



Legal Protection Construction For Wives As Victims Of Bullying In Domestic Violence Crimes

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Abstract— This article discusses the legal issues of domestic violence, specifically focusing on the inadequacy of Law No. 23 Year 2004 in providing comprehensive legal protection for wives who are victims of domestic violence. The purpose of writing this article is to analyze criminal policy formulation to ensure justice for victims. This research uses a normative juridical approach, examining legal principles, regulations, and doctrines related to the protection of women from domestic violence, with an emphasis on analyzing legislation, particularly Law No. 23 of 2004. The findings revealed several shortcomings in the law, including alternative sentencing that can result in lenient sentences, lack of specification of minimum sentences, and inadequate coverage for unofficial marriages. These gaps contribute to victims' reluctance to report incidents and result in inconsistent legal protection. This study underscores the need for amendments to the law to address these shortcomings and improve law enforcement, ensuring justice and safety for victims of domestic violence.

Keyword: Domestic Violence, Legal Protection, Bullying, Criminal Policy

I. INTRODUCTION

Bullying is now a common phenomena both in Indonesia and abroad. It is witnessed anywhere. Bullying happens whether in an informal environment covering family environments; a formal environment including educational institutions, offices, and public organizations; as well as a non-formal environment embracing daily routines. Bullying occurs when someone regularly becomes the target of negative actions either from an individual or a group of people. Bullying happens to not only children but also adults.[1] Making fun of, threatening, criticizing, hitting, and robbing, done by one or more perpetrators to their victim are considered bullying.

Recently, bullying has become widespread that it even happens between spouse. This bullying triggers domestic violence crime comprising physical, psychological, sexual and financial violence or neglect. The violences result in physical wound, emotional trauma, depression, anxiety, and other mental health issues. The data shown by the ministry as well as law enforcement agencies such as the police and prosecutor's office also indicate a high number of cases of domestic violence. According to records from the Online Information System for Women and Child Protection (Simfoni PPPA) from 2022 to June 2023, there were 15,921 reported cases of violence against women, involving 16,275 victims. Based on the type of violence, the cases with the highest number of adult female victims are physical violence (7,940 cases), psychological violence (6,576 cases), sexual violence (2,948 cases), and neglect (2,199 cases).

In 2022, a total of 457,895 cases of violence against women were reported. These cases predominantly took place in private settings, with domestic violence, often perpetrated by husbands or

fathers, being the most prevalent form. Data from women's advocacy organizations aligns with law enforcement reports, which consistently highlight the alarming frequency of domestic violence incidents. The most frequently reported forms of domestic violence include physical, psychological, and sexual abuse, as well as instances of forced sexual intercourse and domestic neglect. As of July 2023, the National Police Headquarters recorded 2,261 cases, with 1,848 involving physical violence, 217 involving domestic neglect, and 133 involving psychological abuse, as well as sexual violence and forced sexual intercourse cases.

Acts of violence are often linked to bullying, especially when the perpetrator uses intimidation tactics against the victim. In the context of domestic relationships, bullying can occur during conflicts, involving threatening language and hurtful words that not only offend but also cause fear, leading to psychological abuse. Such behavior is classified as bullying under Law No. 23/2004, known as the Domestic Violence Law. This includes any actions directed towards individuals, especially women, resulting in physical, sexual, psychological, and/or household neglect. Such behavior causes suffering for the victim and may involve threats, coercion, or the unlawful deprivation of freedom within the household.

The most “horrible” effect of bullying is a suicidal desire, specifically on those who are regularly or physically bullied. A physical bullying is marked by several signs, one of which is bruising. Besides physical bullying, there is also verbal bullying which is difficult to identify since there are no visible evidences. However, even if there are no visible evidences, this verbal bullying also threatens the victim as it affects the psychological state that may also trigger suicidal desire.

In order to ensure proper legal protection for victims of spousal abuse, it is imperative to establish legal safeguards. Legal protection is a fundamental right guaranteed by the state, rooted in the recognition and preservation of human dignity and integrity. Domestic Violence Law serves as a crucial legal framework for preventing domestic violence and protecting victims, while upholding the integrity and harmony of the family.

