

CHAPTER IV

FINDING AND DISCUSSION

A. An Overview of Violence Against Women

1. Definition of Violence Against Women

Referring to Bahasa Indonesia dictionary, violence is meant as ¹:

1. Subject of a characteristic, hard character;
2. The conduct of a person or group of persons causing injury or death of another person or causing physical damage or other person's goods;
3. Coercion.

It can be interpreted that the word "violence" is generally understood as the disturbance activity related to physical attacks.² As defined by Sanford ³ that: "All types of illegal behaviour or either threatened or actual activities cause damage or destruction of property or in the injury or death of on individual"

In the Encyclopaedia of Crime and Justice, it is found that "Violence"⁴ is: "A general term referring to all types of behaviour, either threatened or actual, that result in or are intended to result in the damage or destruction of property or the injury or death of an individual."

¹Kamus Besar Bahasa Indonesia, 1998, p.425

²Mansour Fakih, 1997, *Perkosaan dan Kekerasan Perspektif Analisis Gender (Perempuan dalam Wacana Perkosaan)*, Yogyakarta, PKBI-DIY, p.6

³ Kandish Sanford, 1983, *Encyclopedia of Criminal Justice*, Collier Macmillan, p.1618

⁴ *Encyclopedia of Crime and Justice*, 1984, Vol.4, The Free Press, A Division of Macmillan Inc.

Based on the above explanation, it can be inferred that violence refers to the behaviour that is contrary to the law; it is not distinguished in its kind specifically in the form of threats alone; it is a real action that resulted in damage to property, physical, or cause death to a person.

The word violence has its equivalence *La Violencia* in Colombia, the *vendetta Barbaricana* in Sardinia, Italy, *La Vida vale nada* (life is worth nothing) in El Safador,⁵ Violence in English means violence, greatness, cruelty. Etymologically, the word violence is a combination of the word "vis" which means power or strength and "latus" derived from the word "ferre" which means to bring. Thus, violence is an act that brings force to coercion or pressure in the form of physical as well as non-physical. As stated by Elizabeth Kandel Englander as quoted by Saraswati, that:⁶

“In general, violence is aggressive behaviour with the intent to cause harm (physical or psychological). The word intent is central; physical or psychological harm that occurs by accident, in the absence of intent, is not violence.”

In the Encyclopedia of Feminist Theories, “violence”⁷ is interpreted as:

“Feminist has encompassed a much wider domain, including physical, sexual and psychological or emotional abuse committed against person, harmful cultural practices and in some contexts, damaging words and images.”

In contrast to the notion of violence expressed by Jerome Skolnick: “Violence is unambiguous term whose meaning it established through political process.”⁸ Violence

⁵ John Hagan, 1987, *Modern Criminology, Crime, Criminal Behavior and It's Control*, Singapore, McGraw Hillbook Com, p.181.

⁶ Rika Saraswati, 2006, *Perempuan dan Penyelesaian Kekerasan dalam Rumah Tangga*, Bandung, PT.Citra Aditya Bakti, p.13.

⁷ Encyclopedia of Feminist Theories, 2004, London, New York, Routledge, p.482.

⁸ *Ibid*

against women can be defined simply as any form of behaviour perpetrated against women that gives rise to psychological consequences of feelings of discomfort and even feeling of fear until the result of physical treatment.

Violence against women, more specifically, is often categorized as gender-based violence. This is because violence against women is often caused by gender imbalances due to unequal power relations. This can, among other things, be reflected in domestic violence more often done by people with more power to the weaker victims.

Gender-based violence is putting particular emphasis on the root causes be undertaken against the perpetrators and the victims are in a position where gender relations and the role of perpetrator and victim were controlled through violence.

Actual gender difference acts a problem as long as it does not give birth to gender inequality. However, the problem is that gender differences have resulted in injustice, both for men and especially for women.

Violence caused by gender bias is also called gender-related violence which has various types and forms of crime,⁹ such as:

1. Forms of rape against women, including rape in marriage. Rape occurs when a person is forced to obtain sexual services without the willingness of the person concerned. This disenchantment is often not disclosed due to various factors, such as shame, fear, and compulsion.
2. Beatings and physical assaults in domestic violence, including acts of violence in the form of child abuse.

⁹ Mansour Fakih, 1999, *Analisis Gender dan Transformasi Sosial*, Yogyakarta, Pustaka Pelajar, p.20.

3. Form of torture that leads to genital organs (genital mutilation).
4. Violence in the form of prostitution. Prostitution is a form of violence against women organized by economic mechanisms that disadvantage women. Every State and society always uses double standards against these sex workers. On the one hand, the government banned and arrested them, but on the other hand the State also withdrew taxes from them. In addition, people always look down on prostitutes as public garbage, whereas their activities are always crowded by people, especially men.
5. Violence in the form of pornography. Pornography includes nonphysical violence in the form of harassment against women because women's bodies are made an object for the benefit of a person.
6. Molestation in the form of holding or touching a certain part of the female body in various ways and opportunities without the willingness of the owner of the body. This type of violence often occurs in the workplace or in public places.
7. The most common crime against women in society is sexual harassment. Many people argue that sexual harassment is very relative because it is often a friendly endeavor, but in fact sexual harassment is not a friendly endeavor because it is unpleasant for women.

