

Reconstruction of Legal Protection Regulations against Victims of Crime of Household Violence Based on Justice Value

Agus Irawan Yustisianto¹, Sri Endah Wahyuningsih¹, Anis Mashdurohaturun^{1*}

¹Doctoral Program in Law, Unissula Semarang, Indonesia

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*Corresponding author: Anis Mashdurohaturun
Doctoral Program in Law, Unissula Semarang, Indonesia

Abstract

The family is the first social environment known to humans. 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 have cases of irregularities or illegal activities that cause misery or suffering and are carried out by members of one family against other family members such as molestation, rape, and even leading to murder. This situation is commonly referred to as Domestic Violence or more commonly abbreviated as domestic violence. The formulation of the problems in this dissertation research is: 1) Why is the regulation of legal protection for victims of criminal acts of domestic violence not fair? 2) What are the weaknesses of the current legal protection regulations for victims of criminal acts of domestic violence? 3) How is the reconstruction of legal protection regulations for victims of domestic violence crimes based on the value of justice? The research method uses a constructivist paradigm, with a sociological juridical approach. Methods of data collection by observation and interviews, with qualitative analysis data analysis method. The results of the study are 1) Regulation of legal protection for victims of criminal acts of domestic violence has not been fair, it is worth considering who has the most initiative among couples in the household to commit acts of violence, including the scale of differences in physical strength and ability between husband and wife and seriousness in using physical force. Most women are victims of violence perpetrated by people who are closely related to them. Domestic violence is generally perpetrated by men against women, generally violence by husbands against wives. 2) Weaknesses of legal protection regulations for victims of criminal acts of domestic violence at this time in terms of legal substance, law enforcers in carrying out law enforcement are only oriented to legal certainty, not legal justice. From the aspect of the legal structure, the synergy between the apparatus has not been optimal, the weakness in this case since the enactment of the PKDRT Law in 2004, there are still many cases of violence against women that occur in society and many are even unsolved. In terms of legal culture, the factors behind domestic violence can be identified due to gender and patriarchal factors. 3) Reconstruction of Law Number 23 of 2004 concerning the Elimination of Domestic Violence by changing and adding imprisonment and fines in Article 44, and the second reconstruction by adding the value of justice to Article 54.

Keywords: Reconstruction, Regulation, Legal Protection, Victims, Domestic Violence, Justice.

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A. PRELIMINARY

In Indonesia, the reporting of domestic violence cases continues to increase from year to year. According to Komnas Perempuan's Annual Records (CATAHU) in 2021, throughout 2020 there were 299,911 cases consisting of 291,677 cases in the Religious Courts and 8,234 cases derived from questionnaire data from service provider institutions. This indeed shows a decrease in cases of 31.5% from the previous year but this does not mean the number of cases has decreased. In line with the results of the survey on the dynamics of ID cards during the current Covid-19 pandemic, the decrease in the number of

cases is due to: 1) victims are close to perpetrators during the pandemic (PSBB), 2) victims tend to complain to their families or remain silent, 3) technological literacy issues, 4) complaint service model that is not ready for pandemic conditions (not yet adapted to converting complaints to online). For example, due to the pandemic, religious courts have limited their services and proceedings (this caused the divorce rate to drop by 125,075 cases from last year). In addition, the number of questionnaires returned has decreased by almost 100 percent from the previous year. Thus, if the religious court returns to provide services as usual and returns the same questionnaire as

the previous year, it is certain that the number of cases will increase. If calculated on average, in 2019 each institution had 61 cases, while in 2020 it increased to 68 cases in each institution. Thus, if the questionnaire returns are the same as the previous year, there is an increase of 10 percent or equivalent to 1700 cases.

