

The Law Enforcement against Persons of Crime of Household Violence

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Abstract. *In Act No. 23 of 2004 concerning the Elimination of Domestic Violence article 1 "Domestic violence (KDRT) is any act against a person, especially women, which results from suffering or physical, sexual, psychological misery, and household neglect including threats to commit acts, coercion or unlawful deprivation of liberty within the household sphere". Domestic violence is quite an interesting issue to study and study because the reported number of domestic violence shows an increase from year to year. In this study, two problems will be examined, namely what are the factors that cause domestic violence and how to enforce the law for perpetrators of domestic violence. The method used by the author in compiling the journal uses the Normative juridical method with the research specifications used in this research is descriptive analysis type. The data collection technique carried out in this study used literature study, collecting data from the results of a review of literature and secondary data which included primary legal materials, secondary legal materials and tertiary legal materials. Data analysis techniques in this study were carried out by qualitative data analysis.. The results of the research on the factors that cause domestic violence are economic factors, then domestic violence is often considered to be just a misunderstanding in the family environment. Law enforcement for perpetrators is regulated in Act No. 23 of 2004 concerning the Elimination of Domestic Violence, but law enforcers often apply articles in the Criminal Code to cases of domestic violence.*

Keywords: *Actors; Domestic; Enforcement; Violence.*

1. Introduction

Humans are social creatures where they cannot live alone, they live in pairs and produce offspring or build a household. The household should be a shelter for all

family members. However, in fact, some households have become places of suffering and torture due to violence. The problem of violence (especially in the household) is a form of crime that insults and tarnishes human dignity, and should be categorized as a type of crime against humanity. However, not all crimes contain elements of violence, and not all acts of violence can be said to be components of crime.¹

Domestic violence is a long-standing problem in society, Nawal El Saadawi illustrates how domestic violence has occurred since the emergence of a culture.² In Act No. 23 of 2004 concerning the elimination of domestic violence article 1 "Domestic violence (KDRT) is any act against a person, especially women, which results from suffering or physical, sexual, psychological misery, and household neglect including threats to commit acts, coercion or unlawful deprivation of liberty within the household sphere".

There are two main things that trigger the occurrence of domestic violence. First, the economic factor. The economic factor referred to is the problem of the husband's income, so that it often triggers fights that result in physical violence. Economic reasons are generally the cause of the wife's demands that she always asks her husband for more, while the husband is unable to fulfill it. Another case is when his wife often insults, criticizes her husband and even curses him when there is a problem in the household. Not because of a lack of money, but because the wife can earn a higher income than the husband and meet all household needs. If the husband feels that he does not accept being treated in this way, an argument ensues, which usually ends in physical violence. Second, the affair factor.

According to data from the Ministry of PPPA, until October 2022 there were 18,261 cases of domestic violence throughout Indonesia, 79.5% or 16,745 of the victims were women. Apart from this data, what we can highlight from the data from the Ministry of PPPA is that domestic violence also affected 2,948 men be a victim. So, men and women should not be ignored because each has the risk of becoming a victim of domestic violence.³

As a rule of law (*reechstaat*) the principles of the rules of law must be upheld in the Republic of Indonesia. For us, the principles of the rules of law are none other than the rules of justice, law enforcement that prioritizes the value of justice. This principle needs to be emphasized, because the discrimination in the

¹Alimuddin, 2014, Settlement of domestic violence cases at the Religious Court, Publisher CV. Mandar Maju Bandung, p. 38

²Nawal El Saadawi, 2001, Women in Patriarchal Culture, Student Library, Yogyakarta, p. 177

³<https://www.metrotvnews.com/play/b2lCrdXL-kemenpppa-rilis-data-nomor-kases-kdrt-di-indonesia-untill-oktober-2022> accessed on January 4, 2023 at 10.59 WIB

application of law in reality is too stark. Legal products and their enforcement are more in favor of the ruling class, groups of people who have economic power or political power on other parties. The rights of people seeking justice, most of whom come from powerless groups, are always sidelined, substantive or sociological justice is always enjoyed by those who are powerful, while the powerless only get formal justice.⁴

2. Research Methods

The method used by the author in compiling the journal uses the normative juridical method. The research specification used in this study is a descriptive type of analysis. In this study the authors focused on library research as well as primary materials in the form of applicable laws and secondary materials in the form of expert opinions, law books, journals and magazines. The data collection technique carried out in this study used literature study, collecting data from the results of a review of literature and secondary data which included primary legal materials, secondary legal materials and tertiary legal materials. Data analysis techniques in this study were carried out by qualitative data analysis, namely data collection using laws, theories and legal principles.

