

LEGAL PROTECTION FOR VICTIMS OF DOMESTIC VIOLENCE THROUGH COMPENSATION AND RESTITUTION

Siti Rahmah

Faculty of Law, Jambi University, Jambi, Indonesia
E-mail Correspondence: raturahmahdaeng@gmail.com

Hafrida

Faculty of Law, Jambi University, Jambi, Indonesia

Usman

Faculty of Law, Jambi University, Jambi, Indonesia

Abstract

Cases of domestic violence can attract the attention of the wider community and cause reactions from various parties, this is because domestic violence is indeed a case that requires special handling from the authorities. Because domestic violence is a type of violence that has unique characteristics, namely that it is carried out in the home, the perpetrators and victims are family members and is often considered not a form of violence. Law No. 23/2004 on the Elimination of Domestic Violence provides a strong legal basis that makes domestic violence, which was originally a household affair, a State affair. Legal protection to victims of crime as part of protection to the community can be realized in various forms such as through the provision of restitution and compensation such as medical services and legal assistance from the state so as not to cause prolonged traumatic effects, that victims of domestic violence, most of whom are women, must receive protection from threats of violence, torture, treatment that is degrading to human dignity. With the existence of Law Number 23/2004 on the Elimination of Domestic Violence, it is hoped that it can be a solution to prevent and overcome domestic violence in law enforcement efforts, in accordance with the principles as intended in Article 3 of Law Number 23/2004 on the Elimination of Domestic Violence, namely: "Respect for human rights, gender justice and equality, non-discrimination, and victim protection". Everyone has the right to a sense of security, the right to fair legal treatment without discrimination. Domestic violence is a violation of human rights and a crime against human dignity and forms of discrimination.

Keywords: Domestic Violence; Compensation; Victims of Crime; Legal Protection; Restitution.

INTRODUCTION

Philosophically, Indonesia is a state of law (Rechtstaat), as stipulated in Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia. As a state of law, Indonesia holds the principle of "rule of law". The Indonesian state regulates all systems based on law. This includes criminal law which is popularly known as the Criminal Justice System (CJS).

The Indonesian criminal justice system consists of the police, prosecutors, courts and correctional institutions as law enforcement officers. Each component of the system should consistently maintain the permanent system of the State of Indonesia which aims to protect the entire Indonesian nation and all Indonesian descendants as well as to advance the general welfare and intellectual life of the nation's people and participate in the organization of a world order based on independence, peace and eternal justice, meaning that every aspect of life in the social, national and state spheres, including government, must always be based on the law.¹ To realize the rule of law, legal instruments are needed to regulate all areas of people's lives in order to maintain balance and justice.

Indonesian criminal law as a specific field in the national legal system functions to provide protection for the rights and interests of individuals, communities, nations and states represented by the government, including the rights and interests of criminal offenders and victims of criminal acts.² The neglect of the rights and interests of victims of crime at the normative level of legislation, the consequences of neglecting the rights and interests of victims in the process of resolving criminal cases through the mechanism of the criminal justice system. "The position of victims of criminal acts is limited only as witnesses, regarding the rights and interests as victims suffering losses due to the actions of perpetrators of domestic violence crimes".³ According to Van Boven, "victims' rights consist of the right to know, the right to justice, and the right to reparation, namely the right to material and non-material recovery for victims affected by human rights crimes".⁴

Violence against women is any behavior of the perpetrator that causes discomfort and even fear, both physical and non-physical violence.⁵ Article 89 of the Criminal Code defines violence as the unlawful use of small physical or physical force, such as hitting with the hand or with any kind of weapon, kicking, kicking. One of the topics of crime that often appears in people's lives is violent crime. Crime is an eternal problem in human life, because it develops in accordance with the development of the level of human civilization, especially in the problem of domestic violence against women still continues to occur in Indonesia. looks normal and considers it a life force must be available. Most housewives do not do this dare to speak out about the abuse they face because they think: it is a family tragedy that victims should not experience.