The Domestic Violence Law ensures that all citizens have the right to be safe and free from various forms of violence, in line with the values of Pancasila and the constitution of the Republic of Indonesia. The main objective of this law is to eliminate physical and psychological violence in the household, as well as promote equality between men and women. Maintaining balanced relationships between partners, children, and parents, as well as within the nuclear family and those connected to the family in any way, is crucial in preventing individuals from experiencing violence.

In its recent development, the empirical evidences show that physical, psychological, sexual violence, and household neglect frequently happen. The violences are directly recognized through print or electronic media. The empirical evidences illustrate the gap between law in books & law in action that all parties should find the solutions through scientific studies. Several weaknesses are also present in the Domestic Violence Law. The law includes alternative punishments, which might lead to confusion. Perpetrators of bullying could choose to pay a fine instead of facing legal consequences. Furthermore, the law does not specify minimum punishments, causing uncertainty. This can result in lenient penalties for serious actions, making victims hesitate to report bullying. Additionally, the law does not clearly address bullying by a spouse in domestic violence cases.

Drawing from this context, the author aims to compile this article to analyze the development of criminal policy for the purpose of ensuring full justice for wives who are victims of domestic violence. The identification of the objectives of punishment can serve as the foundation for establishing the methods, resources, or measures to be employed in addressing domestic violence offenses.

II. LITERATURE REVIEW

A. Legal Construction in Legal Protection Theory

Construction or argumentation is also known as judicial reasoning or rendering. This type of method is employed where the law is incomplete, that therefore, construction or argumentation methods are used to complete it. The legal construction aims to form a decision or ruling based on concrete events that can meet the demands of justice and benefit seekers of justice.

A legal construction must also have an aesthetic element, showing that it is not something artificially created. Moreover, it must provide a vivid illustration that it should be simple and understandable. Sidarta in Bambang Sutiyo outlines six main steps of judicial reasoning: (a) identifying facts to create a case structure, (b) connecting the case structure with legal sources, (c) selecting relevant legal sources and rules to ascertain underlying policies, (d) linking the rule structure with the case structure, (e) exploring resolution alternatives, and (f) deciding on one alternative as the final decision.[2]

Legal construction and legal interpretation have different meanings, although both are activities. The difference is that interpretation is an effort to explore the semantic meaning of the use of certain phrases in context, while construction is interpreted as an effort to use that meaning in certain factual situations and conditions.[3]

Fitzgerald discusses Salmond's legal protection law, which is designed to harmonize and synchronize the diverse interests present in a society. This goal is pursued by placing limitations on the interests of other parties. Legal protection encompasses the management of human rights and interests, with the law serving as the ultimate authority for regulating and safeguarding these interests. The foundation of this legal safeguarding stems from the provisions and regulations collectively endorsed by society to govern the behavioral interactions among members of society as well as between individuals and the government.[4]

Legal protection is one of the main concepts in the rule of law, where legal protection must be based on the applicable legal rules. Legal protection is of two types: preventive and repressive. Preventive protection encourages careful government decision-making to prevent violations, while repressive protection resolves disputes through sanctions against violations.[5]

B. Bullying and Domestic Violence Crime

Bullying, conceptually, is humans' actions or behaviors, carried out individually or collectively, which involve repeated physical, psychological, social, or verbal attacks which is conducted in a position of power that is situationally defined for their own benefit or satisfaction.[6] Bullying is considered psychological violence as it, although indirectly, affects the mental of those being bullied. Bullying is a conscious, intentional activity aimed at using further aggressive threats and creating terror based on an imbalance of power, the intention to harm, further aggressive threats, and terror, which can occur when oppression relentlessly increases.[7]

Bullying is surely disconcerting because of its negative effects. It is a social issue and is often faced by children at school, as it is known that the phenomenon of bullying can happen to anyone.