3. Results and Discussion

3.1. Factors in the Occurrence of Domestic Violence Crimes

Basically every family wants to build a happy and loving family both physically and mentally, in other words that every family really wants to be able to build a harmonious and happy family which is often called *a sakinah, mawaddah wa rahmah*. The reality is that not all families can run smoothly in wading through their lives, because in the family one cannot fully feel happiness and love and care for one another, but instead there is a feeling of discomfort, depression, or sadness and mutual fear and hatred among one another.

There are three theories underlying the causes of domestic violence. First, the biological theory states that not only animals have aggressive traits in each of them, but also humans have had it since birth. Sigmund Freud stated that humans have a desire for death which leads them to enjoy the act of injuring and killing others or themselves. Meanwhile, Konrad Lorenz stated that aggressiveness and violence are two very useful things for survival. Second, the

⁴Satjipto Raharjo, 1983, Law Enforcement Issues, Sinar Baru, Bandung, p. 19

frustration-aggression theory states that everyone who is frustrated tends to be aggressive with reasons to vent their feelings. Third,⁵

Factors in the occurrence of violence against women in the household, especially those perpetrated by husbands against wives, namely:⁶

a) There is an unequal power relationship between husband and wife. Patriarchal culture places men or husbands at a higher level of power than women or wives, so that women are often considered the property of their husbands when they are married. This creates inequality in the relationship because the husband has more power over his wife than his own wife.

b) Economic dependency. Patriarchal education and culture that has become part of society gives the view that a wife should really depend on her husband. This phenomenon often makes some wives not used to being independent or economically empowered, so when domestic violence occurs the wife has to survive. This kind of behavior also makes the husband feel that he has more power over his wife's helplessness

c) Violence as a tool to resolve conflict. Violence against wives usually occurs against the background of a mismatch between the husband's expectations and the reality. Violence is carried out with the aim that the wife can fulfill her expectations without putting up a fight because of her powerlessness. This phenomenon is also still one of the cultural bases in society that if a woman or wife does not obey, then they must be treated harshly so that she becomes obedient.

d) Competition. Basically human life is full of competition and never want to lose, as well as with a husband and wife. Competition between husband and wife occurs as a result of inequality between the two to fulfill each other's desires, both in education, social relations, economic domination, working conditions and society can lead to competition which can lead to domestic violence. Culture also creates the view that men should not be inferior or inferior to women, so it is not surprising that violence against women or wives occurs only to fulfill the ego of men or husbands.

e) Frustrated. Violence can also occur due to psychological fatigue which causes self-frustration and a husband's lack of ability to cope with stress. Frustration arises due to a discrepancy between expectations and reality that is felt by the

⁵Rosma Alimi, Nunung Nurwati, Factors Causing Domestic Violence Against Women, *Journal of Community Service and Research (JPPM)*, Vol. 2 No. 1 April 2021, p. 22

⁶Prince, Diana Rebekah. 1998. "Acts of Violence Against Women in the Family." University of Indonesia, p. 89

husband. This is common for couples who are not ready to marry, husbands who do not have a job and steady income to meet household needs, and are still completely limited in their freedom. In this case, the husband usually seeks an escape from drunkenness and other negative actions which results in taking the form of violence against his wife, whether physically, sexually, psychologically, or even abandonment of the family.

f) Less opportunities for women in the legal process. In court proceedings, there is very little opportunity for the wife to reveal the violence she has experienced. This can also be seen from the lack of KUHP discussing the rights and obligations of the wife as a victim, because her position is only as a reporting witness or victim witness. This is important because the victim's report to the law enforcement agencies may not be considered a crime but simply a misunderstanding within the family.

According to articles 5-9 of Act No.. 23 of 2004 concerning the Elimination of Domestic Violence, it is stated that the forms of domestic violence are as follows:

- a) Physical violence, namely actions that cause pain, fall sick or seriously injured.
- b) Psychological violence, namely actions that cause fear, loss of self-confidence, loss of ability to act, feelings of helplessness, and/or severe psychological suffering to someone
- c) Sexual violence, i.e. forced sexual intercourse committed against someone within the scope of the household and forced sexual intercourse against one person within the scope of the household with another person for commercial purposes and/or specific purposes
- d) Household neglect, namely abandonment of people within the scope of the household, even though according to the law that applies to him or because of an agreement or agreement he is obliged to provide life, care, or care for that person neglect also applies to anyone who causes economic dependence by limiting and/or prohibiting people from working properly inside or outside the home so that the victim is under the control of that person.

