

A COMPARATIVE STUDY OF VICTIM PROTECTION ON THE DOMESTIC VIOLENCE ACCORDING TO LAW IN INDONESIA AND MALAYSIA

(Regulation No. 23/2004 Considering PKDRT & Domestic Violence Act 521 1994 jo. Domestic Violence Act A1538 2017)

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ABSTRACT

The United Nations as a representation of the international community even accommodates regulations related to human rights through International Treaties agreed upon by state parties in the world through the Universal Declaration of Human Rights. Domestic violence is one of the most violence that occurred in many countries, which happens in Indonesia and Malaysia. Any violence between current or past intimate partners, wherever and whenever the abuse happens, is considered domestic violence (breach of human right). Physical, sexual, emotional, and financial abuse are all potential forms of violence. Indonesian law and Malaysian law define domestic violence as any act against a person, especially a woman, that results in physical, sexual, psychological, and/or domestic neglect or suffering including threats to commit acts, coercion, or unlawful deprivation of liberty within the domestic sphere. Research in a positive direction without excluding the elements of harmonization and legal politics that exist within the scope of the Republic of Indonesia and the Federated States of Malaysia in the realm of Domestic Violence entitled "A COMPARATIVE STUDY OF THE DOMESTIC VIOLENCE LAW IN INDONESIA AND MALAYSIA" according to Law No. 23 of 2004 on the Elimination of Domestic Violence and Domestic Violence Act 521 of 1994 jo. Domestic Violence Act A1538 2017. In this research, the researcher uses normative legal research, there are two types of groupings, consisting of primary legal material and secondary legal material.

Keywords: Victim Protection, Domestic Violence, Indonesian Law, Malaysian Law.

Abstrak

Perserikatan Bangsa-Bangsa sebagai representasi masyarakat internasional mengakomodasi pengaturan yang berkaitan dengan hak asasi manusia melalui Perjanjian Internasional yang disepakati oleh negara-negara pihak di dunia melalui Deklarasi Universal Hak Asasi Manusia. Kekerasan dalam rumah tangga merupakan salah satu kekerasan yang paling banyak terjadi di banyak negara, yang terjadi di Indonesia dan Malaysia. Setiap kekerasan antara pasangan intim saat ini atau masa lalu, dimanapun dan kapanpun pelecehan terjadi, dianggap sebagai kekerasan dalam rumah tangga (pencederaan hak asasi manusia). Pelecehan fisik, seksual, emosional, dan finansial adalah semua bentuk kekerasan yang potensial. Hukum Indonesia dan hukum Malaysia mendefinisikan kekerasan dalam rumah tangga sebagai setiap tindakan terhadap seseorang, terutama perempuan, yang mengakibatkan pengabaian atau penderitaan fisik, seksual, psikologis, dan/atau rumah tangga termasuk ancaman untuk melakukan tindakan, pemaksaan, atau perampasan kemerdekaan secara tidak

sah dalam lingkup domestik. Penelitian ke arah positif dengan tidak mengesampingkan unsur-unsur harmonisasi dan politik hukum yang ada dalam lingkup Negara Republik Indonesia dan Negara Federasi Malaysia dalam Ranah KDRT berjudul “**STUDI KOMPARATIF HUKUM KDRT DI INDONESIA DAN MALAYSIA**” menurut UU No. 23 Tahun 2004 tentang Penghapusan Kekerasan Dalam Rumah Tangga dan UU PKDRT 521 Tahun 1994 jo. UU KDRT A1538 Tahun 2017. Dalam penelitian ini peneliti menggunakan penelitian hukum normatif yang pengelompokannya ada dua macam, terdiri dari bahan hukum primer dan bahan hukum sekunder.

Keywords: Perlindungan Korban, Kekerasan Dalam Rumah Tangga, Hukum Indonesia, Hukum Malaysia.

A. INTRODUCTION

Violence is a problem that occurs in many countries.¹ Violence as a form of human rights violation that injures one's dignity, personal security, and freedom, has the potential to lead to the deprivation of the right to life of each victim. The United Nations as a representation of the international community even accommodates regulations related to human rights through International Treaties agreed upon by state parties in the world through the Universal Declaration of Human Rights.

