

Legal Uncertainty on the Obligations of People Who Hear, See or Know the Occurrence of Domestic Violence Crimes

Bambang Tri Bawono¹⁾, Andri Winjaya Laksana²⁾ & Moh. Nurul Huda³⁾

¹⁾Faculty of Law, Sultan Agung Islamic University, Indonesia, E-mail: bambang@unissula.ac.id

²⁾Faculty of Law, Sultan Agung Islamic University, Indonesia, E-mail: andri.w@unissula.ac.id

³⁾Faculty of Law, Sultan Agung Islamic University, Indonesia, E-mail: moh.nurulhuda@unissula.ac.id

Abstract. *One of the problems that until now is still mushrooming in Indonesia is related to violence in the stairs. The problem of domestic violence regulation is related to the existence of legal uncertainty for the community or everyone who hears, sees, or knows the occurrence of a crime of domestic violence is obliged to prevent, protect the law and provide emergency assistance to the victim and assist in the process of submitting an application for the determination of protection. The type of research used in this study uses empirical legal research, using a descriptive research type which will later be analyzed using qualitative analysis. The results of the study show that there is legal uncertainty in article 15 of the PKDRT Law. This is because the article contains the phrase mandatory, while it is not accompanied by sanctions, while in point 268 of Attachment 1 of the Law on the Formation of Legislation it expressly says that when there is a mandatory word, sanctions must be given for those who do not do it.*

Keywords: *Domestic Violence; Legal Uncertainty; Mandatory.*

1. Introduction

Domestic violence or commonly referred to as *domestic violence* is gender-based violence that often occurs in the family realm. This violence often occurs in the family realm, so the perpetrator is a person who is very well known to the victim. The occurrence of this violence, for example, is an act of violence committed by a husband to his wife, a father to a child, and so on. Based on this, the occurrence of domestic violence crimes is in principle based on the relationship of a marriage.

In the context of efforts to realize an ideal household ark, of course everyone wants their household to be happy, *sakinah, mawaddah, warahmah*. It's just that to achieve such a noble goal, of course, is not easy to achieve because there are various problems that must be solved. Based on that, it is not uncommon for the ark of the household that is built to be eroded which leads to divorce. Data submitted by the Central Statistics Agency states that in 2023 in Central Java there have been 76,367 divorces (Central Statistics Agency,

2025). Furthermore, in 2024 the divorce problem in Central Java will also still be high at 64,569.

Based on such data, of course, there are many chronologies behind the occurrence of such divorces, including economic factors and the occurrence of domestic violence. The main problem that needs to be raised in this context is the lack of knowledge of the community that to establish good relations between families is the fulfillment of all rights and obligations by each party. Not only that, this ignorance also arises because most people also do not understand that daily behavior carried out between husband and wife between children and fathers can be included in the category of domestic violence crimes.

Article 1 paragraph (1) of Law No. 24 of 2024 concerning the Elimination of Domestic Violence states that Domestic Violence is any act against a person, especially a woman, which results in physical, sexual, psychological, and/or domestic neglect suffering or neglect, including threats to commit unlawful acts, coercion, or deprivation of independence within the scope of the household (Surianto, 2018). In principle, the problem related to domestic violence is an irony of the existence of a patriarchal culture in Indonesia. Not only that, even according to M. Hendra Pratama Ginting, Muhammad Akbar and Rica Gusmarani, it is stated that the causes of domestic violence are (Hendra Pratama Ginting, 2022):

1. The patriarchal culture is still strong so that men are considered the most dominant, both in the family and the surrounding environment.
2. There is a squeeze on the family economy.
3. There is a squeeze of big city problems that encourage stress.
4. The harsh environmental conditions and work encourage the high temperamental of people.
5. There is a socio-cultural influence in society that puts women and children in a marginal and helpless condition.

Based on this reality, the problem of domestic violence crimes has also increased from year to year. Referring to the executive summary of Komnas Perempuan on March 7, 2025 as the Annual Record of Violence against Women in 2024, it is stated that violence against women in 2024 amounted to 445,502 cases. This number is a very fantastic number because there has been an increase of 43,527 cases or around 9.77% compared to 2023 of 401,975 cases. Of the number of such cases, the most reported were sexual violence as much as 26.94%, psychological violence as much as 26.94%, physical violence as much as 26.78% and economic violence as much as 9.48% (Komnas Perempuan, 2025).

Based on this fact, in principle, this study was carried out on the basis of the large number of cases of domestic violence crimes that occurred in Indonesia. The basic problem of the occurrence of this criminal act is also caused by the ignorance of the community. Although in legal concession there is a legal fictional principle that assumes that everyone understands

the law (Ida Bagus Wisnuputra Raditya, 2024). However, in practice, the community also does not fully understand the law. It could even be that the victims who are treated as the type of violence above, also do not understand that it is part of the crime of sexual violence.