There are several causes that assume the occurrence of violence against women

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1. The perception of something in the minds of the perpetrators, often the underlying acts of violence, is not something that is actually faced. This is evidenced by the

¹⁰ Zaitunah Subhan, 2004, *Kekerasan Terhadap Perempuan*, Yogyakarta, PT. LKIS Pelangi Aksara, p.14-15

reality of the field which shows that the perpetrator has committed such acts of violence without a fundamental reason. The reason given by the perpetrator is almost always based solely on himself or on the reflection of his mind, even if not infrequently he denies that he has done evil and is not honorable. Moreover, if the perpetrator considers his actions cannot be categorized as a pervert or rape e.g. so when in front of the prosecutor he rejected the allegations that he had committed a rape.

2. The law governing violence against women is still gender biased. Often the law does not take sides with women who are victims of violence. The impartiality is not only related to the substance of law that is less concerned about the interests of women or the victim, even the absence of legal substance that governs the fate of victims of violence, which is generally experienced by women.

Saraswati through her research in Rifka Annisa Women's Crisis Center in Yogyakarta, found that the occurrence of domestic violence is due to gender and patriarchal factors, unequal power relations and role modeling (behavior of imitating results).¹¹ Gender and patriarchy causes unequal power relations because men are considered more important than women result in the position of husband which was considered to have power to regulate his household including his wife and children. This patriarchal culture influences the legal culture of society.

In article 38 on Vienna Convention 1993 there is an explanation to urge States to combat violence against women, namely:

“In Particular, the World Conference on Human Rights stresses the importance of working towards the elimination of violence against women in public and

¹¹ Rika Saraswati, 2006, Op.cit., p.20.

private life, the elimination of all forms of sexual harassment, exploitation and trafficking in women, the elimination of gender bias in the administration of justice and the eradication of any conflicts which may arise between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices and the declaration on violence against women and urges states to combat violence against women in accordance with its provisions. Violations of the Human Rights of women in situations of armed conflict are violations of the fundamental principles of International Human Rights and Humanitarian Law. All violations of this kind, in particular murder, systematic rape, sexual slavery, and forced pregnancy, require a particularly effective response”¹²

States have the obligation to prevent, protect against, and punish violence against women whether perpetrated by public or private actors. States have a responsibility to uphold standards of due diligence and take steps to fulfill their responsibility to protect individuals from human rights abuses. Yet such violence is often ignored and rarely punished. Too often no one is held accountable for these crimes.

2. Understanding Violence Based on Legislation

The definition of juridical violence can be seen in Article 89 of the Criminal Code, namely: to commit violence is to make people become unconscious or powerless (weak). The article does not explain how the violence is done. Nor does it explain how such forms of violence are, while the notion of "powerless or helplessness" is having no strength or power at all, so he/she cannot take the slightest resistance. However, in the articles of the criminal code of law violence is often associated with threats.¹³

¹² Vienna Declaration and Programme of Action, taken from www.ohchr.org/Documents/ProfessionalInterest/vienna.pdf, downloaded on May 9th, 2017, at 11:10 p.m.

¹³ Moerti Hadiati Soeroso, 2012, *Kekerasan dalam Rumah Tangga dalam Perspektif Yuridis-Viktimologis*, ISBN 978-979-007-350-0, Jakarta, Sinar Grafika, p.58

Such violent acts may be said to be maltreatment. Failure to be persecuted is that if the act involves a serious injury; the serious injury referred to any result of sickness or injury that does not give rise to hope of recovery or death, unable to keep on doing the job, losing one of the limbs, suffering paralysis, and disturbed thinking power for 4 weeks, or autumn / dead a woman's womb.¹⁴

In article 1 number 11 of Law number 21 of 2007 concerning the eradication of criminal acts of trafficking in person's violence is defined as: "Any unlawful acts, with or without the use of any means against the physical and psychic that pose a danger to the life, the body, or the deprivation of one's liberty." The provisions of this article narrate the violence extensively in all forms or means and to anyone without any limitations.

According to article 1 of the Declaration on the Elimination of Violence against Women the violence against women ¹⁵ is categorized into:

"Any action based on the act of sex which results in or may result in the physical or sexual misery or psychological suffering or suffering of any particular threat of force, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."

Concerning the limitations of violence against women as prescribed in article 1 of the Declaration, are not explicitly mentioned about domestic violence but at the end of the declaration there is a phrase that mentions "or in private life". Personal life is meant in the above sentence as the life in the household.

¹⁴ Rika Saraswati, Op.Cit. p.14

¹⁵ Niken Savitri, Op.Cit, p.47

The General Recommendation of the Women Convention No. 19 emphasizes the importance of abolishing gender-based violence by stating that: "gender-based violence is a form of discrimination which is a serious obstacle to women's ability to enjoy her rights and freedoms on equal rights with men."¹⁶

The recommendations also formally extend prohibitions or discrimination on the basis of gender and formulate acts of gender based violence as follows:

"Acts of violence directly addressed to women because they are female, or affect women disproportionately. This includes actions that result in physical, mental, and sexual harm or suffering, threats to perform such acts, coercion and other forms of deprivation of liberty."¹⁷

Since a form of protection against women as victims of violence after ratifying the convention on the elimination of all forms of discrimination against women through Law Number 7 of 1984, the government then established Law Number 23 of 2004 on abolition of domestic violence (PDKRT).

With regard to the types of violence, the Law on PKDRT is further expanded. Another type of violence committed against women is physical violence, such as psychological, economic, and sexual violence. They can be found in article 1 as follows:

"Any act against a person, especially a woman, resulting in physical, sexual, psychological, and / or neglect of suffering or suffering, including the threat of unlawful conduct, coercion, or deprivation of liberty in the sphere of the household."

