

State Responsibility for Victims of Domestic Violence

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ABSTRACT

The occurrence of violence in the household is still common due to a wrong understanding of gender bias, where a woman must submit to a man. In general, gender bias also places women in a weak position, thus making men more dominant in the family system and society, this is very detrimental to women, so women experience violence more often. Domestic violence is often called a hidden crime, because it is committed within the scope of the household which cannot be known by other people openly, and for victims it is also a separate dilemma considering that the perpetrators of violence are also family members (husband against wife or vice versa) who in fact are still in a marriage bond. the variables causing the wrongdoing of household savagery incorporate envy, financial variables, and a need of information almost existing enactment. Legitimate security for ladies casualties of household viciousness has been controlled in Law Number 23 of 2004 concerning the Disposal of Household Viciousness.

KEYWORDS

legal protection; domestic; violence

INTRODUCTION

Law Number 16 of 2019 concerning Corrections to Law Number 1 of 1974 concerning Marriage where the law says "Marriage could be a physical and otherworldly bond between a man and a lady as spouse and spouse with the point of shaping a cheerful family or family." and based on Conviction within the One and As it were God". Family life, of course, is not as easy and beautiful as imagined, you can be sure there will be a problem in the family. In this case, understanding and a sense of family togetherness is needed so that later all problems can be faced and resolved with the hope that these problems will be resolved properly.

Violence that occurs in domestic life cannot be separated from the lack of harmony in establishing family relationships which causes conflict so that violence cannot be avoided either physical, mental, sexual or financial viciousness. In its advancement, casualties of residential savagery get negligible security for the enduring they involvement to law requirement, due to the solid see that the damaging treatment of a family member towards his family is part of a private or personal incident, so that there is rarely reporting to law enforcement officials. or the police.¹The mention of the word "especially against women" shows that the idea of making this law is inseparable from the sociological reality where more women experience domestic violence than men.²

Article 1 point 4 of Law Number 23 of 2004 concerning the Elimination of Residential Savagery states: Protection is all endeavors pointed at giving a sense of security to casualties

¹ La Jama, Protection of Victims of Domestic Violence in Indonesian Criminal Law, Journal of Cita Hukum, Vol. II No.2, 2014, p. 250.

² Zulfatun Ni'Mah, The Effectiveness of Law Enforcement on the Elimination of Domestic Violence, Journal of the Law Platform, Volume 24, Number 1, February 2012, p. 56.

carried out by family, advocates, social teach, police, prosecutors, courts or other parties, either briefly or based on a court arrange. This can be a genuine frame of security given by the state to secure casualties of residential viciousness. Moreover, in Article 1 number 5 of Law Number 23 of 2004 concerning the End of Household Violence it states: Brief Security is assurance that's straightforwardly given by the police and/or social educate or other parties, earlier to issuing a stipulation of a assurance arrange from the court.

Domestic violence is the end of a less harmonious household relationship. Especially the husband-wife relationship which is always in a state of conflict. In the social context, domestic violence is constructed from the values that are used as references in a society. It is in this context that the community's perspective on the nature and dignity of humanity or what is known as human rights (HAM) is built.

Continuation of the marital relationship, the couple will become a family consisting of father, mother and children or even without children. Within the social order of each country, a common appraisal is found that individuals who are hitched have a position that's more regarded than those who are not married.² Within the Unitary State of the Republic of Indonesia, the marriage bond has been ensured by the constitution which states "everybody has the correct to make a family and proceed descendant through legitimate marriage. a sense of family togetherness is needed so that later all problems can be faced and resolved with the hope that these problems will be resolved properly.

The Criminal Code (KUHP) as one of the branches of public law consists of instructions and descriptions of offenses, regulations regarding the conditions under which a person can be convicted (*strafbaarheid*), designation of persons who can be convicted and provisions regarding punishment.³ The Criminal Code (KUHP) and special criminal laws listed in the statutory regulations but are outside the Criminal Code (KUHP).⁴

In its development, victims of domestic violence received minimal protection for the suffering they experienced to law enforcement, due to the strong view that the abusive treatment of a family member towards his family was part of a private or personal incident, so that it was rare to report this to law enforcement officials. or the police.⁵ In general, violence that occurs in the household is always preceded by psychological violence which is often not realized by a family. A wife or a child does not know that a psychological abuse has befallen them. Like the feeling of fear, they must have felt it but they didn't know that it was a form of psychic violence.⁶

A wife who experiences psychic violence from her husband because the wife forgets to prepare breakfast and then gets cursed at by her husband with harsh and hurtful words, then her husband has an affair with another woman and starts looking for many reasons to get to the stage of divorcing his wife, children who experiencing fear of their parents and even experiencing severe psychological suffering or prolonged trauma due to bad treatment from parents just because the child cannot be managed are just a few examples of concrete incidents of psychological violence in the household.⁷

³ Andi Hamzah, Indonesian Criminal Law, Sinar Graphic, Jakarta, 2017, p. 2.