On the other hand, problems related to the regulation of domestic violence crimes are also contained in Article 15 of the Law on the Elimination of Domestic Violence. In the article, it is explained that everyone who hears, sees or knows the occurrence of domestic violence is obliged to make efforts in accordance with the limits of his or her ability to prevent the occurrence of criminal acts, provide protection to victims, provide emergency assistance, and assist in the process of submitting applications for the determination of protection. The problem is that the existence of phrases in accordance with the limits of competence is a sensitive part and does not have legal certainty because there is a space for multiple interpretations in it (Ahmad Fuad Rosyidi and Siti Zumrotun, 2025).

Moreover, in the context of the discussion of Article 15, there is also a mandatory phrase, while the law on the elimination of domestic violence also does not regulate sanctions when there are everyone who does not do the things as above. In fact, there should be a mandatory word when it is not implemented requires sanctions, because the phrase used is a mandatory word.

2. Research Methods

The type of research used is sociological legal research that emphasizes primary data and secondary data. The use of primary data is carried out through legal counseling and questions and answers with the community as well as secondary data based on literature studies. The type of research used is descriptive analytical using qualitative data analysis.

3. Results and Discussion

3.1. The Construction of Domestic Violence Crimes

Article 1 paragraph (3) of the 1945 Constitution expressly states that Indonesia declares itself as a state of law (Riani Bakri and Murtir Jeddawi, 2022). Efforts to build Indonesia into a state of law are certainly not just about declaring a state of law, but it has several requirements that must be met. According to research by Divany Harbina Emzillena Kaban et al, in this case it is also explained that there are four conditions that must be met to form a country into a state of law. First, the formation of a constitution which is used as a basis for state development. Second, the realization of transparency and openness in showing accountability for every policy made by the government. Third, the realization of guarantees for the independence of judicial power in enforcing the law. Fourth, the realization of protection for human rights for every citizen (Divany Harbina Emzilena Kaban, 2024).

Based on these four conditions, the development of guarantees for the protection of human rights is part of the state of law. The problem of domestic violence is not new in principle, this

crime is often termed domestic *violence or Family Volence*. In principle, this crime does not only discuss women as victims of crimes, but can lead to children, husbands, or anyone who falls into the category of family in the household. Although, the victim and the perpetrator are the closest people, domestic violence often targets women and children. According to Jane Robert Chapman, violence against women is a universal part that occurs in all cultures and countries. Of the 90 countries studied, Jane found that domestic violence often occurs, especially against female victims (Harkistuti Harkisnowo, 2021).

The discussion on the regulation of domestic violence crimes has undergone a very extraordinary development. As part of protecting women and families in general from acts of violence, almost every country has special rules on domestic violence. Malaysia is one of the countries that has special rules on domestic violence. Regulations on domestic violence are regulated in the Domestic Violence Act 1994 (Act 521). Not only that, the construction of the domestic violence act is also accompanied by criminal sanctions regulated in the Malaya Penal Code (Act 574) or the Penal Code of Malaysia (Rizky Amalia, 2021).

Correspondingly, the construction of domestic violence in Singapore depends in principle on court rulings because Singapore adheres to Anglo Saxon. Regulations that existed before 2007, the law in Singapore still provides legal immunity for husbands who force their wives to have sexual relations. It is based on Article 375 of the Singapore Penal Code Chapter 224. In this provision, sexual intercourse without the consent of the wife is not part of rape unless the dissertation is violent threat or the wife is at least 14 years old. However, in 2019, this provision received special attention by parliament and proposed the abolition of the immunity of perpetrators of marital rape. In addition, Singapore also has the Women's Chapter which regulates the rights and legal protection for women (Azzahra Nikita Wahdah, 2025).

In line with this, the construction of domestic violence began to emerge in 2004 as stipulated in Law No. 24 of 2004 concerning the Elimination of Domestic Violence. In the regulation, in principle, it regulates the types of domestic violence crimes divided into four types, including:

a. Physical Violence

Physical violence is an act that results in pain, falling ill, or seriously injured (Ps 5 jo 6). Physical violence can be exemplified such as kicking, slapping, hitting, bumping, biting and so on. Acts that cause pain must certainly receive medical treatment according to the violence they experienced (Agung Budi Santoso, 2019).

b. Psychological Violence

Psychological Violence, which is an act that causes fear, loss of confidence, loss of ability to act, sense of helplessness, and/or severe psychological suffering in a person (Ps 5 jo 7). It can be exemplified such as threatening behavior, intimidation, swearing/insulting, bullying and so on. This psychological violence if it occurs in children will certainly have an impact

on the development and psyche of children, so they tend to experience prolonged trauma. This can also happen to women.

c. Sexual Violence

Sexual violence as referred to in Article 5 letter c includes:

- 1) Forced sexual relations committed against people who live within the scope of the household,
- 2) Forced sexual relations against one person within the scope of his household with another person for commercial and/or specific purposes.

