

THE ANALYSIS OF LEGAL PROTECTION ASPECTS FOR WOMEN AS VIOLENCE'S PERPETRATOR BASED ON JUSTICE VALUE

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ABSTRACT

Households between husband and wife, and parents and the children conflict often occur. It is a natural thing in a household, there is no household that runs without conflict, almost all families have experienced. The different is how families resolve and overcome the conflicts. Each family has its own way to solve the problem, how the family resolves the problem depends on family members how to deal with a problem calmly without emotion and prioritize personal interests, so the problem can be resolved properly.

The state's obligation to carry out the elimination of domestic violence is carried out through the criminal justice system. Criminal justice system can be interpreted as the use of a system approach to the mechanism of criminal justice administration and criminal justice as a system as a result of interactions between legislation, administrative practices and rational attitudes or social behavior and by efficient means to provide certain results with all its limitations.

Domestic violence is categorized as a juridical crime stipulated in Law Number 23 year 2002 concerning the Elimination of Domestic Violence. The scope of the household includes husband, wife and child; people who have family relationships because of blood relations, marriage, dairy, care, and guardianship, who live in the household; and/or people who work to help the household and settle in the household. As a crime, domestic violence can be punished as a criminal threat stipulated in Law Number 23 year 2002. Domestic violence can be carried out by women, all the physical violence, psychological violence, sexual violence and neglect. Women in the criminal justice system are still protected by the separation of detention rooms and examined by women's units. In a crime prevention system, character education is needed especially for prospective parents to provide an understanding of the concept of marriage, being a wife, husband, daughter-in-law, parents and members of a community.

Keywords: Legal protection, Women's Domestic Violence, Value of Justice

A. BACKGROUND

Family in community life is the most basic group, but besides the most basic group, the family has an important role in social development in the community and within the family itself. There are organizations and within family organizations there are members consisting of father, mother, and child. Behind the advancement of a family, there must be important figures, important figures are the head of the family and besides the head of the family there must be support from other family members. In the family, good relations between family members are needed and good relations themselves in marking the harmony of relationships between family members. The family can be said to be a harmonious family if

each family member feels happy without any tension, disappointment, satisfaction with the situation (physical, mental, emotional, and social, and in family members without conflict.

Conflicts that occur in the household between husband and wife, or parents with children are natural. There are no households that run without conflict, almost all families have experienced it. The different is how families solve and overcome the conflict, each family has its own way of solving the problem. How the family resolves the problem depends on how family members deal with a problem calmly without emotion and prioritize personal interests. If the problem can be resolved properly, the family will get meaning which is very valuable. The meaning of the problem is used to realize and to understand the feelings and personality between family members. On the other hand, if the conflict is resolved in an improper way, venting anger with shouting and invective, sometimes behaviors such as attacking, threatening and forcing or to committing physical violence such behavior can even be said as an act of violence household.

Many cases of domestic violence occur in the middle of the community. Victims also usually come from various walks of life. for example, from artists, celebrities, state officials, lower classes even among educated people. Domestic violence ladder can befall wives, husbands, children, or people who live in the family environment including the housemaid.¹

Gender-based crime studies often discuss the position of women as victims of a crime. The discussion cannot be separated from thinking about the inferior position of women when compared to men. This position causes women to be unable to commit violence, especially if the victims are men. Violence is understood as gender-based or gender-based violence. This concept actually refers to the position of subordination of women because their relations reflect powerless and powerful, in other words, there is a power imbalance between women and men.² Women are seen as having a loving nature so that they are not likely to commit a crime, but this assumption cannot be justified. Today, women often become perpetrators of crime, even becoming perpetrators of domestic violence. Judging from the crime record, women are often victims of domestic violence.

