

DOMESTIC VIOLENCE BASED ON LAW NO. 23 OF 2004 CONCERNING THE ELIMINATION OF DOMESTIC VIOLENCE

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ABSTRACT

Domestic Violence is a classic problem in the world of law and gender. Even though the legal umbrella to protect victims from domestic violence already exists, namely Law Number 23 of 2004 concerning the Elimination of Domestic Violence, this has not been enough to anticipate this violence, in this case, the need for legal attention and protection from both the government, law enforcement officials, as well as from the community so that it is hoped that everyone who hears, sees, or knows about the occurrence of domestic violence is obliged to take preventive measures and provide assistance. Actually, what are the causes and what kind of protection is there for women victims of crimes of domestic violence regulated in Indonesian positive law? From this background, several problems can be raised, namely: against women victims of domestic violence and efforts to overcome them. Discussion of these issues requires research methods, while the research methods used include: approach methods, research specifications, types and sources of data, data collection methods, and data analysis methods. Based on the research above, the following results and conclusions can be obtained: legal protection for women victims of criminal acts of domestic violence has been regulated in Law No. 23 of 2004 concerning the Elimination of Domestic Violence.

Keywords: *no action criminal, domestic violence, law*

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INTRODUCTION

The problem of violence (especially at home) is a type of crime that disturbs and demeans human dignity and can be categorized as a type of crime against humanitarian law (Friedman, 1999). However, because of that, not all crimes contain elements of violence (Oktoberina & Savitri, 2008). It can be said that all acts of violence are included in crimes. Violence in society is nothing new. Sharing views, perceptions, and definitions regarding domestic violence develops in society. In general, people think that domestic violence is a family and internal problem (Dewi & Fatahillah, 2011).

Domestic violence is nothing new. However, until now it has always been kept secret or hidden from the family, or by the victims themselves or their families. Domestic violence contains something specific or specific. In particular, it lies in the relationship between the perpetrator and the victim, namely family relations or work relations (employers and household helpers). Domestic Violence can happen to anyone, including husbands, wives, and children. we will only discuss the general definition of Domestic Violence which is narrowed down to abuse by a husband towards a wife. This is understandable because most of the victims of Domestic Violence are wives. if we look further, there are many unhappy families, the household is always blown by a storm of bickering and bickering. In a situation like this, any wife will not be comfortable living his life. In RI Law no. 23 of 2004 concerning domestic violence, where most women are required to receive protection from the state and/or society to avoid and be free from violence or threats of violence, torture, or abuse of human dignity (Tanya et al., 2010). The problem of domestic violence is generally very close to women's

lack of access to economic resources (financial capital and immovable objects such as land, and other sources of welfare), age, education, religion and ethnicity.

Violence in household (domestic violence) for women is also multi-layered. This means that the types of violence experienced by women can be more than one type of physical, psychological, sexual and economic violence. Then domestic violence in the household is any act against someone, especially women that causes physical misery or suffering, sexual, psychological negligence, and/or neglect of the household including threats to act, coercion or deprivation of liberty; against the law within the household sphere (Oktrina, 2023). On the other hand, the perpetrators of Domestic Violence in the application of criminal sanctions still often occur dualism in the application of sentencing provisions (Arief, 2010). This dualism occurs, namely with the enactment of Law No. 23 of 2004 concerning the Elimination of Domestic Violence it turns out that the rules in the Criminal Code still apply (Sjarief, 2020). Violence against women according to the UN in its statement on the elimination of violence against women, violence against women is any form of gender-based violence that causes pain or suffering to women physically, sexually, psychologically, including threats of restrictions on freedom, coercion, in public or at home. Violence against women is an act or attitude that fulfills its purpose to hurt the wife both physically and psychologically. Another important point is that an accidental incident is not categorized as violence even though it causes harm to women (Herkutanto, 2009).

Domestic Violence, especially violence against wives, is one of the causes of chaos in society. Various research findings show that wife abuse does not stop at the suffering of the wife or children, a series of suffering will spread outside the home environment and consequently color the lives of our society. According to the Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence, Domestic Violence is any act against a person, especially women, that causes physical, sexual or psychological misery or suffering, or neglect of the household, including things that cause fear, loss of self-confidence, loss of ability to act, distrust, or severe psychological suffering to a person. This law also does not aim to encourage divorce (Sururie & Susanto, 2020), as people are often accused of.