Domestic Violence, has specificity compared to other forms of violence against women because of the power relationship between the victim and the perpetrator. The psychological burden experienced by women victims of domestic violence is very high because power relationships always contain an element of trust and also an element of dependency to a certain degree. In addition to feeling the abuse of power by the owner of the power, victims also generally experience fear, reluctance, and embarrassment to report to the authorities.⁶

Violence, especially domestic violence, is a violation of human rights and a crime against human dignity and discrimination. Violence, in any form and for any reason, is a type of crime that cannot be justified. Therefore, violence, even if it is mild, can be considered a crime. So far violence has occurred due to a lack of communication of organizational commitment to respond to the challenges of people, mostly women and children, becoming victims.

Impact of domestic violence on women Incidents of violence are a serious problem. The implications of attacks also have a big impact. For example, injury, trauma, stress, birth conflict, murder and children can interfere with the process of growth and development. According to the author, the impact of domestic violence is over women can be divided into 2, namely temporary effects and long-term effects. First, short-term effects often have immediate consequences such as physical injury, disability, pregnancy, loss of work etc. Second, long-term effects often affect the future and last a lifetime. It is common for victims to suffer from mental illness, loss of trust, withdrawal, shock, fear and depression.

Violent crimes according to Arif Gosita are acts against the law, which are carried out intentionally by someone against another person either for the benefit of themselves or others, and which cause mental, physical and social suffering. violence is one of the criminological acts committed by individuals, families, or groups, especially in the household.⁷ Domestic violence is defined as various forms of the use of violence or threats of violence (physical, psychological, emotional, sexual, neglect) committed to control a spouse, child, or family member or other person, who resides or is within the scope of a household.

Domestic violence can be resolved out of court (without arbitration) as an alternative criminal settlement with the aim of achieving a negotiated settlement based on Law number 28 of 1997 concerning the State Police (State Gazette of the Republic of Indonesia Number 81, Supplement to State Gazette number 3710) as an improvement of Law number 13 of 1961 concerning Basic Provisions of the State Police (State Gazette of 1961 number 245, Supplement to State Gazette number 2289), which is now enhanced by Article 16 paragraph (1) letter I) "and Article 18 paragraph (1) of Law number 2 of 2002 concerning the Indonesian National Police in the public interest, officers of the Indonesian National Police in carrying out their duties and authorities may act according to their own judgment" or known as the authority of "police discretion" which is expected to be able to provide affirmation of the character of the Indonesian National Police as stated in Tri Brata and Catur Prasetya as a source of values for the Police Code of Ethics which flows from the philosophy of Pancasila.⁸

One of the objectives of regulations that function effectively in dealing with the problem of criminal acts of domestic violence. However, there is a gap between what should be and what is happening "Das sollen and das sein". On the issue of the reporter who revoked the notification, if this law exists, the perpetrators of domestic violence can be prosecuted and prosecuted based on existing laws, because the offense is essentially a criminal law consisting of various provisions and regulations that threaten punishment for those who violate it, almost all information regarding cases of domestic violence (KDRT) that are still processing or almost canceled in all cases on the grounds that the reporter revoked his report only to encourage the suspect, because the reason the reporter revoked his report was a woman, a figure who always faces violence and is still retained.

RESEARCH METHOD

The type of research that the author uses in this research is normative law. Normative legal research is the study of a legal norm/ principle/doctrine. The author uses normative legal research by conducting a study through related laws on Witness and Victim Protection to the Elimination of Domestic Violence. This type of normative legal research in this study is supported by a legal concept analysis approach and a statutory approach to analyze the problems studied. The primary legal materials used in this research are: Criminal Code, Criminal Procedure Code, Law Number 31 of 2016 concerning Amendments to Law Number 1945 Constitution, Law Number 26 of 2000 concerning Human Rights Courts, Law Number 13 of 2006 concerning Witness and Victim Protection Institutions, Law Number 8 of 1981 concerning Criminal Procedure Code (KUHP), Criminal Code (KUHP), Law Number 21 of 2007 concerning Eradication of Trafficking in Persons, Law No. 8 of 1999 on Consumer Protection, Law No. 32 of 2009 on Environmental Protection and Management, Government Regulation No. 03 of 2002 on Compensation, Restitution and Rehabilitation for Victims of Gross Human Rights Violations, Government Regulation No. 44 of 2008 on Providing Compensation, Restitution and Rehabilitation for Victims of Gross Human Rights Violations, Government Regulation No. 44/2008 on the Provision of Compensation, Restitution and Assistance to Witnesses and Victims, Regulation of the Witness and Victim Protection Agency. Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence. The secondary legal materials used are literature related to land law such as related journal articles. The legal material collection technique used in this research is a document study technique and the legal material analysis technique is carried out using qualitative analysis techniques by applying several steps, namely systematization, description, and explanation of a series of phenomena.

