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Law and Society Approach on Legal Protection for Victims of Domestic Violence

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ABSTRACT. Violence in society is actually not a new thing. Violence is often carried out in conjunction with one form of criminal act, as regulated in the Criminal Code (KUHP) for example theft with violence (Article 365 of the Criminal Code), rape (Article 285 of the Criminal Code), Persecution (Article 351 of the Criminal Code). However, at this time there is a lot of domestic violence in the form of violence against wives or women. Often this act of violence is called a hidden crime. It is called so, because both the

perpetrator and the victim try to keep the act a secret from public view. Sometimes it is also called domestic violence, because violence occurs in the domestic sphere. Criminal acts of domestic violence can cause victims both due to physical, psychological, sexual and neglect, so that efforts to protect victims are needed, including physical and psychological health recovery. For perpetrators of domestic violence, law enforcement efforts are needed to resolve cases of violence through the judicial process. Constraints in resolving domestic violence cases need to be overcome through the role of the government and local governments in collaboration with the community so that the implementation of the elimination of domestic violence can be realized. This study is intended to describe and analyze the legal protection for the victims of domestic violence in Indonesia by comparing some related laws and regulations such as Anti-Domestic Violence Act, Child Protection Act, Human Rights Law, and Indonesian Criminal Code.

KEYWORDS. *Domestic Violence, Victim Protection, Legal Protection, Judicial Process, Justice and Crime, Law and Society*

I. INTRODUCTION

Along with the times, the social burden and the burden of crime in society are also getting bigger. This development has an impact on the social life of the community, on the other hand the level of progress that is being experienced, also has an impact on the emergence of various forms of crime. Today, crime has increased both in terms of quantity and quality. In terms of form and manner of occurrence, this can be seen from the fact that in the past, crimes were still conservative in nature.

Violence in society is actually not a new thing. Violence is often carried out in conjunction with one form of criminal act, as regulated in the Criminal Code (KUHP) for example theft with violence (Article 365 of the Criminal Code), rape (Article 285 of the Criminal Code), Persecution (Article 351 of the Criminal Code). However, at this time there is a lot of domestic violence in the form of violence against wives or women. Often this act of violence is called a hidden crime. It is called so, because both the perpetrator and the victim try to keep the act a secret from public view. Sometimes it is also called domestic violence, because violence occurs in the domestic sphere (Soeroso, 2010).

The wholeness and harmony of a happy, safe, and peaceful household is the dream of everyone in the household. To realize this wholeness and harmony, it really depends on everyone in the household, especially the level of quality of behavior and self-control of everyone in the household. Integrity and family harmony can be disrupted if the quality and self-control cannot be controlled, which in the end will result in domestic violence resulting in insecurity or injustice against people within the scope of the household (Huriyani, 2018; Nisa, 2018).

Violence is often carried out in conjunction with one form of criminal act, acts of violence can be carried out with violence or threats of violence are carried out or what tools are used, each depending on the case that arises. To deal with cases of domestic violence, existing legal instruments cannot easily ensnare perpetrators of violence. So far, the perpetrators have only been charged with persecution or murder, not all of them can be caught because not all victims report the incident to the authorities. In addition, the existing legal instruments do not provide legal protection for victims of violence.

Criminal acts of domestic violence can cause victims both due to physical, psychological, sexual and neglect, so that efforts to protect victims are needed, including physical and psychological health recovery. For perpetrators of domestic violence, law enforcement efforts are needed to resolve cases of violence through the judicial process. Constraints in resolving domestic violence cases need to be overcome through the role of the government and local governments in collaboration with the community so that the implementation of the elimination of domestic violence can be realized. To complement the existing legal instruments in preventing and overcoming cases of domestic violence which are increasing day by day, the government issued Law Number 23 of 2004 concerning the Elimination of Domestic Violence which was passed on September 14, 2004. Number 23 of 2004 concerning the Elimination of Domestic Violence, victims of domestic violence, especially women, are expected to be able to obtain legal protection and prevent further acts of domestic violence (Restia & Arifin, 2020; Rahayu, 2021; Sari & Putri, 2020).

