

ANALYSIS OF PENALTIES AGAINST PERFORMERS OF CRIMES OF DOMESTIC VIOLENCE IN INDONESIA

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Keywords:

Criminal System; Domestic Violence; Crime of Domestic Violence.

Abstract

The purpose of the research in this research is to examine and analyze the criminal system for crimes of domestic violence in the law on the elimination of domestic violence, to examine and analyze the weaknesses and solutions faced in the criminal system for crimes of domestic violence in the law. The results of the study concluded that: 1) The criminal system in the Criminal Code with Law Number 23 of 2004 concerning the Elimination of Domestic Violence recognizes the imposition of imprisonment and fines, only the length of imprisonment and the amount of fines are not the same. With regard to legal subjects and regulatory systems both in the Criminal Code and in Law Number 23 of 2004 concerning the Elimination of Domestic Violence are the same, namely using individual legal subjects and a single track system, 2). Legal analysis of judges' decisions in cases of crimes of domestic violence in Indonesia that imprisonment is the choice of judges to apply in violations of Article 44 of Law Number 23 of 2004, 3) Obstacles faced in punishing perpetrators of domestic violence, namely: Legal factors itself, factors of law enforcement officials, factors of facilities and amenities.

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A. Introduction

Family is the first social environment known to humans.¹ The family is a social institution that functions to improve all the abilities that exist in each individual. However, it is not uncommon for families to experience various cases of irregularities or illegal activities that cause misery or suffering and are carried out by one family member against another family member, such as: abuse, rape, and even leading to murder.

The integrity and harmony of the household can be disrupted if quality and self-control cannot be controlled, which in the end can result in domestic violence resulting in insecurity or injustice towards people within the household. To prevent, protect victims and take action against perpetrators of domestic violence, the state and society are obliged to carry out prevention, protection and action against perpetrators in accordance with the Pancasila philosophy and the 1945 Constitution of the Republic of Indonesia.²

Legal development is not only limited to the formation of regulations, norms or rules, but legal development is systematic and holistic, always covering various aspects, namely appropriate legal

¹ Sholikhah, A, Peran keluarga sebagai tempat pertama sosialisasi budi pekerti Jawa bagi anak dalam mengantisipasi degradasi nilai-nilai moral. *Yinyang: Jurnal Studi Islam Gender Dan Anak*, 15(1), 2020, page. 111–126.

² Pendidikan dan Pelatihan Pembentukan Jaksa, *Modul Penghapusan Kekerasan Dalam Rumah Tangga*, Tim Penyusun Modul Badan Diklat Kejaksaan Republik Indonesia, Jakarta, 2019, page. 1.

planning, the formation of new laws, which adhere to the principles of Pancasila and the Constitution of the Republic of Indonesia in 1945, good legal application and service, effective and efficient law enforcement but still humane. Reform of criminal law must essentially be a manifestation of change and renewal of various aspects and policies behind it.³ Based on this, planned and systematic legal development is needed to accelerate the renewal and formation of the national legal system in all its aspects.⁴

In today's developments, empirical reality states that physical, psychological, sexual violence and domestic neglect are in fact common occurrences.⁵ This can be known directly or through mass media, both print and electronic media. These empirical facts illustrate that there is a gap between law in books & law in action, which requires attention from all parties as a problem that needs solving through scientific research.

In particular, the PKDRT Law explains that every citizen has the right to feel safe and free from all forms of violence in accordance with the philosophy of Pancasila and the 1945 Constitution of the Republic of Indonesia.⁶ What this law really wants to achieve is to eliminate the crime of domestic violence while realizing equal equality between men and women. A balanced position between husband and wife, children and parents, and also an equal position between the nuclear family and people who are either directly or indirectly part of the family are key points in avoiding victims of domestic violence crimes.

