

LEGAL PROTECTION OF WOMEN AS VICTIMS OF DOMESTIC VIOLENCE IN EAST LUWU DISTRICT INDONESIA

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Legal protection research on women as victims of domestic violence in Indonesia aims to identify and analyze legal protection efforts against women as victims of domestic violence, know the constraints of law enforcement on women as victims of domestic violence, and analyze legal protection solutions to women as victims of domestic violence.

The method used was empirical approach method. Legal materials used were primary and secondary data, Respondents were victims of domestic violence, police, prosecutors and judges with non-random sampling technique. Primary data were obtained by conducting interviews with freely guided techniques, and literature study.

The result of the effort to protect the law against women as victims of Domestic Violence in East Luwu District of Indonesia was conducted in Preventive and Repressive. Law enforcement obstacle is that the victims are not open to the apparatus, so that there many victims did not report and hide the case of domestic violence they experienced with the reasons for the maintenance the family unity, for fear of divorce. The solution made by the government in East Luwu District is to provide assistance and counseling to the victims to solve the problems, create shelters, and socialize directly to the community about Law on Domestic Violence.

Keywords: Legal protection, Women, Crime, Domestic Violence

A. INTRODUCTION

The problem of crime especially violence against women is part of social reality and it is not a new thing, although the places and times are different, but the principles are the same. This equation can be known from many phenomena in society which illustrates that crime rates are increasing and this also affects violent crimes against women. Increased violence against women from time to time is inevitable with various forms of change as a driver.

In Indonesia violence against women in general is a problem experienced by many women. The problem is like a pyramid, it is small at the top but large at the bottom, because to get a definite number is very difficult. Legal protection of

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women from violence, especially domestic violence, has been regulated in various national legal instruments.

The legal substance associated with violence against women can be seen in the Criminal Code (KUHP). In the Criminal Code there are several Articles that are directly related and may be qualified as physical violence against women namely, Articles 351 up to Article 356 of the Criminal Code. The act which fulfills the elements of offense in those Articles may be categorized as acts of violence, it is partly public. In addition to the Criminal Code which provides legal protection against female victims of physical violence is also regulated in Article 6, Article 16 recognizes protection and Article 44 recognizes its criminal sanctions in the Law on Elimination of Domestic Violence.

In Law No. 23 of 2004 on the elimination of domestic violence, it can be interpreted as ensuring the abolition of domestic violence by the state to prevent, prosecute perpetrators of violence, and protect victims.

The law was created in the context of eliminating discrimination against women. Some legislation has been created as a legal instrument to protect women from violence, but in practice it has not been able to guarantee the legal protection of women from physical violence. The legal instruments have not been able to become the basis for ensuring legal protection for women.

In the General Explanation of Law No.23 of 2004 on the Elimination of Domestic Violence explained that the unity and harmony of happy, safe and peaceful households is the desire of every person in the household. Household unity and harmony can be disrupted if quality and self-control cannot be controlled, which can ultimately result in domestic violence resulting in insecurity or injustice to the person within the household.

Violence against women can also be sexual harassment and trafficking of women. As well as violence against women in carrying out work that is perceived as unfair between men and women where women's salaries are less than the salary received by men, where the workload of men and women are the same and the salaries that women receive are sometimes smaller than men. Thus, there is a problem in the work.

Domestic violence is a complex issue to solve. There are many reasons, which are likely to be the cause: The perpetrator of domestic violence is completely unaware what has been done is an act of domestic violence. Or, it could be, the perpetrator realizes that his actions are acts of violence in the household. Hence, the perpetrators ignore it because of shelter under certain norms that have been established in the community. Therefore the offender considers the act of violence in the household as a natural and personal thing. Violence not only arises because there is power but also because there is authority.