Therefore, this study has several research purposes, *first*, to find out the factors that influence the occurrence of domestic violence, *second*, to know, describe and analyze the legal protection for women/wives as victims of domestic violence, *third*, to find out and analyze the legal protection for children as victims of domestic violence by their parents, and *forth*, to find out, analyze and examine the law enforcement for perpetrators of criminal acts of domestic violence.

II. HOW COULD THE DOMESTIC VIOLENCE HAPPENED?

The existence of domestic violence certainly has a considerable impact on the victim, both women/his own wife and children. The impact experienced is not only physical, but also psychologically disturbed. And this domestic violence also occurs due to several factors that influence it. According to Richard J. Gelles, the abuse that is often experienced by children in the family occurs due to a combination of various personal, social and cultural factors which include the inheritance of violence between generations, social stress, social isolation and involvement of the lower community and family structure (Gelles, 2004).

There are several factors behind the emergence of domestic violence, namely:

1. *Family history*

Perpetrators of domestic violence, usually experience or witness firsthand similar behavior by their parents.

2. *Money and health*

There are two important elements supporting the harmony of a couple. Availability of money, and health. When these two important things are disturbed, domestic violence is common. Let's say an individual has had a negative life experience, is unemployed or health is deteriorating. As an outlet for disappointment, usually the closest people become the target of anger. Some forms of economic violence are:

- a. forcing the victim to work;
- b. prohibits the victim from working but does not fulfill her rights and neglects her;

- c. take without the knowledge and without consent of the victim, seize and or manipulate the property of the victim.

Economic violence which is categorized as mild, namely actions in the form of deliberate efforts that make the victim dependent or economically helpless. In public life, we often encounter women who work when they get married and leave their jobs (Nurkhimah & Nur, 2020; Putri, 2020). Women are expected to focus more on taking care of household matters, preparing for pregnancy, birth, breastfeeding for up to two years, and the first care for children. Because of this condition, it becomes an important reason why men are responsible for the life and economic sustainability of the family. Many women leave their public jobs and give themselves up for their families. However, there are many cases where husbands who should carry out their responsibilities to provide for the entire family, do not.

3. *Media influence*

Various media, especially TV, have a big role in the rise of domestic violence. Through the media, it seems as if the perpetrators are being guided by the right way to mutilate the victim without being caught by law enforcement. In films and soap operas, acts of violence are often used as a form of punishment or a way to solve problems.

4. *Conflict resolution*

In fact, conflict resolution is a skill that is very helpful for couples. For example, when you and your partner get into an argument, with conflict resolution you address the situation and talk about it at some point. The problem is, if you're having trouble communicating, your first reaction may be to attack so your partner will listen to your argument.

5. *Drugs and alcohol*

Abuse of drugs and alcohol, contributes to domestic violence. Drugs and alcohol alter the mood to behave violently without making conscious judgments.

In addition, emotionality is also a factor in the occurrence of violent crimes. The existence of an emotional disorder refers to the behavior of a person who is irritable so that he cannot control his emotions and psyche in himself. This is related to the theory of criminal psychology which sees the perpetrators or criminals from a psychological perspective. A person's emotions will be easily provoked when someone cannot contain his anger which can be caused by behavior that can interfere or provoke anger towards someone so that when someone's anger starts to be provoked, it can have a negative impact, namely violence. One of the emotional factors that often drives someone to commit violence is a grudge against the victim.

One of the other emotional factors is a sense of solidarity between friends, where in a society, solidarity with family, surrounding communities, or fellow group friends is very high. When one member of a community group experiences an accident, difficulty, then the members in these groups will help a friend who is experiencing difficulties or difficulties.

Sometimes husbands also commit violence against their wives because they feel frustrated that they cannot do something that should be their responsibility. This is common in couples who:

1. Not ready to marry.
2. The husband does not have a job and a steady income that is sufficient for household needs.

3. Still completely limited in freedom because they are still riding on parents or in-laws (Alimi & Nurwati, 2021; Harefa, 2021).

In this case, the husband usually looks for an escape from drunkenness and other negative actions that lead to vent to his wife by scolding her, hitting her, yelling at her and other similar actions.

III. FORMS OF PROTECTION FOR WOMEN AS VICTIMS OF DOMESTIC VIOLENCE

Domestic violence is a problem that has long existed in society. Nawal El Saadawi describes how domestic violence has occurred since the existence of a culture (Sadawi, 2001). Domestic violence or commonly referred to as domestic violence is a very distinctive problem because domestic violence occurs at all levels of society, from people with low social status to people with high social status.