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According to CATAHU data from the National Commission on Violence Against Women 2022 on its official website, namely⁸ stated [4] "During the 10-year period of recording cases of violence against women (2012-2021), 2021 was recorded as the year with the highest number of Gender-Based Violence (KBG) cases, namely an increase of 50% compared to 2020, with 338,496 cases. This figure is even higher than the KBG figure before the pandemic in 2019. Komnas Perempuan's 2022 CATAHU

³ Sri Endah Wahyuningsih, *Urgensi Pembaharuan Hukum Pidana Materiel Indonesia Berdasarkan Nilai-Nilai Ketuhanan Yang Maha Esa*, Jurnal Pembaharuan Hukum, 1(1). 2014, page. 17

⁴ Sri Endah Wahyuningsih, *Prinsip-Prinsip Individualisasi Pidana Dalam Hukum Pidana Islam*, Badan Penerbit Universitas Diponegoro, Semarang, 2013, page. 23.

⁵ Erwin, E., Rahman, A., & Arief, A. Alternatif Penyelesaian Hukum Bagi Korban Kekerasan Dalam Rumah Tangga Yang Dilakukan Suami Terhadap Istri. *Journal of Lex Theory (JLT)*, 5(2), 2024, page. 511-526

⁶ Rahawarin, A. R., Anita, Suwito, & Hamid, M. A. Perlindungan Hukum Bagi Perempuan Atas Tindak Pidana Kekerasan Dalam Rumah Tangga. *Journal of Law Review*, 2(1), 2023, page. 13-40

⁷ Charmanda, Kurnia Harta; Kurniawan, Eko. Tinjauan Tindak Pidana Kekerasan Psikis Di Dalam Rumah Tangga. *Jurnal Retentum*, Vol. 5, No. 1, 2023, page. 80 - 89

⁸ komnasperempuan.go.id accessed 1 June 2024

data shows an 83% increase in KBGS cases from 940 cases in 2020 to 1,721 cases in 2021. The largest recipients of KBGS reports are NGOs (Non-Governmental Organizations) and WCC (Women Crisis Center) with 170 cases, followed by DP3A (Child Empowerment and Protection Service) and P2TP2A (Integrated Service Center for Empowerment of Women and Children) with 22 cases, and the District Court with 13 cases. It turns out that domestic violence is not just a problem of gender inequality. This often occurs due to lack of communication, disharmony, economic reasons, inability to control emotions, inability to find solutions to any household problems, as well as drunkenness due to alcohol and drugs.⁹

One example of a case that will be quite busy in 2023 is Venna Melinda who became a victim of domestic violence at only nine months of marriage with Ferry Irawan. Venna Melinda reported her husband on January 8 2023 in the morning to the Kediri Police and then handed it over to the renakta at the Regional Police's treskrimum. East Java. Hotman Paris as Venna Melinda's attorney stated that for the last three months Venna Melinda admitted that she had been a victim of physical and psychological domestic violence and that in the last three months Ferry Irawan had never supported his wife, the suspect could be subject to Article 44 paragraph 1 of physical violence and could be sentenced to three to five years. Verell Bramasta and Athalla Naufal were also invited in the morning and felt sad and disappointed with their adoptive father Ferry Irawan. Domestic violence, the majority of victims of which are women.

One of the efforts to overcome the rise of victims of domestic violence is to empower women, namely following the Ministry of Women's Empowerment and Child Protection (KP2PA) program, namely: improving the quality of life of women and child protection, strengthening gender mainstreaming institutions, harmonizing policies to improve the quality of children and women, increasing gender participation and equality in development.¹⁰

Research conducted by entitled Jurisdic Analysis of Punishment Policies for Victims in Domestic Violence Cases in Indonesia. The research results show that the elements of a criminal act of domestic violence must fulfill the subjective and objective elements of a criminal act. The crime of domestic violence is a complaint offense and also an ordinary offense. The concept of domestic punishment is an effort to protect victims in cases of domestic violence so that punishment not only causes physical but also psychological suffering, and most importantly it provides punishment and education. The most important goal is protection for victims and action against perpetrators with efforts to maintain the integrity and harmony of the household.¹¹

⁹ A. B.Santoso, "Kekerasan Dalam Rumah Tangga (KDRT) Terhadap Perempuan: Perspektif Pekerjaan Sosial", *Jurnal Komunitas, Universitas Islam Negeri Mataram, Indonesia*, Vol 10 No 1, 2019, page. 39-57

¹⁰ Sri Kusriyah, "Kebijakan Pemerintah Daerah Dalam Pemberdayaan Perempuan di Kabupaten Demak", *Jurnal Pembaharuan Hukum*, Vol. IV No.1, Januari-April 2017, page. 120

¹¹ Holijah, M. Rizal, Analisis Yuridis Kebijakan Pemidanaan Bagi Korban pada Perkara Kekerasan dalam Rumah Tangga di Indonesia, *Khazanah Multidisiplin* Vol 4 No. 2, 2023, page 300-314

The purpose of the research in this research is to examine and analyze the criminal system for crimes of domestic violence in the law on the elimination of domestic violence, to examine and analyze the weaknesses and solutions faced in the criminal system for crimes of domestic violence in the law.