Bullying behavior commonly seen in schools and communities includes forcefully demanding things from weaker peers and often involves physical violence like hitting or kicking.[8] Bullying negatively affects the children's physical and mental health. Moreover, in severe cases, bullying can be a trigger for fatal actions, even leading to loss of life. Considering its severe effects, bullying is a serious issue. Children who are bullied seem to be able to handle the bully, but appropriate assistance and handling are absolutely required.[9]

Bullying can also occur within the household and is considered domestic violence. Domestic violence is one of the various criminal acts identified in society. One of the most common forms is violence committed by a husband against his wife. Such violence, especially against wives, is often encountered and the numbers are quite significant. In Herkutanto's perspective, domestic violence is defined as an act or behavior carried out with a specific intention that has adverse effects on women physically or psychologically. Mansour Fakih defines violence as an attack on someone physically or mentally. Domestic violence, especially against wives, occurs frequently and often in sizable numbers. However, few of these incidents are properly resolved. This is because there is still an assumption in society that domestic violence is a private matter or a family disgrace that is very inappropriate to be revealed and become public consumption.

Article 1 paragraph (1) of the Domestic Violence Law states that an act is said to be domestic violence when it causes suffering both physical and psychological, sexual, domestic neglect including threats, coercion, or unlawful deprivation of independence in the context of the household. Generally, these acts are committed against women.

III. METHOD

The research methodology employs a normative juridical approach, conducting a thorough examination of legal principles and regulations related to the legal protection of women who are victims of bullying in domestic violence cases. This approach involves a systematic review of laws, doctrines, and applicable regulations to identify deficiencies accurately, propose legal amendments, and offer valuable insights to improve law enforcement in specific contexts. Furthermore, the research includes a literature review and applies a normative juridical perspective to assess the regulatory framework concerning legal protection for women. The analysis encompasses relevant legislative regulations, including Law No. 23 of 2004, with a particular emphasis on establishing legal protection to ensure justice for victims of domestic violence crimes.

IV. RESULT AND DISCUSSION

The Domestic Violence Law emphasizes the importance of integrity and harmony within the household to ensure happiness, security, tranquility, and peace for every individual. The law is based on the belief that the Republic of Indonesia is a state that depends on the Almighty God, as guaranteed by Article 29 of the 1945 Constitution of the Republic of Indonesia. It stresses the fulfillment of rights and obligations based on religious values for every person within the household in order to strengthen its integrity. The text also highlights that the quality and self-control of an individual are crucial for maintaining the household's harmony, as their absence can lead to domestic violence, causing insecurity and injustice for the household members.[10]

The state and society have a very important responsibility to prevent and protect victims of domestic violence and take effective action against perpetrators. This responsibility is in line with the basic values of Pancasila and the Constitution of the Republic of Indonesia. All forms of violence, including domestic violence, are expressly recognized as violations of human rights and crimes against human dignity, and are also considered a form of discrimination.[11] Article 28G paragraph (1) of the 1945 Constitution, states the right of every person to protection of self and family, including the honor and dignity of himself and his family, as well as property. In addition, the right to security from threats and intimidation is a fundamental right. In addition, Article 28H paragraph (2) emphasizes the right to special treatment in order to achieve equality and justice.

The protection of victims in the criminal justice system depends on the specific laws in place. Currently, existing criminal laws tend to provide only indirect protection for victims' legal rights and interests. This indirect protection is a result of various formulations of criminal acts in legislation.[12]

The Domestic Violence Law provides protection for victims. Article 44 outlines the penalties for perpetrators of physical domestic violence with imprisonment of up to 5 years or a fine of up to 15 million rupiah. Penalties become more severe if the victim suffers serious illness or injury, with imprisonment of up to 10 years or a fine of up to 30 million rupiah. If the physical violence is committed by a spouse without causing illness or hindrance to daily activities, the perpetrator can be sentenced to up to 4 months' imprisonment or a fine of up to IDR 5 million. It is important to note that a complaint must be made for the crime of physical violence.