The problem of victims of criminal acts of domestic violence needs attention from the apparatus, society and the state, not only because of the losses incurred, but also the impact of criminal acts of domestic violence for victims who not only suffer material (physical) losses, but also experience physical harm. immaterial (psychic) loss. Legal protection for victims of criminal acts has received less attention from the law, this is influenced by several factors, including:

1. Statutory (legal) factor
2. Legal awareness by the victim
3. Supporting facilities
4. Human Resources

Indonesia as a state of law (*rechtstaat*) has implications for Human Rights. Clearly, the conception of *rechtstaat*, and the conception of the rule

of law, places human rights as one of the characteristics of a state called *rechtstaat*, and upholds the rule of law. In a democracy, the recognition and protection of human rights is one measure of the goodness or badness of a government (Hadjon, 1987).

The existence of a statutory regulation in a legal system greatly determines the realization of a legal order because the law is the main source of law (Mansur & Gultom, 2007). So far, the Government has indeed tried to protect victims of criminal acts of domestic violence through Law Number 23 of 2004 concerning the Elimination of Domestic Violence. -Law Number 23 of 2004 concerning the Elimination of Domestic Violence is still felt to be not optimal and far from expectations.

Although Law No. 23 of 2004 has existed, there are still many victims who do not report their cases to the police for the following reasons:

1. Shame, feel free with extended family if the disgrace is known to many people. This reason arises due to the understanding of some members of the community that the violence experienced by the wife is the result of the wife's own fault
2. Heavy dependence on actors economically
3. Regarding the performance of law enforcement in handling cases that are considered by women to report violence that has occurred to themselves (Indrianto & Nurtjahup, 2006).

By looking at this reality, the protection of victims of domestic violence appears to be neglected even though this issue is already regulated in the legislation. After the enactment of Law Number 23 of 2004, it is hoped that the awareness of victims will arise to report to the authorities if there is an act of domestic violence. According to this law, victims are socially weak victims (Ekotama, Prdjianto, & Wiratana, 2001), namely those who have a weak social position that causes someone to

become a victim, especially women and children. In this study, the victims of domestic violence were limited to wives who were abused by their husbands.

Relevant to the expected principles and objectives of eliminating domestic violence, the law has specifically regulated how to resolve acts of domestic violence that lead to efforts to protect victims. In this regard, the method of resolving domestic violence consists of five parts, namely:

1. the rights of victims of domestic violence;
2. obligations of government and society;
3. victim protection; and
4. victim recovery; and
5. settlement of domestic violence through the application of legal sanctions (Law No. 23 of 2004).

V. LEGAL PROTECTION FOR CHILDREN AS VICTIMS OF DOMESTIC VIOLENCE OF THEIR PARENTS

Talking about children is very important because children are the potential fate of a generation or nation in the future. Children are a reflection of the nation's attitude to life and determine the development of the nation (Sutedjo, 2010). This is certainly a broad concern for everyone to put the child's position as a human being who needs to be considered and get all the needs that are according to the needs of the child himself.

But nowadays there are so many children who experience acts of violence in their lives, even it starts from the closest environment, namely by their own families. Sexual violence is very common. This situation is further exacerbated by the ideology of guarding the praja or keeping strictly the ideology of the family.

Based on Law Number 23 of 2002 Article 20 concerning child protection, those who are obliged and responsible for the implementation of child protection are the state, government, community, family and parents. Articles 21 and 25 of this law also regulate further the protection and responsibilities of children. In Law Number 23 of 2004 concerning the Elimination of Domestic Violence in Article 2, the scope of this article also includes the existence of children to be protected from domestic violence. Legal protection for children is also implicit in the law on the protection of witnesses and victims. Law Number 13 of 2006 article 15 paragraph (1) point a.

In the general provisions of this article, it is explained about the family and the child being one member. The legal instruments above are proof that the law in Indonesia pays attention to the existence of children. The thing that must be understood again to prevent violence against children is the principle of child protection. The principle of non-discrimination, the principle of the best interest of the child, the principle of the right to life, survival and development of children, and the principle of respecting the views of children (Mansur & Gultom, 2007; Sebayang, Barus, & Ramadhan, 2021; Badruzaman, 2020).