The Law on the Elimination of Domestic Violence aims to maintain the integrity of a harmonious and prosperous household by stopping all types of violence in protecting victims and taking action against perpetrators of domestic violence. Domestic violence is a violation of human rights and a violation of human dignity as well as forms of discrimination that must be eliminated. This law is a guarantee given by the state to prevent domestic violence, take action against perpetrators of Domestic Violence, and protect victims of Domestic Violence. Types of violence can be psychological violence, this type of action is difficult to define because the sensitivity of a person's emotions varies greatly. In a household this can be in the form of: not giving the wife an atmosphere of affection so that her emotional needs are met. This is important for developing one's mental identity. Psychological violence is more difficult to measure than physical violence. Neglect of women, is ignoring providing the necessities of life for dependents of other parties, especially in the household environment. Physical Violence, if treatment is found not because of accident for women. Such treatment can result from a single or repeated episode of violence, from mild to fatal. Sexual violation, any sexual activity committed by an adult or a woman. This sexual violation can be committed by

coercion or without coercion. Sexual violations with elements of coercion will result in injuries related to deep trauma for women.

Broadly speaking, the factors that lead to domestic violence can be formulated into two, namely external factors and internal factors. One indication of social problems that have a negative impact on the family is violence that occurs within a family, in almost all forms of domestic violence committed by men such as wife beating, family rape and so on, these are rarely the subject of news. the public because it is considered not a problem, something that is taboo or inappropriate to be discussed by victims, from various types of violence which are generally women, more specifically wives tend to be quiet because they feel worthless. Victims are usually embarrassed and don't even dare to tell others about their situation.

The impact of violence experienced by wives can have psychological consequences such as anxiety, depression, stress, low self-esteem, loss of husband's trust, self-blame, etc. Physical consequences such as bruises, broken bones, physical disabilities, menstrual disorders, uterine damage, miscarriage, contracting infectious diseases, psychomatic and even death. Being a victim of domestic violence is not limited to the wife, but also the children. Children can experience abuse directly or feel the suffering experienced by their mothers, at least half of the children also experience cruel treatment. Most were physically abused, some emotionally and sexually.

Witnessing violence is a very traumatic experience for children, they are often speechless, scared, and unable to do anything when the father tortures the mother, some try to stop the father's actions or ask for help from others. According to data collected from around the world the children who finally grew up killed their fathers after years of not being able to help their mothers. Domestic violence is a lesson to children that cruelty in the form of abuse is a natural part of life. Children will learn that the way to deal with pressure is to use violence. Children will learn that the way to deal with pressure is to use violence.

Using violence to solve children's problems is normal and fine. Domestic violence teaches boys a lesson not to respect women. Based on the legal function, both as social media engineering, as a means of social control, then every regulation that regulates revenge is created to work according to its aims and objectives. Members of the community (individuals) as parties proposed by the mandatory regulation with an open heart and full understanding of the law. There are regulations and legal institutions and law enforcement officials who have the necessary facilities and equipment without being supported by the awareness of citizens as individual members of society, therefore it is likely that the law will face many obstacles in its implementation because individual behavior varies. How to apply Law against T act Domestic violence crime.

METHOD

Research is a scientific activity related to analysis and construction which is determined methodologically, systematically and consistently. Methodology means according to a certain method or method, systematic is based on a system, while being consistent means that there are no contradictory things within a certain framework. To analyze the questions posed, this study uses normative legal research, namely a way of writing based on an analysis of several legal principles and legal theories as well as laws and regulations that are appropriate and related to problems in legal research writing. This normative legal research is a procedure to

find the truth based on the scientific logic of law from a normative perspective. The approach taken is a statutory approach (statute approach) and case approach (case approaches) (Diantha & SH, 2016) (Rifa'i, 2023).

Research using the statute approach is research that prioritizes legal materials in the form of laws and regulations as a basic reference material in conducting research. The statutory approach (statute approach) is usually used to examine laws and regulations which in their normalization still lack or even foster deviant practices both at the technical level and in practice in the field. This approach is carried out by examining all laws and regulations that are related to the problems (legal issues) that are being faced.

This statutory approach, for example, is carried out by studying the consistency or conformity between the Constitution and laws, or between one law and another law. Research using case. The approach is carried out by examining cases related to the legal issues at hand. The cases reviewed are cases that have obtained court decisions with permanent legal force. The main thing that is examined in each of these decisions is the consideration of the judge to arrive at a decision so that it can be used as an argument in solving the legal issues at hand.