Sexual violence includes various unwanted behaviors that have sexual meaning, or often called "sexual harassment", as well as various forms of forced sexual intercourse referred to as rape. Sexual violence includes: forced sexual intercourse in a pattern that is not desired or approved by the wife, forced sexual intercourse when the wife does not want to, wife is sick or menstruating (Moerti Hadiarti Soeroso, 2010).

d. Economic Violence

Economic violence includes: not providing support to the wife, neglecting, or taking advantage of the wife's dependence economically to control the wife's life, letting the wife work and then her income is controlled by the husband, and so on.

The construction of the crime of domestic violence as above has criminal sanctions regulated in Articles 44 to 49 of Law No. 23 of 2004 concerning Domestic Violence (Maya Jannah, 2017). On the other hand, the construction of domestic violence regulations does not only regulate criminal sanctions, but also contains victims' rights, legal protection for victims, and the obligations of the government and society. Furthermore, even in Article 15 of the Law on the Elimination of Domestic Violence, it provides an obligation for everyone who hears, sees and knows the occurrence of domestic violence to make efforts in accordance with the limits of their ability to carry out prevention, provide legal protection and emergency assistance to victims, and assist in the process of submitting applications for the determination of protection (Dewi Lestari, 2005).

3.2. Legal Uncertainty on the Obligations of People Who Hear, See or Know the Occurrence of Domestic Violence Crimes

As stated above, there are provisions in Article 15 of Law No. 23 of 2004 concerning the Elimination of Domestic Violence regarding the obligation of the community to hear, see and know the occurrence of domestic violence. In this regard, the making of a law should uphold the principle of legal certainty. According to Van Apeldron, legal certainty is a condition that shows that the law can be a clear guideline about what can and cannot be done. From this

side, the elements of legal certainty according to Van Apeldorn must be clear, easy to understand and unambiguous (Randi Adi Saputra, 2025).

In line with that, Gustav Radbruch also explained that a law that has legal certainty contains the following elements, namely: Positive law is a law, law must be based on facts, the reality of facts must be formulated clearly, so as to avoid interpretation, and law must not be easily changed. In this regard, the construction of legal certainty envisaged by Gustav Radbruch is to maintain social order and ensure that law enforcement runs consistently (Anisyaniawati, 2025).

The construction of legal certainty in the formation of legislation is a vital part that must always be implemented. This is because if the law experiences uncertainty, it has the potential to cause ambiguity so that it cannot be implemented as a whole. The provisions contained in Article 15 of the Law on the Elimination of Domestic Violence as explained above, are subject to legal uncertainty. This legal uncertainty lies in the existence of a mandatory word for the community or every person who sees, hears, and knows the occurrence of a criminal act of domestic violence to do the following things according to the limits of their ability, namely:

- a. Preventing criminal acts;
- b. Leaving protection to the victim;
- c. Providing emergency assistance; and
- d. Assist in the process of submitting applications for protection determination.

The construction of the mandatory provision in the above provisions is subject to legal uncertainty because the Law on the Elimination of Domestic Violence does not contain sanctions when each person does not do it. This is in line with point 268 of Appendix 1 of Law No. 13 of 2022 concerning the Second Amendment to Decree No. 12 of 2012 concerning the Formation of Legislation which states that "To declare the existence of an obligation that has been determined, use the word mandatory. If these obligations are not fulfilled, the person concerned will be sanctioned" (Daila Doman, 2019).

Based on that fact, the provisions of Article 15 of the PKDRT Law expressly oblige everyone to do several things, but it is not dissertated with sanctions when every person or society does not do this. On the other hand, the existence of the phrase making efforts according to the limits of one's ability becomes unclear, considering that the existence of such a phrase certainly gives rise to multiple interpretations because to what extent the limits of one's ability are possessed. Meanwhile, in Gustav Radbruch's view above, it is expressly explained that the construction of the law must be formulated clearly, so as to avoid interpretation.

