sup> Henry J. Muller, Sarah L. Desmarais, and John M. Hamel, *Do Judicial Responses to Restraining Order Requests Discriminate against Male Victims of Domestic Violence?*, *Journal of Family Violence*, 2009, XXIV, doi:10.1007/s10896-009-9261-4.

<sup>23</sup> Muller, Desmarais, and Hamel, XXIV.

legal system created specifically as a "Restraining Order" but there are several legal instruments that can be used to protect victims of violence, harassment, or threats.<sup>24</sup>

Law Number 13 of 2006 on the Security of Witnesses and Victims can be one option to provide a form of protection to victims of violence, including a form of prohibition or prevention of direct or indirect contact with the perpetrator. The Code of Criminal Procedure Law also discusses the suspension or temporary prohibition of perpetrators not to approach victims or witnesses to maintain their security and protection. The absence of the Restraints Order mechanism in Indonesia can be caused by the first few factors, namely the Legal System Differences, the second, the Cultural and Social Context, the third, the Legal Development.

In addition, Article 50 of the PKDRT Law also regulates additional crimes for domestic violence perpetrators, Article 50 states that if in committing domestic violence the perpetrator has a marriage relationship or an equivalent relationship with marriage, then the judge may impose an additional penalty in the form of revocation of certain rights. The additional crime aims to provide deterrent effect to domestic violence perpetrators, and can also provide additional protection for victims. Additional protections referred to in this context are legal measures or measures taken from the legal framework to enhance protection against victims of domestic abuse.<sup>25</sup>

In cases of serious or repeated domestic violence the judge may order detention or arrest of the perpetrator to protect the victim from further harm. In addition, the judge can also issue a restraining order or a remote order to protect victims of domestic violence that can prevent the perpetrator from approaching or contacting the victim for a period of time.

Although the system of the Restraining Order does not exist in Indonesia, efforts must still be made to strengthen legal protection for victims of domestic violence in Indonesia through revisions of laws and other policies so that in the future there will be no more victims due to domestic violence a ladder.

#### 4. CONCLUSION

The Restraining Order mechanism is essential as a first step in providing legal protection for individuals who are victims of violence, harassment, or threats that threaten their safety and well-being. The purpose of using the Restraining Order mechanism is to protect victims, prevent further violence, set clear boundaries, legal support, and recognize victims' well-being. Serious effects may have on victims of violence or harassment if there is no Restraining Order mechanism, without Restraining Order victims of violence or harassment may not have sufficient legal protection, they may also have difficulty setting clear boundaries or obtaining protection from existing law enforcement. Without an official ban on approaching the victim, the perpetrator may feel more free to commit further violence or harassment and that would cause greater risk to the victim. The introduction of the Restraining Order mechanism can provide legal support for victims and protect their rights because legal support for victims of violence or harassment is a key element in efforts to provide protection, justice, and recovery

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<sup>24</sup> Harkristuti Harkrisnowo, 'Domestic Violence (Kekerasan Dalam Rumah Tangga) Dalam Perspektif Kriminologi Dan Yuridis', *Indonesian Journal of International Law*, 1.4 (2021), doi:10.17304/ijil.vol1.4.563.

<sup>25</sup> G P Mandala, 'Perlindungan Hukum Terhadap Korban Kekerasan Dalam Rumah Tangga Sebagai Implementasi Hak-Hak Korban', *Jurnal Analisis Hukum*, 2.23 (2019), pp. 45-54  
<<http://journal.undiknas.ac.id/index.php/JAH/article/view/2168>>.



for those affected by violence or harassment. Literally, the mechanism of the Restraining Order in Indonesia does not exist and has not yet been comprehensively regulated, but various efforts must still be made to strengthen legal protection against victims of domestic violence in Indonesia through revisions to other laws and policies so that in the future the community can be free from violence and safer for all individuals.

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