



Legal Protection for Women Victims of Psychological Domestic Violence Based on Enactment Number 23 of 2004

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Abstract

According to National Commission on Violence against Women's annual record in 2020, within a period of 12 (twelve) years, violence against women increased by 792%. It means that violence against women in Indonesia for 12 (twelve) years increased almost 8 (eight) times. Psychological violence against women in the household is an act against the law, a violation of human rights, a crime against human dignity, and a form of discrimination that must be abolished. This study aims to examine the legal protection for women victims of psychological violence in the household based on the enactment of domestic violence elimination. The method used in this research is normative legal research which makes the norm system the centre of its study with the aim of providing legal arguments as a basis for determining whether an event is right or wrong and how the event should be according to law. The results showed that the government has made efforts to protect women victims of psychological violence in the household. Preventively bypassing the constitution of domestic violence elimination and repressively by providing protection and services needed by victims in the context of recovery. Domestic violence is included in the complaint offence; therefore, the victim must report to the investigator related to the violence experienced so that legal proceedings can be carried out immediately.

Keywords: household; legal protection; victims of psychological violence

I. INTRODUCTION

Indonesia adheres to a democratic political system. As an effort to realize the principles of democracy in the life of the state, the state guarantees and provides a sense of security and legal protection to all its citizens from acts of violence without exception. This shows that all citizens have the same position before the law. One of the government's efforts to provide legal protection to its citizens is to ratify enactment number 23 of 2004 concerning the Elimination of Domestic Violence (hereinafter referred to as the enactment of domestic violence elimination). Before the enactment of domestic violence elimination was ratified, the cases of domestic violence entered the realm of a person's personal life. According to National Commission on Violence against Women's annual record in 2020, in a period of 12 years, violence against women increased by 792%, meaning that violence against women in Indonesia for 12 years increased almost 8 times (komnasperempuan.go.id: 2020).

The Ministry of Women's Empowerment and Child Protection noted that reports of violence against women had increased in the last three years. Based on the online information system for the protection of women and children throughout 2019-2021, there has been an increase in reports of cases of violence against women (Kompas.com: 2022).

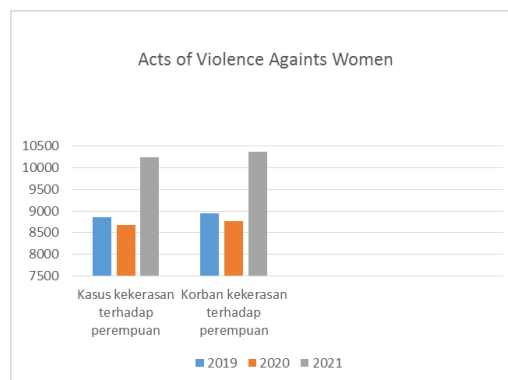


Figure 1. Numbers of Violence Against Women in Years 2019 – 2021

In the course of eighteen years of enactment of the enactment of domestic violence elimination, there are still many cases of domestic violence. There are two possibilities that occur, firstly, the community does not know and understand that domestic violence is a crime and considers it normal, secondly, the community knows that it is a crime, but continues to commit domestic violence.

The issue of gender equality is still a taboo subject to discuss within the household, this is due to the patriarchal culture that has taken root in people's lives which considers that women are weaker than men and men have a higher position, higher than women. Married women are considered as belonging to their husbands and families and are obliged to serve in the family, this causes a lot of psychological violence perpetrated by husbands, in-laws or other family members. Women must obey all orders from their husbands and are not allowed to argue, or serve their husbands and in-laws, if they can't do it perfectly, often get insults, curses or harsh words that are unwittingly a form of psychological violence. This causes women who experience psychological violence in the household can only surrender to accept and try to heal their inner wounds alone. Psychological violence in the household is considered normal. There is a negative stigma from society towards a wife who reveals psychological violence she has received from her husband or other family members, causing many who do not dare to disclose or report to the authorities having received psychological violence from their own families. People who are mentally strong will be able to deal with it, but not a few also end up experiencing mental disorders. They struggle alone without the support of the closest people.

