



LEGAL PROTECTION OF WOMEN VICTIMS OF DOMESTIC PSYCHICAL VIOLENCE Case Study Decision Number 298/Pid.Sus/PN Mdn

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ABSTRACT

Crimes of violence in the domestic sphere still often occur due to a mistaken understanding of gender bias, where a woman must submit to a man. Gender bias also pressures women to be submissive and accept all forms of unfair behavior. In general, gender bias also places women in a weak position, thus making men more dominant in the family system and society, this is very detrimental to women, so that women are more often experience violence. Domestic violence is often called hidden crime(hidden). The type of research for this thesis is normative legal research with a descriptive research nature, while the data collection method is library study, using secondary data consisting of primary, secondary and tertiary legal materials and using qualitative data analysis. Imposing criminal sanctions on the defendant must also take into account the proportionate losses experienced by the victim. The panel of judges in the aquo case should have informed the victim regarding Article 98 of the Criminal Procedure Code which states that if an act which is the basis of an indictment in a criminal case examination by a district court causes harm to another person, then the presiding judge at the hearing's request may decide to consolidate the case. claim for compensation in criminal cases. The judge in a trial related to a criminal offense where the victim is a woman should inform the victim regarding Article 98 of the Criminal Procedure Code and then the notification statement to the victim regarding Article 98 of the Criminal Procedure Code must be recorded in the decision.

INTRODUCTION

In social life, problems often arise that can threaten safety and human life itself. Therefore, humans have the ability to defend and protect themselves from existing disturbances and problems. Peace between humans is maintained by law as a norm by protecting certain human interests as well as honor and freedom as well as lives, property and objects, and so on against things that are detrimental to them. Crimes of violence in the domestic sphere still often occur due to a mistaken understanding of gender bias, where a woman must submit to a man. Gender bias also pressures women to be submissive and accept all forms of unfair behavior that prioritize other people's social rights over personal rights. In general, gender bias also places women in a weak position, thereby making men more dominant in the family system and society. This is very detrimental to women, so that women experience violence more often. Domestic violence is often called hidden crime. It is called that because both the perpetrator and the victim try to keep the act secret from public view. Sometimes it is also referred to as domestic violence because it occurs in the domestic realm. One of the things done by the government in order to provide protection for women is by ratifying the convention regarding the elimination of all acts of discrimination committed against women. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) which has been ratified by Indonesia through Law Number 7 of 1984 . It is fully realized that CEDAW itself was formed based on an individualistic philosophy, a philosophy that emphasizes the respect and freedom of each individual, so it is not surprising that the concept of neglect in Law Number 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT) is the implementation of a material mandate. The content of the current



PKDRT Law is also based on this philosophy. Resolving acts of violence in the family or household if it is resolved through criminal law is deemed inappropriate, considering that the perpetrator and the victim have a very close relationship, so different methods of resolution are needed in dealing with conflicts in the household. If in civil law we know that there are alternative non-litigation dispute resolutions that are carried out outside of court, there are several options that can be used by the parties to resolve conflicts, namely by means of consultation, negotiation, mediation, conciliation and expert assessment. In the development of criminal case resolution, certain cases are no longer resolved through formal channels but are resolved by means of peace between the perpetrator and the victim, known as penal mediation, settlement by means of peace or better known in Indonesian society through consensus deliberation using traditional institutional mechanisms. , the resolution of criminal cases in the criminal justice system is carried out through the discretion of the police.

Apart from that, extrajudicial settlements were also found in cases of children whose resolution was out of court through a diversion mechanism taking into account the type of crime and the form of the act committed. The basic principle of restorative justice is that there is restoration for victims who suffer as a result of crime by providing compensation to the victim, peace, the perpetrator carries out social work or other agreements. Fair law within the framework of restorative justice is certainly not one-sided, impartial, not arbitrary, and only sides with the truth in accordance with applicable laws and regulations and takes into consideration equal rights to compensation and balance in every aspect of life. The perpetrator has the opportunity to be involved in restoring the situation, the community plays a role in preserving peace, and the court plays a role in maintaining public order. The aim of restorative justice in the context of criminal law is to empower victims, perpetrators, families and communities to repair the consequences of a criminal act that has been committed, using awareness and conviction as a basis for improving social life (the concept of looking at justice not from one side, but looking at from various parties, both for the benefit of victims, perpetrators and society).