B. Research Methods

The approach method in this research is to use a normative juridical approach, namely a process of finding legal rules, legal principles and legal doctrines in order to answer the legal issues being faced.¹² In this type of legal research, law is conceptualized as what is written in statutory regulations or law is conceptualized as rules or norms which are benchmarks for human behavior that is considered appropriate.¹³

C. Results and Discussion

1. Punishment System for Crimes of Domestic Violence in Indonesia

Several weaknesses exist in Law no. 23 of 2004 concerning the Elimination of Domestic Violence. The existence of an alternative sanction system listed in the Law above can give rise to misinterpretation, namely that those (perpetrators) who commit criminal acts of domestic violence can choose alternative sanctions by paying a fine to be free from legal entanglement. In addition, simply including a maximum sanction without including a minimum limit can create legal uncertainty. The perpetrator may only be sentenced to the minimum and lightest punishment which is disproportionate to the act he has committed. This is the reason why many victims are reluctant to report the acts of domestic violence they have experienced because it will only waste time and will not fulfill a sense of justice for domestic violence victims.

Domestic Violence (KDRT) tends to be committed by men in the young age group, not working, not in a legal marriage, the possibility of having witnessed domestic violence as a child, and the presence of psychiatric problems that vary from depression to dangerous substance abuse. . Several other situations that need attention regarding the possibility of domestic violence are problems related to drugs and alcohol, situations related to stress and depression.¹⁴ Many domestic violence perpetrators commit violence under the influence of alcohol. However, perpetrators who commit violence while conscious take a larger proportion.

¹² Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta: Kencana Prenada, 2010, page. 35.

¹³ Amiruddin dan H. Zainal Asikin, *Pengantar Metode Penelitian Hukum*, Jakarta: PT. Raja Grafindo Persada, 2006, page. 118

¹⁴ Rini Andriani Suban, Perlindungan Hukum Perempuan Terhadap Tindak Pidana Kekerasan Dalam Rumah Tangga, *Jurnal Hukum EGALITAIRE*, Vol. 1, No. 3, April 2024, page 483-495

In general, in every act, the perpetrator and victim often do not know each other and even seem like strangers. It is true that there are several criminal acts committed by people who already know each other (friends, friends, neighbors), as well as people who are related by blood. In fact, the forms of violence that occur in the household are also the same as forms of criminal acts in general, for example abuse as regulated in Article 351 of the Criminal Code, murder (Article 338 of the Criminal Code), rape (Article 285 of the Criminal Code), and insults (Article 310 of the Criminal Code). Adultery (Article 284 of the Criminal Code) and other acts that can be categorized as criminal acts regulated in the Criminal Code. However, domestic violence has special characteristics and characteristics that lie in the relationship between the perpetrator and the victim, as well as the methods for resolving it.¹⁵

In Article 6 it is stated that physical violence as referred to in Article 5 letter a is a change that results in pain, falling ill or serious injury. Another correlation that domestic violence is a form of gender-based violence and also a form of discrimination, is as stated in the fourth paragraph of the General Explanation of the Domestic Violence Law, which emphasizes: "...The State is of the view that all forms of violence, especially domestic violence, is a violation of human rights and crimes against human dignity and forms of discrimination." The statement of the state's views is as mandated in the provisions of Article 28 of the 1945 Constitution of the Republic of Indonesia and its amendments, and the mandate of Article 28G paragraph (1) stipulates that: "Everyone has the right to protection of himself, his family, honor, dignity, and property under his control, and has the right to a sense of security and protection from the threat of fear of doing or not doing something which is a human right." Article 28H paragraph (2) of the 1945 Constitution of the Republic of Indonesia stipulates that "Everyone has the right to receive special facilities and treatment to obtain the same opportunities and benefits in order to achieve equality and justice".