¹⁶ General Recommendation of CEDAW Number 19, Year 1992

¹⁷ *Ibid.*

However, the scope of the legislation is only within the scope of domestic; that is, those who have a family relationship or are in the same domicile, so it cannot be applied to women victims in general who do not meet the category of domestic scope.

3. Women as Victim

Every woman who is a victim of a crime is in a weak position and often experiences a disappointing event. Because they are treated as the object. Even the experiences must be retold each time, for example when she reports to the Police or during the trial. The situation will get worse, if the public also look down on those who become victims of criminal acts. The situation is very disappointing, because the victim must always hold back and keep the feeling of shame. It is perceived as suffering.¹⁸

Before discussing the problem of victims of domestic violence (domestic violence), first the author discusses the problem of understanding the victim as the problem of victims is not really a new phenomenon, but it is often ignored.

The victim has a functional role in the occurrence of a crime. In fact, it can be argued that there could be no crime if there were no victims who were the principal participants of the perpetrator in the event of a crime. It can be said that where there is a crime there are certainly victims.

¹⁸ Shanty Dellyana, 1998, *Wanita dan Anak-Anak di Mata Hukum*, Liberty, Yogyakarta, p.112.

The word "victim" (victim) comes from the Latin *victim*.¹⁹ According to Stanciu, the victim (in the broad sense) is the one who suffers the consequences and injustice. Thus, there are two basic or attached traits of suffering and injustice. The incidence of casualties can not only be viewed as a result of illegal acts, as the law can actually cause casualties, such as casualties due to legal procedures.

In giving restrictions, Gosita argues that the meaning of the victim is: "Those who suffer bodily and spiritually as a result of the actions of others who seek the fulfilment of self-interest or others that are contrary to the human rights interests of the suffering party."²⁰ The word "They" here is meant individuals or groups both private and government.

From these limits, it can be seen that the victim is a person suffering from the consequences caused by the actions of other parties, whether the action is committed by humans, structures, organizations or institutions. With regard to the victims, Kindern, as quoted by Kusumah:

"One of the main difficulties encountered in formulating what" victim "means comes from the extension of the victimized approach to crime and deliberate forms. As a result, the question arises as to the extent of the understanding of the victim, can reasonably be applied to cases where there is no bodily harm, loss or damage to property or threat to a person must be sure that the victim actually suffered physical or psychological pain or that his / Certain forms of loss have been committed against the victim personally or not."²¹

¹⁹ Benjamin Mendelshon, *Victimology and Contemporary Society's Trends*, dalam Emilio C. Viano, (ed), 1976, *Victims and Society*, Washington D.C., Visage Press, Inc., p.9.

²⁰ Arif Gosita, 1993, *Masalah Korban Kejahatan*, Edisi Kedua, Akademika Pressindo, Jakarta, p.63.

²¹ Mulyana W. Kusumah, 1984, *Kriminologi dan Masalah Kejahatan*, Bandung, Amico, p.109

According to Sola, the victim is: “person who has injured mental or physical suffering, loss of property or death resulting from an actual or attempted criminal offense committed by another.”²²

International Law has also regulated the protection of victims. The UN Declaration in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985 states that:

“Victim means person who, individuals or collectively, have suffered harms, including physical or mental injury, emotional suffering, economic loss or substantial impairment of the fundamental rights, through acts or commissions that are in violation of criminal laws operative within member states, including those laws proscribing criminal abuse of power.” Through acts or omission that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights.²³ It should be noted that the notion of "harm" (harm) according to the above explanation, including physical or mental (emotional suffering), their substantial impairment of fundamental rights.²⁴

UUPKDRT defines the victim as a person who experienced violence and / or threats within the scope of the household. That means anyone can become a victim when someone becomes part of a family. The violent forms provided in this law are clearly explained in Article 5, namely physical, psychological, sexual and neglectful abuses, referred to abandonment of households as referred to in Article 9. It is to neglect the obligation to fulfil the necessities of life financially including causing dependence economically to a person within the scope of the household.

²² Ralph de Sola, 1998, *Crime Dictionary*, New York, Facts on File Publication, p.188

²³ Dikdik M. Arief Mansur dan Elisatris Gultom, 2007, *Urgensi Perlindungan Korban Kejahatan antara Norma dan Realita*, Jakarta, Raja Grafindo, p.48

²⁴ Barda Nawawi Arief, 1998, *Jurnal Hukum Pidana dan Kriminologi*, Bandung, PT. Citra Aditya Bakti, p.16

According to the Act of Trafficker and the Criminal Act of Trafficking in Persons (UUPTPO) the victim as mentioned in article 1 number 3 is “a person who suffers psychological, mental, physical, sexual, economic, and / or social suffering caused by the crime of trafficking in persons.” The suffering refers to something broader than UUPKDRT. UUPKDRT provides a lower and more alternative criminal penalty and a complaint offense.

Since the problem of the victim is a human problem, it is only natural that the people hold on to the right view of man and his existence. With a proper view of human beings, it is possible to behave and act appropriately in the face of human beings who participate in the occurrence / birth of victims and perpetrators of crime and determine their respective responsibilities.

The 7th United Nations Congress in Milan, Italy in 1985, has defined the victim in terms of the draft Declaration of Basic Principles of Justice distinguishing two categories of victim:

1. Victim of crime
2. Victim of abuse of power.²⁵

In this case who often become victims of violence is women and children, but the author focuses more on women as victims of domestic violence. Women are particularly vulnerable to crime victims, both within the private and public sphere. Violence is then interpreted as the crime due to gender inequality with men.