Anyone who commits sexual violence can be imprisoned for up to 12 years, or receive a fine of up to 36 million rupiah. If someone forces a household member to have sexual intercourse, they can be imprisoned for 4 to 15 years or fined at least 12 million rupiah. If the perpetrator is a spouse, a complaint is required.

If the act results in the victim receiving incurable injuries, causing mental disorders for at least 4 weeks continuously or for 1 year uninterruptedly, the death of the fetus in the womb, or resulting in disruption of the function of the reproductive organs, then the perpetrator is punishable with 5-20 years imprisonment and a fine of at least 25 million rupiah. Victims of domestic violence can pursue legal remedies through civil and marital law. Civil remedies can be pursued by filing a lawsuit based on Article 1365 on Unlawful Acts. Legal remedies through marital law can refer to the provisions of Article 24 of Law No. 1 Year 1974 Paragraphs (1) and (2).

The PKDRT Law not only includes protection for victims, but also guarantees their safety by offering medical treatment, temporary shelter (safe house), and the opportunity to claim compensation. Compensation is regulated in Articles 98-101 of Law No. 8/1981. In addition to protecting the rights of suspects or defendants, KUHAP also regulates the rights of victims of crime who have suffered losses. The KUHAP aims to reveal the truth for the establishment of justice for the sake of public peace, while maintaining the continuity of substantive criminal law and ensuring order and public interest. To speed up the process of claiming compensation for damages caused by the defendant's actions, KUHAP combines criminal cases and compensation claims, which are basically civil cases. [13]

If a criminal action causes losses to another person, the judge in a District Court can decide to combine the compensation claim case with the criminal case, based on Article 98 paragraph (1) of the Criminal Procedure Code (KUHAP). The "other party" mentioned is the victim of the crime who suffers due to the perpetrator's actions. Articles 99-101 of KUHAP also show concern for the victim's well-being. While there are laws in place to protect victims of violence, the actual implementation and enforcement of these laws depend on how they are applied and enforced. Victims who suffer losses must be aware of their rights within the legal system.

Victims of violence and threats of violence within the context of households are given special

guarantees to receive protection, whether temporary or based on court decisions. One form of protection provided is the provision of a special place called a "safe house" for victims to stay temporarily.

Domestic Violence (KDRT) is typically perpetrated by young, unemployed men who are not in lawful marriages, may have experienced domestic violence in childhood, and may have psychiatric issues ranging from depression to substance abuse. Other factors to consider regarding the potential for KDRT include drug and alcohol problems, stressful situations, and depression. Many perpetrators of KDRT commit violence under the influence of alcohol, although perpetrators who commit violence while sober are also quite significant. Perpetrators of KDRT can be classified into three types: (1) Perpetrators with cyclical emotional instability, who are emotionally dependent on their partners. They exhibit patterns of escalating emotions that culminate in aggression towards their partners. Violence begins with psychological abuse and may escalate to serious physical violence. (2) Perpetrators who are overly controlled, who tend more towards psychological control than physical violence. (3) Psychopathic perpetrators, who lack empathy or remorse and are often involved in violence between men and other criminal behaviors.[14]

In daily life, there has been an increase in violence directed towards women, including sexual violence, rape, and sexual harassment, with women being the majority of victims. This violence is considered gender-based, reflecting the imbalance of power between men and women, and ultimately leading to the subordination of women.[15]

Violence against women persists, both in domestic and public spheres, and there may still be unreported cases (dark numbers), even though the government has guaranteed women's rights through various legal instruments. However, the Law on the Elimination of Domestic Violence (UU PKDRT) does not automatically ensure that victims of domestic violence will utilize it. Social and cultural values often turn personal issues into public problems, which then become barriers for victims to bring their cases to court. Cases of domestic violence involve relationships between individuals who know each other, are considered private matters, and are often associated with economic dependency, future prospects, and child status, all of which are reasons for victims to conceal their domestic violence cases.

