

RESEARCH ARTICLE

How Can Criminology and Victimology Answer the Protection of Victims of Domestic Violence?

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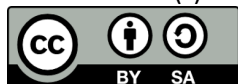
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Abstract

The term violence is used to describe behavior, whether *overt*, or *covert*, either offensive or *defensive*, which is accompanied by the use of force to others. Law No. 23 of 2004, defines domestic violence as any act against a person, especially a woman, which results in physical, sexual, psychological, and/or domestic neglect or suffering including threats to commit acts, coercion, or unlawful deprivation of independence within the scope of the household. This study aims to analyze how criminology and victimology are able to answer victim protection in cases of domestic violence in Indonesia. This study uses normative affirmations using legal studies, criminology, and victimology in cases of domestic violence.

Keywords: *Domestic Violence, Victim Protection, Legal Protection, Justice, Human Rights*

1. INTRODUCTION

In this day and age, the word "violence" is not something unfamiliar in social life. Every day we can see news about criminal acts that are growing and getting more

and more terrible. With the transformation of news, violence can be more visible and real which will indirectly affect the culture of people's lives. The history of human civilization itself has never been separated from violence and crime, starting from the dark age or also known as the Jahiliyah Age until now the modern century. As Frank Tannembaum said that where there is a society there will grow and develop evil.

The action and use of violent means is already commonplace in everyday life. For example, a husband beats his wife, even molesting him to death, corporal punishment given by the teacher to his student, or parents to his child. Treating or hurting someone with rude attitudes and speech. This can be classified as one of the ways of violent acts. And in this day and age violence occurs not only in the public sphere but is also rampant in the domestic area which gives birth to domestic violence. Ironically, in various cases of domestic violence, women, especially wives, are victims. Husband and wife relationships are ideally built in an atmosphere of harmony and happiness, but many wives experience violence from their husbands, both physical, psychic, sexual and economic violence.

In its development, victims of domestic violence find it difficult to submit their suffering to law enforcement, because of the strong view that the abusive treatment of husbands to wives is part of private events (domestic affairs), so they cannot be reported to the police. Therefore, domestic violence is recorded far less than should be reported because not all women who experience violence are willing to report their cases, while the domestic sphere has become a place of suffering and torture due to violence. So that the suffering of victims of domestic violence is prolonged without protection.

The condition of victims of such domestic violence is still dilemmatic after the promulgation of Law Number 23 of 2004 concerning the Elimination of Domestic Violence. Because if a wife who experiences domestic violence reports

her husband to the police, it is feared that the husband will be more abusive towards him after the wife returns to her home due to the absence of legal protection from the police and or the courts. There are even some wives who are victims of domestic violence who prefer to endure the suffering of violence they experience because they are worried about their future if their husband deals with law enforcement.

However, with the existence of Law Number 23 of 2004 concerning the Elimination of Domestic Violence, it is hoped that it can be a solution to prevent and overcome acts of domestic violence in law enforcement efforts, in accordance with the principles as intended in Article 3, namely: "Respect for human rights, justice and gender equality, non-discrimination, and victim protection". Because everyone has the right to have a sense of security, the right to fair legal treatment without discrimination. Domestic violence is a violation of human rights and a crime against the dignity of humanity.

2. METHOD

This study used a normatif reasearch by comapring some laws and regulation, legal theories, legal norms, victimology and criminological approach and social theories concerning to domestic violence cases. This study aims to analyze and describe concerning:

- a. What is the explanation for domestic violence?
- b. What is the victimological review of the legal process for solving domestic violence crimes?
- c. How is the protection of victims of domestic violence in Law Number 23 of 2004?

3. RESULT AND DISCUSSION

A. Domestic Violence: Legal Aspect, Social and Pyschological Aspect

Domestic violence according to Law No. 23 of 2004 is any act against a person, especially a woman, which results

in physical, sexual, psychological misery or suffering and/or domestic neglect including threats to commit acts, coercion, or unlawful deprivation of independence within the scope of the household (Djannah, 2007).