²⁵ United Nations General Assembly, available on <http://www.un.org/documents/ga/res/40/a40r034.htm>, accessed on July 7th, 2017, at 8:07 p.m.

Domestic violence is a violent category for women at much higher risk. Domestic Violence as set forth in Law Number 23 Year 2004 on the Elimination of Domestic Violence means every act against a person, especially a woman, resulting in misery or suffering physically, sexually, psychologically and / or neglecting the household including threats to commit acts, coercion, or deprivation of liberty unlawfully within the scope of the household.

There are many examples of cases of domestic violence against women occurred in Indonesia. Although many people are concerned with this social problem, but some also do not care, ignore, even not know at all. Domestic violence can be experienced by both men and women. Although the case is more on the women, but still both cause negative effects, especially for victims.

The following are examples of cases against women in Indonesia;

1. Case of rape of female students conducted by lecturers at Universitas Negeri Jakarta (UNJ).²⁶ The student was sexually assaulted by her lecturer with initials AR, the lecturer is lecturer at the Faculty of Social and Political Sciences. Incidents of violence by a student with the initials FN occurred on February 8th, 2015, the chronology of the case of the FN is AR ask the FN to come to his home to work on the financial report of the cooperative Faculty, when she arrived at AR's home, she did not work on the report but AR asked FN to do things that are not obscene.

²⁶Mahasiswa Korban Kekerasan Seksual Dosen, Mahasiswa UNJ Galang Solidaritas, available on <http://kupang.tribunnews.com/2015/06/26/mahasiswa-korban-kekerasan-seksual-dosen-mahasiswa-unj-galang-solidaritas>, accessed on August 9th, 2017, at 5:00 p.m.

After returning from AR's home, FN did not dare to tell the incident that has happened.

2. Cases of violence against the wife experienced by Siti Misrah, because her husband Rio Kenedy was jealous.²⁷ This violence occurred in 2016, initially Rio Kenedy saw his wife riding with a man. Because Rio is jealous of seeing her, he has a malicious intention to injure his wife by buying dangerous liquids in some stalls; after he bought the liquid then he look for his wife in public transportation and he dismissed the public transportation and then splashes the liquid. The violence caused physical injury and death. He was sentenced by the Law Number 23 of 2004.

The story of violence against women is inexhaustible and occurs in various countries. Not only in Indonesia, in India despite many protests, mass rapes are still a complicated issue, while in the Middle East, many women are victims of ISIS terrorist rape and abuse.²⁸ Every year, the United Nations announced data on issues related to women with figures alarming. Anti-violence campaign and the demands of gender equality continued to be spoken, but until now women are still experiencing violence and discrimination.

One of the causes of violence and lack of legal protection for women victims in Indonesia is probably due to the existence of a patriarchal cultural system in society, where the system of social institutions is based on a lame relation according to the weak-

²⁷Cemburu, Rio Kenedy Tega Guyur Istrinya Dengan Air Keras, available on <https://metro.sindonews.com/read/1161011/170/cemburu-rio-kenedy-tega-guyur-istrinya-pakai-air-keras-1481036618>, accessed on August 9th, 2017, at 5:15 p.m.

²⁸Kasus Kekerasan Terhadap Perempuan Masih Tinggi, available on <http://m.dw.com/id/kasus-kekerasan-terhadap-perempuan-masih-tinggi/a-19099797>, accessed on August 9th, 2017, at 2:14 a.m.

strength category, the powerful and oppressive parties Weak or social cultural systems have marginalized women's position permanently in the community, which seems to legitimize various kinds of injustice, deprivation and oppression committed perpetrators of the rights of women victims.²⁹

B. Protection of Women as Victims of Domestic Violence

For centuries domestic violence seemed buried without ever being recorded as a crime in criminal statistics. The UUPKDRT was born to save the victims of crime in the household. This is a good sign because victims of domestic violence are enlightened because they can prosecute and be protected by law.

The issuance of various conventions or laws with a gender perspective to protect women from human rights violations has not been able to fully guarantee women against human rights violations. The revolutionary CEDAW has guaranteed women's rights to work, politics, education, marriage, and health. Therefore, the State acts as a guardian of human rights for its citizens and must guarantee the de jure rights but most importantly de facto. CEDAW is a powerful weapon for women to oppose all forms of discrimination.

Women victims of domestic violence often cannot do much or are in control of confusion. Because they do not know where to complain, home is not necessarily accepted. The threat of violence often occurs in households often done by members of their own family which is difficult to be seen by outsiders such as domestic violence experienced by wives, mothers, daughters and female housekeepers.

²⁹ A. Nunuk.P. Murniati, 2004, *Getar Gender (Perempuan Indonesia dalam Perspektif Sosial, Politik, Ekonomi, Hukum dan HAM)*, ISBN 979-9375-27-4, Magelang, Indonesia Tera, p.227-229

The perpetrators and victims of victimization often have contacts or know each other first. So, that each has a certain role on the existence or the occurrence of a particular criminal crime.³⁰

The negative effect of domestic violence is very diverse and not only the nature of family relations, but also against members within the family in it. In this case serious physical and psychological injuries directly experienced by female victims, ultimately limiting women's opportunities to obtain equal rights in the legal, social, and political fields in society. Domestic violence also causes the breakdown of family and child relationships that are the source of social problems.