DISCUSSION

1. Regulating the Rights of Victims of Domestic Violence through Compensation and Restitution

Law Number 13 of 2006 concerning Witness and Victim Protection, in Article 1 point 6 is: "All efforts to fulfill rights and provide assistance to provide security to victims that must be implemented by the Witness and Victim Protection Agency (LPSK) or other institutions in accordance with the provisions".⁹ Such

protection is provided to witnesses and victims at all stages of the criminal justice process in the judicial environment, namely starting from the process in the Police, Prosecutor's Office, and Court. Legal protection for the community is very important because both groups and individuals can become victims or even perpetrators of crime.

With the existence of Law Number 23/2004 on the Elimination of Domestic Violence, it is hoped that it can be a solution to prevent and overcome domestic violence in law enforcement efforts, in accordance with the principles as referred to in Article 3 of Law Number 23/2004 on the Elimination of Domestic Violence, namely: "Respect for human rights, gender justice and equality, non-discrimination, and victim protection". Everyone has the right to a sense of security, the right to fair legal treatment without discrimination. Domestic violence is a violation of human rights and a crime against the dignity of humanity and forms of discrimination, yet domestic violence continues to occur at a greater volume.

The guarantee of the right to restitution for victims of domestic violence has not been implemented properly, because there is no guarantee of justice provided by the government, law enforcement, social institutions, or the perpetrators. So that the welfare and physical and psychological recovery that should be obtained by victims of domestic violence are difficult to fulfill. As a result, the provision of restitution rights that should be given to victims of domestic violence crimes still has many problems in its implementation.¹⁰

Explaining the vulnerability of criminal acts of domestic violence within the scope of the household, and victims of criminal acts of domestic violence suffer many physical and psychological losses, and many of the law enforcers pay less attention to the losses suffered by victims, because law enforcers pay more attention to the rights of the perpetrators than the rights of victims, so that it is detrimental to victims of criminal acts of domestic violence. With this, victims have the same rights as the perpetrators, so victims of domestic violence are entitled to their rights in the form of restitution whose purpose is to restore victims from the consequences of criminal acts of domestic violence to their original state before experiencing violence within the scope of the household. implementation of restitution for victims of domestic violence through LPSK in Indonesia and the problems of fulfilling restitution for victims of domestic

violence in the Indonesian Criminal Justice System The concept of regulating the Witness and Victim Protection Agency for victims of crime, first of all what is considered is the essence of the losses suffered by victims. It turns out that the essence of the loss is not only material or physical suffering but also psychological, so that this situation traumatizes the victims of criminal acts.¹¹

Furthermore, in Article 98 paragraph 1 of Law Number 8 of 1981 concerning the Criminal Procedure Code, which states as follows: "If an act which forms the basis of an indictment in an examination of a criminal case by the District Court causes harm to another person, then the presiding judge at the request of that person may determine to combine the case for compensation with the criminal case". The explanation of the above article is that if an act that forms the basis of an indictment in a case filed by the public prosecutor in court and causes harm to the victim, then the victim can submit a request for compensation to the public prosecutor and the judge can decide to combine the case of the victim's compensation claim in the criminal case in the trial. Thus, many judges' decisions in the future will not only impose punishment and fines on the perpetrator but also impose restitution on the perpetrator in cases of domestic violence. Investigators and Public Prosecutors are obliged to inform victims about their right to apply for restitution so that victims can exercise their rights to obtain justice. Coordination between various parties including victim advocates, law enforcement officials, social services, health services and other related agencies is important so that maximum punishment can be imposed on the perpetrators of criminal acts to prevent the recurrence of criminal acts of domestic violence against other victims. As well as restoring the dignity of victims as human beings with various rehabilitation programs and providing restitution.