In Indonesia, legally formal, these provisions have come into effect since 2004. The mission of this Act is as an effort, an endeavor for the abolition of Domestic Violence. With this provision, it means that the state can seek to prevent domestic violence, to prosecute domestic violence perpetrators, and to protect victims of domestic violence. Something previously could not happen, because it is considered as an internal matter of one's family. The reason is strictly speaking that the physical, psychological, sexual and neglectful (abandonment of the economy) violence carried out within the household sphere is a crime. Such actions may be common and may occur between the husband to the wife and vice versa, or the parents against the child. As a law requiring special arrangements, in addition to containing criminal sanction arrangements, the Act also provides for procedural law, the obligation of States to provide immediate protection to the reporting victims. Thus, it can be said that this provision is a very important legal breakthrough for human rights enforcement efforts, especially the protection of people who have been harmed in a family or household order.

The expected protection for the victim is a protection that can bring justice to the victim. In domestic violence, the major victims are women. In principle, it is one of the phenomena of human rights violations, so that this issue as a form of discrimination, especially against women and it is a crime whose victims need to be protected both from government officials and the public. Legal protection of women victims of Domestic Violence still creates problems especially in recognizing the provisions in the criminal law which require a Crime can only be prosecuted because of the complaint.

The problem of complaints is a very difficult thing done by the victim, because by reporting the crime of violence that happened to her/him, it will cause feelings of shame, if the disgrace in his family is known by the community. On the other hand, law enforcement officers cannot process cases of violent crime if there is no complaint from the victim. Criminal law enforcement in this case, victim protection cannot be done optimally, especially in giving sanction to perpetrator.

The protection of the victims requires a deeper assessment of the causes of violent crimes against women victims, the prevention efforts undertaken by the government, community and any constraints are faced by law enforcement agencies in enacting laws. This law provides protection to victims of women criminal acts violence against women.

Data from the Institute for Women's Empowerment show that cases of violence against women such as ill-treatment, ill-treatment resulting in deaths, and killings have increased sharply. There are several cases underlying the consideration of the need for protection of violence against women as data presented by the Woman National Commission (Komnas), such as beatings, continuous physical abuse, even to physical violence that resulted in victims unable to carry out their daily activities.

B. RESEARCH PROBLEM

Based on the background described above, there are issues arise that become the subject matter:

1. How do legal protection measures for women as victims of domestic violence in East Luwu District?
2. How is law enforcement of women as victims of domestic violence in East Luwu District?
3. What are the constraints and solutions of law enforcement on women as victims of domestic violence in East Luwu District?

C. RESEARCH METHODS

Approach method used was empirical juridical approach method. The data are primary and secondary data, research respondents were selected by non-random sampling technique consisting of victims of domestic violence, police, prosecutors and judges handling cases. Primary data were obtained by conducting interviews with freely guided techniques. The data were then analyzed by qualitative method.

D. RESEARCH RESULTS AND DISCUSSION

1. Legal Protection Efforts on Women as Victims of Domestic Violence in East Luwu District

Efforts to Protect Women as Victims of Crime of Domestic Violence in East Luwu District which has been done by the police according to Muh Sadar¹ are:

- I. Preventive efforts undertaken by local governments and law enforcement in East Luwu District are:
 1. The good communication between husband and wife, in order to create a harmonious family relationship.
 2. The beliefs of married couples. This is based on the activities or a deed of the couple is not suspicious, thus making one of the couple jealous and suspicious.
 3. There is a permanent source of income from the couple, so there is no shortage of economy.
 4. The cooperation with related institutions.

Based on the interview with Muh Sadar as Kanit (Head of Unit) PPA (Women and Children Service) East Luwu Police, he said that the coordination of cooperation between agencies in East Luwu District has been running well. This can be seen from the special places of the Polres, Hospitals and Puskesmas (center of community health service) that provide a place for victims of Domestic Violence, although only a few places that already exist.

The counter measures taken by Luwu Timur District Police are:

1. To socialize directly to the community about the Domestic Violence Law.
2. To conduct seminars and counseling with KP2PA of East Luwu District with materials and materials on Domestic Violence.
3. To become resource persons in activities organized by public and private agencies on Domestic Violence².