The National Commission on Violence Against Women stated that the most reported cases by female victims were domestic violence and sexual violence. In the annual record of the National Commission on Violence Against Women, it was revealed that the number of cases of violence against women in 2015 increased by 9 percent from 2014. That was the

¹ Rena Yulia, *Perlindungan Hukum Terhadap Korban Kejahatan, Graha Ilmu*, Yogyakarta, 2010, Page1

² Romany Sihite, *Perempuan, Kesenjangan, dan Keadilan Suatu Tinjauan Berwawasan Gender*, Jakarta: PT RajaGrafindo Persada.2007, page 226

number of cases reported, while those that were not reported were thought to be higher. From the collected data, the most prominent types of violence against women are the same as in previous years, namely domestic violence which reached 11,207 cases or 69 percent of the total. In the realm of domestic violence the most prominent violence was physical violence as many as 4,304 cases (38 percent), followed by sexual violence 3,325 cases (30 percent), psychic as many as 2,607 cases (23 percent), and the economy as many as 971 cases (9 percent).³

Domestic violence is a crime in a juridical sense. Crime is a social phenomenon that occurs in society. Hugu D. Barlow argues that crime as a human act violates the criminal law⁴. Crime is a human act that violates criminal law. Domestic violence is a crime that is prohibited in the Law of the Republic of Indonesia Number 23 year 2004 concerning the Elimination of Domestic Violence (State Gazette of the Republic of Indonesia of 2004 Number 95). Article 1 number 1 of the Law of the Republic of Indonesia Number 23 year 2004 states the following:

Domestic Violence is any act against a person, especially a woman, which results in physical, sexual, psychological misery or suffering, and/or neglect of the household, including threats to carry out acts, coercion or deprivation of liberty illegally within the household.

Violence committed by wives against husbands tends to be unreported because it is seen as a disgrace for men who cannot afford to become family leaders. The community will say that the case is a unique, rare case and tends to question the truth of the case. Cases of physical violence have occurred in Jorong Sungai Kambut, Nagari Sungai Kambut, Pulau Punjung District, Dharmasraya Regency, West Sumatra. The wife allegedly committed violence against her own husband which resulted in her husband being injured in the legs and face. The case was handled by the PPA unit IV Satreskim Dharmasraya Police. The wife had mistreated her husband who named Afrizal scratched the victim's body and struck 1 (one) log on the part of her husband's own victim. In a meeting of the victim with the perpetrator in a neighbor's house, the perpetrator allegedly suffocated his neck by hand, and then ensnared the victim's neck using a rope. The perpetrator again allegedly committed violence against the victim of his legitimate husband by throwing Accu at the victim's two leg bones which caused the injured victim's leg to bleed.⁵

³<http://www.cnnindonesia.com/nasional/20160307183325-26-115932/perempuan-paling-banyak-laporkan-kasus-kdrt/>.

⁴ Topo Santoso dan Eva Achjani Zulfa, 2001, *Kriminologi*, Jakarta: RajaGrafindo Persada.2001, page13

⁵<https://www.gosumbar.com/berita/baca/2016/08/22/kasus-kdrt-unik-di-kabupaten-dharmasraya-istri-diduga-aniaya-suami-hingga-babak-belur#sthash.UO07t8b4.dpuf>

The description of cases of domestic violence committed by women against men breaks the general view that men have superiority compared to women. Violence committed by mothers towards children and the housemaid is more often reported and processed legally. In this research, women were discussed as perpetrators of domestic violence.

The increasing prevalence of domestic violence especially towards women and talking about violence against women will involve very broad problems, either because of their form (sexual violence, physical violence), their type (rape, abuse or murder) and their place of occurrence within the household.

B. PROBLEM FORMULATION

1. How is the legal protection of women as perpetrators of domestic violence?
2. How does the criminal justice system regulate women as perpetrators of domestic violence based on the value of justice?

C. OBJECTIVE OF THE RESEARCH

This research has theoretical benefits and practical benefits.

1. Theoretical benefits in this study are for the development of scientific criminal law, especially in the field of criminology.
2. The practical benefit of this research is that it can be used as a reference for law enforcers to construct cases of violence against women in the household.

In general, the community is expected to understand that domestic violence is not only done by men to women, but can be the opposite where women become perpetrators.

D. LITERATURE REVIEW

1. Review of Legal Protection

The equivalent of the word *perlindungan* in English is protection, which means as: (1) protecting or being protected; (2) protecting system; (3) person or thing that protect. The form of the verb, protect (vt), means: (1) keep safe; (2) guard. In the Indonesian Dictionary, protection means (1) shelter; (2) actions or things and so on protecting. From these two definitions linguistically there are meaningful similarities in the elements of the meaning of protection, namely:

1. Elements of a protective action.
2. Elements of the parties that protect.
3. Elements of how to protect.

Based on the above elements, it means that the word protection contains meaning, an act of protection or an act of protection from certain parties aimed at certain parties using certain methods. In the life of nation and state protection of consumers can be done through various forms including economic, social, political protection and legal protection. The most important forms of protection against these consumers is protection provided by law, because the law can accommodate various interests of consumers, besides that the law has forced power so that it is permanent because of its constitutional nature that is recognized and adhered to in its implementation in community life.