After finding the condition of Indonesian women who are very vulnerable to victimization, to what extent does the State protect women especially related to domestic violence? The following rules governing the legal protection of women:

1. Protection of Women in CEDAW

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is essentially an international bill on the right to women. Despite the existence of other international human rights treaties, women still often do not have the same rights as men do. Additional means of protecting women in human rights are urgently needed to ensure that all protections lead to the rights because they are always inconsistent with the facts.

³⁰ Sagung Putri M.E. Purwani, 2008, "Viktimisasi Kriminal terhadap Perempuan", Kerta Patrika, Vol. 33, No. 1, p.3.

If a state is a member of CEDAW (ratified), it is required to uphold equality between women and men by not discriminating against women who are deemed to have infringed the rights and dignity of a human being.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is an international standard instrument adopted by the United Nations on 18 December 1979 and entered into force on 3 December 1981.³¹ CEDAW is an attempt to eliminate discrimination against women by making the State as the holder of responsibility for discrimination in their territory.

In the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), every woman is obliged and must obtain legal protection by not eliminating the human rights of every woman who is equal in the eyes of law. This can be also found in article 15 which says:

“States parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equals right to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.”

It means that if the right is not owned or abused by the man / husband causing the act of discrimination against women in the form of Domestic Violence then woman in this case must get legal protection according to law.

CEDAW contains 30 articles relating to Human Rights, including:

³¹ Sri Wiyanti Edyono, 2005, *Hak Asasi Perempuan dan CEDAW*, Jakarta, Lembaga Studi dan Advokasi Masyarakat, p.3.

Section I, includes articles 1-6, containing the principles adopted by the Convention:

a. Non Discriminatory Principles

Article 1 stated that discriminatory against women, namely:

"Any distinction, exclusion or restraint made on the basis of sex, which has the effect or purpose of reducing or eliminating the recognition, enjoyment or use of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field Others by women, regardless of their marital status, on the basis of equality between men and women. "

Article 4 determines positive or corrective discrimination as an important aspect of the elimination of discrimination and the General Recommendation 19 extends its scope by incorporating forms of gender-specific forms of Violence. Implementation and its obligations include the public sphere and the private sphere as well as the State and not the State as the perpetrator.

b. Principle of Equality (Substantive Justice)

The principle of equality recognizes that the differences between men and women result from discriminatory cultural constructs since long time ago and have an impact on the unacceptable role of female reproduction.³²

c. Principle of State Obligations

³² *Ibid.*

State obligations are an important and integral concept of the framework of equality and non-discrimination contained in the Convention. Besides being a supporter of equality and non-discrimination against women, the State has obligation to use the definition of equality and non-discrimination against women in determining its implementation.

Section III, Chapters 10-14 contains the economic, social, and cultural rights of women. The Convention emphasizes these rights in the field of education, employment, health, and women's special rights in rural areas.

Section IV, article 15-16 contains the right to deal with the law or the right to deal with legal institutions to administer property and recognize its legal competence and guarantees the rights of women in marriage.

Section V, article 17-22 contains committees contained in CEDAW, Monitoring Mechanisms, and Report Formats contained in the Convention.

Section VI, article 23-30 contains an affirmation of the importance of upholding the principle of equality in the laws of each Member State.

The following countries are incorporated in CEDAW.³³

Table 2.1

CEDAW Ratified States

No.	States	Sign	Ratified
1	Afghanistan	14 August 1980	5 March 2003
2	Albania		11 May 1994

³³ Negara-Negara yang bergabung dalam CEDAW, available on <https://treaties.un.org>, accessed on July 13th, 2017, at 7:46 p.m.

3	Algeria		22 May 1996
4	Andorra		15 January 1997
5	Angola		17 September 1986
6	Antigua and Barbuda		1 August 1989
7	Argentina	17 July 1980	15 July 1985
8	Armenia		13 September 1993
9	Australia	17 July 1980	28 July 1983
10	Austria	17 July 1980	31 March 1982
11	Azerbaijan		10 July 1995
12	Bahamas		6 October 1993
13	Bahrain		18 June 2002
14	Bangladesh		6 November 1984
15	Barbados	24 July 1980	16 October 1980
16	Belarus	17 July 1980	4 February 1981
17	Belgium	17 July 1980	10 July 1985
18	Belize	7 March 1990	16 May 1990
19	Benin	11 November 1981	12 March 1992
20	Bhutan	17 July 1980	31 August 1981
21	Bolivia	30 May 1980	8 June 1990
22	Bosnia and Herzegovina		1 September 1993
23	Botswana		13 August 1996
24	Brazil	31 March 1981	1 February 1984
25	Brunei Darussalam		24 May 2006
26	Bulgaria	17 July 1980	8 February 1982
27	Burkina Faso		14 October 1987
28	Burundi	17 July 1980	8 January 1992
29	Cabo Verde		5 December 1980
30	Cambodia	17 October 1980	15 October 1992
31	Cameron	6 June 1983	23 August 1994

32	Canada	17 July 1980	15 October 1992
33	Central African Republic		21 June 1991
34	Chad		9 June 1995
35	Chile	17 July 1980	7 December 1989
36	China	17 July 1980	4 November 1980
37	Colombia	17 July 1980	19 January 1982
38	Comoros		31 October 1994
39	Congo	29 July 1980	26 July 1982
40	Cook Islands		11 August 2006
41	Costa Rica	17 July 1980	4 November 1980
42	Côte d'Ivoire	17 July 1980	18 December 1995
43	Croatia		9 September 1992
44	Cuba	6 March 1980	17 July 1980
45	Cyprus		23 July 1985
46	Czech Republic		22 February 1993
47	Democratic People's Republic of Korea		27 February 2001
48	Democratic Republic of the Congo	17 July 1980	
49	Denmark	17 July 1980	21 April 1983
50	Djibouti		2 December 1998
51	Dominica	15 September 1980	15 September 1980
52	Dominican Republic	17 July 1980	2 September 1982
53	Ecuador	17 July 1980	9 November 1981
54	Egypt	16 July 1980	18 September 1981
55	El Salvador	14 November 1980	19 August 1981
56	Equatorial Guinea		23 October 1984
57	Eritrea		5 September 1995
58	Estonia		21 October 1991

