
Implementation of Legal Protection for Women Victims of Physical Violence by Police Investigators of the Women and Child Protection Unit

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ABSTRACT: The relationship between husband and wife should be a good example for their children. This relationship can be based on happiness and harmony. But in reality, wives in their position face a lot of domestic (economic) neglect and violence from their husbands, both sexual, psychological and physical violence. A number of women's considerations in handling domestic violence issues in their families make some victims hesitate to immediately report to law enforcement officials and take legal action to find a solution). Based on the facts that occur, most women and children are often victims of domestic violence. The number in Indonesia is very high, around 24 million cases or 11.4% have experienced acts of violence. The dominant violence experienced by Indonesian women is domestic violence or domestic violence, such as maltreatment, rape, harassment or infidelity committed by the husband. The problem in this paper is whether women as victims of physical violence have obtained legal protection? Based on the results of the research, it is found that women as victims of physical violence have not fully obtained optimal legal protection because when the victim finishes making a report the Police investigator at the Polres/Polresta level, especially at the Women and Children Protection Unit (UPPA) must take her to a safe house but this has not been done. Then when the victim finishes making a police report and returns home, the Police investigator/investigator at the Polres/Polresta level, especially at the Women and Children Protection Unit must collaborate with other family members and neighbouring parties to provide protection to the victim in the form of supervision but this has not been done. So it is suggested that the Indonesian National Police at the Polres/Polresta level, especially the Women and Child Protection Unit can work together with community leaders and religious leaders as well as the government at the sub-district level to actively conduct socialisation about legal protection against women of physical violence in the household so that women as victims no longer feel afraid or pressured to report the acts of violence they experience.

KEYWORDS: Legal Protection, Women, Victims, Physical Violence

INTRODUCTION

The Indonesian government has passed Law No. 23/2004 on the Elimination of Domestic Violence which aims to ensure that victims of domestic violence, mostly women, are immediately protected by the state and society to ensure that they are free from torture, threats of violence or abuse, as well as sexual harassment. In addition of the Law on the Elimination of Domestic Violence, the perpetrator of the crime of domestic violence (or commonly referred to as domestic violence) can be a person within the scope of the household, in this case, we must understand the rights and obligations of husband and wife stipulated in the Marriage Law to prevent domestic violence.^[1] Domestic violence is a violation of human rights and a crime against human dignity and a form of discrimination that must be eradicated.^[2]

Domestic violence is a social phenomenon. Such violence can break the integrity and harmony of the household. The household is no longer a sanctuary or safe haven from the outside world, but instead becomes a hell for its members. Violence at a personal level has a lasting psychological impact on the victim. Because they have seen violence as normal, victims act the same way when they form their own families. Even though he/she understands and also has knowledge related to these actions which are reprehensible. In addition, because of experiencing violence, victims can be encouraged to commit crimes in society, with the tendency for violence to trigger the perpetuation of other violence.^[3]

One of the legal actions often found in Indonesian society is domestic violence, especially against wives. Violence against wives in the household is not only found in public places. However, this violence is also very well known in the domestic realm, where it is categorized as a form of violence contained in the law on the elimination of domestic violence. In several cases of domestic violence, especially against wives, this can be said to be a victim. The relationship between husband and wife should be a good example for their children. This relationship can be based on happy and harmonious nuances. but in reality, wives in their position face many acts of domestic (economic) neglect and violence from their husbands, both sexual, psychological and physical violence.

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A number of considerations by women in dealing with the problem of domestic violence in their families encourage some victims to hesitate to immediately make a report to law enforcement officials and take legal action to find a solution.^[4]

A number of data collected from Komnas Perempuan's data collection forms or service institutions totalling 8,234 cases, which are often found related to the type of violence against women is in the private or personal sphere, namely Relationships and Personal Domestic Violence at 79% (6,480 cases). Among others, violence against wives (KTI) with the first position of 3,221 cases (49%), then a total of 1,309 cases (20%) of dating violence in the second position. The third position was 954 cases (14%) of violence against girls.

Data on cases of physical violence against wives obtained by the author at the Ambon Island and Lease Islands Police in 2021 totalled 23 cases, then increased to 30 cases of physical violence against wives, and in 2023 further increased to 31 cases of physical violence against wives. The reality in the field is often found that a criminal case that should have gone through the stages of examination at the level of investigation, prosecution and finally decided by the court only reaches the investigation stage and ends up in the hands of the investigator and is marked by a letter of termination of investigation (SP3) on the basis that there have been peace efforts and led to peace between the parties involved in the criminal case.