The obligations and responsibilities of the State and Government in child protection efforts are regulated in the Child Protection Law articles 21 to 24, namely:

1. Respect and guarantee the human rights of every child without distinction of ethnicity, religion, race, class, gender, ethnicity, culture and language, legal status of the child, order of birth of the child and physical and/or mental condition;
2. Provide support for facilities and infrastructure in the implementation of child protection;

3. Guarantee the protection, maintenance, and welfare of children by taking into account the rights and obligations of parents, guardians, or other people who are generally responsible for children and oversee the implementation of child protection;
4. Guarantees children to exercise their rights in expressing opinions according to the age and level of intelligence of the child (Sainul, 2021; Sormin, Wahyuni, & Prayudhi, 2021; Arief, 2018).

Furthermore, as a tangible form of the Government of Indonesia's commitment to child protection, Law Number 23 of 2002 concerning Child Protection has been passed. Child protection aims to ensure the fulfillment of children's rights so that they can live, grow, develop, and participate optimally in accordance with human dignity and dignity, and receive protection from violence and discrimination, for the realization of quality, noble, and prosperous Indonesian children (Mahfud & Rizanixarli, 2021; Setyowati & Rusdiana, 2020; Setiawan, et.al., 2019).

VI. LAW ENFORCEMENT FOR PERPETRATORS OF DOMESTIC VIOLENCE

Domestic violence is a social problem, not a family problem that needs to be hidden. This is stated in the rules contained in Article 11 of Law Number 23 of 2004 which reads: "*The government is responsible for efforts to prevent domestic violence.*" One of the legal breakthroughs made through Law Number 23 of 2004 concerning the Elimination of Domestic Violence is regarding the roles of Law Enforcement Officials, especially the police, advocates and courts in providing protection and services for victims of domestic violence, especially with the regulation of the court's protection

mechanism for the safety of the victim ([Cahyaningutomo, 2020](#); [Husein, 2021](#); [Ilahi, 2021](#)). The roles explains as follows:

1. The Role of the Police (Articles 16-20 of Law Number 23 of 2004)

The police receive reports of cases of violence and immediately explain the rights of victims to receive services and assistance ([Cristiana, Yuliartini, & Mangku, 2019](#)).

2. The role of advocates (Article 25)

Advocates as a profession who advocate for the community must always be ready to solve problems or cases regarding violence that occurs in the household. This is regulated in Article 25 of Law Number 23 of 2004

3. Court's Role

The role of the court in providing protection to victims, especially regarding the implementation of the mechanism for protection orders ([Hasibuan, 2019](#); [Asmadi, 2018](#)).

In cases like this, efforts must still be made to overcome them. These efforts are:

1. *Preventive*

Preventive efforts are efforts made by the police or other law enforcement parties in tackling crimes, both crimes in general and violent crimes committed together in public specifically before the occurrence of the crime itself, in other words, this effort is an effort early prevention by law enforcement officers.

2. *Repressive*

This effort is carried out at the time of the occurrence of a crime, so the most entitled and authorized to carry out this action are the authorities in this case the police. In carrying out this action, the police must be serious in taking action if there is a case of violent crime committed

together in public. Efforts are being made in the form of legal action against the perpetrators involved in violent crimes committed together by first looking at the severity of the violence committed by the perpetrators. In addition, correctional development is also carried out for criminals, namely correctional development for criminals (Manan, 2018; Santoso, 2019; Setyaningrum & Arifin, 2019).

The existence of punishment as a means of coercion so that someone obeys the applicable norms. Chapter VIII concerning criminal provisions in Article 44, Article 45, Article 46 of Law Number 23 of 2004. Article 45 of Law Number 23 of 2004 reads:

- a. *Any person who commits acts of psychological violence within the household as referred to in Article 5 letter b shall be sentenced to a maximum imprisonment of 3 (three) years or a maximum fine of Rp. 9,000,000.00 (nine million rupiah).*
- b. *In the event that the act as referred to in paragraph (1) is carried out by a husband against his wife or vice versa which does not cause disease or obstacles to carry out work, livelihood positions or daily activities, the sentence is imprisonment for a maximum of 4 (four) months or a fine of a maximum of Rp. 3,000,000.00 (three million rupiah).*

Then Article 45 needs to be linked with Article 52 of the same law, which reads: "*The criminal act of psychological violence as referred to in Article 45 paragraph (2) is a complaint offense.*" As for Article 46 of Law Number 23 of 2004, it reads: "*Everyone who commits acts of sexual violence as referred to in Article 8 letter a shall be punished with imprisonment for a maximum of 12 (twelve) years or a fine of a maximum of Rp. 36,000. 000, 00 (thirty six million rupiah)*".

