

DOMESTIC VIOLENCE AND VICTIM RIGHTS IN INDONESIAN LAW CONCERNING THE ELIMINATION OF DOMESTIC VIOLENCE

Hanafi Arief, Universitas Islam Kalimantan (Uniska) Banjarmasin

ABSTRACT

Domestic violence is a crime against humanity. This crime happens all over the country. Therefore, many countries have laws to eliminate domestic violence, including Indonesia Act No. 23 of 2004 on the Elimination of Domestic Violence. Law No. 23 of 2004 was formed to protect family members from various forms of violence. This law divides domestic violence into two types, that are physical violence and psychological violence and grants certain rights to the victims. This paper aims to identify the rights of women victims of domestic violence according to Law No. 23 of 2004. This paper uses normative legal research, in the form of descriptive analysis. The research material is derived from the library and the other responsible sources to get the latest materials. The results show that rights of victims according to this Law are the rights to obtain potential protective of the family, the police, prosecutors, courts, lawyers, social agencies, or other parties on a temporary or by determination of protection order from the courts; service health according to medical needs; treatment specifically related to the confidentiality of the victim; assistance by social workers and legal assistance at every level of the inspection process in accordance with the provisions of the legislation; and spiritual guidance. However, this legislation does not contain compensation that can be claimed by the victim if the victim suffered personal injury or property damage or financial loss. In addition, counseling is only provided to perpetrator and not to the victim.

Keywords: Domestic Violence, Victim Rights, Elimination of Domestic Violence, Indonesia.

INTRODUCTION

Violence in the home or domestic violence is always identic with violence against women, especially in the realm of the family. This is because in addition to women being the most victims of this crime (Arief, 2016), it is also because the development of criminology in women's perspective is now in line with the development of feminist thinking (Supatmi and Sari, 2007). The UN Declaration on the Elimination of Violence Against Women states that violence is an unequal manifestation of power relations between men and women, resulting in oppression or discrimination against women. Moreover in everyday women are considered to have a weak nature and are in a marginalized position. When viewed from the legal perspective, the problem of domestic violence is very interesting to discuss. This is due to the perception that the present law is considered not really provide adequate protection for victims of violence (Rokhmad & Susilo, 2017). Even law is often used to justify forms of violence. Domestic violence can harm the victim's physical and mental conditions in long term (Mulia, 2002). Domestic violence in the

world increases every year (Women's Aid Organisation, 2017). The United Nations Organization report states that one in three women around the world receive violence due to female status. In India, an estimated 25,000 brides die per year due to dowry. In Middle Eastern countries like Jordan, Pakistan, Syria, Iraq and some countries in the Persian Gulf, honor killing is reported that women who was raped killed by his own family in order to preserve the honor of the family (Arief, 2016; Sev'er & Yurdakul, 2001; Odeh, 2010; Chesler, 2010; Ruggi, 1998; Kulczycki & Windle, 2011). A UN-implemented 2010 study worldwide estimated that 150 million girls under the age of 18 were sexually abused 80% of 800,000 women, and girls are trafficked each year 70% for sexual purposes. According to the United Nations, domestic violence resulted in losses of approximately USD 1.16 billion annually in Canada, USD 5.8 billion annually in the United States and USD 11.38 billion per year in Australia. All that does not include the cost of service and maintenance of health related to the violence (<http://insightsabah.gov.my>).

Although the conditions, position and status of Indonesian women are better than their counterparts in the Middle East countries, domestic violence is not entirely lost. The Indonesian National Commission on Women revealed that by 2016 there were 259,150 cases of violence against women, where most cases handled by the Religious Courts ended in divorce (www.bbc.com). Although the Domestic Violence Law has been enacted in Indonesia since 2004, the massive cases of domestic violence have made laws not optimal in determining social behavior and suppressing violence threatened by criminal prosecution. Socially, the society culture is still patrilineal nuance so it is still difficult to assess the legal awareness. In addition, this happens because some of the apparatus are less gender sensitive. This paper aims to identify the rights of women victims of domestic violence according to Law No. 23 of 2004 on the Elimination of Domestic Violence. This paper uses normative legal research, in the form of descriptive analysis. The research material is derived from the library and the other responsible sources to get the latest materials. This paper uses normative legal research, in the form of descriptive analysis. The research material is derived from the library and the other responsible sources to get the latest materials.