Legal protection to victims of crime as part of protection to the community can be realized in various forms such as through the provision of restitution and compensation, medical services and legal assistance. Law No. 23/2004 on the Elimination of Domestic Violence provides legal protection to victims by providing rights as stipulated in Article 10, namely:¹²

- a. Protection from family, police, prosecutors, courts, advocates, social organizations, or other parties either temporarily or based on the stipulation of a protection order from the court;
- b. Health services in accordance with medical needs;
- c. Special handling related to victim confidentiality;

- d. Assistance by social workers and legal aid at every examination process in accordance with statutory regulations;
- e. Spiritual guidance services.

With the rights of these victims, it is hoped that victims of domestic violence will receive protection from the community and the state so as not to cause prolonged traumatic effects. Because in accordance with the preamble of Law Number 23/2004 on the Elimination of Domestic Violence, that victims of domestic violence, who are mostly women, must receive protection from the community and/or the state in order to avoid and be free from violence and threats of violence, torture, degrading treatment and human dignity.

2. Urgency of Legal Protection for Victims of Domestic Violence through Compensation and Restitution

The interests and needs of victims of domestic violence, the government has sought to implement the recovery of victims of domestic violence by regulating the recovery of victims of domestic violence in Article 39 to Article 43 of the PKDRT Law and Government Regulation of the Republic of Indonesia Number 4 of 2006 concerning the Implementation and Cooperation of the Recovery of Victims of Domestic Violence (PP Number 4 of 2006).

As explained in the explanation of PP No. 4/2006, to further streamline integrated services, this regulation establishes a coordination forum that will coordinate between service officers, as well as develop program plans for improving efforts to recover victims of domestic violence. The coordination forum is established at the Center and in the Regions. The Minister establishes the coordination forum at the central level, while at the regional level it is established by the Governor.¹³

Various forms of violence are known in Indonesian society. Violence is not only found in the public sphere, but also in the domestic sphere. Domestic violence, or domestic violence for short, often victimizes women or couples. Home is supposed to be a place where everyone can find peace, but acts of violence still occur frequently, causing most of the private sector to greatly affect the survival and development of its inhabitants, such as affecting women and children who live there.¹⁴

The phenomenon of domestic violence can be found in almost all households with different degrees of intensity and characteristics. There are families who rarely experience domestic violence, but there are families who experience domestic violence every day. Some experience verbal violence such as yelling and harsh words, but there are also those who experience it in layers. For example, verbal, physical, psychological, economic, social, sexual and even spiritual violence. The occurrence of domestic violence can have cumulative indirect effects such as reducing women's self-confidence, inhibiting women's participation and affecting the mental and physical health of victims.¹⁵

It is very difficult for victims of domestic violence to share or report their suffering to law enforcement, as most victims believe that what happens at home, including abuse by their husbands, is considered a shameful family disgrace that must be covered up. This makes victims of domestic violence only able to remain silent when experiencing it. In addition, in some cases of domestic violence that have occurred, the suspect is the husband, which means that women are vulnerable to domestic violence.

Despite Indonesia's ratification of The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and Law No. 23 of 2004 (abbreviated as PKDRT), the number of domestic violence cases is still high. This Ordinance is expected to provide legal protection for family members, especially women, from all acts of domestic violence. Any form of physical, verbal, psychological or other violence is not justified because it is contrary to the protection and respect for human rights and is a crime against human dignity.