The case of domestic violence that had attracted attention was the case with the decision of the Sleman District Court Number 180/Pid.Sus/2018/PN.Smn which stated that the defendants NKS and MFR were legally and convincingly proven to have jointly committed a crime of physical violence within the household, and violates Article 44 paragraph (1) of the PKDRT Law. Because of their actions, the defendants were sentenced to imprisonment for 8 (eight) months. Another case is the case with the decision of the Semarang District Court Number 630/Pid.Sus/2018/PN.Smg which stated that the defendant AM was legally and convincingly proven to have jointly committed a crime of physical violence within the household, and violated Article 44 paragraph (1) PKDRT Law. Because of their actions, the defendants were sentenced to imprisonment for 10 (ten) months.

Law Number 23 of 2004 concerning the Elimination of Domestic Violence, states the protection of the rights of victims, as regulated in Article 10: Victims have the right to:

- a. 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;
- b. Health services according to medical needs;
- c. Special handling relating to the confidentiality of the victim;
- d. Assistance by social workers and legal assistance at every level of the examination process in accordance with the provisions of the legislation; and
- e. Spiritual guidance service.

Several weaknesses exist in the PKDRT Law. With the alternative sanctions system listed in the Act above, it can lead to misinterpretation, namely those (the perpetrators) who commit domestic violence crimes can choose alternative sanctions by paying a criminal fine to be free from legal bondage. In addition, the inclusion of a maximum sanction without including a minimum limit can create legal uncertainty. The perpetrator may only be sentenced to the minimum and lightest sentence which is not commensurate with the act he has committed. This is the reason why many victims are reluctant to complain about the acts of domestic violence they have experienced because it will only be a waste of time and cannot fulfill their sense of justice for victims of domestic violence.

From this background, this paper is intended to analyze the formulation of criminal law policies in the context of overcoming the crime of domestic violence. Determining the purpose of punishment can be the basis for determining the methods, means or actions that will be used in the context of overcoming the crime of domestic violence. On the basis of the explanation above, the writer examines the "Reconstruction of Legal Protection Regulations Against Victims of Criminal Acts of Domestic Violence Based on the Value of Justice".

B. RESEARCH METHODS

The research approach used in this research is sociological legal research or commonly called sociological juridical research. In this study, law is conceptualized as an empirical phenomenon that can be observed in real life. The type of research used in completing this dissertation is a descriptive analytical juridical research method, namely research conducted by examining library materials (secondary data) or library legal research, then described in the analysis and discussion.

Sources of data used are primary and secondary data. Primary data refers to data or facts and legal cases obtained directly through research in the field, including information from respondents related to the object of research and practices that can be seen and related to the object of research. Secondary data is done by means of literature study. The secondary data in this study include: Primary legal materials, which consist of: 1) Pancasila, 2) the 1945 Constitution of the Republic of Indonesia, 3) the Criminal Code, 4) the Criminal Procedure Code, 5) Law Number 23 of 2004 concerning Elimination of Domestic Violence, 6) Law Number 31 of 2014 concerning Amendments to Law Number 31 of 2006 concerning Protection of Witnesses and Victims. Secondary legal materials; Books, journals, and documents resulting from research in the field of law, especially the problem of reconstructing legal protection for victims of criminal acts of domestic violence based on the value of justice. Tertiary Legal Materials, consisting of: Indonesian Language Dictionary, English Dictionary, Law Dictionary, Encyclopedia and teaching tools (hand out) on procedures for writing scientific papers.

This research uses Library Research and field studies. The data obtained are presented in the form of narrative text, which describes the data systematically, logically and rationally starting with primary legal materials, secondary legal materials and tertiary legal materials, with data analysis used using qualitative data analysis, where data analysis is carried out by conducting interpretation of law by describing or describing both primary and secondary data obtained to answer the problems in this research.

