

PROTECTION FOR WIFE AS THE VICTIM OF DOMESTIC VIOLENCE UNDER INDONESIAN LAW

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ABSTRACT

Uncomfortable, stressed or distressed condition and hatred among family members which leads to domestic violence is still commonly found in the society. This study analyses factors which cause domestic violence upon wife and Indonesian law protection for wife as the victim of domestic violence. This study used juridical-sociological approach. The result of this study shows that factors which cause domestic violence against wife is incomprehensive religious knowledge, adultery, economic factor, and social life. The form of Indonesian law protection includes accommodating the victim in the shelters or special reception centre provided by Women and Children Protection Unit, health insurance and recovery, safety protection, counselling, and spiritual or religious fortification using dialog model with the victim.

Key words: domestic matter; protection; violence

A. Introduction

Violence upon women/wives has recently taken rise out of the society at large, especially activists on women issues, be it physical or psychological, particularly when it is done by their closed ones who are supposed to protect them. Becoming a victim of a violence is an undesirable thing regardless of whoever experiencing it. In the case of domestic violence, the perpetrators are often the people who live close with the victims. In other words, they know each other well, are in a close relationship or even are members of the family. According to The State of World Population 2000 report, the United Nations Population Fund elucidates that violence experienced by women has started even when the female embryo was still inside the mother's womb. Abortion against female embryo is often done due to their unexpected sex or because the pregnancy was forced through raping during the age of war where rape is the most effective weapon (Sulaeman, 2011:76).

The form of law protection provided by the law enforcers is still limited due to the vague existence of regulations as the foundation for their action, whereas the position of women/wives as the victims as well as witnesses in the case of sexual violence is paramount in the investigation of the case. However, several District Courts neglected the rights of the victims in their practice (Carolina, 2012). Policies which are relevant to domestic violence in the Law of Domestic Violence require improvement especially in providing protection and preventing violence without imposing any sanction prescribed in the Criminal Code (Sumawarni, 2011).

The concept of protection against the victims of violence, including wives in domestic violence, comprises both abstract (indirect) and concrete (direct) protection. Abstract law protection which can only be emotionally (psychologically) felt by the victim, such as satisfaction whereas the protection which can be physically experienced can be in the form of material or non-material concession. Material concession can be in the form of compensation or restitution. On the other hand, non-material concession can be in the form of freedom against threats and any publication degrading human dignity.

Protection of the wife as the victim of domestic violence has just begun to comprehensively receive attention from the authorities since the enactment of the Law on Domestic Violence through Law No. 23 of 2004. In addition to the law reinforcement, other law instruments are still required to be implemented in the actual practice. In addition to the abstract protection (indirect protection) through criminal sanction imposed to the perpetrator of domestic violence. Law on Domestic Violence also outlines several forms of protection for wives/women as the victims of domestic violence.

The problems in this study are as follows: 1) What are the factors which excites domestic violence? 2) How is the implementation of Legal Protection Against the Victim of Domestic Violence?.

B. Methodology

This study applied normative-empirical juridical approach considering this study analyses law and regulations relevant to the form of legal protection against the victim of domestic violence. The data used in this study comprises both primary and secondary data acquired through field observation using purposive sampling as well as both field and literature review presented in a comprehensive and systematic report.

C. Result and Discussion

1. Factors exciting domestic violence

Every family wants to establish a joyful family life in which all members of the family love each other. In other words, we all want *sakinah, mawaddah, warahmah* family (a family with tranquillity, love and mercy.) Just like what a couple feels during their dating period, everything seems beautiful at the beginning. However, when they are married and start a family life, the initially joyful life can dramatically turn the other way around. This can be caused by a lot of factors within the family itself which make them no longer able to taste the sweetness of family life like what they have imagined prior to the marriage. There are uncomfortable, stressed or distressed feeling, antipathy, distrust, and other unexpected negative issues. This can be indicated by the high number of domestic violence cases. Violence against women is a form of discrimination which prevents them from enjoying their rights of freedom on the grounds of equal opportunity with men. Article 1 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) reaffirms that one of the forms of discrimination against women is gender-based violence, i.e. violence directly imposed upon women or any means which results on disproportionate effect on women, Shingo Shibata (Affandi, 2010:38). Article 1 Verse 1 of the Law No. 23 of 2004 on the Elimination of Domestic Violence states that:

Domestic violence shall be any act against anyone particularly woman, bringing about physical, sexual, psychological misery or suffering, and/or negligence of household including threat to commit act, forcing, or seizure of freedom in a manner against the law within the scope of household.