The presence of a new idea in resolving criminal cases that occur in society with a different approach and involving many parties, namely the perpetrators, victims, and the community is the best way to be able to resolve criminal acts that have their own characteristics and characteristics, the impact caused is not too broad for social life, one of which is violence that occurs in the scope of the household through restorative justice. The choice of a restorative justice approach model in handling cases that have this character and characteristic is because dispute resolution through conventional public courts is deemed unable to provide satisfaction to those seeking justice and even worsen the situation.^[5]

Based on the background that has been described, the author raises the problem, namely whether the Investigator of the Women's and Child Protection Unit of the Polresta/Polres has provided protection to women as victims of physical violence?

METHOD RESEARCH

The type of research used in this research is juridical sociological (empirical). According to Ronny Haniitjo Soemitro juridical sociological is a type of research that aims to describe a statement that exists in the field based on legal principles, legal rules or legislation that applies and has to do with the problems that occur.^[6] This type of research is descriptive analysis. The research location is in the jurisdiction of the Ambon Island and Lease Islands Police. Using several data collection techniques, namely the observation method, documentation method, and interview method.

RESULT AND DISCUSSION OF THE RESEARCH

Scope of Domestic Violence

Criminal law is a law that is deliberately made to maintain public order, which basically has two repressive legal protections and preventive legal protections. These two forms of criminal law are essentially part of criminal policy. The existence of this form of protection is related to the form of legal and criminal protection. Strengthening criminal law cannot be separated from the role of the state as an institution whose competence allows the application of criminal law in society.

The enactment of Law No. 23 of 2004 on the Elimination of Domestic Violence is largely based on several factors including that every citizen has the right to receive a sense of security and freedom from all forms of violence, especially domestic violence which is a violation of human rights.

The direction of the formulation of the Law on the Elimination of Domestic Violence Number 23 of 2004 deviates from the principle that every citizen has the right to be protected and free from all forms of violence, in accordance with the philosophy of Pancasila and the 1945 Constitution. A perfect and harmonious household creates a sense of security, free from all forms of violence and no discrimination. The realization of the integrity and harmony of the household actually depends on each person in the household, especially on the behavior and level of self-control of each person in the household. The integrity and harmony of the household can be disrupted if the quality and self-control is not good and if it cannot be controlled, it can eventually lead to domestic violence, which results in insecurity or injustice to the people in the household.

Victims of criminal acts of domestic violence often occur for women, it does not mean that women cannot be perpetrators of criminal acts Article 2 of the Law on the Elimination of Domestic Violence, the perpetrator of the crime of domestic violence (or commonly referred to as domestic violence) can be a person within the scope of the household, in this case, namely: the perpetrators of criminal acts of domestic violence (or commonly referred to as domestic violence) are persons within the scope of the household, in this case, namely:

- a. Husband, wife, and children;
- b. People who have family ties as referred to in letter a due to blood, marriage, breastfeeding, care, and guardianship, who reside in the household: and/or;

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c. People who work to help the household and reside in the household.

So far, the community has assumed that criminal acts of domestic violence can only be committed by men (husbands, fathers, brothers, or others) and that the victims are always women (wives, mothers, sisters, and others), even though women can also commit domestic violence, and if the victim of domestic violence is a man then the man who is the victim will definitely be blamed because the community will definitely think that it is the man who started the problem and the community will also not be too sympathetic towards men, because men are considered strong.

Forms of Domestic Violence and Their Penalties

The Law on the Elimination of Domestic Violence does not only regulate the protection and recovery of victims of domestic violence but also regulates prevention. In addition, this law also specifically mentions the limits and elements of the act, which is certainly different from the acts of persecution as regulated in the Criminal Code.

There is an obligation for every law enforcement officer, health worker, social worker, volunteer companion, or spiritual counselor to provide protection to victims so that they are more sensitive and responsive to the interests of households which were originally directed at the integrity and harmony of the household.

The qualifications of the crime of violence when viewed in the Criminal Code are:

- a. Crimes against the life of another person, regulated in Articles 338-350 of the Criminal Code;
- b. Crimes of persecution, regulated in Articles 351-358 of the Criminal Code;
- c. The crime of theft preceded, accompanied or followed by violence, as set out in Article 365 of the Criminal Code;
- d. Crimes against decency, rape with the use of violence, regulated under Article 285 of the Criminal Code; and
- e. Crimes against persons or property using violence, regulated under Article 170 of the Criminal Code.