Domestic Violence in Conservative and Feminist Dialectics

Basically, women's rights in households are usually closely related to the rights concerning marriage and family relationships. Basically, Indonesian women have equal rights and obligations with their husbands in the household. However, some legal barriers have limited women's freedom. For example, the 1974 marriage law implicitly determines that women are in charge of taking care of the household and the husband as the head of the family. Although practically, many women now work and become heads of families, the existence of such a passage has become a justification for the restriction of women's rights. In addition, other women's rights, among others, are the right of priority care after divorce, the right to earn a living after the divorce, the right of division of property. The Indonesian Marriage Law has also given various rights that women can enjoy. Furthermore, efforts to improve the status and position of women are further enhanced through the various pro-women regulations and state institutions that specifically address and advocate for women's rights. However, the existence of several regulations that strictly regulate the behavior of women is considered one of the reasons

for the massive domestic violence. At least, this kind of regulation makes patriarchal culture stronger.

Violence in verbal form is not always considered a violation. Similarly, physical and psychological violence in a particular sphere within a culture is also not considered a violent act (Hayati et al., 2011; Blackburn, 2004; Wessel & Wimhöfer, 2001). This means that violence is seen only from the physical aspect, while the other such as psychic aspect is considered not violent (Wicaksono, 2018). Whereas, the domestic violence law from countries such as Malaysia and Indonesia has covered both aspects. Another thing is that violence is a concept which meaning and content is highly dependent on the norms and understanding developed in a society and is recognized by the community itself (Wulandari, 2004).

The term violence is used to describe both overt or covert behavior, offensive or defensive and using force directed to others (Wulandari, 2004). Violence is defined as an act of a person or a group of persons who cause injury or death to another person or cause physical damage or other person's goods (Ranuhandoko, 1996). Violence includes all acts based on gender differences that result in physical, sexual, and psychological misery or suffering including the threat of certain acts, coercion or arbitrary deprivation of liberty whether occurring in the public domain or private sphere.

This violence does not stand alone, but rather deals with the various conditions and developments of the situation of political, economic life and socio-cultural aspects of a society. Violence is a social issue that demands the sensitivity, attention, and responsibility of all parties in the handling, prevention and overcoming of it (Alawiyah, 1999). Meanwhile, in the context of violence against women, the wording of violence has a very broad meaning: all acts against women or other subordinate groups that result or may result in physical, sexual, economic, and/or psychological harm or suffering, including in the sense of threats or acts such as coercion, or eliminating unilateral freedom within the scope of the household (Munir, 2005).

In feminist dialectics, violence is understood as a man's natural and biological form of male power (Yuarsi and Pitaloka, 2002). This concept only covers the personal aspect and tends to emphasize the forms of physical and sexual violence from men. The above concept, then changed after debate among feminists, so that violence against women is understood as a patriarchal manifestation of a system in society that puts men as the ruling party, who is entitled to control and control women as subordinant parties. Therefore the liberal feminist movement focuses on the struggle for changes in all regulations and laws that are presumed to preserve patriarchal family institutions (Nugroho, 2008), given the worldwide legal system that still supports and reinforces these gender differences (Mosse, 2007; Nugroho, 2008).

Violence in the Perspective of Law No. 23 of 2004

United Nations Declaration on the Elimination of Violence Against Women in 1993 Article 1 states, "*violence against women is as any deed based on gender differences that result in or may result in the physical or sexual or psychological misery or suffering of women*". including the threat of enforcement, forced coercion or arbitrary deprivation of liberty, whether applicable in the public sphere of life or in private or private life. The 1994 United Nations Declaration of Beijing defines violence against women as any action based on sex differences

that results in the physical suffering of women, sexual, or psychological, including the threat of arbitrary actio both in public and in personal life (Yuarsi and Pitaloka, 2002).