Domestic violence is one of the most violence that occurred in many countries, which happens in Indonesia and Malaysia. Any violence between current or past intimate partners, wherever and whenever the abuse happens, is considered domestic violence. Physical, sexual, emotional, and financial abuse are all potential forms of violence.² Indonesian law defines domestic violence as any action against a person, especially a woman, that results in physical, sexual, psychological, and/or domestic neglect or suffering including threats to commit acts, coercion, or unlawful deprivation of liberty within the domestic sphere.³ According to Malaysian law, domestic violence is defined as the commission of one or more of the following acts: purposefully or knowingly putting the victim in fear of physical harm or attempting to do so; inflicting physical harm on the victim by doing something that the perpetrator knew or should have known would result in physical harm; compelling the victim by force or threat to engage in any conduct or act, whether sexual or otherwise, from which the victim has a racial or ethnic; stealing the victim's property dishonestly so that the victim experiences emotional pain as a result of the financial loss; communicating with the victim or communicating about the victim to a third person with intent to insult the victim's modesty through any means, electronic or otherwise; threatening the victim with the intent to cause the victim to fear for his safety or the safety of his property, to fear for the safety of a third person, or to suffer distress; subjecting the victim to psychological abuse that involves emotional harm; using any intoxicating substance or other substance to cause the victim to experience delusions without the victim's consent or, if consent is given, obtaining it unlawfully; if the victim is

¹ Violent and Sexual Crime Data. United Nations on Drugs and Crime. Retrieved from <https://dataunodc.un.org/dp-crime-violent-offences>

² Walby, Sylvia. (2004). The Costs of Domestic Violence. *National Statistic: Women & Equality Unit*, 16.

³ Article 1 of Indonesian Law Number 23 of 2004 concerning the Elimination of Domestic Violence.

a child, using any intoxicating substance or other substance to cause the victim to experience delusions.⁴

In October 2022, Indonesia was recorded to have 18,261 domestic violence cases spread throughout its regions, there were 16,745 victims were women and 2,948 were men.⁵ Meanwhile, Malaysia in the last 5 years until 2021 has more than 4,000 cases of domestic violence every year, departing from the age of victims and perpetrators who come from various walks of life.⁶

By ratifying the Universal Declaration of Human Rights into Law No. 31 of 1999 on Human Rights, Indonesia recognizes that violence is one part of the deprivation of human rights (Article 1 Number 6), including domestic violence. Malaysia also regulates human rights through the Laws of Malaysia Act 597 - Human Rights Commission of Malaysia Act 1999, although administratively Malaysia does not ratify the Universal Declaration of Human Rights. However, it does not disregard the fact that the human rights regulated by the United Nations are a statute respected by all countries in the world because the international community recognizes its existence and has been practiced by many countries, so it is generally subject to it whether ratifying or not ratifying, whether a member state of the United Nations or not (Universal Treaty).⁷

Where the provisions on human rights are also clearly contained in the constitution or the highest regulations of the Indonesian state and the Malaysian state, the 1945 Constitution of the Republic of Indonesia, and the Federal Constitution of Malaysia. Indonesia's constitution arranges the human rights realm which examines at **Constitution of the Republic of Indonesia of 1945 CHAPTER XA – Human Rights Article 28A and Article 28D paragraph (1)** stated that everyone is entitled to the right to life, the right to retain that life, the right to just legal recognition, assurance, protection, and certainty, as well as the right to equal treatment under the law. Malaysia's overview through the breach of the human rights arrange on **The Federal Constitution Part I – The States, Religion and Law of The Federation Number 5 – Liberty of the Person and Number 8 – Equality** that no one may be deprived of their life or personal freedom except in conformity with the law, and everyone has a right to equal protection under the law.

Indonesia and Malaysia have complied with international agreements recognized by the international community, both of which mean upholding the human rights of every citizen and not condoning violence in any form and condition to be excluded (*jus cogens*).⁸ Article 16 Paragraph 3 of the Universal Declaration of Human Rights states, "The family is the natural and fundamental group unit of society and is entitled to *protection by society and the State*." This means that the family as a household unit, in the process, must also be carried out properly according to applicable law and there is protection for the parties. This is in line with the explanation in Article 7 of the Universal Declaration of Human Rights for everyone to be treated equally in the eyes of the law and entitled to legal

⁴ Domestic Violence Act 574 1994 juncto Domestic Violence Act 574 2017.