C. DISCUSSION

1. Legal Protection Regulations Against Victims of Crime of Domestic Violence Unjust

Before the issuance of Law no. 23 of 2004, legal protection for women victims of husband violence is regulated in Article 356 paragraph 1, the Criminal Code. Article 1365 of the Civil Code., Article 24 of Law no. 1 of 1974 concerning marriage, Article 1 of Law no. 7 of 1984 concerning Ratification of the Convention on the Elimination of All Forms of Discrimination against Women/Women, Article 17 of Law no. 39 of 1999 concerning Human Rights (HAM). After the enactment of Law no. 23 of 2004 concerning the Elimination of Domestic Violence, perpetrators of domestic violence in the household are regulated in Chapter II, Article 5, Article 6, Article 7, Article 8 and Article 9 of Law no. 23 of 2004. Criminal provisions are regulated in Article 44, Article 45, Article 46, Article 47, Article 48, Article 49 and Article 50.

In the PKDRT Law, there are various types of violence which include acts of domestic violence, namely: a.) Physical violence; b.) Psychological violence; c.) Sexual violence; and d.) Abandonment of the household. According to Article 6 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence, what is meant by physical violence is an act that causes pain, falls ill, or is seriously injured. This crime of physical violence is a complaint offense. So cases of physical violence can be tried in court if there is a complaint first. Below will be described some of the legal instruments that can protect the wife from acts of violence by her husband.

1. The Criminal Code (KUHP) Criminal Law is a Public Law that Contains Various Provisions Regarding

- a. General rules of criminal law relating to certain acts accompanied by the threat of sanctions in the form of punishment for those who violate the prohibition.
- b. Certain conditions must be met for the violator to be subject to criminal sanctions.
- c. Actions and efforts that may or must be carried out by state apparatus in the context of determining and implementing criminal acts. Although the above provisions do not explicitly regulate violence in the family, but at least it can be used to report perpetrators to the police. Even the Criminal Code provides a threat of a more severe punishment if the abuse is carried out against the siteri or her child, as regulated in Article 356 paragraph (1) of the Criminal Code which reads: "The punishment specified in Articles 351, 353, 354 or 355 can be increased by a third: for those who guilty of committing the crime against his mother, legal father, wife or child".

If the weighting of this sentence is also directed at a husband or wife who commits abuse, then at least this article is gender neutral (genderless) and contains the principle of gender justice. But often in practice, law enforcers are often unresponsive to women's interests or see this problem in general. This is caused by:

- 1) This issue is considered a private matter;
- 2) The husband is the main breadwinner, so that the child and his family are not neglected, the judge does not impose a prison sentence but only imposes a probationary sentence;
- 3) The majority of wives are very dependent, both economically and emotionally still in love with their husbands.

2. Marriage Law (Law No. 1 of 1974)

In Article 19 letter d of Government Regulation no. 9 of 1975 concerning the Implementation of Law no. 1 of 1974 is also a legal instrument for the protection of the wife against acts of violence by her husband. In Article 19 letter d, it is stated that divorce can occur because one party commits cruelty or severe abuse that endangers the other party. If the husband commits violence against his wife based on this article, the wife can file a lawsuit for divorce to the court.

3. Law on the Elimination of Domestic Violence (Law No. 23 of 2004)

This law regulates the prevention and protection of victims of domestic violence (KDRT), specifically regulates domestic violence with elements of a crime that is different from the criminal act of persecution as regulated in the Criminal Code, also regulates obligations for law enforcement officers, officer's health workers, social workers and volunteers as companions to protect victims of violence.

Forms of legal protection for wives (as included in the scope of the household) who receive acts of violence in the Law on the Elimination of Domestic Violence (Law No. 23 of 2004) include:

- a. Article 10, which concerns the rights of victims to obtain:
 - 1) protection from family, police, prosecutors, courts, advocates, social institutions or other parties, either temporarily or based on a protection order from the court,
 - 2) Health services according to medical needs
 - 3) Special handling relating to the confidentiality of the victim,
 - 4) Assistance by social workers and legal assistance at every level of the examination process in accordance with the provisions of the legislation,
 - 5) Spiritual guidance services.
- b. Articles 11 to 15 relate to the obligations of the government and society in preventing domestic violence.