3.2. The Law Enforcement for Perpetrators of Domestic Violence According to Act No. 23 of 2004 concerning the Elimination of Domestic Violence

Law enforcement is an attempt to realize the ideas of justice, legal certainty and social benefits into reality. So the enforcement of law is essentially the process of embodiment of ideas. Law enforcement is the process of carrying out efforts to uphold or function legal norms in a real way as a guide for actors in traffic or legal relations in the life of society and the state. Law enforcement is an attempt

to realize legal ideas and concepts that the people expect to become reality. Law enforcement is a process that involves many things.⁷

Law enforcement is greatly influenced by several factors. The factors that influence law enforcement according to Soerjono Soekanto are as follows:⁸

- a) Legal Factors
- b) Law Enforcement Factors
- c) Facility Factor or Supporting Facilities
- d) Community Factors
- e) Cultural Factors

According to article 1 point 1 of Act No.. 23 of 2004 concerning the Elimination of Domestic Violence (UU KDRT), Domestic Violence is any act against a person, especially women, which results in physical, sexual, psychological misery or suffering and/or neglect of the household including threats to commit acts, coercion, or unlawful deprivation of liberty within the household sphere. The Domestic Violence Law applies to everyone, regardless of gender. So, the Domestic Violence Law does not only apply to a wife, but also applies to husbands. This is in accordance with Article 3 letter b of the Domestic Violence Law, namely that the elimination of domestic violence adheres to the principle of gender equality.⁹

For Criminal Provisions for perpetrators of domestic violence are regulated in Articles 44 to Article 46 UURI No.23 of 2004 concerning the Elimination of Domestic Violence:

Article 44

(1) Any person who commits acts of physical violence within the scope of the household as referred to in Article 5 letter a shall be subject to imprisonment for a maximum of 5 (five) years or a fine of a maximum of IDR15,000,000.- (fifteen million rupiahs).

⁷Dellyana Shant, 1988, *The Concept of Law Enforcement*, Liberty, Yogyakarta, page 37

⁸Soerjono Soekanto, 2004, *Factors Affecting Law Enforcement*, Fifth Edition, Raja Grafindo Persada, Jakarta, p. 42

⁹ <https://www.Hukumonline.com/> accessed on January 4, 2023 at 12.36 WIB

(2) In the case of the act referred to in paragraph (1) causing the victim to fall ill or seriously injured, the penalty shall be imprisonment for a maximum of 10 (ten) years or a fine of up to IDR 30,000,000.00 (thirty million rupiahs).

(3) In the event that the act referred to in paragraph (2) results in the death of the victim, the penalty shall be imprisonment for a maximum of 15 (fifteen) years or a fine of up to IDR 45,000,000.00 (forty five million rupiahs).

(4) In the event that the act as referred to in paragraph (1) is committed by a husband against his wife or vice versa which does not cause illness or impediments to carrying out work, position or livelihood or daily activities, the penalty shall be imprisonment for a maximum of 4 (four) months or a maximum fine of IDR 5,000,000.00 (five million rupiah).

Article 45:

(1) Any person who commits acts of psychological violence within the scope of the household as referred to in Article 5 letter b shall be subject to imprisonment for a maximum of 3 (three) years or a fine of a maximum of IDR 9,000,000.00 (nine million rupiahs).

(2) In the event that the act as referred to in paragraph (1) is committed by a husband against his wife or vice versa which does not cause illness or impediments to carrying out work, position or livelihood or daily activities, the penalty shall be imprisonment for a maximum of 4 (four) months or a maximum fine of IDR 3,000,000.00 (three million rupiah).

Article 46

Anyone who commits an act of sexual violence as referred to in Article 8 letter a shall be subject to imprisonment for a maximum of 12 (twelve) years or a maximum fine of IDR 36,000,000.00 (thirty-six million rupiah).

In the settlement of criminal cases, the law often places too much emphasis on the rights of the suspect/defendant, while the rights of the victim are ignored. It was found that many victims of crime did not receive adequate legal protection, both immaterial and material protection. Victims of crime are placed as evidence giving information, that is, only as witnesses, so that the possibility for victims to gain freedom in fighting for their rights is small. Victims are not given authority

and are not actively involved in the investigation and trial process, so they lose the opportunity to fight for their rights and recover from a crime.¹⁰

On the other hand the perpetrators of domestic violence in the application of criminal sanctions still often occur dualism in the application of sentencing provisions. This dualism occurs, namely with the enactment of Act No. 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT) it turns out that the rules in the Criminal Code are still valid.

4. Conclusion

The cause of domestic violence is triggered by several factors such as economic factors, infidelity factors, competition factors between husband and wife, and the behavior of demanding each other to fulfill their rights where the parties are unable to fulfill these demands causing bickering and often followed by violence. In law enforcement against perpetrators of domestic violence, the law has actually been regulated specifically with the enactment of Act No. 23 of 2004 concerning the elimination of domestic violence, but in practice there is still legal dualism where cases of domestic violence are often sentenced with the punishments contained in the criminal law code.

5. References

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¹⁰Vidi Pradinata, Legal Protection for Victims of Domestic Violence (KDRT), Journal of Law Khaira Ummah Vol. 12. No. December 4, 2017, p. 773

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