⁵ Online Information System for the Protection of Women and Children (SIMFONI-PPA). Retrieved from <https://kekerasan.kemenpppa.go.id/>

⁶ Domestic Violence Statistics. Women's Aid Organisation. Retrieved from <https://wao.org.my/domestic-violence-statistics/>

⁷ Charney J I. (1993, October). The American Journal of International Law. *Cambridge University Press*, 87 (4), 535.

⁸ Guan, S. Sue. (2017). *Jus Cogens: To Revise a Narrative*. University of Minnesota Law School: The Minnesota Journal of International Law, 285.

protection. It is the right step when Indonesia and Malaysia have positive laws in their respective countries to regulate the protection of domestic violence.

Progressive measures from Indonesia and Malaysia to crack down on domestic violence are further regulated in special laws under the constitutions of both countries. Indonesia has Law No. 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT) passed on September 22, 2004, now 18 years old and has been used as a legal for resolving domestic violence cases. Then, the domestic violence regulation in Malaysia is contained in the Domestic Violence Act 521 1994 which was amended to become Domestic Violence Act A1538 2017.

Domestic violence can be in the form of physical violence, emotional violence, sexual violence, and economic violence. It is not uncommon for a woman to experience several types of domestic violence at once.⁹ The cases of domestic violence are mostly experienced by women and¹⁰ do not occur just in one country but in many countries, including Indonesia and Malaysia. Victims of domestic violence are also cross-demographic, regardless of socioeconomic status, ethnicity, religion, education level, and age.¹¹

During the pandemic yesterday, there was a significant increase in domestic violence cases in Indonesia and Malaysia. Domestic violence became the most reported case of violence in Indonesia during the pandemic, as evidenced by the 319 reported cases of violence, two-thirds of which (213 cases) were cases of domestic violence.¹² Meanwhile, Malaysia in the midst of Covid-19, recorded 5,260 cases of domestic violence in 2020.¹³ Of course, this will set a bad precedent for every victim, even to everyone else who does not get a direct act of domestic violence (butterfly effect). As a result, domestic violence as an unpleasant experience has the potential to have a negative influence on the contribution of human resources in each country that experiences it.¹⁴

With various restrictions in the workplace, schools, and public places or facilities, eventually, people stay at home more, both for studying from home and working from home. This condition can cause a variety of new problems in the family, including violence.¹⁵ One group that is vulnerable to violence is women.¹⁶ This condition can be worsened in families with uncertain economies due to the pandemic. Meanwhile, the burden on women is increasing because they have to take care of the household and accompany children to learn from home, and some also have to try to find additional income.¹⁷ Increased family burdens, stress, and economic hardships due to the loss of

⁹ Declaration on the Elimination of Violence against Women.

¹⁰ Arivia, Girl. (2006). *Feminism: A Word of the Heart*. Jakarta: Kompas Book Publishers.

¹¹ Walker, E. Lenore. (1999). *Psychology and Domestic Violence Around the World*. *American Psychological Association*, 54 (1).

¹² The Number of Domestic Violence in Indonesia Has Increased Since the Covid-19 Pandemic: Causes and How to Overcome It. (2020, 6 August). Retrieved from <https://theconversation.com/>

¹³ The Annual Report of the Line of Love. Retrieved from www.kpwkm.gov.my

¹⁴ Hassan, Kamal Halili & Lee, Yee Zing. (2015, September 11). Sexual Harassment in the Workplace: Selected Court Cases and New Legal Provisions in Malaysia. *Canadian Center of Science and Education*, 11(16), 9. Retrieved from <http://dx.doi.org/10.5539/ass.v11n16p9>

¹⁵ Brennan, Gerard. (2007). *Law and Liberty In the War on Terror*. Sydney: The Federation Press.

¹⁶ CATAHU, Annual Record National Commission on Women.

¹⁷ Susiana, Sali. (2020). *Domestic Violence During the Covid-19 Pandemic*. Research Center of the Expertise Agency of the DPR RI: Brief Info on Actual and Strategic Issues, XII (24), 14.

some income/work have the potential to trigger conflicts in the family. Finally, domestic violence and other gender-based violence can occur.¹⁸

The pandemic that occurred in Indonesia and Malaysia was not only the Covid-19 pandemic, but also an outbreak of domestic violence (non-medical pandemic). This action absolutely violates the human rights of every victim in Indonesia and Malaysia. In summary the majority of the costs are in the following areas: Legal – especially the criminal justice system but also civil legal systems; Health – physical and mental; Social services; Housing; Refugees; Employment – income foregone, lower productivity, fewer taxes paid; Human cost of pain and suffering.¹⁹ Victim protection

Therefore, hoped this comparison of victim protection on domestic violence according laws between Indonesia and Malaysia can contribute to reducing the number of domestic violence between the two countries as an improvement and improvement of the law if there are similarities and differences.