59	Ethiopia	8 July 1980	10 September 1981
60	Fiji		28 August 1995
61	Finland	17 July 1980	4 September 1986
62	France	17 July 1980	14 December 1983
63	Gabon	17 July 1980	21 January 1983
64	Gambia	29 July 1980	16 April 1993
65	Georgia		26 October 1994
66	Germany	17 July 1980	10 July 1985
67	Ghana	17 July 1980	2 January 1986
68	Greece	2 March 1982	7 June 1983
69	Grenada	17 July 1980	30 August 1990
70	Guatemala	8 June 1981	12 August 1982
71	Guinea	17 July 1980	9 August 1982
72	Guinea-Bissau	17 July 1980	23 August 1985
73	Guyana	17 July 1980	17 July 1980
74	Haiti	17 July 1980	20 July 1981
75	Honduras	11 June 1980	3 March 1983
76	Hungary	6 June 1980	22 December 1980
77	Iceland	24 July 1980	18 June 1985
78	India	30 July 1980	9 July 1993
79	Indonesia	29 July 1980	13 September 1984
80	Iraq		13 August 1986
81	Ireland		23 December 1985
82	Israel	17 July 1980	3 October 1991
83	Italy	17 July 1980	10 June 1985
84	Jamaica	17 July 1980	19 October 1984
85	Japan	17 July 1980	25 June 1985
86	Jordan	3 December 1980	1 July 1992
87	Kazakhstan		26 August 1998
88	Kenya		9 March 1984

89	Kiribati		17 March 2004
90	Kuwait		2 September 1994
91	Kyrgyzstan		10 February 1997
92	Lao People's Democratic Republic	17 July 1980	14 August 1981
93	Latvia		14 April 1992
94	Lebanon		16 April 1997
95	Lesotho	17 July 1980	22 August 1995
96	Liberia		17 July 1984
97	Libya		16 May 1989
98	Liechtenstein		22 December 1995
99	Lithuania		18 January 1994
100	Luxembourg	17 July 1980	2 February 1989
101	Madagascar	17 July 1980	17 March 1989
102	Malawi		12 March 1987
103	Malaysia		5 July 1995
104	Maldives		1 July 1993
105	Mali	5 February 1985	10 September 1985
106	Malta		8 March 1991
107	Marshall Islands		2 March 2006
108	Mauritania		10 May 2001
109	Mauritius		9 July 1984
110	Mexico	17 July 1980	23 March 1981
111	Micronesia		1 September 2004
112	Monaco		18 March 2005
113	Mongolia	17 July 1980	20 July 1981
114	Montenegro		23 October 2006
115	Morocco		21 July 1993
116	Mozambique		21 April 1997
117	Myanmar		22 July 1997

118	Namibia		23 November 1992
119	Nauru		23 June 2011
120	Nepal	5 February 1991	22 April 1991
121	Netherlands	17 July 1980	23 July 1991
122	New Zealand	17 July 1980	10 January 1985
123	Nicaragua	17 July 1980	27 October 1981
124	Niger		8 October 1999
125	Nigeria	23 April 1984	13 June 1985
126	Norway	17 July 1980	21 May 1981
127	Oman		7 February 2006
128	Pakistan		12 March 1996
129	Palau	20 September 2011	
130	Panama	26 June 1980	29 October 1981
131	Papua New Guinea		12 January 1995
132	Paraguay		6 April 1987
133	Peru	23 July 1981	13 September 1982
134	Philippines	15 July 1980	5 August 1981
135	Poland	29 May 1980	30 July 1980
136	Portugal	24 April 1980	30 July 1980
137	Qatar		29 April 2009
138	Republic of Korea	25 May 1983	27 December 1984
139	Republic of Moldova		1 July 1994
140	Romania	4 September 1980	7 January 1982
141	Russian Federation	17 July 1980	23 January 1981
142	Rwanda	1 May 1980	2 March 1981
143	Samoa		25 September 1992
144	San Marino	26 September 2003	10 December 2003
145	Sao Tome and Principe	31 October 1995	3 June 2003
146	Saudi Arabia	7 September 2000	7 September 2000
147	Senegal	29 July 1980	5 February 1985

148	Serbia		12 March 2001
149	Seychelles		5 May 1992
150	Sierra Leone	21 September 1988	11 November 1988
151	Singapore		5 October 1995
152	Slovakia		28 May 1993
153	Slovenia		6 July 1992
154	Solomon Islands		6 May 2002
155	South Africa	27 January 1993	15 December 1995
156	Spain	17 July 1980	5 June 1984
157	Sri Lanka	17 July 1980	5 October 1981
158	St. Kitts and Nevis		25 April 1985
159	St. Lucia		8 October 1982
160	St. Vincent and the Grenadines		4 August 1981
161	State of Palestine		2 April 2014
162	Suriname		1 March 1993
163	Swaziland		26 March 2004
164	Sweden	7 March 1980	2 July 1980
165	Switzerland	23 January 1987	27 March 1997
166	Syrian Arab Republic		28 March 2003
167	Tajikistan		26 October 1993
168	Thailand		9 August 1985
169	The Former Yugoslav Republic of Macedonia		18 January 1994
170	Timor-Leste		16 April 2003
171	Togo		26 September 1983
172	Trinidad and Tobago	27 June 1985	12 January 1990
173	Tunisia	24 July 1980	20 September 1985
174	Turkey		20 December 1985
175	Turkmenistan		1 May 1997