Article 46 is related to Article 53 of the same law, which reads: "*A criminal act of sexual violence as referred to in Article 46 which is committed by a person against his wife or vice versa is a complaint offense.*"

There are also many obstacles that are faced for cases that are resolved criminally. Here the police suggest to just make peace. If you want to process the report, it must have been done three times. This resulted in weak evidence, because the distance between persecution and reporting had long existed. So *visum et repertum* does not support it as evidence.

Besides that, they consider that domestic violence is a personal problem that is not resolved by the authorities. Besides that, there is another obstacle, namely the difficulty of presenting witnesses, because law enforcement officers (police, prosecutors, judges) always force the victim to present witnesses who actually saw the beatings or other acts of abuse. For this, of course, it will be difficult to present witnesses because usually the persecution takes place in a closed room such as a bedroom. If anyone knew, they would be afraid to testify.

Another obstacle is that in the implementation and application of the articles in the Anti-Domestic Violence Act (hereinafter as PDKRT Law). Among other things, the interpretation of several articles on domestic violence is different between law enforcers and the community itself. In addition, the problem of proof or the absence of a Government Regulation that regulates the implementation of the provision of protection and handling is still an obstacle for victims and law enforcers (Della Firdausi, Susanti, & Sunarto, 2018; Annisa, 2020; Huda & Astrovanapoe, 2021).

Domestic violence has fulfilled the elements of a criminal act or criminal act, considering that other forms of domestic violence are also contained in the Criminal Code (hereinafter as KUHP). However, with developments in criminal law and the emergence of new offenses, more

specific regulations were formed, although in general in the statute book, regulations regarding this matter already exist. In the Criminal Law (KUHP) it has been regulated regarding persecution and decency and neglect of people who need to be given a living. Law number 23 of 2004 has a close relationship with the Criminal Code (KUHP). Articles related to the Criminal Code (KUHP) and Law Number 23 of 2004 are Article 10 of the Criminal Code concerning types of crimes. Article 10 of the Criminal Code is still relevant to be applied to cases of domestic violence. The punishment imposed on perpetrators of domestic violence is imprisonment or a fine. Some people still think that domestic violence is not a criminal act, but is a disgrace that must be covered up. Thus, both the victims themselves and their families tend to allow the violence to occur. Some wives who can't stand the situation choose to divorce ([Prodjodikoro, 1974](#)).

VII. CONCLUSION

Finally, this study highlighted and concluded that the domestic violence is a problem that often occurs in the household. Therefore, early prevention of religious education and religious experience in the household is the key to success in preventing domestic violence. To prevent domestic violence in the household, love and compassion must be developed from an early age. Mothers can play a big role in teaching children at home to love and care for each other. Legal protection for victims of physical violence within the household is the protection of their rights as victims of Domestic Violence. Victims are entitled to protection, one of which is from the Court, Police and Social Institutions (for example LBH). The protection provided is in the form of legal assistance, namely assistance to victims starting from

the process of providing safe houses to victims if necessary, the visum et repertum process to the trial process. Then the provision of sanctions to the perpetrators and the protection provided by the police such as temporary protection, namely the police who work together with medical personnel to check the health of the victim and then carry out an investigation into the case. The government has issued legislation that specifically regulates child protection, namely Law Number 23 of 2002 concerning Child Protection. Article 1 point 1 of Law Number 23 of 2002 explains that child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop, and participate optimally in accordance with human dignity and protection. from violence and discrimination. As well as law enforcement officers in giving criminal sanctions in accordance with the provisions of Law Number 23 of 2004. Article 1 point 1 of Law Number 23 of 2002 explains that child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop, and participate optimally in accordance with human dignity and protection. from violence and discrimination. As well as law enforcement officers in giving criminal sanctions in accordance with the provisions of Law Number 23 of 2004.

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