Then in Article 9 it is stated, (1) Every person is prohibited from abandoning someone within the scope of his 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 maintenance to that person; (2) Neglect as intended in paragraph (1) also applies to every person who causes economic dependence by limiting and/or prohibiting decent work inside or outside so that the victim is under that person's control. This Law also states that the criminal act of physical violence as intended in Article 44 paragraph (4) is a complaint offense (Article 51). Likewise, the criminal act of psychological violence as intended in Article 45 paragraph (2) is a complaint offense (Article 52). Likewise, criminal acts of sexual violence as referred to in Article 46

¹⁵ Nyimas Enny Fitriya Wardhany, Pemidanaan Terhadap Pelaku Tindak Pidana Kekerasan Dalam Rumah Tangga Oleh Suami Terhadap Istri, *legalitas: Jurnal Hukum*, Vol 16 No 1 2024, page 23-33

committed by a husband against his wife or vice versa constitute a complaint offense (Article 53).

The final part of the Law on the Elimination of Domestic Violence contains criminal provisions, with several forms of punishment, namely imprisonment, fines and supervision. The amount of imprisonment and fines is in the range of one year to fifteen years, which seems to refer to the provisions in the Criminal Code, because the parameters for determining this penalty are never explained at all, as is the case in other regulations. A parameter for determining criminal sanctions can only be created if it has been previously agreed on what will be used as the rationale for punishment. With regard to the parameters for determining criminal penalties, the new Criminal Code has created a ranking based on the seriousness (gravity) of criminal acts. This rating is divided into five levels using a semantic scale technique, from "very light" to "very serious" with the note that "very light" crimes are not subject to deprivation of liberty, while very serious crimes are crimes that are subject to sanctions of imprisonment for more than seven years.

2. The Weaknesses And Solutions Faced In The Criminal System For Crimes Of Domestic Violence In The Law.

The scope of domestic violence is an act against someone, especially women,¹⁶ which results in physical, sexual, psychological misery or suffering, and/or domestic neglect, including threats to commit unlawful acts, coercion, or deprivation of liberty within the household sphere. Most victims of domestic violence are women (wives) and the perpetrators are husbands, although there are also victims of the opposite, or people who are subordinate in the household. Perpetrators or victims of domestic violence are people who are related by blood, marriage, breast-feeding, parenting, guardianship with husbands and children, even housemaids who live in a household. Not all acts of domestic violence can be handled completely because victims often cover it up for reasons related to cultural structures, religion, and lack of understanding of the applicable legal system. In fact, protection by the state and society aims to provide a sense of security to victims and take action against the perpetrators. Meanwhile, what is meant by recovery for domestic violence victims is all efforts to strengthen domestic violence victims so that they are more empowered, both physically and psychologically.

Gustav Radbruch said that law is the bearer of the value of justice, justice has both normative and constitutive characteristics for law. It is normative because it is from justice that

¹⁶ Nurain Soleman, Analisis Perbandingan Hukum Islam dan Undang Undang KDRTTentang Kekerasan Dalam Rumah Tangga, *Al-wardah: Jurnal Kajian Perempuan, Gender dan Agama* Vol: 14. No : 2 .2020, page 275-284

positive law originates. It is constitutive because justice must be an absolute element of law, without justice, a rule does not deserve to become law.¹⁷

This also takes into account the principle of priority put forward by Gustav Radbruch that in order to apply the law appropriately and fairly to fulfill legal objectives, the priority is justice, then expediency and then legal certainty.¹⁸

Internal factors that can trigger domestic violence include the character of the perpetrator of violence who tends to be emotional, economic dependence, third parties in the household, economic conditions, and poor communication. Meanwhile, external factors that can trigger domestic violence include differences in culture/customs, such as if the husband comes from a certain tribe which is known for being tough, while the wife comes from a certain tribe which is gentle, even though they are already husband and wife, they should understand each other and accept each other, in fact that doesn't happen, what ends up being selfishness of each and imposing their will, resulting in acts of violence within the family that look down on women and factors such as misinterpretation of religious teachings in society, such as religious differences. /belief.