Psychological violence against women in the household is an act against the law, a violation of human rights, a crime against human dignity and a form of discrimination that must be abolished. Suci H., (2021) stated that domestic violence in the form of psychics causes more prolonged danger, psychological effects can cause trauma and destroy self-concept, make victims feel that they are bad, and other things such as depression can lead to victims committing suicide. In general, what can be referred to as psychological violence is:

There are statements made with swearing, anger, insults, negative labelling, or demeaning postures.

The act of suppressing, ridiculing/insulting, demeaning, limiting or controlling the victim in order to fulfil the perpetrator's demands (Suci H., 2021).

A wife or mother in a household carries out a noble task and has a very important role in a household, they give birth to the next generation of this nation, raise and educate it. Such an important role certainly requires health support not only physically but also psychologically. Motivation from the closest people is needed, namely from husbands, in-laws, parents and surrounding families, unfortunately, without us realizing it, psychological violence is carried out by the closest people and is considered a normal thing in society.

Article 1 of Enactment Number 1 of 1974 states that: "Marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on God Almighty". If we look at the definition of

marriage referred to in the Marriage Law, the purpose of marriage is essential to form a happy and eternal family. Happiness and eternity will be achieved if, in the relationship between family members and husband and wife, each party respects and respects each other. If there is psychological violence, of course, happiness will not exist in a household.

Some previous related studies have examined the legal protection for women victims of violence. Indira & Maharani (2023) in their study examined instances of domestic abuse against women that call for a strong legal foundation in the fight for women's independence. The results of their study showed that a structure for law enforcement or civil society especially created to handle domestic abuse cases, such as UUPA, P2TP2A, the Women Crisis Center (WCC), or victim assistance organizations controlled by the community, has been made possible by the Law on the Elimination of Domestic Violence. Moreover, Ihya (2023) also conducted a similar study that analyzed the protection of domestic violence victims pursuant to law number 23 of 2004. The results study conducted by Ihya (2023) showed that with the existence of Law Number 23 of 2004 concerning the Elimination of Domestic Violence, it is hoped that all parties can understand the existence of this law, especially law enforcement officers so that they can properly implement this law in resolving cases of Domestic Violence and right on target, so that it can provide protection to victims of domestic violence both women and children and can provide a deterrent effect on perpetrators, because that is one of the goals of "law", to give a deterrent effect to perpetrators of crimes. Based on the background and the previous studies above, this study aims to examine the legal protection for women victims of psychological violence in the household based on the enactment of domestic violence elimination.

II. METHOD

The research method used in this research is normative legal research. Normative legal research always takes issues from the law as a system of norms used to provide prescriptive justification for a legal event. So normative legal research makes the norm system the centre of its study. The norm system in a simple sense is a system of rules or rules (Ranuhandoko, 2003). So that normative legal research is research that has an object of study about legal rules or regulations. Normative legal research examines the rule of law as a building system related to a legal event. This research was conducted with the intention of providing legal arguments as a basis for determining whether an event was right or wrong and how the event should be carried out according to the law.

III. DISCUSSION

Legal Protection Concept

According to Raharjo (2000), legal protection is to provide protection for human rights that are harmed by others and this protection is given to the community so that they can enjoy all the rights granted by law or in other words legal protection is an effort to organize various interests in society so that there is no collision between interests and can enjoy all the rights granted by law (Raharjo, 2000). Meanwhile, according to Hadjon (1987), legal protection is the protection of dignity and worth, as well as the recognition of human rights owned by legal subjects based on legal provisions from arbitrariness or as a collection of rules or rules that will be able to protect one thing from another (Hadjon, 1987). Regarding women who experience psychological violence in the household, the law provides protection for the rights of victims from something that results in the non-fulfilment of these rights. The philosophical basis of legal protection efforts against women who experience psychological violence in the household is the fifth precept of Pancasila which reads social justice for all Indonesian people, this means that the State guarantees the rights of all citizens to get justice and equal treatment before the law.

In general, protection means protecting something from dangerous things, something that can be in the form of interests or objects or goods. In addition, protection also contains the meaning of protection given by someone to someone who is weaker (Muchsin, 2003).