⁴ Ibid., p. 13

⁵ Opcit La Jama, Protection of Victims of Domestic Violence in Indonesian Criminal Law, Journal of Cita Hukum, Vol. II No.2, 2014, p. 250

⁶ Resti Arini, Domestic Psychic Violence as a Crime, Journal of Lex Crimen, Vol. 2, No. 5, Sep 2013, p. 32

⁷ Ibid., p. 32

RESEARCH METHODS

Descriptive research method This analysis describes legal issues related to domestic violence from the point of view of state responsibility. The approach strategy utilized in this think about is the statutory approach. Secondary data includes primary legal materials and secondary legal data as well as tertiary legal materials. Secondary legal materials consist of textbooks, law journals, results of previous research, opinions of scholars, and other publications. Essential and auxiliary legitimate materials such as legitimate word references, reference books and others.

RESULTS AND DISCUSSION

Protection for victims who have been treated as household viciousness and inside the scope of the family are all endeavors pointed at casualties to supply a sense of security to casualties to provide a sense of security to victims and it is very necessary to be carried out at the earliest by the family, traditional leaders, community leaders, advocates, social teach, police, prosecutors, courts or other parties which are starting activities either transitory or based on a court arrange. Article 10 of Law Number: 23 of 2004 concerning the Elimination of Domestic Violence, states that victims have the right to receive:

- a. Protection from the family, police, prosecutors, courts, advocates, social teach, or other parties, either incidentally or based on a stipulation of a security arrange from the court;
- b. Health administrations concurring to restorative needs;
- c. Special dealing with related to the privacy of the victim;
- d. Assistance by social specialists and legitimate help at each level of the examination handle in agreement with the arrangements of laws and controls; and
- e. Spiritual direction services.⁸

In Article 6 "For the purposes of recovery, victims are entitled to receive services from wellbeing laborers, social laborers, companion volunteers, and/or otherworldly guides" Government Direction Number 4 of 2006 concerning Execution and Participation within the Recuperation of Casualties of Household Savagery.⁹

Protection of Human Rights

Controls on human rights are decided by alluding to the Joined together Countries Affirmation of Human Rights such as the Joined together Countries Tradition on the Disposal of All Shapes of Separation against Ladies, the Joined together Countries Tradition on the Rights of the Child, and different other worldwide rebellious that direct human rights. The UN Affirmation on Human Rights confirms that: each individual is born with the proper to flexibility and equal dignity. This certification may be a symbol of a social life with a vision of the have to be regard the humankind of everybody, notwithstanding of race, skin color, devout and political convictions, dialect and sexual orientation.¹⁰

Article 1 of the Statement on the Disposal of Viciousness Against Ladies states that: "viciousness against ladies is any activity based on sex contrasts that comes about in, or may result in, physical, sexual or mental wretchedness or enduring of ladies, debilitated by certain

⁸ Law Number: 23 of 2004 concerning the Elimination of Domestic Violence

⁹ Government Regulation Number 4 of 2006 concerning Implementation and Cooperation in the Recovery of Victims of Domestic Violence.

¹⁰ Maemuna B, The Protection Law Of Women's Right Against Violence In The Family Viewed From The Perspective Of Human Rights, page 55 – 58 Thesis

activities, certain activities, constraint or subjective hardship of freedom arbitrary, whether it occurs in the environment of personal life or as a member of society.

Article 2 of the Announcement states that: Savagery against ladies should incorporate, but not be constrained to acts of physical, sexual and mental viciousness that happen inside the family and in society, counting beatings, sexual manhandle of children, viciousness related to marriage, conjugal assault, female genital mutilation and other conventional hones of brutality to ladies, non-spousal savagery and savagery related to the misuse of ladies, assault, sexual manhandle and badgering and sexual dangers within the working environment in instructive educate and trafficking in ladies and constrained prostitution and counting savagery executed and advocated by the state wherever it happens.¹¹

Forms of Protection Against Women

Women have the right to enjoy and obtain the same protection of human rights and fundamental freedoms in politics, economics, social, culture, civil or other fields. The rights referred to in Article 3 include:

1. The right to live;
2. The right to equality;
3. The right to individual opportunity and security;
4. The right to rise to assurance in public;
5. The right to be free from all shapes of discrimination;
6. The right to get the leading conceivable physical and mental wellbeing services;
7. The right to better than average work and great working conditions;
8. The right not to endure torment or other remorselessness, uncaring or subjective treatment or torture.¹²

The provision of protection to victims of domestic violence, the process of investigation, prosecution and examination in court of cases of domestic violence is carried out based on the provisions contained in the Criminal Procedure Code (KUHAP) and uses Law Number 23 of 2004 concerning Elimination of Domestic Violence as the basis for crimes committed by perpetrators of domestic violence. The virtues and advantages possessed by Law Number: 23 of 2004 concerning the Elimination of Domestic Violence, in the Indonesian criminal law system include:

1. Law Number: 23 of 2004 concerning the End of Household Savagery, energizes cases of residential savagery from the domain of private law to gotten to be open law.
2. Law Number: 23 of 2004 concerning the Disposal of Residential Savagery, has made a modern breakthrough in criminal procedural law, to be specific the rule that 1 (one) witness isn't a witness. the specialist has met the necessities to demonstrate the presence of violence.
3. The scope of the family has been extended by Law Number: 23 of 2004 concerning the Disposal of Residential Viciousness, to be specific spouses, spouses, children and all those inside the scope of the family (counting family assistants).
4. The definition of savagery within the Criminal Code (KUHP) has been extended by Law Number: 23 of 2004 concerning the End of Household Viciousness, counting physical, mental, sexual savagery, as well as disregard of the household.¹³

¹¹ Maemuna B, Loc.,Cit, p. 55-58.