176	Tuvalu		6 October 1999
177	Uganda	30 July 1980	22 July 1985
178	Ukraine	17 July 1980	12 March 1981
179	United Arab Emirates		6 October 2004
180	United Kingdom of Great Britain and Northern Ireland	22 July 1981	7 April 1986
181	United Republic of Tanzania	17 July 1980	20 August 1985
182	United States of America	17 July 1980	
183	Uruguay	30 March 1981	9 October 1981
184	Uzbekistan		19 July 1995
185	Vanuatu		8 September 1995
186	Venezuela	17 July 1980	2 May 1983
187	Vietnam	29 July 1980	17 February 1982
188	Yemen		30 May 1984
189	Zambia	17 July 1980	21 June 1985
190	Zimbabwe		13 ay 1991

2. The Protection of Women in Law Number 23 Year 2004

Due to the high number of domestic violence cases in Indonesia, the Law on the Elimination of Domestic Violence (UUPKDRT) was established. In article 2 UUPKDRT limits the scope of applicability is only limited in the household. That is, in addition to husbands, wives, children, and people who have blood relationships and

others who work to help households settle in the household. Prohibited acts regulated in article 5 are:³⁴

- a. Physical abuse;
- b. Psychic violence;
- c. Sexual violence; or
- d. Household neglect.

The criminal provisions were set forth in Article 44 to Article 50 where the threatened penalty is an alternative with maximum criminal penalties in the form of imprisonment and fine. Arrangement in UUKDRT is a delicate complaint against actions that do not cause pain or injury that prevents the victim to carry out the job position or livelihood or daily activities.

In Europe, marriage is considered a contract so that when an action occurs that makes one party uncomfortable, the aggrieved party is aware and will demand for the deeds that befall him. Unlike Indonesia where Indonesian people's mindset is mostly patriarchy, positioning women is lower than men's position. This concept refers to the subordinate position of women because their relations reflect both powerless and powerful, in other words, there is a power disparity between women and men.³⁵

The process of marriage is not merely an individual process, but also the process of kinship, kinship and even the environment ³⁶ So that the adoption of complaint offense in UUPKDRT is very unfair for women. The establishment of this law is to

³⁴ Law Number 23 of 2004, article 5

³⁵ Romany Sihite, 2007, *Perempuan, Kesetaraan, dan Keadilan Suatu Tinjauan Berwawasan Gender*, Jakarta, PT. RajaGrafindo, p.226.

³⁶ Barda Nawawi Arief, 2005, *Bunga Rampai Kebijakan Hukum Pidana*, Bandung, PT. Citra Aditya Bakti, p.291.

protect women from domestic violence. Because this form of violence is a violation of human rights and is a crime against human dignity, a form of discrimination must be removed.

In the event that the victim wishes to obtain protection and justice for the criminal offense, by referring to article 26 the victim may report on the crime he or she experienced directly or indirectly.

C. The Effectiveness of CEDAW in Eradicating of Domestic Violence

Exactly 33 years ago Indonesia ratified the CEDAW Convention into Law No. 7 of 1984 on the Elimination of Discrimination Against Women. After ratifying it, there should be consequences in the execution of the Convention and ratification should be followed by reservation of article 29 of the Convention. Hopefully, it can create a just and equitable society order.

From the results of a study conducted by Yayasan Jurnal Perempuan (YJP), many international conventions related to women discrimination and trafficking have been ratified by Indonesia resulted in zero effect³⁷, starting from the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Eradication of Trafficking in Women and the Exploitation of Prostitution in 1949, the Convention on the Political Rights of Women in 1952, the Declaration on the Protection of Women and Children in Emergency and Armed Conflict in 1974.

CEDAW Convention is one of the International instruments that regulate the equal rights for women in the political, social, cultural and economic fields.

³⁷ Nol Besar, Implementasi Ratifikasi CEDAW di Indonesia, available on <http://m.hukumonline.com/berita/baca/hol15722/nol-besar-implementasi-ratifikasi-cedaw-di-indonesia>, accessed on July 30th, 2017, at 7:48 a.m.

Nevertheless, gender-based discrimination and violence against women continues to occur in Indonesia.

The principles recognized in CEDAW include the non-discriminatory principle contained in article 1 of the Convention, other than that the principle recognized in CEDAW is the principle of equality, the final principle recognized in CEDAW is the principle of State obligations.³⁸

In this case the obligation of a State ratifying the CEDAW Convention to implement the Convention is not only limited to the establishment of an anti-discriminatory policy towards women but also guarantees the implementation of its practice in the form of exclusion, discrimination and restrictions based on sex.

The factors that influence the implementation of CEDAW principles that should be able to reduce domestic violence to be effective are:

1. Regarding the rule of law / legal substance, CEDAW is a human rights instrument; its formation was based on the issuance of the Universal Declaration of Human Rights (DUHAM) on 10 December. The compliance can be seen in Article 2 of the Universal Declaration of Human Rights with the principle of CEDAW namely substantive justice and article 3 of CEDAW concerning the State's obligation to make appropriate economic, social, political and cultural regulations to ensure the fulfillment of women's rights; then article 4 of the Universal Declaration of Human Rights is in compliance with article 6 of CEDAW. The State's obligation to make appropriate regulations, including the enactment of legislation to combat all forms of trafficking in women's exploitation.