The law functions as the protection of human interests so that human interests are protected, the law must be implemented professionally. Laws that have been violated must

be enforced through law enforcement. Law enforcement requires legal certainty, legal certainty is justifiable protection against arbitrary actions. In legal protection there are 2 (two) main indicators, as follows:

Requires the existence of norms that contain substance about what is protected.

Requires the implementation and enforcement of norms, so that if there are actions that violate the norm, an action that is in accordance with the norm will immediately be taken.

Thus, legal protection is significantly correlated with legal certainty, where legal norms can be enforced. Through legal protection, the general objectives of the law will be realized, namely order, security, tranquillity, welfare, peace, truth and justice (Sudrajat & Wijaya, 2020). In its application there are several factors that hinder law enforcement against perpetrators of criminal acts of psychological violence in the household, victims are embarrassed to report to the authorities related to acts of violence experienced because it is a disgrace in the family, in the family the perpetrator is the backbone of the family and the victim is economically dependent. against perpetrators, and domestic violence has been considered as a test experienced in a household.

Psychological Violence Against Women in the Household

Society in general considers domestic violence to be a private matter because it involves people who are in the household. The struggle of women to get the same rights as men and not to get discriminated against has started in the era before the independence of the Indonesian State and this is still continuing to this day. One of the legal instruments that guarantee women's rights is the enactment of domestic violence elimination. After 18 (eighteen) years of this Law being passed, there are still many cases of women experiencing discrimination and inhumane treatment in the household. The trend of adding cases is very significant, especially during the Covid-19 pandemic.

Based on article 1 paragraph (1) of the enactment of domestic violence elimination, domestic violence is any act against a person, especially a woman, which results in physical, sexual, or psychological misery or suffering, and/or neglect of the household including threats to commit acts, coercion or deprivation. independence against the law in the domestic sphere.

Article 5 of the enactment of domestic violence elimination states that everyone is prohibited from committing domestic violence against people within the scope of their household, by:

Physical abuse;

Psychological violence;

Sexual violence and;

Domestic neglect.

Psychological violence according to the enactment of domestic violence elimination is an act that results in fear, loss of self-confidence, loss of ability to act, feeling helpless and/or severe psychological suffering on a person. Psychological violence can be in the form of verbal violence that is intimidating, threatening, or terrorizing, so that the victim will feel psychological pressure, and mental disturbance, and it can affect daily life activities. Forms of actions or actions that include psychological violence are acts of berating the victim with dirty words or inappropriate words, threatening the victim with threatening words or intimidating the victim to do or not do something according to the person's will, or scolding the victim. the victim continuously for various reasons so that the victim becomes psychologically depressed yells at the victim with a loud voice or a high tone accompanied by glaring eyes at the victim, causing the victim to be afraid and psychologically depressed, as well as other forms of acts that cause the victim to be psychologically and mentally depressed (Amin, 2021).

The scope of the household in Article 2 paragraph (1) of the enactment of domestic violence elimination, namely:

Husband, wife, and children.

People who have family relationships with people as referred to in letter a because of blood relations, marriage, breastfeeding, care and guardianship, who live in the household.

People who work to help the household and stay in the household.

In paragraph (2), it is stated that people who work as referred to in letter c are considered family members for the period of time they are in the household in question. This means that domestic workers who do not have family relationships are included in the household scope and have the potential to become perpetrators of acts of violence or victims who are obliged to get protection.

Article 52 of the enactment of domestic violence elimination states that the criminal act of psychological violence is a complaint offence. In the Big Indonesian Dictionary, the offence is defined as an act that can be punished because it is a violation of the law. According to Zuleha (2017:43), a complaint offence is an offence whose prosecution is only carried out on the basis of a complaint from an interested party or an injured person, meaning that if there is no complaint then the offence cannot be prosecuted (Zuleha, 2017). Therefore, victims who experience acts of psychological violence in the household must report the violence they experience to the police, if there is no report from the victim, no legal process can be carried out against the perpetrator.

Arini (2013) stated that in relation to acts of psychological violence, evidence occupies a central point in resolving the case. The purpose of the proof is to seek and locate material truths and not to find fault with others. Proving psychological violence in the household is not as easy as proving physical violence which is clearly visible. While the psychic is the soul, spiritual and mental as well as the mind that can only be felt by the victim because the injured or sick is not physically (Arini, 2013).