According to Satijipto Raharjo, legal protection is to provide protection for human rights that are harmed by other people and that protection is given to the community in order to enjoy all the rights granted by law. Law can be used to realize protection that is not only adaptive and flexible, but also predictive and anticipatory. Law is needed for those who are weak and not yet strong socially, economically and politically to obtain social justice.⁶

In the opinion of Phillipus M. Hadjon, protection is a legal protection for the people as a preventive and repressive government action. Preventive legal protection aims to prevent the occurrence of disputes, which directs government actions to be careful in making decisions based on discretion, and repressive protection aimed at resolving disputes, including handling them in the judicial institution.⁷

The function of law is to protect the people from harm and actions that can harm and narrate their lives from other people, the community and the authorities. Besides that, it also functions to provide justice and become a means to realize prosperity for all people.

Legal protection can also raise questions that then doubt the existence of law. Law must provide protection for all parties in accordance with their legal status because everyone has the same position before the law. Law enforcement officials are obliged to enforce the law and with the functioning of the rule of law, the law will indirectly provide protection for every legal relationship or all aspects of people's lives governed by law.

⁶ *Ibid*, page.55

⁷ Phillipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Indonesia*, PT. Bina Ilmu, Surabaya: 1987. page.29

2. Overview of the Relationship of Domestic Violence to Women

Regarding the problem of crime, violence is often a complement to the form of crime itself. In fact, it has formed a distinctive feature in the repertoire of crime studies. The more widespread the frequency of crimes followed by violence in the community, the thicker public confidence in the importance and seriousness of such crimes. Thus, in turn this crime model has formed a distinctive perception among the people.

The problem of violence is not an easy thing, because violence is basically an aggressive action that can be done by everyone. For example the act of hitting, stabbing, kicking, slapping, punching, biting, these are all examples of forms of violence. Besides these things too, sometimes violence is a normal action, but the same action in a different situation will be called aberration.⁸

Whereas what is meant by Domestic Violence (KDRT in Indonesian) is violence committed in the household both by the husband and by the wife. According to Article 1 of Law Number 23 year 2004 concerning the Elimination of Domestic Violence (UU PKDRT), domestic violence is any act against a person, especially women, which results in physical, sexual, psychological misery or suffering resulting from misery and/or neglect of the household including threats to commit acts, coercion or deprivation of liberty against the law in the household sphere.

Domestic violence is generally related to gender based violence. This form of crime is a form of discrimination that prevents women from getting equal rights with men. The act of violence can be in the form of domestic violence and crime that excuses honor. Violence in this category arises from the positioning of women as dependents and protection from a male guardian, first father and then her husband.

Gender is the difference between men and women who are formed at the same time socially institutionalized. This makes the community determine the limits of appropriateness and label stereotypical roles for men and women. What has been determined by the community has been going on for centuries, and it is assumed that nature cannot change. Therefore, one can only exist and be considered right when following the prevailing social boundaries and labels. Conversely, someone will feel guilty and blamed if they come across the social boundaries and labels.

Domestic violence is a big problem characterized by silence and no problem solving. This is related to the cultural values inherent in the family concept, it can be derived from the

⁸ Muhammad Mustofa, *Prevensi Masalah Kekerasan Di Kalangan Remaja*, Depok: 1996

teachings of religion, culture and myths that develop in society. Philosophy in an Indonesian culture that upholds family honor and closes family disgrace meetings is often the reason for a family not to open up the issue of violence that occurs in the household.

Whereas household coverage according to Article 2 of Act Number 23 year 2004 concerning Domestic Violence is:

- a. Husband, wife and child (including adopted children and stepchildren);
- b. People who have family relationships as mentioned above because of blood relations, marriage (eg in-laws, daughter-in-law, brother-in-law, and besan), dairy, care, and guardianship, who live in the household; and/or
- c. People who work to help the household and settle in the household, within the period of time they are in the household concerned (Article 2 paragraph (2) of Law Number 23 Year 2004 concerning Domestic Violence).