In addition, efforts made to minimize domestic violence include:

1. Look to the person you trust
2. Ponder the advice and advice
3. Ask the husband of counseling
4. Take a decision immediately

The steps mentioned above are basically an effort for a wife to find the truth about the existence of a crime committed by husband to wife in order to get protection and justice.

Therefore, it is necessary to minimize early efforts as a form of anticipation to the occurrence of cases of domestic violence in East Luwu District.

In efforts to control and prevention of perpetrators of domestic violence is not enough only with an integrated approach between penal and non penal facilities, but also must be supported by raising awareness of community law. Public legal awareness is one part of legal cultures that includes the legal awareness of the community, government and law enforcement apparatus. If the effort succeeds then with the crime level will go down, so the ultimate goal of criminal politics, that is social defense and social welfare will be realized.

A crime prevention policy or called 'criminal politics' can cover a wide range of scope. According to G. Peter Hoefnagels³, crime prevention efforts can be done by:

1. Criminal law application
2. Prevention without punishment
3. Influencing the public's view of crime and mass media criminalization (influencing views of society on crime and punishment/mass media)

In GP division, Hoefnagels mentioned efforts in prevention without punishment and influencing the public's view of crime and punishment mass media may be included in the non-penalization group⁴.

II. Repressive efforts by related parties in East Luwu District are:

1. Taking action against the perpetrators in accordance with applicable regulations.
2. Prosecuting for fair justice.

3. Providing punishment in accordance with the judge's decision.

Meanwhile, from the Malili Prosecutor's Office, Mr. Ida Komang Ardhana as Kajari said that the koorps he leads carry out the duties that should be the responsibility of prosecution of the suspect, in addition to establish coordination with other agencies have been idle both with the communication to prosecution and protection of victims. Demands must be in accordance with the applicable law pursuant to Article 49 letter a of RI Law 23 of 2004 on abolition of domestic violence⁵.

Meanwhile, for the ranks he has taken steps in accordance with the prosecution of domestic violence criminal cases such as completing the file

1) Formal

- Identity.
- Letter of the local court chief to conduct a search.
- Letter of Chief Justice conducting examination.
- The complaint of the person who has the right to make a complaint in a criminal complaint.
- Making news of witness examination, suspect examination, arrest, ransacking.

2) Material

Material equipment is very important in the punishment because the file has been eligible to be transferred to the Court, that is fulfill the evidences set forth in chapters 183 and 184 KUHAP so that it can be compiled indictment pursuant to Article 143 paragraph (2) letter b KUHAP.

Legal Protection Against Women as Victims of Domestic Violence in East Luwu District is well under Article 10 Sub-Article a of the Law of the Republic of Indonesia Number 23 Year 2004 Concerning the Abolition of Domestic Violence, starting from family, police, prosecutor, court, advocate, social institution or other party, temporarily or by the determination of the protection order from the court. However, in this paper, it is limited to law enforcement only, namely:

1. The police have the duty to provide temporary protection to the victims after the report, because remembering the domestic violence in the form of physical, psychological and sexual violence is a complaint.
2. The court has a role in the implementation of the mechanism of protection, such as: issuing a letter of appointment containing protection for victims and other family members; stipulating a special condition that restricts the actors' movement; and if there has been a violation of the protection order, the victim may report this to the police, then jointly prepare a report addressed to the court. Thereafter, the court must summon the offender to

conduct an investigation and ask the offender to make a written statement whose content is the ability to comply with the protection order. If the perpetrator continues to violate the statement, then the court may detain the perpetrator for up to 30 days.

3. Advocates in providing protection and services to victims, shall provide legal consultations covering information on the rights of victims and the judicial process, assisting victims at the level of investigation, prosecution and examination in court and assisting victims to fully expose domestic violence or coordinate with fellow law enforcers, companion volunteers, and social workers to make the judicial process work as it should.