¹² Maemuna B, Loc.,Cit, p. 55-58.

¹³ Pingkan Thessalonika Wenur, Legal Protection for Victim Witnesses in Domestic Violence Crimes, Journal of Lex Crimen, Vol. II/No.2/April – June, 2013, p.80

State Protection Against Victims of Domestic Violence

In outline, the rights of Victims of Domestic Violence can be categorized into 2 (two) parts, namely:

1. Juridical assurance, this security incorporates security within the field of public law, and security within the field of gracious law.
2. Non-juridical protection, namely the provision of protection carried out by social, health and education agencies.

Article 1 of Law Number 23 of 2004 concerning the Disposal of Household Viciousness states that residential savagery implies any activity against a individual, particularly ladies, which comes about in physical, sexual, mental wretchedness and enduring, and/or disregard of the family, counting dangers to commit acts, constraint, or illegal hardship of freedom inside the family circle.¹⁴

Law requirement may be a issue confronted by each society, which should be a form of state protection for victims, in other words that law enforcement has the implication of implementing, executing arrangements in society, so that in a broader setting law requirement is an progressing handle. exemplification of theoretical concepts into reality. The law requirement prepare in reality comes full circle in its usage by law authorization authorities themselves.¹⁵

Within the prepare of law authorization, there are components that impact it. These components have sufficient meaning so that the positive and negative impacts lie within the substance of these variables. Concurring to Soerjono Soekanto, there are five of these variables, namely:

1. the law itself, which in this paper will be restricted to the law;
2. law authorities, to be specific parties who frame or apply the law;
3. means or offices that bolster law enforcement;
4. society, specifically the environment in which the law applies or is applied;
5. culture, to be specific the work, imagination, and taste based on human activity in social life.¹⁶

Legal Sanctions Against Domestic Violence Actors

Within the setting of executing the usage of the law, law authorization organizations are shaped, such as the police, prosecutors, courts. Without this organization, the law cannot be executed in society. Each organization works in a certain social setting (subculture). Each individual or organization alluded to carries out certain arrangements or exercises that are felt to be more productive. In other words, in these organizations there's continuously a inclination to supplant official objectives as stipulated in lawful directions with arrangements or every day activities. Arrangements that are felt to be able to maximize the benefits to be accomplished, by stifling to a least the deterrents to the work of the organization.

The police institution is entrusted with managing with infringement of the law, the legal is organized with the point of planning the examination of cases some time recently a court session; and so on with each course of action of the organization within the framework of administering the law. The court as an institution for dispute resolution used by the community begins with receiving a delegation from the public prosecutor, then continues with examining and ending with deciding cases based on the principles of being free, honest and impartial according to the manner regulated by law.¹⁷

¹⁴ Article 1 Law Number 23 of 2004 concerning the Elimination of Domestic Violence.

¹⁵ Ishaq, Fundamentals of Law, Sinar Graphic, Jakarta, 2018, p. 297.

¹⁶ Ibid., p. 298-299.

¹⁷ Ibid., p. 305-306.

According to Geoffrey Hazard Jr., there are three forms of approach in the criminal justice system, namely:

1. The normative approach, which views the four law authorization device (police, prosecutors, courts, and remedial educate) as executing educate of appropriate laws and directions, as these device are an indivisible portion of the law authorization framework exclusively.
2. The authoritative approach sees the four law authorization offices as a administration organization that has working components, both flat and vertical in nature, in agreement with the organizational structure winning within the organization. The system used is an administrative system.
3. The social approach sees the four law requirement authorities as an fundamentally portion of a social framework, so that society as a entire is additionally capable for the victory or disappointment of the four law authorization authorities in carrying out their obligations.¹⁸

The implementation of the criminal justice system (as a tool for overcoming a crime) is carried out by submitting criminals to justice so as to create a deterrent effect on criminals and make potential criminals think twice before committing a crime.¹⁹

Legal culture is attached to everyone, both state administrators, law enforcers, law implementers and the wider community. Because judges are part of law enforcers who play a role in making decisions that are expected to provide a sense of justice for society, of course, the legal culture of judges in sentencing must also be reformed according to their function and role as determinants of legal supremacy.²⁰

CONCLUSION

State protection for victims of domestic violence that can be provided is by implementing laws and the operation of a law enforcement system that adheres to the principle of equality before the law (equality before de law) so as to create prosperity and justice in society.

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