To prove the existence of domestic violence psychologically requires a special process compared to proving physical or sexual domestic violence because it must be assisted by a doctor or psychiatrist in the process of proving it to determine whether or not someone has experienced a criminal act of psychological violence. A psychiatrist specializes in diagnosing emotional disorders and how to treat them (Erwin Asmadi: 2018). Expert testimony is very necessary in cases of psychological violence because investigators will find it difficult to prove the existence of psychological violence experienced by the victim, expert testimony is legal evidence.

In the case of psychological violence in the household, what needs to be proven is whether it is true that the victim experienced psychological violence and the consequences whether the victim has a mental disorder or mental stress. Evidence of psychological violence cannot be seen with the naked eye; therefore, a psychiatrist is needed as a person who has competence in this field to conduct an examination of the victim. The results of research conducted by Diana Ribka, the factors that cause violence against women in the household, especially those committed by husbands against wives, namely (Hamzah, 2007):

There is an unequal power relationship between husband and wife. The assumption that the husband is more powerful than the wife has been constructed in such a way in the family and culture and community structure. That the wife belongs to the husband and therefore must carry out everything that is desired by the owner. This causes the husband to feel powerful and ultimately to act arbitrarily toward his wife. If this is the case, then the inequality of power relations between husband and wife will always be the root of violent behaviour in the household.

Economic dependence. The wife's economic dependence on her husband forces the wife to comply with all the husband's wishes even though she feels suffering. In fact, even though harsh measures were taken against him, he was still reluctant to report his suffering with consideration for his survival and the education of his children. This is used by the husband to act arbitrarily against his wife.

Violence as a tool to resolve conflict. This factor is the third dominant factor in cases of domestic violence. This violence is usually carried out as an outlet for offence, or

disappointment because the desire is not fulfilled, then acts of violence are carried out with the aim of the wife being able to fulfil her wishes and not fighting.

Competition, there is an imbalance of power relations between husband and wife. The balance between husband and wife in terms of education, association, and economic control can lead to competition and trigger domestic violence.

Frustration is caused by the husband's inability to fulfil his responsibilities to the family, because he is not ready to marry, and does not have a job or income that cannot meet family needs, thus triggering violence against his wife as a form of the vent.

Lack of opportunities for women in the legal process. Reports of victims to law enforcement officers are not considered criminal acts but only misunderstandings within the family.

From the several factors above, it can be concluded that the factors that cause domestic violence are internal factors and external factors.

Domestic violence is a social phenomenon that becomes a serious problem. Domestic violence has penetrated into various social strata of society, not only the lower economic community with a relatively limited level of education which results in very low knowledge of domestic violence but also in the upper economic community with an established life and supported by a high level of education. Therefore, to tackle acts of domestic violence, it is necessary to have the participation of all components of the Indonesian nation and state. Wulandari (2010) stated that the offers of peace between the parties to litigants in domestic violence are often offered in the early stages of the criminal justice process. Peace offers are generally made in cases of domestic violence that do not cause serious injuries. Cases of psychological violence and neglect in the household are types of violence that are often offered for resolution through deliberation (Wulandari, 2010).

Legal Protection Efforts Against Women as Victims of Psychological Violence in the Household Based on Enactment Number 23 Year 2004

What is meant by protection in Article 1 point 4 of the enactment of domestic violence elimination are all efforts aimed at providing a sense of security to victims carried out by families, advocates, social institutions, police, prosecutors, courts or other parties, either temporarily or based on court decisions. It can be concluded that the protection efforts carried out against victims of psychological violence in the household must get support from the family, of course, a strong commitment is needed because the perpetrator is a member of the household. The success or failure of these protection efforts also involves the role of all components of society and law enforcement officers.

The rights of victims guaranteed by the enactment of domestic violence elimination are:

Protection from the family, police, prosecutors, courts, advocates, social institutions or other parties, either temporarily or based on the stipulation of a protection order from the court.

Health services according to medical needs.

Special handling related to the confidentiality of the victim.

Assistance by social workers and legal assistance at every level of the examination process in accordance with the provisions of the legislation.

Spiritual guidance service.