According to the Law of the Republic of Indonesia No. 23/2004, “*violence is any act against a person, especially a woman, resulting in physical, sexual, psychological, and/or abandonment of the physical, sexual, psychological and/or neglect of the household, including the act of threatening unlawful conduct, coercion, or deprivation of liberty within the scope of the household.*” Forms of domestic violence according to Law No. 23 of 2004 “*include physical violence, psychic violence, sexual violence, or household neglect.*” Physical violence is defined as an act that results in pain, become ill or serious injuries. While psychic violence is an act that leads to fear, loss of confidence, loss of ability to act, sense of helplessness, and/or severe psychological suffering to a person. Other violence is sexual violence which is defined as coercion of sexual intercourse committed against a person who resides within the scope of that household, and coercion of sexual intercourse with an individual in the sphere of his household with others for a specific commercial purpose. Whereas household neglect is defined as any act which results in the victim of economic dependency by limiting and/or prohibiting to work properly within or outside the house so that the victim is under the control of the person.

Increased legislation now is in line with the progress of society in various fields (Ghofur & Sulistiyono, 2014). These additions cannot be prevented because of the public's expectation of a better life and security, even though the number of violations against regulations is also increasing (Marpaung, 2008; Ghofur & Sulistiyono, 2015). Violation of the rules is a human act of what is done, what is spoken and how to behave. Domestic violence is a violation of the law (Marpaung, 2008). This violence is a juridical crime because the crime is regulated in a law or a crime by law that has been determined as a crime (Yulia, 2010).

Law No. 23 of 2004 was established with the aim of protecting family members from various forms of violence. The purpose of this protection is then set forth in the form of law of anti domestic violence. This is based on the idea that domestic violence is a form of attack on the honor, independence and safety of the victim's soul. Therefore, its placement in the form of law is deemed to be in harmony with the concept of the law material itself, namely that this law is a demand for legal protection of human rights in the domestic realm.

Article 1 (2) states that “*the abolition of domestic violence is a guarantee provided by the state to prevent domestic violence, to take action against perpetrators of domestic violence, and to protect victims of domestic violence.*” Furthermore, to prevent and protect victims and to punish perpetrators of domestic violence, the Indonesian government and the community are obliged to implement the prevention, protection and prosecution of the perpetrators according to the Indonesian state philosophy of Pancasila and the Constitution of 1945. The various forms of violence, especially domestic violence, are considered as violations of human rights, crimes against human dignity and forms of discrimination.

The development in this period indicates that physical, emotional, sexual, and neglectual abuse of the household have been so real that a sufficient law is required and may benefit the

prevention of the aforementioned beings. Therefore, the Indonesian government has enacted a criminal law namely the Law on the Elimination of Domestic Violence No. 23 of 2004. This law has some important principles, which is respect for human rights, justice, non-discrimination and victim protection. In addition, this law is a guarantee of the Indonesian government to its people with the aim of: preventing all forms of domestic violence, protecting victims, prosecuting perpetrators and maintaining the integrity of harmonious and prosperous households. In addition, this law regulates the prevention and protection and recovery of victims. This law also regulates specifically the violence occurring in households with criminal elements different from those set out under general criminal law. In addition, the law provides for the obligation of law enforcers, health workers, social workers, volunteers, or spiritual counselors to protect victims so that they are more sensitive and responsive to household interests originally directed to wholeness and harmonious household (Ghofur & Susilo, 2017; Susilowati, 2018; Arif, 2018).