- c. Article 16 to Article 38; forms of protection for victims of domestic violence provided by the police, health workers, social workers, companion volunteers, spiritual guides, advocates, and courts.
- d. Article 39 to Article 43; victim's right to seek redress.
- e. Article 44 to Article 49; is a criminal provision that provides threats of punishment for perpetrators of violence.

Legal protection is something that protects legal subjects through applicable laws and regulations and enforced its implementation with a sanction. Legal protection can be divided into two, namely:

1. **Preventive Legal Protection:** Protection provided by the government with the aim of preventing violations before they occur. This is contained in laws and regulations with the aim of preventing violations committed by business actors and providing signs or limitations to business actors in carrying out their obligations.
2. **Repressive Legal Protection:** Repressive legal protection is the final protection in the form of corporate responsibility, fines, imprisonment, and additional penalties given if a dispute has occurred or a business actor has committed a violation.

In addition, the PKDRT Law also divides the protection into temporary protection and protection by court order and services. Protection and services are provided by institutions and institutions according to their respective duties and functions. That based on Article 10a of the PKDRT Law, victims are entitled to protection from their families, police, prosecutors, courts, advocates, social institutions, or other parties, either temporarily or based on government stipulations for protection from justice with the following explanation:

- a) Protection by the police in the form of temporary protection provided for a maximum of 7 (seven) days, and within 1 X 24 hours from providing protection, the police are obliged to request a letter of stipulation of a protection order from the court. This temporary protection by the police can be carried out in collaboration with health, social workers, companion volunteers and spiritual mentors to assist victims.
- b) Protection by lawyers is provided in the form of legal consultation, conducting mediation and negotiations between parties including the victim's family and the perpetrator's family (mediation), and assisting the victim at the investigation, prosecution and examination levels in court proceedings (litigation), coordinating with other law enforcement, companion volunteers, and social workers (cooperation and partnership).

- c) Protection by court order is issued in the form of a protection order which is given for 1 (one) year and can be extended. The court may detain with a warrant for the detention of the perpetrator of domestic violence for 30 (thirty) days if the perpetrator violates the statement he signed regarding the ability to fulfill the order of protection from the court.
- d) The service of health workers is very important, especially in the effort to give sanctions to perpetrators of domestic violence. Health workers according to their profession are required to provide written reports on the results of medical examinations and make a *visum et repertum* at the request of police investigators or make other medical certificates that have legal force as evidence.
- e) Social worker services are provided in the form of counseling to strengthen and provide a sense of security for victims, provide information on victims' rights to protection, and provide coordination with related institutions and institutions.
- f) Services by spiritual guides are provided to provide explanations of rights, obligations and to strengthen faith and piety to victims. In practice in the field, the handling of cases of violence against women is not specifically handled by female prosecutors; this depends on the leadership's policy on the appointment of prosecutors. Although there is actually no guarantee that female prosecutors are better at handling cases of violence against women, at least from a psychological point of view the victim will feel more understood and understood if the prosecutor is a woman. The female prosecutor will better understand how the victim feels, such as shame, trauma or other feelings that damage the victim's psyche.

The factors that hinder the reporting of victims to the police include:

1. **Difficulty Accessing Protection Services:** The protection services provided by the police as well as from the local PPT are not often heard among the public so that their effectiveness is low in protecting victims of domestic violence.
2. **Fear of Reporting:** Victims of domestic violence are afraid to report the violence they have received to the police for several reasons, such as: a) Not ready to live independently without perpetrators, b) Threats, c) Negative Community Stigma towards Victims of Domestic Violence

A judge must provide a sense of justice, not only for the accused, but also for the victim. In order to provide justice to both parties, according to the provisions of Law no. 48 of 2009 concerning Judicial

Power, judges as law and justice enforcers are obliged to explore, follow and understand the legal values that live in society and in considering the severity of the crime, judges must also pay attention to the good and evil characteristics of the accused. This is difficult, it is necessary to have sensitivity to the value of justice in society considering the values that develop in society change over time.