The forms of domestic violence regulated in The Law on The Elimination of Domestic Violence Include :

1. Physical Violence;

Article 44 regulates the criminal provisions for perpetrators of physical violence, namely:

- 1) Every person who commits acts of physical violence within the scope of the household as referred to in Article 5 letter a shall be punished with a maximum imprisonment of 5 (five) years or a maximum fine of Rp 15,000,000.00 (fifteen million rupiah).
- 2) In the event that the act as referred to in paragraph (1) results in the victim receiving sickness or serious injury, the person shall be punished with imprisonment of 10 (ten) years or a maximum fine of Rp 30,000,000.00 (thirty million rupiah);
- 3) In the event that the act as referred to in paragraph (2) results in the death of the victim, shall be punished with imprisonment of 15 (fifteen) years or a maximum fine of Rp 45,000,000.00 (forty five million rupiah); and
- 4) In the event that the act as referred to in paragraph (1) is committed by the husband against the wife or vice versa which does not result in illness or hindrance to the performance of official work or livelihood or daily activities, shall be punished with imprisonment of not more than 4 (four) months or a maximum fine of Rp 5,000,000.00 (five million rupiah).

2. Psychological Violence;

Psychological violence, namely actions that result in fear, loss of self-confidence, loss of ability to act, a sense of helplessness and or severe psychological suffering in a person. Article 45 stipulates that;

- 1) Every person who commits acts of psychological intimidation within the scope of the household as referred to in Article 5 letter b shall be punished with a maximum imprisonment of 3 (three) years or a maximum fine of Rp 9,000,000.00 (nine million rupiah); and
- 2) In the event that the act as referred to in paragraph (1) is committed by the husband against the wife or vice versa which does not cause illness or hindrance to carry out official work or livelihood or daily activities, shall be punished with imprisonment of 4 (four) months or a maximum fine of Rp 3,000,000.00 (three million rupiah).

3. Sexual Violence;

Sexual violence, namely coercion of sexual intercourse committed against a person who resides within the scope of the household. In addition, it also means the coercion of sexual intercourse against one of the persons within the scope of the household with another person for commercial purposes or certain purposes. The crime of sexual violence is regulated in Articles 46, 47 and 48.

Article 46:

Every person who commits an act of sexual violence as referred to in Article 8 letter a shall be punished with a maximum imprisonment of 12 (twelve) years or a maximum fine of Rp 36,000,000.00 (thirty six million rupiah).

Article 47:

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Any person who forces a person who resides in his/her household to have sexual intercourse as referred to in Article 8 letter b shall be punished with imprisonment of not less than 4 (four) years and a maximum imprisonment of 15 (fifteen) years or a fine of not less than Rp 12,000,000.00 (twelve million rupiah) or a maximum fine of Rp 300,000,000.00 (three hundred million rupiah).

Article 48:

In the event that the acts as referred to in Article 46 and Article 47 result in the victim receiving an injury from which there is no hope of complete recovery, suffering a mental or physical disorder for at least 4 (four) weeks continuously or 1 (one) year non-consecutively, the abortion or death of a fetus in the womb, or result in the malfunctioning of the reproductive organs, shall be punished with imprisonment of at least 5 (five) years and imprisonment of at most 20 (twenty) years or a fine of at least Rp 25.000,000.00 (twenty five million rupiah) and a maximum fine of Rp 500,000,000.00 (five hundred million rupiah).

1. Household Neglect;

Every person is prohibited from neglecting a person within the scope of the household, when according to the law applicable to him by agreement or contract he is obliged to provide livelihood, care or maintenance to such person. Such neglect also applies to people who cause economic dependence by restricting or prohibiting proper work within or outside the home, so that the victim is under the control of that person. This is regulated in Article 49 that shall be punished with imprisonment of up to 3 (three) years or a fine of up to Rp 15,000,000.00 (fifteen million rupiah), every person who:

- a. Neglects another person within the scope of his/her household as referred to in Article 9 paragraph (1);
- b. Neglects another person as referred to in Article 9 paragraph (2)