RESULTS AND DISCUSSION

A. Application of the Principles of Justice for Crimes of Domestic Violence Based on Law Number 23 of 2004 concerning the Elimination of Domestic Violence

Law No. 23 of 2004 concerning the Elimination of Domestic Violence emerged starting from Domestic Violence, one of which was triggered by a settlement in the form of violence/beating the wife which left physical scars. Law No. 23 of 2004 concerning the Elimination of Domestic Violence aims to protect the rights of victims of violence, especially women. In addition, Law no. 23 of 2004 concerning the Elimination of Domestic Violence indirectly discusses private problems, especially household problems which previously were not touched upon at all by the criminal law (Rodliyah, 2017).

Seeing the provisions of Law No. 23 of 2004 concerning the Elimination of Domestic Violence which regulates the protection of the rights of victims of domestic violence, shows that the government has implemented the principle of justice by imposing criminal provisions on perpetrators of domestic violence (Philipus, 1987). According to the author, the principle of justice is in the same condition between family members, both wife and husband, so that family members cannot be arbitrary. Based on this, what are the parameters for the accommodation of the principle of justice in Law no. 23 of 2004 concerning the Elimination of Domestic Violence. According to the author as expressed by Plato, Bernard L. Tanya, 2010: 53). Accommodation of the principle or principle of justice for crimes of domestic violence seen at the start of the drafting of Law No. 23 of 2004 concerning the Elimination of Domestic Violence which must be fulfilled 4 (four) conditions, namely:

1. Equality or similarities, implies that the circumstances are the same or people who are in the same circumstances. In the principle of 'equality' it is not permissible for either husband or wife to commit violence in the household. This is as stated in Article 3 of Law no. 23 of 2004 concerning the Elimination of Domestic Violence Ladder that states: "The elimination of domestic violence is carried out based on the principles of:
 - a. respect for human rights;
 - b. justice and gender equality;

- c. non-discrimination; And
- d. victim protection.”

Apart from that, in Article 5 of Law no. 23 of 2004 concerning the Elimination of Domestic Violence states: "Everyone is prohibited from committing domestic violence against people within the scope of his household, by:

- a. physical abuse;
- b. psychological violence;
- c. sexual violence; or
- d. domestic abandonment."

Violation of these provisions is regulated in Article 44 of Law no. 23 of 2004 regarding the Elimination of Domestic Violence, which carries a maximum penalty of 15 (fifteen) years in prison or a maximum fine of Rp. 45,000,000.00 (forty-five million rupiah), where this provision can be made based on reports from victims of domestic violence or commonly referred to as complaint offenses. Based on this, both husband and wife have the same protection and legal consequences when one of them commits domestic violence.

- 2. Certainty or legal certainty, is the goal of every law.

Legal certainty is a guarantee given by the State regarding the rights and obligations of every legal subject, through statutory regulations in which there are no conflicting statements (contradictions or inconsistencies), both vertically and horizontally and there are no understandings or terms that can be interpreted differently, so that each legal subject will obtain the desired legal effect in a particular legal event (Setiadi & SH, 2017). In Law no. 23 of 2004 concerning the Elimination of Domestic Violence which is good can always provide legal certainty to everyone in the household, what their rights and obligations are, who is the subject and object. In the criminal provisions of Law no. 23 of 2004 concerning the Elimination of Domestic Violence, it is known that in general, cases of domestic violence are complaint offenses.

This is because the legislators, namely the DPR and the government, wish that criminal sanctions are a last resort (ultimatum remedium) if peace cannot be carried out, so that a "balanced crime" is created, namely taking action against perpetrators of domestic violence on the one hand, but at the same time wanting to maintain the integrity household (Nuryasva & Jadidah, 2022). This is in accordance with the Considerations of Law no. 23 of 2004 concerning the Elimination of Domestic Violence, it is stated regarding the rights of every person, that every citizen has the right to feel safe and free from all forms of violence in accordance with the Pancasila philosophy and the 1945 Constitution of the Republic of Indonesia, so that all forms of violence, especially violence in the household, is a violation of human rights and a crime against human dignity as well as a form of discrimination.

- 3. Arrangement or arrangement, implies that Law No. 23 of 2004 concerning the Elimination of Domestic Violence

The household has properly regulated the perpetrators of domestic violence regarding the legal consequences of committing acts of domestic violence. The purpose of this arrangement is as an effort to create legal certainty.