Domestic violence has characteristic traits and characteristics depending on the relationship between the perpetrator and the victim, the location of the incident, and its resolution. Like an iceberg, recorded violence data is much less than actual cases because not all women who experience it are willing to report the cases. Many of them choose to keep the issue hidden to maintain their family's reputation. Victims of domestic violence, mostly women and often in lower positions, tend to hesitate to report the violence they experience. They require great courage to report their husbands' misconduct, often thinking multiple times before taking action. Emotional pressure and economic dependence are often the main reasons for not reporting such violence.

According to the legal provisions in Indonesia, the status of a legitimate husband/wife refers to Law No. 1 of 1974 on Marriage, which stipulates that such status is considered valid if it has been registered in the civil registry or the Office of Religious Affairs (KUA). Therefore, if a husband/wife is not registered in the civil registry/KUA and experiences domestic violence, Law No. 23 of 2004 cannot provide protection, and the alternative is to use articles from the Criminal Code (KUHP). Cases of domestic violence often face obstacles in their processes due to the status of the reporter or victim. One status of the victim that hinders the domestic violence legal process is marital status. In cases of unofficial marriages or customary/church marriages, the police require evidence from the civil registry or KUA. In such situations, the Law on the Elimination of Domestic Violence (UU PKDRT) cannot cover perpetrators because the definition of "husband" or "wife" in the UU PKDRT only applies to those who are officially registered in the civil registry or KUA.[16]

Initially, the UU PKDRT was created due to limitations in legal instruments, especially the Criminal Code, in handling domestic violence issues, particularly in terms of temporary protection procedures and determining protection for victims. Protection for domestic violence victims is crucial for addressing complex domestic violence issues, thus requiring new legal instruments specifically for that purpose. Although the UU PKDRT is expected to provide more specific protection for women as victims, the reality has not shown optimal results, especially in the constraints faced during the initial examination phase. One phenomenon is the difficulties encountered by the police in implementing temporary protection procedures and determining protection for victims, as regulated in Articles 16 to 38 of the Law on the Elimination of Domestic Violence (UUPKDRT).

Articles 5 to 9 of the Domestic Violence Law address regulations relating to domestic violence. This law prohibits acts of domestic violence against household members, which include physical, psychological, sexual violence, or neglect of household responsibilities. Physical violence is defined as acts that result in serious pain, illness, or injury. In addition, this law links domestic violence to gender-

based violence and discrimination, emphasizing that violence, especially domestic violence, violates human rights, is a violation of human dignity, and is a form of discrimination. This perspective is consistent with the Constitution, which upholds the right of all individuals to equal opportunity and fair treatment in the pursuit of equality and justice.

Article 7 defines psychological violence as any behavior that causes fear, diminished self-confidence, loss of capacity to act, feelings of helplessness, and/or severe psychological distress in an individual, as set out in section 5, paragraph b. Section 8 details sexual violence, as outlined in section 5, paragraph c, including: (a) compelling sexual relations with household members, and (b) compelling sexual relations with a household member for commercial or specific purposes. Section 9 states that neglecting household members, by failing to provide necessary living conditions, care, or maintenance as required by law or agreement, and by preventing or limiting their access to suitable work, is prohibited. The law also stipulates that physical, psychological, and sexual violence committed by one spouse against the other or vice versa are prosecutable offenses under sections 51, 52, and 53.

V. CONCLUSION

Legal protection against domestic violence according to the Law on the Elimination of Domestic Violence (UU PKDRT) encompasses three aspects: preventive, repressive, and responsive. This violence is often referred to as a hidden crime because both perpetrators and victims tend to conceal such incidents from the public. It is sometimes also referred to as domestic violence because it occurs within the household environment. Although violence against women has been historically recognized, in the past it was not considered a social and legal issue. Traditional violent crimes were seen as harmful and unacceptable acts, such as various forms of abuse. Some time ago, such acts were not included in criminal regulations, so perpetrators often felt that they were not committing a crime. It is important for society to realize that changes and social conditions can turn an action into a threat to society, thus eventually considering it a criminal act.

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