This research which is carried out in terms of the scope of legal comparisons that focus on victim protection of domestic violence. With research in a positive direction without excluding the elements of harmonization and legal politics that exist within the scope of the Republic of Indonesia and the Federated States of Malaysia in the realm of Domestic Violence entitled “**A COMPARATIVE STUDY OF THE DOMESTIC VIOLENCE LAW IN INDONESIA AND MALAYSIA**” according Law No. 23 of 2004 on the Elimination of Domestic Violence and Domestic Violence Act 521 of 1994 jo. Domestic Violence Act A1538 2017.

B. STATEMENT OF PROBLEM

Based on the background described above, in this study, the formulation of the problem stated:

1. What is the similarity of victim protection on domestic violence according to Indonesian and Malaysian law?
2. What is the difference regarding victim protection on domestic violence between the Domestic Violence Act under Indonesian and Malaysian Law?

C. RESEARCH METHODS

Research has been started when trying to solve a problem systematically with certain methods and techniques.²⁰ The research method is a description of the method used to answer the problem.²¹ The research method that will be used by the author in conducting the research is as follows:

1. Types of Data

¹⁸ Mukundan, Sri Ranjani. (2020, 9 September). Domestic Violence amid COVID-19 in Malaysia: Diving Deeper into the Heart of the Matter. Retrieved from <https://www.undp.org/malaysia>

¹⁹ *Ibid.* The Costs of Domestic Violence.

²⁰ Soerjono Soekanto. (2007). Pengantar Penelitian Hukum, Cetakan Ketiga. Jakarta: UI Press, 3.

²¹ Pendoman Penulisan Skripsi Fakultas Hukum. Bengkulu: Fakultas Hukum Universitas Bengkulu, 14.

Ideally, in normative legal research, there are two types of groupings, consisting of primary legal material and secondary legal material. Primary legal material consists of laws and regulations related to the law on the elimination of domestic violence in Indonesia and Malaysia. Secondary legal materials are books written by legal experts, legal journals, and opinions of legal scholars.

2. Data Collection

The method of data collection used by researchers by conducting literature studies to obtain data is as follows.

- a. **Primary Legal Material**
Primary legal materials are legal materials consisting of statutory regulations that have binding legal force.
- b. **Secondary Legal Material**
Secondary legal material provides an explanation of primary legal material, such as draft laws, research results, works from legal circles, and so on. In using secondary legal materials, researchers use some data that serve as material to broaden and enrich knowledge and data related to problems, including scientific works of scholars, collections of books, legal journals, and articles related to the subject matter.

3. Data Analysis

The data analysis that the researcher intends to use in this study is to carry out qualitative data analysis, namely providing descriptions in words or findings and therefore prioritizing the quality or quality of the data and not the quantity or amount. This paper has never been raised or discussed before in any literature about the comparison of domestic violence between Indonesian and Malaysian law. The analysis of this qualitative data is aimed at secondary data that has been collected in order to obtain answers to the main problems contained in this research which is carried out by studying the laws and regulations that determine the dynamics of society and are dynamic in their existence in the midst of society. Writings such as; law books as well as domestic and foreign journals related to research objects. Furthermore, the next step of data analysis is carried out without using numbers and tables, this aims to obtain an overall picture related to the topic of discussion related to the material to be examined in this paper.

D. LITERATURE REVIEW

Indonesian Criminal Law

Domestic violence is included in the category of criminal acts. If committed in a domestic environment, the act leads to criminality which is referred to as a criminal act of domestic violence. Punishment in educational criminal cases refers to the Regulation No. 1/2023 Considering Criminal Code (the newest Criminal Code in Indonesia), where the penalties vary as affirmed in Article 64:

- a. **Basic Punishment (Article 65)**
 - 1) Imprisonment;
 - 2) Prison Sentence;
 - 3) supervision punishment;
 - 4) fines;
 - 5) social work punishment.