Social workers and spiritual mentors are obliged to provide services to victims in the form of counselling to strengthen and provide a sense of security for victims. In the context of recovering victims, medical staff, social workers and spiritual mentors can work together. Special handling is applied to victims of domestic violence related to maintaining the confidentiality of the victim's identity, this is related to criminal acts that occur within the household scope, of course, it will be related to the good name of the family.

For the provision of services to victims, several efforts can be made by the

government are:

Provision of a special service room at the police station;

Provision of officers, health workers, social workers and spiritual guides;

Creation and development of systems and mechanisms for cooperation in service programs involving parties that are easily accessible to victims;

Protection for companions, witnesses, families and friends of victims.

It can be seen that the enactment of domestic violence elimination not only provides protection for victims but also for companions, witnesses, families and friends of victims.

As the government's responsibility and efforts to prevent the occurrence of domestic violence, preventive forms of legal protection are carried out, namely:

Formulating policies to eliminate domestic violence;

Organizing communication, information, and education about domestic violence;

Organizing outreach and advocacy on domestic violence, and

Organizing gender-sensitive education and training and issues of domestic violence and establishing gender-sensitive service standards and accreditation.

As an effort to prevent the occurrence of domestic violence, it is necessary to socialize about domestic violence, knowledge about gender sensitivity and policies that regulate the enactment of elimination of domestic violence. It is hoped that after the community receives education, there will be a growing public awareness of the law which is expected to reduce the number of domestic violence in Indonesia.

Everyone who sees or even knows the occurrence of domestic violence is obliged to make efforts within the limits of his ability to prevent the occurrence of criminal acts, provide protection to victims, provide emergency assistance and assist in the process of submitting applications for protection determination. It is hoped that anyone who hears, sees or knows of the occurrence of domestic violence does not remain silent, to try to do prevention and help, of course, this is not easy to do because problems that occur in the household are considered as personal problems, but it is time for that view changed. Domestic violence is a crime that must be processed in accordance with applicable law. Domestic violence is a violation of human rights, a crime against human dignity and discrimination that must be eliminated.

Within 1 x 24 hours from the time of knowing or receiving a report of domestic violence, the police must immediately provide temporary protection to the victim. Temporary protection lasts a maximum of 7 days from the time the victim is received or handled. Within 1 x 24 hours since the provision of temporary protection, the police must request a letter of determination of protection order from the court. Applications to obtain a protection warrant can be submitted by the victim, the victim's family, friends of the victim, the police, a volunteer companion or a spiritual guide.

In providing health services to victims, health workers must:

Check the victim's health according to professional standards;

Make a written report on the results of the examination of the victim and *visum et repertum* at the request of the police investigator or a medical certificate that has the same legal force as evidence.

In article 45 of the enactment of elimination of domestic violence, it is stated that:

Anyone who commits acts of psychological violence within the household as referred to in Article 5 letter b shall be punished with imprisonment for a maximum of 3 (three) years or an amercement of a maximum of Rp. 9,000,000.00 (nine million rupiahs).

In the event that the act as referred to in paragraph (1) is carried out by the husband against the wife or vice versa which does not cause disease or obstacles to carrying out the work of the position or livelihood or daily activities, the person shall be punished with imprisonment for a maximum of 4 (four) months or a maximum amercement of Rp. 3,000,000.00 (three million rupiah).

Judges can also impose additional penalties in the form of:

Restrictions on the movement of behaviour, both aimed at keeping the perpetrator away from the victim within a certain distance and time, as well as limiting certain rights of the perpetrator;

Determination of perpetrators to participate in counselling programs under the supervision of certain institutions.

I. CONCLUSION

The government has made efforts to protect women victims of psychological violence in the household. Preventively by passing the enactment of elimination of domestic violence and repressively by providing protection and services needed by victims in the context of recovery. Domestic violence is included in the complaint offence; therefore, the victim must report to the investigator with regard to the violence experienced so that legal proceedings can be immediately carried out. In practice, there are factors that hinder law enforcement in cases of domestic violence, among others, because victims are embarrassed to report to the authorities related to acts of violence experienced since it is a disgrace in the family, in the family the perpetrator is the backbone of the family and victims are dependent on a regular basis economic activity against perpetrators, and domestic violence have been considered as tests experienced in a household.

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