Responsibility for Preventing Domestic Violence and Victim Rights

Actually the responsibility for preventing domestic violence is the responsibility of the government and the community (Wirawan, 2018). Under article 12 (1), *“the government as the party responsible for prevention of domestic violence shall (a) formulate policies on abolition of domestic violence; organize communications, information and education about domestic violence; (c) organize socialization and advocacy on domestic violence; and (d) conduct gender-sensitive education and training and issues of domestic violence and establish gender-sensitive service standards and accreditations.”*

Communities are also required to have responsibilities in preventing domestic violence. Under article 15, *“everyone that hears, sees or knows the occurrence of domestic violence shall make efforts in accordance with the limits of its ability shall endeavor to (a) prevent the ongoing crime; (b) provide protection to the victim; (c) provide emergency assistance; and (d) assist in the process of submitting the application for safeguards.”* Moreover, Law No. 23 of 2004 provides protection to parties within the family. Scope of family according to article 2 (1) *“includes husband, wife, and child, and persons who have a family relationship because of the blood relationships, marriage, through breastfeeding, nurturing, and guardianship, who reside in the household; and/or people who work to help the household and settle in the household.”* Moreover, the article also states that the scope includes the person who works that regarded as a family member for a period of time during his or her stay in the household concerned.

Further, within one twenty-four hours from the date of knowing or receiving reports of domestic violence, the police shall immediately provide temporary protection to the victim. Temporary protection shall be granted for a maximum of seven days after the victim has been received or handled, and within a period of once twenty-four hours begins the provision of protection, the police shall request the order of protection to the court. In providing temporary protection, police may cooperate with medical personnel, social workers, volunteers, and/or spiritual counselors to assist the victim. The Chief Justice within seven days of receipt of the petition, shall issue a decree containing the order of protection to the victim and other family members. An application for a warrant may be delivered by the victim or the victim's family, a friend of the victim, the police, a companion volunteer, or a spiritual director. Applications can

be submitted in both oral and written form. Protection orders may be granted within a maximum of one year and may be renewed on a court basis. The application for renewal of the protection order is given seven days before the expiration date.

However, on another side, Law No. 23 of 2004 does not contain compensation that can be claimed by the victim if the victim suffers personal injury or damage to property or financial loss due to violence. It further states that the victim has the rights to obtain (a) the protection of family, police, prosecutors, courts, advocates, social institutions or other parties, temporarily or in accordance with the determination of the protection order of the court; (b) health services according to medical needs; (c) handling which is specifically related to the confidentiality of victims; (d) assistance by social workers and legal aid at each stage of the review process in accordance with the provisions of legislation; (e) spiritual guidance services. In addition, the court may provide temporary or permanent protection orders to families, lawyers, social institutions, police, prosecutors, courts or any other party; temporary protection provided by police and/or social institutions or other parties, prior to the issuance of protection from the courts. In addition, this law contains only penalties in lieu of punishment paid by the perpetrator to the state for the crimes committed. In the meantime, counseling is only provided to the perpetrator not to the victim.

CONCLUSION

Law No. 23 of 2004 on domestic violence has implicitly declared to eliminate all forms of violence, especially domestic violence, and declares it to be a violation of human rights and crimes against human dignity and forms of discrimination. As a form of crime, domestic violence in various types and forms is not likely to be lost on earth as with other crimes. However, that does not mean we have to be pessimistic about the abolition of this crime. This effort must be done, because at least the results achieved at least the reduction of the crime. This effort can be done in a juridical way by implementing the law of abolition of domestic violence effectively. Another non juridical business is to change attitudes and patterns of community behavior through education, counseling and so forth. In addition, this effort must involve many parties, such as law enforcement, social institutions and other community members in general.

REFERENCES

- Alawiyah, T. (1999). *Female sexual violence as a global issue, in words and deeds* (In Indonesian). Jakarta: Office of the Minister of State for the Role of Women of the Republic of Indonesia.
- Arief, H. (2016). *Malignancy against Women: A study on socio-legislative comparisons in Malaysia and Indonesia* (In Indonesian). Doctoral Thesis Universiti Kebangsaan Malaysia, Bangi.
- Arif, A. (2018). Comparative study of law of impeachment in various countries. *Asian Journal of Law and Jurisprudence* 1(1), 1-20.
- Blackburn, S. (2004). *Women and the state in modern Indonesia*. Cambridge University Press.
- Chesler, P. (2010). *Worldwide trends in honor killings*. Middle east quarterly.
- Ghofur, A., & Sulistiyono, S. (2014). Eklektisisme dalam taqnîn hukum keluarga di dunia Islam. *ISLAMICA: Jurnal Studi Keislaman*, 8(2), 261-291.
- Ghofur, A., & Sulistiyono, S. (2015). Peran ulama dalam legislasi modern hukum Islam. *Asy-Syir'ah Jurnal Ilmu Syari'ah dan Hukum*, 49(2), 265-297.