In the case of domestic violence, there is a pattern that shows the cycle of violence between married couples. This cycle consists of three main stages (phases), namely:

1) Phases of tension

At this stage the abuser begins to blame his partner and uses petty mistreatment to control his partner. Instead, the victim (wife) will try to spread herself and feelings arise in her to save the household.

2) Acute phase or persecution

In the second stage, tensions that have risen can explode into acts of persecution. In this case the husband intends to teach the partner a lesson, then a feeling of fear arises in the wife and the wife tries to release her anger by the way of resisting.

3) State of calm or honeymoon phase

After the persecution of the wife, sometimes the perpetrator realizes and regrets his actions that have crossed the line. Generally, the perpetrator will apologize and promise not to repeat the persecution again. The husband's apology made the wife feel happy and have hope again (Wini, 2005).

After going through all three stages, the husband and wife begin to form a new life again and forget the previous events. If there is no complete awareness of the perpetrator, then this state will not last long, until finally tension reappears, that is, that will continue again from the first stage.

There are several tendencies of people to commit and perpetuate violence, namely:

- 1) a patriarchal culture that places the position of men is considered superior to that of the masters,

- 2) negative views and labeling (stereotypes) that are very detrimental, for example, men are rude, and women are weak,
- 3) religious interpretations that are inconsistent with the universal values of religion, for example such as nusyuz, i.e., the husband may spank the wife on the grounds of educating, or when the wife does not want to serve sexual needs then the husband has the right to spank and the si istri is circumcised by angels,
- 4) Violence overlaps with legitimacy and becomes part of culture, family, state, and practice in society, so it becomes part of life (Mufidah, 2006).

According to Law No.23 of 2004 concerning the elimination of Domestic Violence, there are four types of domestic violence, namely as follows:

- 1) Physical violence

What is meant by physical violence is an act that results in pain, falling ill or serious injury.

- 2) Psychic violence

Psychic violence is an act that results in fear, loss of self-confidence, loss of ability to act, a sense of helplessness, and/or severe psychic suffering in a person.

- 3) Sexual violence

Sexual violence is any act in the form of forcing sexual relations, forcing sexual relations in an unnatural and/or unwelcome way, forcing sexual relations with other people for commercial purposes and/or certain purposes.

- 4) Domestic neglect

Domestic neglect is a person who abandons a person within the scope of his household, when according to the law applicable to him or by agreement or agreement he is obliged to give life, care or maintenance to that person. In addition, neglect also applies to any person who results in economic dependence by restricting and/or prohibiting decent work inside or outside the

home so that the victim is under the control of that person.

Domestic violence is a form of control over the couple that can occur in any society and family in any socioeconomic class, which occurs because of the assumption that men are superior, and women's positions are inferior. This causes the husband to have the right to impose his will on the wife because he is the head of the family. In addition, the gender assumption that a wife is supposed to work in the domestic area and a man works in the public sphere causes the wife to get caught up in the domestic routine so that her position is marginalized and subordinated within her own home.

B. Legal Protection Against Victims of Domestic Violence

The presence of Law No. 23 of 2004 which regulates the Elimination of Domestic Violence is indeed very important. Legal reforms that favor vulnerable people or groups that are considered weak, especially women, are very necessary because there are still frequent acts of violence that occur within the domestic sphere.

After the government promulgated Law No. 23 of 2004 concerning the Elimination of Domestic Violence on September 22, 2004, the legal protection of victims of female violence has been regulated in the Law specifically regulating the prohibition of domestic violence. The scope of the household in accordance with the provisions of Article 2 of Law No. 23 of 2004 covers: husband, wife, children, people who have family relationships due to blood relations, marriages, marriages, marriages, care, and guardianship who are settled in the household, as well as people who work to help the household and settle in the household concerned for a certain period of time.

In reality the victims of domestic violence are mostly women or wives. That's why the existence of Law No.23 of 2004 implied in its formulation is more inclined to protection

for wives or women in domestic life or marriage (Tungka, et.al., 2007).

C. Victimological Review of the Legal Process for Resolving Domestic Violence Crimes

Article 54 of Law No. 23 of 2004 on the Elimination of Domestic Violence states that investigations, prosecutions and examinations in court hearings are carried out according to the provisions of the applicable criminal procedure law (KUHAP) because the Law on the Elimination of Domestic Violence does not separately regulate the provisions regarding the process of investigation, prosecution and examination in court.