2. Weaknesses in Legal Protection Regulations against Victims of Domestic Violence Based on Justice Values and Solutions

Weaknesses in the regulation of legal protection for victims of criminal acts of domestic violence currently include legal substance, legal structure and legal culture. The weaknesses of the PKDRT Law that hinder efforts to eliminate domestic violence in Indonesia are:

- a. The PKDRT Law does not have its own procedural law so that law enforcement officers are again guided by the Criminal Code which is rigid and unfriendly to victims of domestic violence;
- b. By not having its own procedural law, the PKDRT Law also does not provide opportunities for alternative dispute resolution methods other than courts (eg mediation), even though courts are not always appropriate and suitable in handling the specifics of domestic violence cases;
- c. The inclusion of physical, psychological and sexual violence perpetrated by a husband against his wife in the complaint offense greatly limits the space for the wife to move which places the wife in a subordinate position.
- d. The PKDRT Law provides an opportunity for the application of the Criminal Code because there are no rules that revoke the validity of provisions in similar criminal acts (unlike the Corruption Eradication Law which in its clause closes this possibility).

- e. The criminal threat of the PKDRT Law is in the form of an alternative (jail or fine); should be in the form of cumulative (jail and/or fines) so that it provides a more deterrent effect on perpetrators of domestic violence;
- f. The PKDRT Law does not regulate threats for perpetrators to pay a sum of money to victims for recovery due to domestic violence. The threat of fines in the Act is paid to the State.

From the aspect of the legal structure, the synergy between officers is not yet optimal. An agency in realizing criminal law which is in order of position behind, in carrying out its functions essentially depends on what is given by the agency in front of it. So the activities in resolving cases (mostly) depend on the cases given by the police, the court can only examine cases submitted by the prosecutor's office, this is what is called negative control. Each of these agencies stipulates the law and its authority, the view of the implementation of the legal system is called the "steer mode" (*stuur mode*). Weaknesses in this regard since the enactment of the PKDRT Law in 2004, there are still many cases of violence against women that occur in society and many of them are not even revealed. In terms of legal culture, the factors behind domestic violence can be identified due to gender and patriarchal factors, unequal power relations. Gender and patriarchy as already discussed will lead to unequal power relations because men are considered more important than women resulting in the position of the husband being considered to have the power to regulate his household, including his wife and children. The assumption that husbands have higher power than other family members makes men more likely to commit violence.

3. Reconstruction of Legal Protection Norms for Victims of Criminal Acts of Domestic Violence Based on the Value of Justice

Table 1: Summary of Reconstruction of Legal Protection Regulations against Victims of Criminal Acts of Domestic Violence Based on the Value of Justice

No.	Construction	Weakness	Reconstruction
1.	(1) Law Number 23 of 2004 concerning the Elimination of Domestic Violence, namely: (2) Article 44 (3) Everyone who commits acts of physical violence within the scope of the household as referred to in Article 5 letter a shall be sentenced to a maximum imprisonment of 5 (five) years or a maximum fine of Rp. 15,000,000.00 (fifteen million rupiah). (4) In the event that the act as referred to in paragraph (1) causes the	1. Legal protection for victims is not optimal. 2. Criminal sanctions and fines are relatively light. 3. There are general weaknesses in the formulation of the Law on the Elimination of Domestic	Reconstruction of Law Number 23 of 2004 concerning the Elimination of Domestic Violence by changing and adding imprisonment and fines so that Article 44 reads: (1) Everyone who commits acts of physical violence within the scope of the household as referred to in Article 5 letter a shall be sentenced to a maximum imprisonment of 7 (seven) years or a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah). (2) In the event that the act as referred to in paragraph (1) causes the victim to fall ill