3. Overview of the Value of Justice

In general, it is said that unjust people are unlawful, lawless and unfair, so fair people are law-abiding and fair people. Because the act of fulfilling / obeying the law is fair, then all acts of law making by the legislature in accordance with the existing rules are fair. The purpose of making law is to achieve progress in people's happiness. So, all actions that tend to produce and maintain the happiness of society are fair.⁹

Thus, justice can be equated with basic social values. Complete justice not only achieves happiness for oneself, but also happiness for others. Justice which is interpreted as an act of fulfilling happiness of oneself and others, is justice as values. Justice and values in this case are the same but have different essence. As a person's relationship with others is justice, but as a special attitude without qualification is value. Injustice in social relations is closely related to greed as the main feature of unfair actions.

Justice as part of social value has a very broad meaning, even at a point it can conflict with the law as one of the social values. A crime committed is a mistake. However, if this is not greed it cannot be said to cause injustice. Conversely an action that is not a crime can cause injustice.

⁹ Aristoteles, *Op. Cit*,

E. DISCUSSION

The elimination of domestic violence is the government's effort to combat crime. Elimination of domestic violence is a guarantee given by the state to prevent domestic violence, take action against perpetrators of domestic violence, and protect victims of domestic violence. The state has the duty to guarantee the welfare of all its people, so that one way to carry out this task is to make arrangements in the form of laws.

Domestic violence is a juridical crime that is regulated through Law Number 23 year 2004. Current developments indicate that physical, psychological, sexual, and neglect of domestic violence are really exist. So that adequate legal instruments are needed to eliminate violence in the household.

Prevention of domestic violence is carried out by public education about victim protection and crime for perpetrators. Cases of domestic violence are crimes that are difficult to reveal. The case of domestic violence eventually became a hidden crime and allegedly very little was revealed in the criminal justice, even though there were laws as a legal basis.¹⁰ To realize this integrity and harmony, it is very dependent on everyone in the household, especially the level of quality of behavior and self-control of everyone in the household. The integrity and harmony of the household can be disrupted if the quality and self-control cannot be controlled, which in the end can result in domestic violence resulting in insecurity or injustice towards people who are in the household.

This violence was carried out within the household, so that awareness of reporting violence was low. Article 2 of Law Number 23 Year 2004 regulates the scope of the household, namely as follows:

- (1) The scope of the household in this Act includes:
 - a. husband, wife and child;
 - b. people who have family relations as referred to in letter a because of blood relations, marriage, dairy, care, and guardianship, which are settled in the household; and/or
 - c. people who work to help the household and settle in the household.
- (2) The person working as referred to in letter c is considered as a family member within the period of time in the household concerned.

¹⁰ Romany Sihite, *Perempuan, Kesenjangan, dan Keadilan Suatu Tinjauan Berwawasan Gender*, Jakarta: PT RajaGrafindo Persada.2007, page .145

As a covert crime, this crime certainly causes greater casualties. It is not uncommon to find someone who has suffered (physically, mentally or materially) as a result of a criminal offense that has befallen him or her, not hidden, then this crime certainly causes a greater victim loss. It is not uncommon to find someone who experiences suffering (physical, mental or material) as a result of a criminal act that befalls him, does not use the rights he should receive for various reasons, such as fear in the future people will know what happened to him (due this is a disgrace to himself and his family) so that the victim is better hiding it, or the victim refuses to propose compensation because it is feared that the process will become longer and protracted which can result in prolonged suffering.¹¹

In studies on gender-based crime, men are often constructed as perpetrators while women are constructed as victims. In a study conducted by Susan Hanks, Director of the Institute for Family and Violence in Alameda, California, it was analyzed about the factors that caused maltreatment by men to women. There is no special feature regarding men who persecute women. Are these men of age, economic conditions, or certain sexual disorders. Men persecute because of their psychological condition. Men who persecute want to find strength or control their partners, or their own lives. It could also be because they are constantly dependent on women, and are worried that there will be a reaction from the women regarding their freedom. Some other men abuse because that's the only way they know to be close to their partner.¹²