In line with the above, it can be said that the concept of legal responsibility/liability is the concept of legal liability. A person is said to be legally responsible for a certain criminal offense means that it can be prosecuted in a case of tort. Usually in a case, sanctions are imposed on the perpetrator (delinquent) because his actions make him responsible for the act.^[7]

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Arif Gosita's view of victims is those who suffer physically and mentally as a result of the actions of others who seek fulfillment, the interests of themselves or others which are contrary to the interests of the human rights of the injured party.^[8]

Meanwhile, according to Lilik Mulyadi, victims can be seen from two aspects, namely victims in a broad sense and victims in a narrow sense. Victims in a broad sense are people who suffer or are harmed as a result of violations, both penal and non-penal violations or can also include victims of abuse of power. Meanwhile, victims in a narrow sense are defined as victims of crime, namely victims of crimes regulated in criminal law provisions.^[9]

At the normative level, domestic violence laws are enacted based on the principles of respect for justice and gender equality, victim protection, non-discrimination, and human rights. This law aims to avoid various kinds of domestic violence, safeguard victims, and deal with the perpetrators of such violence. It is hoped that this law will provide legal protection.

Quoting Margie Gladies Sopacua's opinion that "The Law of the Republic of Indonesia on Human Rights provides an affirmation that what is meant by human rights are all rights that are inherent and contained in humans as creations of God Almighty. The rights regulated in the Human Rights Law must be respected, protected, and maintained by the state through various positive legal regulations. Human rights originate from God Almighty as the creator. The state must protect them as the holder of the power to make legal regulations to protect the human rights of each human being".^[10]

A serious problem is domestic violence, which has become a social phenomenon. Such violence can break the integrity and harmony of the household. Households are no longer a sanctuary or safe haven from the outside world, but instead a hell for its members. Violence at a personal level has a lasting psychological impact on the victim. Because they have seen violence as normal, victims act the same way when they form their own families.

Even though he understands, he also has the knowledge that such actions are reprehensible. In addition, because of experiencing violence, victims can be encouraged to commit crimes in society, with the tendency for violence to trigger the perpetuation of other violence.^[10]

In Indonesian society, domestic violence, especially against wives, is a common legal action, not only in public places, but also very common at home. The occurrence of several acts of domestic violence, especially against wives, can be said to be a victim. Supposedly, the relationship between husband and wife is used as an example as well as a role model for their children and the relationship can be based on happy and harmonious nuances, but in reality the wife as a victim experiences acts of violence from her husband, including sexual, psychological, physical or economic violence (household neglect).^[11]

Legal protection is all legal efforts to provide a sense of security to victims by social institutions, advocates, police, family, courts, prosecutors, or other parties either, according to the determination of the court.^[12] Protection in the abstract means that indirect protection is mostly contained in victim protection in positive criminal law in Indonesia. The formulation of legal acts in several provisions of the law can be considered to have indirect protection in abstracto against the human rights and interests of victims of

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criminal acts. This is because according to positive criminal law, criminal acts are not known as acts of attacking the interests of victims (someone), concretely and personally, but are only understood as resistance to order or legal norms in abstracto. Thus, it does not directly protect the victim in concreto, but only in abstracto.

Therefore, it can be considered that the liability and criminal sanction system are not concrete and directly aimed at protecting the victim, but only protecting abstractly and indirectly.

The protection of society, including the legal protection of crime victims, can be realized in several forms, such as by providing compensation and restitution, legal assistance, and medical services. For the protection of victims of crime in the criminal justice system in Indonesia, there are several principles that need attention, namely:

1. The principle of benefit states that the protection of victims does not only provide benefits for victims of crime, both material and spiritual, but also provides benefits to society at large, such as efforts to reduce the number of crimes and create public order;
2. The principle of justice states that efforts to protect victims of crime are not absolute because they are limited by a sense of justice that must also be given to the perpetrators of crime.
3. The principle of balance states that the purpose of the law, in addition to providing certainty and protection of human interests, is also to restore the balance of the disturbed social order to its original state (restitution in integrum); and
4. The principle of legal certainty provides a strong legal basis for law enforcement officials to carry out their duties in an effort to provide legal protection to victims of crime.

