

LEGAL PROTECTION OF WOMEN'S RIGHTS VICTIMS OF VIOLENCE IN HOUSEHOLD IN THE INDONESIAN JUSTICE SYSTEM

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ABSTRACT

The protection of human rights is basically meant to protect the rights of all human beings, both men and women. Indonesia as a rule of law state implies that all arrangements in the life of the nation, society and state are based on applicable law. Law No. 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT) aims to provide protection to women in marriage who experience violence, both physical and psychological, sexual violence and economic violence or family neglect. In the criminal justice system in Indonesia, it is only oriented towards punishing the perpetrators of criminal acts, not yet paying attention to the legal protection of victims' rights, especially victims of domestic violence. Therefore, it is very interesting to analyze and examine issues regarding legal protection of women's rights in crimes of domestic violence. This type of research is normative legal research, with a statute approach. Domestic Violence includes crimes that occur within the family sphere whose actions occur through personal relationships between husband and wife, parents and children, children and other children, or people within the family sphere. Victims of criminal acts of domestic violence currently tend to be multiple victims; First, being a victim of a crime that happened to him; Second, they become victims when they enter the criminal justice system, whose paradigm is still oriented towards the perpetrators. Law No. 23 of 2004 concerning the Elimination of Domestic Violence has not yet accommodated the rights of victims to obtain material compensation for their suffering, either in the form of restitution or compensation. This is because the policy towards crime prevention through the criminal justice system is focused on the perpetrators of crimes (offender centered) and does not think about the consequences of crime on the victim in every decision making.

Keywords: *Legal Protection, Women's Rights, Domestic Violence*

1. INTRODUCTION

The protection of human rights is basically meant to protect the rights of all human beings, both men and women. But in reality quite a lot of women's rights are neglected. Even though there are quite a number of international legal instruments and those relating to human rights that contain protection for women. International legal instruments relating to human rights that contain protection for women, among others:

- 1) Vienna Declaration and Program of Action (1993)
- 2) Convention of the Elimination of all Forms of Discrimination Against Women (1979).
- 3) Declaration on the Elimination of Violence Against Women (1993).
- 4) Beijing Declaration and Platform for Action (1995) (Harkristuti, 2000).

Indonesia has ratified the convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) with Law Number 7 of 1984 concerning Ratification of the Convention Concerning the Elimination of All Forms of Discrimination Against Women

which is published in the State Gazette of the Republic of Indonesia Number 29 of 1984. Indonesia is a constitutional state, this is stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states: The State of Indonesia is a State of Law. Indonesia as a rule of law state implies that all arrangements in the life of the nation, society and state are based on applicable law.

The preamble to the 1945 Constitution of the Republic of Indonesia (1945 Constitution), in the fourth paragraph, contains the objectives of the Republic of Indonesia, namely to protect the entire Indonesian nation and to advance public welfare. The same thing is also contained in Article 28 AJ of the 1945 Constitution which explains guarantees for the protection of the human rights of every citizen including protection to be free from torture or treatment that degrades human dignity (Article 28 G paragraphs (1) and (2)) and freedom from discriminatory treatment on any basis. Then in the 2nd precept of Pancasila which reads "just and civilized humanity" and the 5th precept reads "social justice for all Indonesian people" (Satriana, 2022).

Indonesia already has legal instruments that regulate violence, which are contained in the Criminal Code (KUHP). Regarding Crimes against Decency regulated in CHAPTER XIV concerning criminal acts committed by means of violence or threats of violence related to crimes against decency as contained in Articles 284 to 294. The description of these Articles is as follows:

1. Adultery, Article 284;
2. Rape, Article 285;
3. Sexual intercourse with underage women, Article 286 to Article 288;
4. Sexual abuse, Article 289 to Article 294;
5. Crimes against decency, Article 281 to Article 283.

Law No. 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT) aims to provide protection to women who are bound by marital relations who experience violence, both physical and psychological, sexual violence and economic violence or family neglect.

Even though many laws have been enacted on the prevention and elimination of domestic violence, cases of violence experienced by women in the household life do not necessarily decrease. According to the Komnas Perempuan Institute, the number of cases of violence against women reported in 2020 was 8,234 cases. The most prominent cases were in the Personal Realm (RP) or called KDRT/RP (Household Cases/Personal Domain) as much as 79% (6,480 cases). Cases in domestic violence/RP included violence against wives (KTI) which ranked first with 3,221 cases (50%), followed by dating violence with 1,309 cases (20%) which ranked second. The third position is violence against girls in 954 cases (15%), the rest are violence by ex-boyfriends, ex-husbands, and violence against domestic workers (Komnas Perempuan, 2020).

In the family circle, there are also not a few husbands who think that their wife is their property and responsibility, so they have the right to do anything, including beating and torturing because of excessive emotions and causing the wife to be injured and even to death (Harkristuti, 2000). If one looks at the cases of domestic violence that have occurred, only a few have been reported to the police. Many cases of domestic violence perpetrated by husbands against their wives are not reported to the police or are not shown in public.