Based on the provisions of the Criminal Procedure Code, the process and procedure for resolving criminal cases will confront the perpetrator on the one hand and the state (in this case represented by law enforcement officials) on the other. This also happens in the process of resolving domestic violence. Even the face-to-face position as opposed will also occur between the victim presented as a witness, against the perpetrator and his legal counsel. By providing information about what he experienced, the victim's testimony usually tends to incriminate the perpetrator, while the perpetrator (and his legal counsel) will usually also make a defense, even justification for his actions. Thus, the process and procedure for solving domestic violence cases according to the Criminal Procedure Code will not create a dialogical atmosphere between the victim and the perpetrator but will be forced to confront them (victims and perpetrators) as opponents, even though they are people who used to have close physical and mental ties. In this case, criminal justice, one of whose objectives is to resolve conflicts, has the potential to create new conflicts between the parties (perpetrators and victims). In fact, it is not impossible that the emotions and various feelings of resentment that exist in the conflict between the victim and the perpetrator have begun to decrease, even disappear as

the case progresses. The methods of resolving cases as stipulated in the Indonesian criminal procedural law are different from those regulated according to the principle of restorative justice, in restorative justice the parties are invited to jointly sit in a forum facilitated by the authorities and dialogically try to find ways to resolve conflicts that lead to the perpetrator's accountability to their victims with the principle of balance of interests between the parties so that all interests become well accommodated, both the interests of the perpetrator and the victim as a family (Widiartana, 2009).

Apart from the provisions of the Criminal Procedure Code, there are other facilities that have been determined by the Law on the Elimination of Domestic Violence and other regulations that support the best efforts in the process of resolving domestic violence criminal cases. At the initial examination level, services for victims of domestic violence have been pursued through the holding of a Special Service Room (RPK) starting at the level of the Resort Police (Polres) or the City Resort Police (Polresta) in accordance with the legal basis in article 13 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence which was followed up by the issuance of Perkapolri Number 3 of 2008 concerning the Establishment of Special Service Rooms. In addition, in the early stages of the examination, special facilities have also been provided for victims of domestic violence in the form of officials, health workers, social workers and spiritual mentors.

At the level of examination, all forms and systematics in the process have been regulated in Law Number 8 of 1981 concerning the Criminal Procedure Code, but there are special rules for handling cases of violence against women, both perpetrators and victims are women, namely the National Police pays special attention to the handling of the case by prioritizing special officers, namely the female police (Polwan) in accordance with the stages of investigation, and positioning officers not only as law enforcement officers

who are on duty to resolve the case, but also tasked with providing protection for the victim's companions, witnesses, family and friends (Martha, 2003).

Once they get a report on a domestic violence case, the police are required to take steps to provide temporary protection to the victim, at the same time the police also request a protection order from the court. Related to the protection procedures regulated in article 16 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence specifying that the police must immediately provide protection to victims within 1x24 hours accompanied by a letter of determination protection order from the court. According to the Women and Children Protection Unit (PPA), victims usually refuse to be protected, in addition to technical problems regarding the implementation rules protection procedures have not been regulated internally by the Indonesian National Police. The PPA itself still questions about the temporary protection model, about the form of protection, its shelter at home or in the shelter or with the assistance of the body guard, the period of protection and the period of cessation of temporary protection provided, as well as the use of other units allowed or not and administrative constraints such as budgets from the state that are not or have not been prepared in protection procedures so that they are technically a burden on the unit PPA.

After the police request a protection warrant from the court, the court must immediately process the determination letter within a predetermined period of time, for some more specific cases, the victim may request an application through his attorney or without being represented by a power of attorney to the court for the court to consider in establishing a special condition, namely the restriction of the perpetrator's movements, prohibition of entering a shared residence, prohibition on bullying, supervising or intimidating victims based on article 31 of Law Number 23 of 2004 concerning Domestic Violence. In

the event of a violation of the protection order, the victim can report this to the police, and then jointly compile a report addressed to the court. After that, the court is obliged to summon the offender to make a written statement in the form of an ability to comply with the protection order. If the perpetrator continues to violate the affidavit, the court can detain the perpetrator for up to 30 days in accordance with the provisions of article 38 of Law Number 23 of 2004 concerning the elimination of Domestic Violence.