The handling of victims of domestic violence in the district of East Luwu is in accordance with the actions that should be done by law enforcement in East Luwu District such as Police, Attorney General. Meanwhile, for victims of violence has provided a special place to avoid the bad actions of the suspect for reporting his actions to the authorities.

According to the researchers handling victims of domestic violence in East Luwu District is in accordance with the procedures applicable by law. It is seen a place for victims of domestic violence.

2. Law Enforcement Against Women as Victims of Domestic Violence In East Luwu District

According to Soerjono Soekanto, law enforcement is an activity of harmonizing the relationship of values that lies in the principles of steadfast values and attitude and acts as a series of final value stages to create, maintain and sustain peace of life. Law enforcement in concrete terms is the enactment of positive law in practice as it ought to be obeyed. Therefore, to provide justice in a case means to decide the law of in concerto in maintaining and ensuring compliance with material law by means of procedural means established by formal law⁶.

Factor factors that influence law enforcement according Soerjono Soekanto are⁷:

1. Legal Factor: There are times when there is a conflict between legal certainty and justice, because the conception of justice is an abstract formulation, whereas legal certainty is a normatively determined procedure. Precisely, a policy or action that is not strictly law-based is justifiable as long as the policy or action is not contrary to law. So in essence the implementation of the law not only includes law enforcement, but also peace maintenance, because the implementation of the law is actually a process of harmony between the principle value and real behavior patterns aimed at achieving peace.

2. Law Enforcement Factors: Legal functions, mentality or personality of law enforcement officials play an important role, if the rules are good, but the quality of the officers is not good, there is a problem. Therefore, one of the keys to success in law enforcement is the mentality or personality of law enforcement.
3. Factor Facilities or Support Facilities: Factor means or supporting facilities include software and hardware, one example of software is education.
4. Community Factors: Law enforcement comes from the community and aims to achieve peace within the community. Every citizen or group at least has legal awareness. The problem that arises is the level of legal compliance, namely high legal compliance, medium, or less. The existence of the degree of legal compliance of the public against the law is one indicator of the functioning of the law concerned.
5. Cultural Factors: Based on the concept of everyday culture, people so often talk about culture. Culture according to Soerjono Soekanto, has a very big function for people and society, which is set so that people can understand how should act, do, and determine their attitude if they relate to others. Culture, then, is a fundamental line of conduct that establishes rules about what to do, and what is forbidden.

The case in East Luwu district, the preparator's name was named Ansar Fipardi Tamrin alias Anzar while the victim was Damayanti alias Mama Arya which occurred on September 29, 2014 at around 11.30 WITA with the indictment Reg Number. PERKARA: PDM-47 / MLI / Euh.2 / 11/2014. It has been revealed that the defendant has been beaten the victim, because his wife is considered negligent in taking care of her child. For his actions the defendant was found guilty of violating Article 49 letter a of RI Law no. 23 year 2004, and imprison the imprisonment for 3 (three) years 4 (four) months.

3. Obstacles and Law Enforcement Solutions to Women as Victims of Domestic Violence in East Luwu District

1) Constraints faced by Victims of Crime in East Luwu District

Social problems of domestic violence (KDRT) directly or indirectly will affect the victim both physically and psychologically the victim. The constraints experienced in the protection of women victims against domestic violence are still afraid of the victims to report the actions of members his family. Yet according to applicable law has violated an act of crime. In addition, many women who do not have the power to make a fight or defense let alone to the legal ground.

The impact of mistreatment of spouses that often occur in domestic life, in addition to causing physical consequences (serious injury The higher incidence of

physical illness associated with stress) and the effects of an economic nature. Among the psychological effects of negative partner abuse, depression, anxiety, and self esteem have been identified as a common response. In addition, partner abuse has an adverse effect on interpersonal relationships in general. Many female victims of domestic violence who do not want the integrity of the trafficked households have ceased due to a better problem. In addition, women also still think twice with her status and the fate of children when experiencing a divorce.