There are several reasons why women are sometimes reluctant to report sexual violence that befalls them perpetrated by their husbands to the police. This is due to, among other things: First, domestic violence has so far not been recognized as a crime in society, even though violence has occurred in many places in the form of wife beating, wife torture, murder and other forms of violence. The perception that has developed in society

so far is that the problem of domestic violence is a private matter and therefore other parties (outside parties including law enforcement officials) should not interfere in it (intervention). Second, most victims cannot speak openly about cases in the family. This is understandable because so far these cases have been underestimated by the surrounding community. Neighbors or other witnesses usually do not necessarily help victims. 6 Third, the traditional attitude of society that women are seen as subordinate to men, social and economic dependence on husbands and families and fear and reluctance of women as victims of violence to get justice. 7 Besides the attitude of wives/women who do not want to report violence perpetrated by their husbands, what needs attention is the actions of the police as law enforcement officers who first received complaints from women as victims of domestic violence.

In providing legal protection for women's rights in the PKDRT Law there are a number of obstacles: First, the domestic violence offense formulated in the PKDRT Law is "half-hearted" so that in practice almost all forms of domestic violence are considered complaint offenses and "stuck" as violence that does not cause harm. result (physically); Second, the bias in the perception of law enforcers from the early stages towards domestic violence so that domestic violence is often seen as a private matter and receives less priority; Third, law enforcers tend to view domestic violence as physical violence so that evidence of the impact of violence is only visible to the naked eye, even though domestic violence always has multiple impacts. , fifth, The wider impact caused by this is the best victims' rights (Abdurrachman, 2010).

Based on the explanation of the background above, an interesting problem can be drawn for further research, namely: how is the legal protection of women's rights in crimes of domestic violence? This becomes interesting for a more in-depth analysis because of the absence of norms in relation to legal protection for women to obtain victims' rights in cases of domestic violence that occur.

2. RESEARCH METHODOLOGY

The type of research used is normative legal research. Normative legal research is research conducted by examining literature (secondary data) which includes legal principles, legal systematics, comparative law and legal history (Soekanto, 2013). Normative law research serves to provide juridical arguments when there is a void in norms, unclear norms, and/or conflicting norms (Diantha, 2017). The approach used in a normative legal research is the statutory approach (Ibrahim, 2006). The statutory approach in this study refers to the 1945 Constitution of the Republic of Indonesia (UUD NRI), the Criminal Code (KUHP), Law No. Law Number 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT), and Law Number 12 of 2022 concerning Crimes of Sexual Violence. The method of collecting primary, secondary and tertiary legal materials in this study is to use a combination of the snowball method and the systematic method. The collected primary, secondary and tertiary legal materials were analyzed through description, comparative, systematic, argumentation and evaluation steps.

3. RESULTS AND DISCUSSION

Domestic violence (KDRT) can be called partner violence where this action includes verbal abuse, physical emotional and sexual acts against someone. Domestic violence can occur to all sexes or gender, race, age and sexual orientation. Regarding violence that occurs in the household, it causes a number of negative impacts, such as long-term physical and mental health problems for victims, who are generally women and children. Physically, the injuries that may occur are cuts, bruises, concussions, broken bones,

internal injuries, organ damage, hearing and vision loss, arthritis, permanent disability and other injuries caused by sharp objects (Alejo, 2014).

Domestic Violence is one of the crimes that occur within the family sphere whose actions occur through personal relationships between husband and wife, parents and children, children and other children, or people who are within the scope of the family (Setyaningrum, 2019). According to Winarsunu, sexual harassment is all kinds of behavior that has a sexual connotation that is carried out unilaterally and is unwanted by the victim. The form can be in the form of speech, writing, symbols, gestures and actions that have a sexual connotation. Activities that have a sexual connotation can be considered sexual harassment if they contain the following elements, namely coercion of will unilaterally by the perpetrator, events are determined by the perpetrator's motivation, events are unwanted by the victim, and cause suffering to the victim (Susi Wiji Utami, 2016).

According to Collier, the notion of sexual harassment here is any form of unwanted sexual behavior by those who receive such treatment, and sexual harassment that can occur or be experienced by all women. Meanwhile, according to Rubenstein, sexual harassment is the nature of unwanted sexual behavior or actions based on sex that offend the recipient (Susi Wiji Utami, 2016). Many cases of domestic violence are experienced by women. Not only discrimination against the victims themselves, but many cases of violence were also found, such as cases of physical or sexual abuse and cases of domestic violence. Society's view of women is still low, because women are seen as gentle, sensitive, patient, and weak creatures. So that in this case the position of women is less profitable (Gultom, 2014).