Visum et repertum is needed in the examination process as evidence for reports related to the existence of physical violence, but the cost of making visum et repertum is still charged to the victims or their families, so that victims who come from underprivileged circles become a new burden in the process of solving domestic violence crimes that they experience due to limited funds. In the trial, the victim must be present as the main witness or the victim's witness who is examined for the first time. The victim's testimony is essential to prove the guilt of the defendant as the perpetrator of the crime. Victims in testifying are usually very difficult because of the trauma of seeing the person who has hurt them, even though the trial is closed to the public. This distress arises when attending a hearing that may never cross his mind, having to face a panel of judges, public prosecutors, legal counsel and defendants. At trial the witness must retell all his events from beginning to end in detail and clearly, facing the questions of the tribunal, the public prosecutor and the legal counsel who sometimes corner the witness, looking for his weaknesses in the interests of his client's defense.

In the types of sanctions threatened in Law Number 23 of 2004 concerning the Elimination of Domestic Violence, especially the main criminal sanctions, none of them are directly related to efforts to cure the suffering or losses experienced by the victim as a result of the perpetrator's actions, even though if you look at it from the victim's point of view that is in line with the principles of restorative

justice, efforts to heal / restore the suffering and loss experienced by the victim are. The main thing is in the framework of conflict resolution and this actually reflects the form of accountability of the perpetrators to the state only.

However, apart from the provisions of Law Number 23 of 2004 concerning the Elimination of Domestic Violence, in the legal realm it still provides an opportunity to fight for the right to all losses, both material and immaterial. Victims can claim compensation to the perpetrator civilly and the Criminal Code (KUHP) articles 95 and 96 give the victim the right to claim compensation to the defendant to the extent of material losses and only to the defendant himself whose examination is combined with the defendant's criminal case (article 98 of the Criminal Code). But usually, the victim is already indifferent to a court that only prolongs suffering and shame. Moreover, if the sentence imposed on the defendant is too light, it is not balanced with the victim's loss and suffering. Therefore, the judge's ruling must reflect a balance between the sentence imposed and the degree of guilt of the accused and the prevalence of security and public order.

Apart from the pessimism on the part of the victim in fighting for civil damages, in practice it is rare and even almost never done to combine this lawsuit case with the criminal case, this happens among other things because the victim does not know his rights, the public prosecutor does not disclose the right to the victim, the public prosecutor does not want to be bothered, legal counsel likewise, and the judge also does not offer this process, so the issue is quite complex and far from the purpose of simplifying the process.

D. Protection of Domestic Violence Victims in Law Number 23 of 2004

Legal protection for victims of criminal acts receives less attention from the law, both material criminal law and

criminal procedural law (formal criminal law) compared to legal protection for suspects and defendants. It is influenced by several factors, including:

- 1) statutory factors,
- 2) legal awareness of the victim,
- 3) supporting facilities,
- 4) human resources.

The existence of a law in a legal system largely determines the realization of a legal order, because the law is the main source of law (Mansur & Gultom, 2008).

Therefore, even though Law Number 23 of 2004 has existed, there are still many victims who do not report their cases to the police department because, among others:

- 1) Feeling of shame, disregard for the extended family, disgrace if it is known to the crowd. This reason arises from the understanding of some members of society, that the violence experienced by the wife is the result of the wife's own fault;
- 2) A great deal of dependence on the perpetrator (husband) economically ;
- 3) Related to the performance of law enforcement in handling cases is a consideration for women to report violence that occurs to them (Irianto, 2006).

The lack of public trust, including victims of domestic violence, to the legal system in the country was caused by facts before the birth of Law Number 23 of 2004. Many reports of domestic violence did not proceed to the investigation stage of the perpetrator. It also further strengthens the victim's belief that even if someone reports, they will not receive special protection from law enforcement, especially the police (Rahardjo, 2009).