Crime is human behavior that violates criminal law. Sutherland stressed that the main feature of crime is behavior that is prohibited by the state because it is an act that is detrimental to the state and to the actions of the state reacts with punishment as the ultimate effort.¹³ The state has a legal obligation to overcome crime. In its implementation, the law can be enforced by the state apparatus to create a peaceful, orderly and fair society. Against human behavior, law requires humans to do deeds that are born, so that humans are bound to the legal norms that apply in the society of the country. The state has an obligation to develop a set of norms to combat this crime.¹⁴ The state's obligation to carry out the elimination of domestic violence is carried out through the criminal justice system. Criminal justice system can be interpreted as the use of a system approach to the mechanism of criminal justice

¹¹ Dikdik M. Arief Mansur & Elisatris Gultom, Gultom, 2007, *Urgensi Perlindungan Korban Kejahatan Antara Norma dan Realita*, Jakarta: PT RajaGrafindo Persada. 2007 page 52

¹² Rena Yulia, *Viktimologi Perlindungan Hukum Terhadap Korban Kejahatan*, Yogyakarta: Graha Ilmu, 2010, page 2

¹³ Topo Santoso dan Eva Achjani Zulfa, 2001, *Kriminologi*, Jakarta: RajaGrafindo Persada.2001 page 14

¹⁴ Dahlan Thaib, Jazim Hamidi dan Ni'matul Huda, Ni'matul Huda, 1999, *Teori dan Hukum Konstitusi*, Jakarta: RajaGrafindo Persada.1999 page76

administration and criminal justice as a system as a result of interactions between legislation, administrative practices and rational attitudes or social behavior and by efficient means to provide certain results with all its limitations.¹⁵

Women in the criminal justice system need to be protected even if the woman poses as a perpetrator. In law as a unity of the system there are (1) institutional elements (institutional elements), (2) rules of elements (instrumental elements) and (3) elements of behavior of legal subjects who bear rights and obligations determined by the norms of rules (subjective elements and cultural). The three elements of the legal system include (a) law making activities, (b) implementation activities or the application of law (law administrating) and judicial activities for law violations (law adjudicating).¹⁶In an effort towards an integrated criminal justice system, it is also necessary to synchronize legal substance records. Substance includes all legal rules, legal norms and legal principles, both written and unwritten, including court decisions. At the level of legal substance, normative provisions are needed to legitimize and equate perceptions regarding the elimination of domestic violence.¹⁷

In the criminal justice process, efforts are needed to provide protection to victims. Organizing services for victims, the government and regional governments in accordance with their functions and duties can make efforts: a. providing special service space at the police station; b. provision of officials, health personnel, social workers, and spiritual guides; c. the creation and development of systems and mechanisms for cooperation in service programs that involve parties that are easily accessible to victims; and D. provide protection for escorts, witnesses, families and friends of victims. To carry out these efforts, the government and regional government in accordance with their functions and duties, can cooperate with the community or other social institutions.

F. CONCLUSION

Domestic violence is categorized as a juridical crime stipulated in Law Number 23 year 2002 concerning the Elimination of Domestic Violence. The scope of the household includes husband, wife and child; people who have family relationships because of blood relations, marriage, dairy, care, and guardianship, who live in the household; and/or people

¹⁵ Romli Atmasasmita, *Sistem Peradilan Pidana Perspektif Eksistensialisme dan Abolisionisme*, Bandung: Binacipta.1996 page .14

¹⁶ Jimly Asshiddiqie, 2010, *Konstitusi & Konstitusionalisme Indonesia*, Jakarta, Sinar Grafika. : 2010 page 306

¹⁷ Achmad Ali, *Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (JudicialPrudence) Termasuk Interpretasi Undang-undang (Legisprudence)*, Jakarta: Kencana Prenada Media Group, 2009,page 204

who work to help the household and settle in the household. As a crime, domestic violence can be punished as a criminal threat stipulated in Law Number 23 year 2002. Domestic violence can be carried out by women, all of the physical violence, psychological violence, sexual violence and neglect. Women in the criminal justice system are still protected by the separation of detention rooms and examined by women's units. In a crime prevention system, character education is needed especially for prospective parents to provide an understanding of the concept of marriage, being a wife, husband, daughter-in-law, parents and members of a community.

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