4. Implementation or implementation, means that in every case handling of domestic violence always follows the mandate in Law no. 23 of 2004 concerning Elimination of Domestic Violence.

The aspect of justice in the formation of laws in general must underlie every formulation of applicable statutory provisions. In this case, the principle of justice is reflected in the principle of equal treatment in law (*het rechtgelijkheidsbeginsel*) which is one of the five material principles that must be met by laws and regulations as stated by Van der Vlies. IC vans order Vlies said the principles for forming legislation can be divided into two, namely formal principles and material principles. Formal principles include:

- a. The principle of clear goals (*beginsel vans duetlijke doelstelling*);
- b. The principle of the right organ / institution (*beginsel vans hey juiste organ*);
- c. Principles need regulation (*het noodzakelijkheids beginsel*);
- d. The principle can be implemented (*het beginsel vans uitvoorbaarheid*);
- e. Consensus principle (*het beginsel vans consensus*). (*ibid.*)

In principle material is as follows:

- a. correct terminology and systematics (*het beginsel vans Uangelike terminology en Uangelike systematic*),
- b. Recognizable principles (*het beginsel vans de Kenbaarheid*);
- c. The principle of equal treatment in law (*het rechsgelijkheids beginsel*);
- d. The principle of legal certainty (*het rechtszekerheidsbeginsel*);
- e. The principle of law enforcement according to individual circumstances (*het beginsel vans de individuale rechtsbedeling*).

In addition to the formulation of the regulations, the accommodation of the principles of justice is also considered important when handling cases of domestic violence itself. According to the author, regulation of domestic violence must be able to provide legal guarantees for achieving justice, and this guarantee is given to parties involved in cases of domestic violence, both committed by husbands and wives.

The author is of the opinion that in order to fulfill the principle of justice, the handling of cases of domestic violence must apply a general and equitable implementation pattern. This means that all perpetrators and victims of domestic violence, both husbands and wives, have the same rights and obligations without any gender differences. However, there are weaknesses in Law no. 23 of 2004 concerning the Elimination of Domestic Violence, namely that there is no regulation regarding granting restitution to victims of domestic violence and imposing restitutorial sanctions on perpetrators of domestic violence.

This results in injustice for victims of domestic violence, where in addition to bearing the burden of suffering psychologically, victims of domestic violence also bear material burdens, because the costs of treating and recovering victims usually require a lot of money, especially if the victim is mentally disturbed. Even though Law No. 23 of 2004 concerning the Elimination of Domestic Violence does not explicitly regulate the provision of restitution to victims of domestic violence, however, there are several laws and regulations that regulate the provision of restitution to victims of domestic violence such as Law Number 31 of 2014 concerning Amendments to the Law Number 13 of 2006 Concerning the Protection of Witnesses and Victims which gives authority to the LPSK to facilitate

victims of domestic violence to obtain restitution from perpetrators of domestic violence, and if the victims of domestic violence are children, then the arrangement can be made based on Law Number 17 of 2016 concerning the Second Amendment Based on Law Number 23 of 2002 concerning Child Protection.

CONCLUSION

The application of the principle of justice to crimes of domestic violence based on Law Number 23 of 2004 concerning the Elimination of Domestic Violence must fulfill 4 (four) conditions, namely equality or the similarity of both husband and wife having the same protection and legal consequences when one of them commits domestic violence. The second is certainty or legal certainty for everyone in the household, what their rights and obligations are, who is the subject and object. The third is an arrangement or good arrangement for perpetrators of domestic violence related to legal consequences for acts of committing domestic violence. Fourth, implementation or implementation in handling cases of domestic violence always follows the mandate in Law no. 23 of 2004 concerning the Elimination of Domestic Violence. However, there are weaknesses in Law no. 23 of 2004 concerning the Elimination of Domestic Violence, namely that there is no regulation regarding granting restitution to victims of domestic violence and imposing restitutorial sanctions on perpetrators of domestic violence, resulting in injustice for victims of domestic violence, where apart from bearing the burden of suffering psychologically, victims of domestic violence also bear material burdens.

There should be related regulations granting restitution to victims of domestic violence and imposing restitutorial sanctions on perpetrators of domestic violence, resulting in injustice for victims of domestic violence, where apart from bearing the burden of suffering psychologically, victims of domestic violence also bear material burdens.

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