After the birth of Law Number 23 of 2004, it is hoped that victims' awareness will emerge to report to the authorities if there is an act of domestic violence. Victims, according to this law, are socially weak victims (Ekotama, 2001), that is, those who have a weak social position that causes a person to become a victim, especially women and

children. In this study, victims of domestic violence were limited to wives who received violence from their husbands.

According to this law, the parameters of the elimination of domestic violence are based on four principles, namely:

- a) respect for human rights;
- b) keadilan and gender equality ;
- c) nondiscrimination; and
- d) victim protection.

In Article 4 of the law, it is explained, that one of the objectives of the elimination of domestic violence is to prevent all forms of domestic violence. Thus, it is hoped that various acts of domestic violence that are rife in Indonesia so far can be minimized and as much as possible can be eliminated in people's lives.

Relevant to the principles and objectives of the expected elimination of domestic violence, the law has specifically regulated the way of resolving domestic violence which boils down to victim protection efforts. In this connection, the method of resolving domestic violence is provided by five parts, namely:

- 1) the rights of victims of domestic violence;
- 2) the obligations of government and society;
- 3) victim protection;
- 4) recovery of the victim;
- 5) Settlement of domestic violence through the application of legal sanctions.

Thus, the protection of victims of domestic violence is taken seriously in law No. 23 of 2004 concerning the elimination of Domestic Violence.

4. CONCLUSION

Finally, this study concluded that, Domestic violence is an act against a person, especially a woman, which results in physical, sexual, psychological misery or suffering and/or domestic neglect including threats to commit acts, coercion, or unlawful deprivation of independence within the

domestic sphere. However, every time a victim commits domestic violence by submitting or reporting their suffering to law enforcement, because of the strong view that the abusive treatment of the husband to the wife is part of a private event (domestic affairs), so it does not assume that it is not something that needs to be reported. Therefore, domestic violence is recorded far less than should be reported because not all women who experience violence are willing to report their cases, while the domestic sphere has become a place of suffering and torture due to violence. So that the suffering of victims of domestic violence is prolonged without protection.

Therefore, from the incident regarding domestic violence, Law No. 23 of 2004 concerning the Elimination of Domestic Violence was born, it is hoped that the existence of this law can be a solution to prevent and overcome acts of domestic violence in law enforcement efforts. Victims, according to this law, are *socially weak victims*, that is, those who have a weak social position that causes a person to become a victim, especially women and children. In this study, victims of domestic violence were limited to wives who received violence from their husbands. However, in fact, even though Law No. 23 of 2004 on domestic abolition has been issued, there are still many victims who do not report their cases to the authorities. The lack of public trust, including victims of domestic violence, to the legal system in the country was caused by facts before the birth of Law Number 23 of 2004. Many reports of domestic violence did not proceed to the investigation stage of the perpetrator. It also further strengthens victims' belief that even if someone reports, they won't get special protection from law enforcement.

In the Victimology review in handling victims of domestic violence crimes, the handling procedures have been explained in Law No. 23 of 2004 concerning the elimination of domestic violence. Once they get a report on a domestic violence case, the police are required to take steps

to provide temporary protection to the victim, at the same time the police also ask for a protection order from the court. Related to the protection procedure regulated in article 16 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence determines that the police must immediately provide protection to the victim within 1x24 hours accompanied by a letter the establishment of a protection order from the court. After the police request a protection warrant from the court, the court must immediately process the determination letter within a predetermined period of time, for some more specific cases, the victim may request an application through his attorney or without being represented by a power of attorney to the court for the court to consider in establishing a special condition, namely the restriction of the perpetrator's movements, prohibition of entering a shared residence, prohibition on bullying, supervising or intimidating victims based on article 31 of Law Number 23 of 2004 concerning Domestic Violence.

In the event of a violation of the protection order, the victim can report this to the police, and then jointly compile a report addressed to the court. After that, the court is obliged to summon the offender to make a written statement in the form of an ability to comply with the protection order. If the perpetrator continues to violate the affidavit, the court can detain the perpetrator for up to 30 days in accordance with the provisions of article 38 of Law Number 23 of 2004 concerning the elimination of Domestic Violence.

5. DECLARATION OF CONFLICTING INTERESTS

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