No.	Construction	Weakness	Reconstruction
	<p>victim to fall ill or is seriously injured, he shall be punished with imprisonment for a maximum of 10 (ten) years or a fine of a maximum of Rp. 30,000,000.00 (thirty million rupiahs). .</p> <p>(5) In the event that the act as referred to in paragraph (2) results in the death of the victim, the punishment shall be a maximum imprisonment of 15 (fifteen) years or a maximum fine of Rp.45,000,000.00 (forty five million rupiah).</p> <p>(6) In the event that the act as referred to in paragraph (1) is carried out by the husband against his wife or vice versa which does not cause disease or obstacles to carry out his official job or livelihood or daily activities, he shall be punished with imprisonment for a maximum of 4 (four) months. or a maximum fine of Rp. 5,000,000.00 (five million rupiah).</p>	<p>Violence.</p>	<p>or is seriously injured, he shall be punished with imprisonment for a maximum of 10 (ten) years or a fine of a maximum of Rp.150,000,000.00 (one hundred and fifty million rupiahs). .</p> <p>(3) In the event that the act as referred to in paragraph (2) results in the death of the victim, the punishment shall be a maximum imprisonment of 15 (fifteen) years or a maximum fine of Rp. 250,000,000.00 (two hundred and fifty five million rupiah).</p> <p>(4) In the event that the act as referred to in paragraph (1) is committed by the husband against the wife or vice versa which does not cause illness 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 1 (one) year. Or a maximum fine of Rp. 50,000,000.00 (fifty million rupiah).</p>
2	<p>Law Number 23 of 2004 concerning the Elimination of Domestic Violence Article 54 Investigations, prosecutions and examinations in courts are carried out according to the provisions of the applicable criminal procedure law, unless otherwise stipulated in this law.</p>	<p>There is a need for clarity on legal protection regulations for victims of domestic violence crimes based on the value of justice.</p>	<p>Reconstruction by adding the value of justice in Article 54 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence so that it reads: Article 54 Investigations, prosecutions and examinations in courts are carried out according to the provisions of the applicable criminal procedural law based on the value of justice.</p>

D. CLOSING

(1) The regulation of legal protection for victims of criminal acts of domestic violence has not been fair, that in the law it states that physical violence is any act that causes pain, injury, injury or disability to a person's body and or causes death and sexual violence is each any act that includes sexual harassment. Weaknesses in the regulation of legal protection for victims of criminal acts of domestic violence currently include legal substance, legal structure and legal culture. In terms of legal substance, law enforcers in carrying out law enforcement are only oriented to legal certainty, not legal justice. From the aspect of the legal structure, the synergy between officers is not yet optimal. An agency in realizing criminal law which is in order of position behind, in carrying out its functions essentially depends on what is given by the agency in front of it. In terms of legal culture, the factors behind domestic violence can be identified due to gender and patriarchal factors, unequal power relations.

- (2) Reconstruction of Law Number 23 of 2004 concerning the Elimination of Domestic Violence by changing and adding imprisonment and fines so that Article 44 reads:
- (1) Everyone who commits acts of physical violence within the scope of the household as referred to in Article 5 letter a shall be sentenced to a maximum imprisonment of 7 (seven) years or a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah).
 - (2) In the event that the act as referred to in paragraph (1) causes the victim to fall ill or is seriously injured, he shall be punished with imprisonment for a maximum of 10 (ten) years or a fine of a maximum of Rp.150,000,000.00 (one hundred and fifty million rupiahs). .
 - (3) In the event that the act as referred to in paragraph (2) results in the death of the victim, the punishment shall be a maximum imprisonment of 15 (fifteen) years or a maximum fine of Rp. 250,000,000.00 (two hundred and fifty five million rupiah).
 - (4) 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 carry out the work of the position or livelihood or daily activities, the person shall be punished with imprisonment for a maximum of 1 (one) year or a maximum fine of Rp. 50,000,000.00 (fifty million rupiah).

- (5) The second reconstruction is by adding the value of justice to Article 54 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence so that it reads: Investigations, prosecutions and examinations in courts are carried out according to the provisions of the applicable criminal procedural law based on the value of justice.

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