Environmental factors also greatly influence the occurrence of domestic violence, such as disrupting interactions between family members or excessive interaction which can also give rise to deviant acts such as violence. For example, a husband who rarely comes home and has problems outside, because of the lack of interaction, other family members may not know about it and their ignorance of the problem results in attitudes that actually worsen the atmosphere, such as fussy children and a wife who asks a lot, resulting in emotional The husband escalated and even triggered him to commit acts of violence.

In this case, many of the victims were mostly wives. For this reason, the resolution process is through mediation. The mediation referred to in this research is the process of resolving disputes outside of court by deliberation to reach a consensus by asking for help from a third party (mediator) as an advisor to reconcile the two parties to the dispute, because mediation is one part of alternative dispute resolution outside of court. This kind of settlement system is a culture that has been passed down from generation to generation.¹⁹

The factors that influence the weakness of the criminal system for domestic violence cases are: Legal factors themselves; There is a slight problem in this case, because it turns out that in Law Number 23 of 2004 concerning the Elimination of Domestic Violence there is no

¹⁷ Bernard L Tanya dkk, *Teori Hukum: Strategi Tertib Manusia Lintas Ruang dan Generasi*, Yogyakarta: Genta Publishing, 2013, page. 117

¹⁸ Satjipto Rahardjo, *Ilmu Hukum*, Editor Awaludin Marwan, Bandung: PT Citra Aditya Bakti, 2012, page. 20

¹⁹ Joko Sugiharto, Criminal Cases of Domestic Violence (KDRT) with the Wife as the Victim and the Application of the Law in the Sukoharjo District Court, *International Journal of Law and Justice (IJLJ)* Vol. 1, No. 1, Mei 2024, page: 11-20

juridical definition of pain, falling ill or serious injury, even though this understanding is the most important for determining and proving the type of act committed by the person. perpetrator/suspect/accused, therefore these definitions must be sought in the Criminal Code and Jurisprudence. This criminal act of physical violence is a complaint offense. So cases of physical violence can be tried in court if there is a complaint first. Apart from that, Article 44 paragraph (4) of the PKDRT Law allows a complaint offense to be withdrawn.

Law Enforcement Factors; Many law enforcement officers (police, prosecutors, judges) still have gender-biased attitudes, and often use victim blaming and victim participating approaches in responding to cases of violence. Victims of violence have doubts, worries and fears about reporting the incidents they experienced. Victims feel afraid of the legal process that will be undertaken. Gender awareness and sensitivity among law enforcers is still lacking, so that sometimes victims become objects. An Integrated Criminal Justice System that is Gender Just in Handling Cases of Violence Against Women (SPPTPKKTP) is an integrated system that shows the process of linkages between agencies/parties authorized to handle cases of violence against women and easy and affordable access to services for victims in every judicial process in cases of violence against women. Woman. (SPPT-PKKTP) demands that law enforcers have a vision of gender justice and no gender bias. Domestic violence cases are sometimes difficult to process.

Facilities and infrastructure factors; These facilities include, among other things, educated and skilled human power, good organization, adequate equipment, sufficient finances and so on.

Community Factors; including low public legal awareness, victims' fear of reporting to the authorities. And finally, the cultural factor, where culture in society still considers that domestic violence is a disgrace and is their private domain, so they are reluctant to report or open up to the public about their domestic problems.

D. Conclusion

The punishment system in the Criminal Code with Law Number 23 of 2004 concerning the Elimination of Domestic Violence recognizes the imposition of imprisonment and fines, but the length of the prison sentence and the amount of the fine are not the same. The obstacles faced in punishing perpetrators of domestic violence are: The legal factors themselves, where the weaknesses of Law no. 23 of 2004 concerning the Elimination of Domestic Violence which lies in the offense of complaints. The factor is that law enforcement officers, namely law enforcement officers (police, prosecutors, judges) still have gender-biased attitudes, and often even use a victim blaming and victim participating

approach in responding to cases of violence. Facilities and facilities factors. These facilities or facilities include, among other things, educated and skilled human power, good organization, adequate equipment, sufficient finances and so on. Community Factors; including low public legal awareness, victims' fear of reporting to the authorities. And finally, the cultural factor, where culture in society still considers that domestic violence is a disgrace and is their private domain, so they are reluctant to report or open up to the public about their domestic problems.

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