- b. Additional Penalties
 - 1) revocation of certain rights;
 - 2) confiscation of certain goods and/or invoices;
 - 3) announcement of the judge's decision;
 - 4) compensation payment; revocation of certain permits;
 - 5) fulfillment of local customary obligations.
- c. Criminal offenses that are specific to criminal acts specified in the Act which is Death Penalty as an alternative punishment.

Perpetrators of violence can be charged using this law if there is evidence and fulfillment of elements of violent acts, the Indonesian Criminal Code recognizes violence as 'persecution'. In the Big Dictionary of Indonesian, persecution is defined as the arbitrary treatment that a person commits to others in the form of torture, oppression, and so on. In fact, the matter of fulfilling the persecution article as stipulated in Article 351 of the Criminal Code which the maximum penalty for persecution is a fine of Rp4,500 or two years and eight months in jail. If the deed results in a serious injury, the offender is given a five-year prison sentence, and if it results in the death of his victim, a seven-year prison term is imposed. Persecuting someone for their beliefs is the same as purposefully endangering their health.

Malaysian Criminal Law

Malaysia is a federation consisting of 13 states and federal territories of Kuala Lumpur, Putrajaya, and Labuan. Criminal law is applied at the federal and state levels, although both have their own specific subject matter and geographical jurisdiction. Malaysia with a common law legal system only has an uncodified criminal law rule, namely Penal Code Act 574. Since it was recognized by the UK in 1936 as a Federated State Malaysia, the contents of Penal Code Act 574 have remained largely intact and reflect the morals of the era. With a constructive criminal law system, its application in Malaysia is known as the Criminal Justice System.²²

Specific Malaysian Criminal Law based on or derived from the customs or customs of the people in the Malaysian state social system has similarities with the British State, considering that Malaysia is a Colonized State from the United Kingdom.²³

Violence under the Malaysian penal code is regulated in the Penal Code Act 574 (Criminal Act) in Article 351 as any gesture or preparation that is made with the intent or knowledge that it is likely to lead any witness to believe that the person making the gesture or preparation is about to use unlawful force against them.

The crime of rape is further regulated in the Penal Code Act 574 consists of the assault which use of criminal force on a person with the intent to violate their sense of modesty, the use of criminal force to dishonor them without serious provocation, use of criminal force to steal something they were carrying, use of criminal force to wrongfully imprison them, and use of criminal force on serious provocation.

Victim Protection on Domestic Violence

Both the community and the government (through law enforcement officials) make preventive and repressive efforts to protect victims of domestic violence, such as offering protection or supervision from various threats that could endanger the

²² Sherman, L. W. (2013). *Handbook of Asian Criminology*. London: Springer, 241.

²³ Sharifah, S. S. A. (2007). *Malaysian Legal System*. Kuala Lumpur: LexisNexis.

victim's life, providing medical assistance, and having the law be sufficiently enforced.²⁴ The impartial investigation and trial of criminals is essentially a manifestation of the preservation of human rights and a check-and-balance mechanism. There is no denying that in situations of domestic abuse, the victim suffers the most. This is inextricably linked to the social-cultural cycle that emerges, including the patriarchal culture that is still proliferating. In reality, it frequently occurs that those who commit domestic violence are unaware that they have done so.²⁵

This is the philosophical basis behind the importance of protecting victims of domestic violence. Protection for victims of domestic violence is a form of upholding human rights. Recognition and protection of human rights is a good or bad parameters of governance in a country.²⁶

E. FINDING

1. Similarities of Victim Protection on Domestic Violence According to Indonesian and Malaysian Criminal Law

Domestic violence is violence that occurs to every family member in one residence, either who is related by blood or someone who is under the same roof. Domestic violence is also classified as a form of violence against women. The definition of violence against women is generally contained in Article 1 of the United Nations Declaration on the Elimination of Violence against Women in 1993, namely: Any act of gender-based violence that results in or has the opportunity to cause physical, sexual or psychological misery or suffering, including the threat of certain actions, coercion or arbitrary deprivation of independence, whether it happens in public (in society) or in private life.

Indonesia and Malaysia are the two countries that ratified the Convention on the Elimination of All Forms of Discrimination Against Women into Law No. 7 of 1984 concerning ratification of the Convention on the Elimination of All Forms of Discrimination Against Women as a form of recognition condemning and rejecting all actions that criminalize women, including domestic violence.