The most common issues in domestic violence are physical, sexual, and psychological violence, such as battering, negligence of the economy of the family, and so forth. This is outlined in Article 5 of the Law No. 23 of 2004 on the Elimination of Domestic Violence which states: “*Anyone shall be prohibited to carry out domestic violence against an individual within the scope of the household, be means of: (a) physical violence; (b) psychic violence; (c) sexual violence; or (d) negligence of household.*”

In the development of domestic violence issue of which victims are mostly women, United Nations (UN) needs to provide limitation on the definition of violence against women. Article 2 of the United Nations’ Declaration on the Elimination of Violence Against Women states that:

Violence against women means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation or liberty, whether occurring in public or in private life.

The Elucidation of Article 2 of Law No. 23 of 2004 on Domestic Violence declares that the scope of household in this Law shall include: (a) husband, wife, and children; (b) people whose family relationship with the individual referred to under letter a is due to blood relationship, marriage, suckling at the same breast, care, and guardianship, who lives in the household; and/or (c) the individual working to assist the household and living in the household. People working as referred to under letter (c) shall be considered as family member during the period while living in the household in question.

Gender-based violence is another form of inequality resulted from imbalance power relation between women and men. Gender-based violence is controlled by imbalance power relation perpetrated by the dominating group upon the subordinated group.

Unequal domestic relationship is among the widely spreading issue causing myriads of victims of women and children. Therefore, all social and cultural values need to be criticised, reconstructed and encouraged to contribute in establishing justice order to eventually eliminate any means of domestic violence to prevent it reoccurring in the future.

In this modern life, there has been a lot of changes in various aspects of household, particularly in the urban area. Many women have entered working industry, even established a promising career, both in the government or private institutions. This makes the position of women/wives equally important with that of men/husbands in terms of income earning. It secures a position for women/wives in their relationship with men/husbands both in social status or the status within the household. On the other hand, women/wives living in the rural areas are generally full-time housewives and usually unemployed.

According to the explanation, although each woman with her own position respectively regardless of their domicile and working status, they basically have different kind of problems within their family. Thus, the writer would like to focus on the latter problem, i.e. violence against wife in the household, using the case sample occurred in Rembang. The victim of the investigated case was domiciled in Pomahan, Sulang, Rembang, Central Java, Indonesia. Based on the result of the interview with the victim, violence perpetrated by her husband against her was the result of the family economic issue of which her husband was unable to earn adequate income whereas she was unemployed. In this case, the writer would like to focus on the family economic/income factor which became the main reason of the divorce. When the family need demanded to be fulfilled

while both husband and wife were unable to provide adequate income, they threw the problem to and blamed each other raising the feeling of antipathy and distrust towards each other. The case was an economy-based violence/negligence of wife. The result of the interview is as follows (name has been changed for the purpose of confidentiality):

Haidi had been engaged in an affair with Istiqomah, a married woman domiciled in Kudus (45 years old), for approximately one year. Haidi had 4 children with Supatminingsih, his legal wife. The affair occurred after Haidi had retired. He then legally married Istiqomah after both previously conducted *nikah siri* (unregistered marriage according to the Marriage Act yet is considered valid in Islamic jurisprudence.).

At first, the husband (Haidi) knew Istiqomah since Istiqomah and her husband lived in the same neighbourhood with Haidi and Supatminingsih. One day, Istiqomah and her husband visited Haidi's house informing that they were moving to Kudus due to her husband's retirement. During the visit, Istiqomah's husband asked for Haidi's mobile number, probably in order to keep in touch with him after they had moved to Kudus. Haidi liked to tease on woman and he did tease on Istiqomah during the visit, making Istiqomah have a crush on him. Both subsequently sent text messages to and began to fall in love with each other. After he retired and separated from Supatminingsih, Haidi never supplied her up until the present time. He married Istiqomah who also got divorced with her husband who was a pensioner. He suffered from a stroke which left him physically paralysed. Finally, Istiqomah asked Haidi to marry him. It was not the first time for Haidi having an affair with a woman other than his wife. In 1995, he firstly got in an affair with a woman named Susiloningsih who already had married with Mularso. At that time, both conducted *nikah siri* and Haidi built her a large house in Jepon. They got divorced in 2016 leaving no child from the marriage. The second affair Haidi had was with a woman from Bojonegoro named Siswati, with whom he conducted *nikah siri* with as well, in 2007. One of his children with Supatminingsih accidentally discovered the text messages between both of them and replied her with abusive text messages. Siswati reported what his child had done to Haidi and he dragged his child to the Waru Gunung forest in Lasem and beat him. The *siri* marriage resulted no child. Supatminingsih had no idea of how Haidi and Siswati got separated. She always backed down every time were engaged in a quarrel while still considering him as a husband at home. The denunciation was made because she was disappointed with what Haidi did for the third time and that he gradually lost his love towards his children in addition to Istiqomah's demand after she got divorced with her ex-husband.