³⁸ Pelaksanaan Konvensi CEDAW dan Pembebasan Perempuan, available on <http://perempuanmahardika.blogspot.co.id/2010/08/pelaksanaan-konvensi-cedaw-dan.html?m=1>, accessed on July 31st, 2017, at 7:30 a.m.

Other compliances can also be found in article 7 of the Universal Declaration of Human Rights with one of the principles contained in CEDAW on the principle of non-discrimination in article 1 and article 2 of CEDAW concerning the State's legal obligations; article 22 of the Universal Declaration of Human Rights with article 4 of CEDAW on the State's obligation to develop special policies; article 29 number (2) of the Universal Declaration of Human Rights with article 5 of CEDAW on the State which must take all steps that can be made to change the pattern of social and cultural actions.

2. Regarding officers / law enforcers or legal structures is still considered to be quite inadequate due to the police responses to domestic violence and the amount of discretion that they will or should use in holding back on minor offense events that are still an open question.³⁹
3. Regarding the suggestions and facilities used. Facilities and facilities are also part of CEDAW's effectiveness, facilities or facilities that have been provided to achieve the ideals and spirit of women's rights desired CEDAW are good enough as seen from facilities such as Shelters and PPT (Integrated Service Centers) for women and children at the city / district level. In accordance with the mandate of the Ministry of Women Empowerment and Child Protection Number 5 of 2010, it is the responsibility of local governments to provide services and facilities for women and children as victims of violence.

D. The Effectiveness of Law number 23 of 2004 in Eradicating of Domestic Violence

³⁹ Mujiarto Karok: kekerasan dalam rumah tangga, available on <http://www.metro.polri.go.id/kekerasan-dalam-rumah-tangga>, accessed on August 2nd, 2017, at 10:02 a.m.

September 22nd, 2004 is a historical moment for feminists in Indonesia. At least, one of the many agendas of their struggle related to women's issues, namely the prevention of violence in the household finally is paid off. The Government and the House of Representatives finally agreed to pass the Law No.23 of 2004 on the Elimination of Domestic Violence or known by the Law of PKDRT.

A good law enforcement system involves harmonizing values with the rules, as well as with the behavior of humans. Therefore, it is necessary to elaborate on the enactment of the law. In this case according to the theory of law, there are three kinds of law enforcement.⁴⁰ The division is as follows:

1. Juridical Law Enforcement, put forward by several figures as follows:

- a. Kelsen states that the Law has juridical conduct when its determination is based on a higher level of instruction. In this case it is necessary to be concerned about what is meant by the effectiveness of the law as distinguished from the enactment of the law, because its effectiveness is a fact.⁴¹
- b. According to Logemann, the rule of law is binding if it shows the necessity relationship between a condition and its consequences.⁴²

2. The enactment of Sociological Law, according to Soekanto there are two theories as follows:

- a. The theory of power which principally states that the law applies sociologically, when it is enforced by the authorities and it is regardless whether the society accepts or rejects it.

⁴⁰ Soerjono Soekanto, 1983, *Beberapa Permasalahan Hukum Dengan Kerangka Pembangunan di Indonesia*, Jakarta, UI Press, p.34

⁴¹ Hans Kelsen, 2007, *Teori Hukum Murni*, Jakarta, Nusamedia, p.206.

⁴² J.H.A Logemann, 1954, *Over de Theorie Van Een Steeling Staatrecht*, Jakarta, PT. Penerbit

- b. The theory of recognition which stems from the stance that the law is based on the acceptance or acknowledgment by those to whom the law is addressed.⁴³
3. The enactment of the Law Philosophically, meaning that the law is in accordance with the ideals of the law, as the highest positive value, for example, Pancasila, a just and prosperous society.⁴⁴

The results of a study done by Rifka Annisa Women Crisis (RAWCC) on domestic violence against 262 respondents (house wife) showed that 48% of women (house wife) experienced verbal abuse, and 2% experienced physical violence.⁴⁵ The results of violence research in Aceh conducted by Flower in 1998 had identified from 100 respondents that there were 76 people responded and 37 people had experienced domestic violence; psychological violence consisted of 32 people, sexual violence 11 people, economic violence 19 People, physical violence 11 people. Of 37 respondents, 20 respondents experienced more than one violence.⁴⁶

In 2005, out of 325 cases handled by LBH APIK Jakarta, 19 cases were processed by law (reported to the police), and 142 cases were processed by filing for divorce. While in 2006, up to August, there were 239 cases of domestic violence, with divorce settlement of 124 cases, and 5 cases reported to the police.

From the above data then the author conclude that violence against women in Indonesian household is always increasing. In fact, it still occurs after the enactment of Law No. 23 of 2004 on the abolition of domestic violence by the government.

⁴³ Soerjono Soekanto, Op.Cit. p.35

⁴⁴ *Ibid.*

⁴⁵ Keumalahayati, Kekerasan Terhadap Perempuan Dalam Rumah Tangga Menyebabkan Gangguan Reproduksi, available on <http://152.118.148.220/pkko>, accessed on August 8th, 2017, 11:43 p.m.

⁴⁶ *Ibid.*

Therefore, it can be concluded that the existence of law enforcement number 23 of 2004 has not effective yet in eliminating domestic violence.