Women are also often victimized because women as victims are in vulnerable areas or because they are deemed not to dare to resist as an adequate retaliation so that this weakness is often exploited by my custodian who feels himself stronger, more powerful than the victim. For example in the family, women as wives are often victims of violence committed by husbands because wives are considered to be dependent on their husbands. This is used as one of the reasons for the enactment of the Law of the Republic of Indonesia no. Law No. 23 of 2004 on the Elimination of Domestic Violence (Violence), and violence intended here not only physical violence but also psychological violence, sexual violence or neglect of households. Similarly, the condition of women is as laborers, domestic servants or as employees who individually have a weaker position than the employer. Thus, the employer can perform actions as casually as the persecution, plunder and deprivations of their rights, all these actions are included crime or criminal victimization.

We as citizens should be aware that Domestic Violence carries the negative consequences that are likely to affect future victims' development in many ways. Thus, the main concern should be on developing strategies to prevent abuse and minimize its adverse effects.

2) *Law Enforcement Solutions to Women as Victims of Domestic Violence Crime in East Luwu Regency*

Solutions undertaken by related parties in East Luwu District are as follows:

- a) Assist the victim in solving the problem (counseling) conducted by appointed counselor in East Luwu District.
- b) Creation of shelters so that victims will be better monitored and protected and counselors can quickly assist psychological recovery.
- c) Socialize directly to the community about Law on Domestic Violence through seminars and counseling, and local electronic and print media in East Luwu District.

E. CONCLUSION

1. Efforts to protect the law against women as victims of Domestic Violence in Luwu District of Indonesia are conducted in a Preventive manner by socializing

the Household Violence Law to the community, conducting seminars and counseling together with KP2PA of East Luwu District with materials and materials on Domestic Violence, as resource persons in the activities held by the government and private agencies about Domestic Violence and enforced the law as a repressive effort.

2. Obstacles to protect women as victims of domestic violence are still not maximized due to the relationship of husbands and wives (kinship) that are still kept secret or the lack of openness of the victims to the apparatus conducting the investigation up to the verdict.
3. Many women conceal cases of domestic violence for the sake of keeping the family together, especially when divorce occurs. With a solution to build awareness that the issue of Domestic Violence, socialize the community about Domestic Violence, campaigning against opposition to violence in the mass media. Both print media, television, cinema, radio and the internet are powerful macro-systems for preventing and reducing domestic violence, accompanying victims in solving problems (counseling) and possibly putting in shelters.

F. SUGGESTIONS

Based on these conclusions, the researchers suggest several things as follows;

1. The need for more intense socialization of Law Number 23 Year 2004 as legal protection against victims of domestic violence, so that both perpetrators and victims, especially husband and wife, understand about their rights and obligations within the household.
2. In order that every victim of violence in the household dare to disclose and report any form of domestic violence in accordance with the existing law, so it is expected that the crime of violence in the household, especially those experienced by women, can be further minimized.
3. For law enforcement officers to be more responsive to all forms of violence that occur within the scope of the home by applying the law as it should.

Note

1. Interview with Muh Sadar , Head of Unit Women and Children Service, East Luwu District, Sulawesi, Indonesia, July 18, 2016.
2. Interview with Muh Sadar , Head of Unit Women and Children Service, East Luwu District, Sulawesi, Indonesia, July 20, 2016
3. Jupri, Domestic violence, *www.negarahukum.com*. Downloaded on May 16, 2016, 09.10 AM
4. ibid
5. Interview with Ida Komang Ardhana sebagai Kajari Malili, on June 7, 2016

6. Dellyana, Shant. 1988, *Konsep Penegakan Hukum*. Yogyakarta: Liberty, page 33
7. Soerjono Soekanto. 2004, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum*, Jakarta: Raja Grafindo Persada, page 42

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