The urgency of such protection is given to witnesses and victims of domestic violence in all stages of the criminal justice process in the judicial environment, namely starting from the process in the police, prosecutor's office, and court. A victim can be defined as someone who suffers physically and mentally as a result of other actions that seek the fulfillment of personal interests or other causes that exist against the human rights interests of other people who suffer.¹⁶ A victim can be defined as someone who suffers physically and mentally as a result of the actions of others who seek the fulfillment of personal interests or other causes that exist against the human rights interests of others who

suffer.¹⁷ The purpose of this Law is to save the victims of domestic violence which is a good progress so that the victims of domestic violence can prosecute and they will feel safer because they are protected by law. The existence of a law is very determining for the realization of a state of legal order, this is very necessary, because the law is the main source of law. Basically, violence against women is any form of behavior carried out by the perpetrator of violence that creates feelings of discomfort and fear, whether physical or non-physical violence. Violence has various forms that can be grouped, such as cases of domestic violence. This form is grouped in a large classification, namely: Violence in the domestic area/personal intimate relationships: Forms of violence where the perpetrator and victim are related to each other; Violence in the public sphere: Forms of violence that occur outside of family or personal relationships; Violence perpetrated by/in the scope of the state: physical, sexual, and psychological violence committed, justified or allowed to occur by the state wherever it occurs.

Article 10 of Law No. 23/2004 on the elimination of domestic violence, provides protection to victims by providing the following rights:

- a. Protection from family, police, prosecutors, advocates, NGOs, social services or other parties either temporarily or based on a court order;
- b. The right according to the needs of the victim to receive health services;
- c. Special handling related to victim confidentiality;
- d. The right to receive legal assistance as well as from social workers (peksos) at each case examination process in accordance with the legislation;
- e. Spiritual guidance services.

The PKDRT Law must be recognized as a progressive breakthrough in the criminal law system, but its implementation is still oriented towards punishing the perpetrators of violence (crime). If the perpetrator is the husband, then the victim (wife) will worry/think again if she wants to continue the complaint/prosecution, again this is due to the unbalanced relationship between husband and wife, and generally accompanied by the wife's economic helplessness. In addition, law enforcement officials still view domestic violence as a complaint offense or family problem, while the complaint offense is only limited to criminal acts of violence in certain articles, namely: physical violence Article 44 paragraph (4) which does not cause illness / in carrying out work / daily activities; psychological violence Article 45 (2) Spousal violence which does not cause illness / hindrance to carrying out work or daily activities; Article 46 concerning forced

sexual intercourse. Meanwhile, those that are not included in the three articles above are ordinary offenses, meaning that the victim cannot withdraw the complaint. However, the fact that often happens is that the perspective of law enforcement suggests family deliberation, here the position of the victim becomes weak; on the other hand, the complexity in this case is that often the victim does not even feel that he has become a victim.

CONCLUSION

Legal protection to victims of crime as part of protection to the community can be realized in various forms such as through the provision of restitution and compensation, medical services and legal assistance. provide legal protection to victims by providing rights as stipulated in Article 10, namely: Protection from family, police, prosecutors, courts, advocates, social institutions, or other parties either temporarily or based on the determination of a protection order from the court; Health services in accordance with medical needs; Special handling related to victim confidentiality; Assistance by social workers and legal aid at every examination process in accordance with statutory regulations; Spiritual guidance services. The existence of these victims' rights, it is hoped that victims of domestic violence will receive protection from the community and the state so that it does not result in a prolonged traumatic impact, that victims of domestic violence, most of whom are women, must receive protection from the community and / or the state in order to avoid and be free from violence and threats of violence, torture, treatment that degrades human dignity.

Cases of domestic violence can attract the attention of the wider community and cause reactions from various parties, this is because domestic violence is indeed a case that requires special handling from the authorities. Because domestic violence is a type of violence that has unique characteristics, namely that it is carried out in the home, the perpetrators and victims are family members and is often considered not a form of violence. Law No. 23/2004 on the Elimination of Domestic Violence provides a strong legal basis that makes domestic violence, which was originally a household affair, a State affair. However, domestic violence is a violation of human rights and a crime against human dignity and is a form of discrimination. Domestic violence is gender-based violence that occurs in the personal sphere and requires legal protection for victims.

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