In addition, there are several reasons why victims need protection, namely:

1. a philosophical aspect, which is a moral and sociological demand to maintain human relations in society and maintain a system of institutionalized trust. Crimes committed against victims will mean the destruction of the trust system. Criminal law rules and other laws related to victim issues will serve as a means of restoring the public trust system.
2. social contract reasoning, which states that the state can be said to monopolize all social reactions to crime and prohibit private actions. In the event of a crime and victimization, the state must be responsible for attending to the needs of the victims and
3. Aspects of the purpose of punishment, with the approach of resolving conflicts arising from criminal acts, restoring balance, and bringing a sense of peace to society.

There are forms of protection that must be carried out after a report or complaint from the victim to the police, as stipulated in Article 1 point (4) of Law Number 23 of 2004 concerning the Elimination of Domestic Violence, which explains that:

“Protection is all efforts aimed at providing a sense of security to victims carried out by the family, advocates, social institutions, police, prosecutors, courts, or other parties, either temporarily or based on court decisions”.

The protection efforts by the police for victims are listed in Article 16 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence, namely temporary protection:

- 1) Within 1 x 24 (one time twenty-four) hours of knowing or receiving a report of domestic violence, the police must immediately provide temporary protection to the victim;
- 2) Temporary protection, as referred to in paragraph (1), is given for a maximum of seven days from the time the victim is received or handled; and
- 3) Within 1 x 24 (one time twenty-four) hours of the provision of protection as referred to in paragraph (1), the police must request a protection order from the court.

Furthermore, protection for victims is regulated in Article 10 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence, namely:

- a. protection from family, police, prosecutors, courts, advocates, social institutions, or other parties, either temporarily or based on the determination of a protection order from the court;
- b. health services in accordance with medical needs;
- c. special handling related to victim confidentiality;
- d. assistance by social workers and legal aid at every level of the examination process in accordance with the provisions of laws and regulations; and
- e. spiritual guidance services.

The Government of the Republic of Indonesia has followed up on the implementation of the Law on the Elimination of Domestic Violence through Government Regulation No. 4/2016 on the Implementation and Cooperation of Recovery for Victims of Domestic Violence (PP PKPKDRT). What is meant by the implementation of recovery in Article 1 paragraph (2) of PP PKPKDRT is all actions that include services and assistance to victims of domestic violence. Furthermore, the provisions in Article 2, paragraph (1) of PP PKPKDRT stipulate that "The implementation of recovery for victims is carried out by government

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agencies and local governments as well as social institutions with their respective duties and functions, including providing facilities needed for the recovery of victims."

For the purpose of recovery, Article 6 paragraph (1) of PP PKPKDRT stipulates that victims are entitled to receive services from health workers, social workers, companion volunteers, and/or spiritual guides. If the substance of the PP PKPKDRT is examined, the provisions in the PP PKPKDRT are not sufficient to provide protection and recovery for victims of crime. The PP PKPKDRT does not explain the recovery process, which is the ultimate goal. It still places the victim as an object and does not require the victim to participate in the criminal justice system.

Women as victims of physical violence have not fully obtained optimal legal protection.

- 1) When there is a report from a victim of domestic violence, the police in this case should provide legal protection to victims as stipulated in Article 10 of the PKDRT Law, but the implementation has not been fully implemented.
- 2) When the victim finishes making a report, they should be taken to a safe house, but this has not been done optimally.
- 3) When the victim finishes making a police report and returns home, the Women and Child Protection Unit Police Investigator should cooperate with other family members and surrounding parties, in this case the Head of the Neighborhood Association (RT), to provide protection to victims in the form of supervision, which has not been implemented. In terms of the protection of victims of physical violence, it is often forgotten, thus weakening the operation of the criminal justice system.

CONCLUSION

Women as victims of physical violence have not fully obtained optimal legal protection, this can be found 1) When the victim finishes making a report, she should be taken to a safe house but this has not been done optimally; 2) When the victim finishes making a police report and returns home, the Women and Child Protection Unit Police Investigator should cooperate with other family members and surrounding parties, in this case the neighbourhood association (RT) to provide protection to victims in the form of supervision has not been carried out. The protection of victims of physical violence is often overlooked, undermining the operation of the criminal justice system.

The Women and Child Protection Unit Police Investigator must implement legal protection for wives who are victims of domestic violence committed by their husbands in accordance with existing laws and regulations in positive law, besides that, the Women and Child Protection Unit Police Investigator must also be able to cooperate with community leaders and religious leaders in terms of conducting socialisation about legal protection for women of physical violence in the household so that women no longer feel afraid or pressured to report the acts of violence they experience.

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