Victims of cases of domestic violence in Indonesia and Malaysia are given the right to get protection and shelter as a result of the actions of the perpetrators that are obtained from them. Researchers found some similarities in the regulation of Domestic Violence owned by the Indonesian state and the Malaysian state regarding victim protection consist as follow.

Protection Order

Law No. 23 of 2004 concerning the Elimination of Domestic Violence in Indonesia and Domestic Violence Act 521 1994 junction Domestic Violence Act A1538 2017 recognize that victims have the right to directly report domestic violence to the police both where the victim is and at the scene of the incident. In addition to conducting an inquiry as soon as they become aware of or receive a

²⁴ Aspalella A. Rahman. (2019). Combating Domestic Violence in Malaysia: Issues and Challenges. Retrieved from www.researchgate.net

²⁵ Donald G. Dutton. (2006). Rethinking Domestic Violence. *Toronto: UBC Press.*

²⁶ Philipus M. Hadjon. (1987). *Perlindungan Hukum bagi Rakyat Indonesia*. Surabaya: PT. Bina Ilmu, 21.

report of domestic violence, the police are required to advise victims of their legal entitlement to services and help. Domestic violence is a crime against human dignity, and the police have a duty to protect victims, which they promptly inform the victim of. They also identify the officer who will be identifying the victim. With enough preliminary evidence of a violation of a protection order, the police can make an arrest to protect the victims.

Considering that an application to obtain a protection order can be filed by:

- victim or victim's family;
- victim's friend;
- police;
- accompanying volunteers; or
- Spiritual guide.

If the victim is a kid, the appropriate parent, guardian, caregiver, or child can file the report in accordance with the requirements of the relevant laws and regulations (Age of the Child as a Legal Subject of Domestic Violence). Domestic violence regulations between Indonesia and Malaysia both recognize a child as someone under the age of 18.²⁷ If in the household there is violence against children under the age of 18, then what is used is not Law No. 23 of 2004 concerning the Elimination of Domestic Violence in Indonesia and Domestic Violence Act 521 1994 junction Domestic Violence Act A1538 2017, but instead uses special regulations that govern separate children. Indonesia and Malaysia have special laws for these children, Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection and The Child Act 2001 (Act 611) of Malaysia. In this case the principle of *Lex Specialist Derogat Legi Generalis* (a law that specifically excludes a general law).²⁸ However, if there are two specific laws at the same time, a more systematic law (*Lex Systematic Specialist*) is used.²⁹ Therefore, Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection and The Child Act 2001 (Act 611) of Malaysia are more suitable for use in domestic violence that occurs to children.

Subject Scope

a. Law No. 23 of 2004 on the Elimination of Domestic Violence

“husband, wife, and children; persons who have a family relationship with the person referred to in letter a due to blood relations, marriage, marriage, parenting, and guardianship, who are settled in the household; and/or persons working to assist the household and settle in the household and the person who works as referred to in letter c is viewed as a family member for a period of time while in the household concerned.”

b. Domestic Violence Act 521 1994

“his or her spouse; his or her former spouse; a child; an incapacitated adult; any other member of the family; an adult son or daughter; a father or mother, of the offender; a brother or sister; any other relative, of the offender who in

²⁷ Early, N. A. M. (2008). Introduction to the Legal System in Malaysia. *Selangor: Syarekat Printing Ihsan.*

²⁸ Suyanto. (2018). Introduction to Criminal Law. *Yogyakarta: Deepublish.*

²⁹ *Ibid.*

the opinion of the court should, in the circumstances of that family, be regarded as a member of the family.”

Where is the protection of victims recognized by Law No. 23 of 2004 concerning the Elimination of Domestic Violence in Indonesia and Domestic Violence Act 521 1994 junction Domestic Violence Act A1538 2017 both stand for parties involved in the household or in a culture of habitual frequent interaction or one shelter and provides victims of violence the right to compensation for the harm they have suffered as a result of the violence, as well as to counseling sessions that might help with family reconciliation and rehabilitation.