There are several factors which cause violence against wife in the above case, namely the religious factor in which both did not regret for committing such affair, and cultural/social factor where having an extramarital affair was considered as normal. However, it is noteworthy here that the most vulnerable party that became the victim is the wife/woman.

2. The Implementation of Legal Protection against Wife as the Victim of Domestic Violence

Arif Agosita (in Moerti Hadiati, 2010:112) delineates victim as: "Those who are physically and psychologically suffering as the result of other person's action in complying with his/her own or other people's interest by violating the interest and the right of the sufferer." Subsequently, the definition of victim according to the Law No. 23 of 2004 on the Elimination of Domestic Violence in Article 1 verse 3 states that: "*Victim shall be the individual experiencing violence and/or threat of violence within the scope of household.*"

By observing the Law No. 23 of 2004 on the Elimination of Domestic Violence and the parties involved in its legislation process, it can be seen that the law was passed in order to protect women (wife) as the victim of domestic violence. This is reiterated in the Consideration Part letter (c) of the Law on the Elimination of Domestic Violence that the victim of domestic violence that are mostly women must get protection from the state and/or the public so that they can be avoided and freed from violence or threat of violence, torture, or treatment human degree and dignity.

On the basis of the aforementioned law, the most possible legal protection for the victims of domestic violence can be in the form of: (1) protection conducted by the police officers in the form of temporary protection provided for no more than 7 days and within 24 hours since the protection is officially provided, the police must acquire a letter of assignment for protection from the court. Temporary protection by the police can be done in cooperation with paramedics, social worker, volunteer, and spiritual counsellor to protect the victim. Service for these victims must be administered in a special service room in the police station with an easily accessible service system and mechanism. According to their duty and authority, police officers can investigate, seize and arrest the perpetrator provided the initial evidence is sufficiently satisfied with or without the seizure and arrest warrant which can be provided within 24 hours of arrest. (2) Protection from the advocates provided in the form of legal consultation, mediation or negotiation involving both the victim and the perpetrator, as well as assistance for the victim during the process of investigation, persecution, pre-trial proceeding, and trial through the coordination with other law enforcers, assisting volunteers and social workers. (3) Protection using the court ruling issued in the form of an assignment of protection provided for 1 year and can be extended if necessary. Court may arrest the perpetrator of domestic violence by means of an arrest warrant within 30 days after the perpetrator committed the crime and the letter of statement with the perpetrator's signature stating that he/she will adhere to the assignment of protection from the court. (4) Health service provider plays a significant role particularly in the imposing sanction upon the perpetrator of domestic violence. Health service provider in

accordance with their professional responsibility must provide written report of medical examination upon the request of the examining police officer or write any other medical statement which can legally serve as an evidence. (5) Social service provided in the form of counselling to encourage the victim as well as to provide a sense of security for the victim, providing information regarding their rights to obtain protection. (6) assisting voluntary service provided for the victim to inform them regarding their rights to obtain volunteer's assistance, assisting someone to objectively explain the domestic violence they experience in the investigation process, persecution and examination in the court, listening and encouraging the victim both physically and psychologically. (7) service from a spiritual counsellor to provide information regarding to their rights and obligations as well as to provide spiritual encouragement for the victim. Protection against the victim of domestic violence is implemented in Indonesia by ratifying the International Law on Human Rights. Discrimination against women has long been condemned by the international society through the Convention on the Elimination of Discrimination of All Forms against Women in 1978 (CEDAW). The convention has been ratified by the government in the Law No. 7 of 1984. By ratifying the convention, the government is obliged to adopt the provision stipulated in the convention into the national law. One of the adoption of CEDAW in the national legal system is the enactment of Law No. 23 of 2004 on the Elimination of Domestic Violence.

The issue of several gender perspective conventions or law in order to protect women against any kind of human right violation has not yet been able to secure them from all kinds of human right violation. The revolutionary CEDAW has secured women's right on employment, politics, education, marriage and health. Therefore, the state as the guardian of human right for its people must ensure equal opportunities in accordance with the law (*de jure*), but more importantly in the real-life practice (*de facto*). CEDAW is indeed an omnipotent weapon for women in combating all forms of discrimination.