Some of the obstacles in Handling Victims of Domestic Violence include:

First, cases of domestic violence that are reported by victims are often not followed up because victims are unsure or do not understand that what is being reported is a crime. Likewise, cases that have been processed by the police are often withdrawn for various reasons, for example because the victim feels that he has forgiven the perpetrator, economic dependence on the perpetrator, domestic violence is still considered a family disgrace; Second, different understandings among law enforcers regarding forms of domestic violence; regarding the mechanism for providing protection and not all parties support efforts to protect victims of domestic violence; Third, the length of time between the incident and the post mortem, so that the post mortem results are less supportive of the legal process; Fourth, the problem of budgeting for outreach to areas that are difficult to reach, so that the frequency is inadequate, and shelter funding for both building and operations; Fifth, the handling of cases of domestic violence has not been considered a priority, so the formation of PPT is still stalled; Sixth, the substance of the punishment as referred to in the provisions of Article 44 and Article 49 of the PKDRT Law does not yet have a deterrent effect. In several cases (especially for psychic domestic violence) the judge imposed a light sentence because he only saw the external condition of the victim without trying to dig into the victim's (inside) suffering (Mudjiati, 2008).

Legal protection for victims of crime is part of community protection which can be realized through various efforts such as providing restitution and compensation and legal protection for victims of acts of violence (Yoserwan, 2007). The difference between compensation and restitution is that compensation is a victim's request and is paid by

the community in the form or accountability of society and the state for victims of acts of violence. Meanwhile, restitution is a form of accountability which is more likely to lead to a crime that is accounted for by the accused as a convict. Protection of victims can be direct (concrete) and indirect (abstract) and accountability can be material or non-material.

There is no provision of victims' rights in the form of compensation or material compensation to victims for the violence they have experienced. The implementation of compensation regulations provides the possibility for victims to freely participate and express their opinions. This matter is very important because it concerns his fate (Abdurrachman, 2010). According to Angkasa, restitution needs to be integrated into the criminal justice system. This integration is based on the consideration that restitution is a criminal institution that can provide benefits to victims, perpetrators, the state and society as compensation for financial losses, repairs and/or treatment of physical injuries and psychological suffering as victims of criminal acts that have befallen them (Angkasa, 2003). Victims of criminal acts of domestic violence currently tend to be multiple victims; First, being a victim of a crime that happened to him; Second, they become victims when they enter the criminal justice system, whose paradigm is still oriented towards the perpetrators.

According to Schneider, there are 5 (five) ways to restitution: First, the basic restitution model with the procedure for the offender paying to the court, and the court then giving the money to the victim; Second, the expanded basic restitution model with the procedure for finding a job for actors with low income and young actors; Third, the victim assistance model, in which the offender is given the opportunity to help the victim so that the victim can receive full compensation; Fourth, the victim assistance-offender accountability model for a settlement that satisfies both parties, is carried out by negotiation and sometimes by bringing the two parties together; Fifth, the community accountability-deterrence model with the procedure for requesting compensation is requested by a group of people as representatives of the community (Andrew Karmen, 1984).

Victim-oriented criminal law reform is needed as an embodiment of the implementation of the Indonesian rule of law in which all people have access to justice (not just offenders) and as a balanced policy (balance) in criminal law reform. So criminal law reform does not prioritize protecting the interests of the offenders and ignoring the interests of the victims, or prioritizing protecting the interests of the victims and ignoring the interests of the offenders, borrowing Groenhuijsen's term, the policy towards victims is not just a priority for victims but parity for offenders and victims.

The development of the orientation of criminal law, if originally criminal law was oriented to the act (crime) the goal was prevention of crime, then to people (offenders) the target was treatment of offender, then developing to victims (victims) the target was treatment of victims. There is attention to the victim, according to current developments so that the criminal law eliminates the impression that it only pays attention to the interests of the perpetrator rather than the victim. This is a necessity considering the suffering of crime victims is ignored by the criminal justice system. The other side of the policy towards crime prevention through the criminal justice system is that it focuses on the perpetrators

of crimes (offender centered) and does not think about the consequences of crime on the victim in every decision making.

4. CONCLUSION

Based on the description above, it can be concluded that domestic violence is included in criminal acts that can have physical, mental and psychological impacts. Women who have experienced acts of violence will generally feel psychologically disturbed because of the acts of violence they have experienced. This violence is not only visible physically, but causes deep mental suffering for the long term. Law No. 23 of 2004 concerning the Elimination of Domestic Violence has not yet accommodated the rights of victims to obtain material compensation for their suffering, either in the form of restitution or compensation. Law enforcement officials in criminal justice processes such as public prosecutors, legal advisers of suspects/defendants, witnesses (victims) and judges based on available evidence, tends to only pay attention to the process of proving the accusations of the public prosecutor against the suspect/defendant. The judicial process is more focused on proving the actions of the suspect/defendant fulfilling the elements in the formulation of the articles contained in the PKDRT Law.

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