4. Conclusion

Based on the above discussion, there is legal uncertainty in the construction of Article 15 of Law No. 23 of 2004 concerning the Elimination of Domestic Violence. This uncertainty lies in the existence of a mandatory word for the community or every person who sees, hears, or

knows of a criminal act of domestic violence is obliged to take prevention, provide legal protection and emergency help to the victim, and assist in the process of submitting an application for the determination of protection according to the limits of their ability. However, the existence of the mandatory word is not accompanied by a sanction, so the existence of this provision is contrary to point 268 of Attachment 1 of the Law on the Formation of Legislation which emphasizes that the use of the word mandatory should be accompanied by sanctions, while the Law on the Elimination of Domestic Violence does not contain such sanctions.

5. References

- Agung Budi Santoso, 2019, Domestic Violence (KDRT) against Women; Social Work Perspective, *Journal of Islamic Community Development*, Vol 10, No. 1
- Ahmad Fuad Rosyidi and Siti Zumrotun, 2025, Normative and Juridical Analysis of the Implementation of Law Number 23 of 2004 in the Handling of Domestic Violence in Indonesia, *Usrah; Journal of Islamic Family Law*, Vol. 6
- Anisyanawati, Fauzan Naufal Kusuma, Haifa Zanatu, and Hemmalika Alyanti Chandra, 2025, The Concept of Law and Justice in the Thought of Gustav Radbruch, *Praxis; Journal of Applied Philosophy*, Vol. 3, No. 1
- Azzahra Nikita Wahdah and Benihamoni Harefa, 2025, Enforcement of Laws on Sexual Violence In Marriage (Marital Rape): A Comparative Study of Criminal Laws In Indonesia and Singapore, *Awang Long Law Review*, Vol. 8, No. 1
- Central Statistics Agency, <https://jateng.bps.go.id/id/statistics-table/3/VkhwVUszTXJPvMQ2ZFRKamNIZG9RMVo2VEdsbVVUMDkjMw==/nikah-dan-cerai-menurut-kabupaten-kota-kejadian-di-provinsi-jawa-tengah--2024.html?year=2024>
- Daila Doman, 2019, Conformity of Regulation on the Utilization of Marine Biota Migration Zones in Provincial Regional Regulations with the Law on the Management of Coastal Areas and Small Islands, *Indonesian Journal of Environmental Law*, Vol. 6, No. 1
- Dewi Lestari, 2005, Domestic Violence Against Women, *Journal of Law & Development*, No. 3
- Divany Harbina Emzilena Kaban, Keshia Annisa Putri, Arif Pujawangsa Paksi, and Irwan Triadi, 2024, The Concept Rule of Law From The Perspective of Indonesian Constitutional Law, *Media Legal Indonesia*, Vol. 2, No. 3
- Harkistuti harkisnowo, 2021, Domestic Violence in Criminological and Juridical Perspectives, *Indonesian Journal of International Law*, Vol. 1, NO. 4

Hendra Pratama Ginting, Muhammad Akbar and Rica Gusmarani, 2022, Violence against Women in Legal and Sociocultural Perspectives, *Journal of Law Deli*, Vol. 2, No. 1, p. 4

Ida Bagus Wisnuputra Raditya and I Dewa Gede Dana Sugama, 2024, Juridical Analysis of the Principles of Legal Fiction from the Perspective of Criminal Law in the Illegal Logging Case in Probolinggo, *Journal of Law, Politics and Social Sciences*, Vo. 3, No. 1

Komnas Perempuan, 2025, *Executive Summary; Organizing Data, Sharpening Direction: Reflection on Documentation and Trends in Cases of Violence Against Women*, National Commission on Violence Against Women

Maya Jannah, 2017, The Application of Criminal Sanctions to Domestic Violence in the Perspective of Law No. 23 of 2004 concerning the Elimination of Domestic Violence (Study of Decision No. 616/Pid.B/2010/PN RAP), *Scientific Journal of Advocacy*, Vol. 5, No. 1

Moerti Hadiarti Soeroso, *Domestic Violence in a Juridical Victimization Perspective*, (Jakarta: Sinar Grafika, 2010)

Randi Adi Saputra, Wahyudi, Nana Suryana, and Siti Putri Indah Meilani, 2025, Analysis of Legal Certainty in the Application of Engagement Law to E-Commerce Transactions in Indonesia, *Journal; of Innovative and Creativity*, Vol. 5, No. 3

Riani Bakri and Murtir Jeddawi, 2022, Indonesia of Law State Index Analysys. *The Crown Prince*, Vol. 4, No. 2

Rizky Amalia, Hafrida, and Elizabeth Siregar, 2021, Comparison of the Criminal Regulation of Domestic Violence in Indonesian Criminal Law and Malaysian Criminal Law, *Pasapas; Journal of Criminal Law*, Vol. 2, No. 2

Surianto, 2018, Domestic Violence (Social Fact Analysis Based on Feminist Counseling on Gender Inequality), *Musawa*, vo. 10, no. 1