The background of the implementation of the law as has been outlined in the consideration art of Law No. 23 of 2004 which states that: "*Whereas all forms of violence, particularly violence in household, constitutes violence against human rights and crime against human dignity as well as form of discrimination that must be eliminated.*"

Preceding the Law on the Elimination of Domestic Violence, domestic violence was always indicated as a crime by accusation. Instead, Article 351 Verse 1 of the Criminal Code (on Violation) and Article 356 of the Criminal Code (on Aggravation) do not require any complaint by accusation (*klacht delict*) at all. However, people (particularly law enforcer) have considered that a case involving family matter always categorised as complaint by accusation, which is supposed to be categorised as pure crime. Even though the victim may end up revoking their complaint, the police officer should promptly consider the reported case as a crime that needs to be furtherly investigated and brought to the court. This has become a common constraint in dealing with domestic violence because the victims are often reluctant in reporting the crime to be processed by law. The victim's unwillingness is closely related to the strongly prevailing patriarchal culture in Indonesia which sees the problem of domestic violence can be resolved without involving any formal legal process. Ironically, the choice to resolve the problem of domestic violence without involving any legal process of is often offered by the law enforcers themselves. Nonetheless, they know exactly that the problem of domestic violence is a crime that must be processed in a legal manner.

According to the interview with the officer of UPPA Polres Rembang, the protection provided for the wife as the victim of domestic violence has been in line with the Law No. 23 of 2004 on the Elimination of Domestic Violence by keeping the confidentiality of the victim, administering them in a special room, listening to their experience and giving empathy as a form of encouragement to the victim. There was a case where the victim experienced a severe trauma and did not want to go back to her house while UPPA Polres Rembang only had a special room to be used only for investigation. However, Rembang District Municipality provided a Safe House in a Service Unit integrated with the Organisations related to the Social Council for Women Empowerment and Family Panning located in the Secretariat Office of Rembang District to be used for consultation if the victim feels scared that the same thing will happen again if they go back to their house. There was also a case when the victim was treated in the Government's Safe House Shelter. It can be drawn from the interview that the regulation on domestic violence has been in line with Law No. 23 of 2004 Chapter 4 Article 10 on the confidentiality of the victims, both women and children.

D. Conclusions

Factors which are influential on the violence against wife in household are: economy, education, social, religious and environmental factor including cultural factor. The protection provided to the victims of domestic violence can be in the form of temporary shelter in a special room, confidentiality of identity, physical and psychological health assurance/recovery, safety protection, counselling and spiritual encouragement.

References

- Abdul Wahid dan Muhammad Irfa., 2001. *Perlindungan Terhadap Korban Kekerasan Seksual (Advokasi Atas Haka Asasi Perempuan)*, Bandung: Refika Aditama.
- Affandi, Yuyun. 2010. *Pemberdayaan dan Pendampingan Korban Kekerasan Seksual (Advokasi Korban Kekerasan Seksual Menurut Al-Qur'an)*. Semarang: Walisongo Press.
- Gosita, Arif. 1993. *Masalah Korban Kejahatan*, Jakarta: CV Akademika Pressindi.
- Hadiati, Moerti. 2010. *Kekerasan Dalam Rumah Tangga Dalam Perspektif Yuridis Viktimologis*. Jakarta: Sinar Grafika.
- Huda, Chairul. 2006. *Dari Tiada Pidana Tanpa Kesalahan Menuju Kepada Tiada Pertanggungjawaban Pidana Tanpa Kesalahan (Tinjauan Kritis Terhadap Teori Pemisahan Tindak Pidana dan Pertanggungjawaban Pidana)*. Jakarta: Prenada Media.
- Lianawati, Ester. 2009. *Tiada Keadilan Tanpa Kepedulian Kekerasan Dalam Rumah Tangga Perspektif Psikologi Feminis*. Yogyakarta: Paradigma Indonesia.
- Mansyur, Ridwan. 2010. *Mediasi Penal Terhadap Perkara Kekerasan Dalam Rumah Tangga*. Jakarta: Gema Yustisia Indonesia.
- Sudiarti Luhulima, Achie. 2000. *Pemahaman Bentuk-Bentuk Tindak Kekerasan terhadap Perempuan dan Alternatif Pemecahannya*, Jakarta: PT Alumni

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