- Ghofur, A., & Susilo, S.. (2017). Maslaha as the philosophical, political and legal basis on the Islamic banking legislation in Indonesia. *Global Journal Al Thaqafah*, 7(1), 7-17.
- Hayati, E.N., Högberg, U., Hakimi, M., Ellsberg, M.C., & Emmelin, M. (2011). Behind the silence of harmony: Risk factors for physical and sexual violence among women in rural Indonesia. *BMC women's health*, 11(1), 52-67.
- Kulczycki, A., & Windle, S. (2011). Honor killings in the Middle East and North Africa: A systematic review of the literature. *Violence against women*, 17(11), 1442-1464.
- Marpaung, L. (2008). *Principles-practice of criminal law (In Indonesian)*. Jakarta: Sinar Grafika Offset.
- Mosse, J.C. (2007). *Gender and development (In Indonesian)*. Yogyakarta: Rifka Annisa Women's Crisis Centre.
- Mulia, M. (2002). Violence against women-Seeking the roots of violence in theology (In Indonesian). *Journal Women in Islam*, 1(1), 1-15.
- Munir, L.Z. (2005). Domestic violence in Indonesia. *Muslim World Journal of Human Rights*, 2(1), 1-37.
- Nugroho, R. (2008). *Gender and public administration (In Indonesian)*. Yogyakarta: Pustaka Pelajar.
- Nugroho, R. (2008). *Gender and strategy, mainstreaming in Indonesia (In Indonesian)*. Yogyakarta: Pustaka Pelajar.
- Odeh, L.A. (2010). Honor killings and the construction of gender in Arab societies. *The American Journal of Comparative Law*, 58(4), 911-952.
- Ranuhandoko. (1996). *Terminology of english-Indonesian law (In Indonesian)*. Jakarta: Sinar Grafika Offset.
- Rokhmad, A., & Susilo, S. (2017). Conceptualizing authority of the legalization of Indonesian women's rights in Islamic family law. *Journal of Indonesian Islam*, 11(2), 489-508.
- Ruggi, S. (1998). Commodifying honor in female sexuality: Honor killings in Palestine. *Middle East Report*, 206(1), 12-15.
- Sev'er, A., & Yurdakul, G. (2001). Culture of honor, culture of change: A feminist analysis of honor killings in rural Turkey. *Violence against women*, 7(9), 964-998.
- Supatmi, M.S., & Sari, H.P. (2007). *The basics of social theory of crime (In Indonesian)*. Jakarta: PTIK Press.
- Susilowati, H. (2018). Cybersex in the criminal law: A legal political perspective. *Asian Journal of Law and Jurisprudence*, 1(1), 15-30.
- Wessel, I., & Wimhöfer, G. (2001). *Violence in Indonesia*. Abera-Verlag Meyer.
- Women's Aid Organisation. (2017). Domestic Violence, the Malaysian Context.
- Wicaksono, A.H. (2018). Reposition of local wisdom based on Pancasila on the function of the prosecution of attorney as a legal enforcement component in Indonesia. *Asian Journal of Law and Jurisprudence*, 1(1), 1-20.
- Wirawan, A. (2018). Future direction of the politics of law of the public service. *Asian Journal of Law and Jurisprudence*, 1(1), 20-39.
- Wulandari, T. (2004). Aspects of protection against women in the concept of the new criminal code and the bill on anti-domestic violence (In Indonesian). *Jurnal Ilmiah Legality*, 11(2), 45-69.
- Yuarsi, S.E., & Pitaloka, D. (2002). *Initiating a safe place for women case in special region of Yogyakarta (In Indonesian)*. Yogyakarta: Center for Population and Policy Studies UGM.
- Yulia, R. (2010). *Victimology, legal protection against victims of crime*. Yogyakarta: Graha Ilmu.