2. Differences in Victim Protection on Domestic Violence under Indonesian and Malaysian Criminal Law

The literature research conducted by the researcher, departs from the definition of domestic violence according to regulations in Indonesia and Malaysia both have covered all matters related to domestic violence. However, women in the definition of domestic violence in Indonesia are referred to as victims which takes precedence in the regulation. Cases of domestic violence have continued to increase in recent years in the multidimensional-modern era as it is now in Indonesia, most of the victims are women.³⁰ Therefore, women are in the main spotlight to get protection from Law No. 23 of 2004 concerning the Elimination of Domestic Violence in Indonesia, but this regulation can still be applied to all victims without limiting gender. To crack down on human rights violations and women's rights violations, Indonesia in Law No. 39/1999 has an order establishing the **National Commission on Human Rights (Komnas HAM)** as an independent institution to conduct human rights assessment, research, counseling, monitoring, and mediation. Furthermore, of the high level of violence in Indonesia, especially since the victims were women, the National Commission for Women (Komnas Perempuan) was formed through Presidential Decree No. 181 of 1998 concerning the Establishment of the National Commission on Violence against Women or **Komnas Perempuan** which was amended by Presidential Regulation Number 65 of 2005 in order to prevent and overcome the problem of violence against women and the elimination of all forms of violence that done against women. Another difference in Malaysia's definition of domestic violence. The context added in the amendments (ea), (eb), and (ec) to the Domestic Violence Act A1538 2017 is more specific so that it is more specific to legitimized forms of domestic violence, down to the protection of the use of electronic media with the intent to insult or bring down victims to third parties. It concluded that the definitions of both sides of regulation have their own advantages and disadvantages, but do not detract from the interpretation of their legal protection.

A. Police

Within 1 x 24 (one time twenty-four) hours of knowing or receiving reports of domestic violence, the police must immediately provide temporary protection to the victim. Temporary protection is given no later than 7 (seven)

³⁰ Suryawirawan, D. P. (2019). Potpourri of crucial issues about sexual violence. *Central Java: Lakeisha Publishers*.

days after the victim is received or handled. Within 1 x 24 (one time twenty-four) hours from the date of granting protection, the police are required to request a letter of determination of a protection order from the court.

B. Health Service

In providing health services to victims, health workers must examine the victim's health in accordance with professional standards, then make a written report on the results of the examination of the victim and *visum et repertum* at the request of police investigators or a medical certificate that has the same legal force as evidence. Health services are carried out in health facilities owned by the government, regional government, or the community.

C. Advocacy

In terms of providing protection and services, advocates are required to provide legal consultations which include information regarding victims' rights and the judicial process; accompanying victims at the levels of investigation, prosecution and examination in court proceedings and assisting victims to fully describe the domestic violence they experienced; or coordinating with fellow law enforcers, companion volunteers, and social workers so that the judicial process runs as it should.

F. CONCLUSION

The differences that the researcher found which were regulated by 56 Articles in Law No. 23 of 2004 concerning the Elimination of Domestic Violence, with 20 Articles in the Domestic Violence Act 521 1994 junction 15 Articles amended in Domestic Violence Act A1538 2017. The protection order from both of that regulations completely tries to cover the victim of domestic violence, from the protection through the perpetrator to the recovery of the victim. The two laws being used by the two nations are excellent and operate in accordance with their own cultures and legal systems, but both nations must remain open in order to adopt this comparative legislation if there is a nation with a superior legal system.

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Regulations:

Indonesian Law:

- a. Constitution of the Republic of Indonesia of 1945
- b. Criminal Code
- c. Law No. 23 of 2004 on the Elimination of Domestic Violence
- d. Law No. 31 of 1999 concerning Human Rights
- e. Law No. 7 of 1984 on ratification of the Convention on the Elimination of All Forms of Discrimination Against Women
- f. Law No. 12 of 2011 concerning the Establishment of Laws and Regulations
- g. Presidential Decree No. 181 of 1998 on the National Commission on Violence Against Women
- h. Presidential Regulation No. 65 of 2005 concerning the National Commission on Violence Against Women

Malaysian Law:

- a) The Federal Constitution of Malaysia
- b) Penal Code Act 574
- c) Domestic Violence Act 521 1994
- d) Domestic Violence Act A1538 2017
- e) Laws of Malaysia Act 597 - Human Rights Commission of Malaysia Act 1999

International Treaty:

- i. Universal Declaration of Human Rights
- ii. Convention on the Elimination of All Forms of Discrimination Against Women
- iii. Declaration on the Elimination of Violence against Women