Penal mediation as an instrument of restorative justice is known by various different terms. The earliest known terminology was Victim-Offender Reconciliation Program. This term is rarely used because many experts consider the use of the term reconciliation unsuitable because it is too religious and does not describe the peace process. The next term that is more widely used is Victim-Offender Mediation (Mediation between Victim and Perpetrator). One of the experts in penal mediation in the world, Mark Umbreit, uses the term humanistic mediation approach. The term mediation is not only used in the realm of civil law but is also used in the realm of criminal law. The use of the term penal mediation is because mediation is used to reconcile those in criminal cases, in the Netherlands it is known as strafbemiddeling, while in France this term is known as penal demediation. During the course of the trial, the judge must prevent and/or reprimand the parties, legal advisors, public prosecutors and/or attorneys who act or make statements that demean, blame, intimidate and/or use the sexual experience or background of Women in Conflict with the Law.

Meanwhile, article 8 explains that 8 judges should ask women as victims about the losses, the impact of the case and the need for recovery and the judge to notify the victim of his or her right to merge the case in accordance with Article 98 of the Criminal Procedure Code and/or an ordinary lawsuit or request for restitution as regulated in the provisions of the statutory regulations. Based on the Decree of the Director General of Badilum Number 1691/DJU/SK/PS.00/12/2020 concerning the Implementation of Restorative Justice in the General Court Environment in Chapter II (Content of Guidelines) Letter C section 2.e (ii) explains the handling of women in conflict with the law as victims, judges in adjudicating cases of women in conflict with the law as victims are obliged to consider legal facts and future implications with a restorative justice approach, in examining and deciding cases of women in conflict with the law as victims. The judge must consider the losses experienced by the victim and the impact of the case as well as the need for recovery for the victim. The judge is obliged to inform the victim about their rights regarding restitution and compensation as regulated in Article 98 of the Criminal Procedure Code and other provisions. The court is obliged to provide a list of social workers in coordination with the local social worker service. Based on the description that the author has stated in the background above, the author has the desire to conduct research in the form of a thesis with the title "Legal Protection for Women in Conflict with the Law as Victims of Domestic Violence Crimes in a Restorative Justice Approach".



METHOD

In writing this thesis, the nature of the research that will be used is descriptive research. Usually researchers have received an overview in the form of initial data about the problem. That in relation to this research, researchers will analyze "Legal Protection for Women in Conflict with the Law as Victims of Domestic Violence Crimes in a Restorative Justice Approach". This research uses a type of normative juridical legal research. Normative legal research is an approach carried out based on primary raw materials, which are theoretical in nature which concerns legal principles, legal conceptions, legal views and doctrines, regulations and legal systems using secondary data, including: principles, rules, norms and legal rules contained in statutory regulations and other regulations, by studying books, statutory regulations and other documents that are closely related to research.

RESULTS AND DISCUSSION

The problem formulation in this research is as follows:

1. Arrangements for Legal Protection for Victims of Domestic Violence

With Indonesia being based on law, this provides

It also has an impact on someone who wants to start a family. Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage Article 1 contains the understanding that marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the belief in the Almighty God. It is also recommended and regulated in the Islamic religion because it has noble goals, and establishing a domestic life should be filled with love between husband and wife and mutual assistance between the two for the mutual benefit of building household integrity. The state recognizes equal rights and positions between women and men. As stated in one of the natural principles of Pancasila,

namely the principle of Just and Civilized Humanity. It is stated that humans are recognized and treated according to their dignity and worth as creatures of Almighty God, who are of the same rank. Human rights and obligations, without distinction of ethnicity, descent, religion and belief, gender, social position, skin color, and so on. To realize this wholeness and harmony, it really depends on each person in the household, especially the level of quality of behavior and self-control of each person in the household. Low self-control regarding a problem can result in venting anger within the household. This will certainly give rise to feelings of insecurity towards people within the household and ultimately result in violence in the family household and violence at first glance seems like a paradox. Violence is destructive, dangerous and frightening,

while on the other hand, family is defined as the environment of human life, feeling the shelter, rest and comfort received by family members. Losses to victims of family violence are not only material, but also immaterial, including emotional and psychological shock, which directly or indirectly will affect their lives. Based on Law Number 23 of 2004 concerning the Elimination of Domestic Violence, Article 2 explains, namely

1. The scope of households in this Law includes:

a. husband, wife, and children;

b. people who are related to people

as intended there is letter a due to blood, marriage, breast-feeding, parenting and guardianship relations, which reside in the household; and/or

c. people who work to help the household and live in the house
the stairs.



2. People who work as referred to in letter c are seen as family members for a period of time while they are in the household concerned. Furthermore, according to Dedy Fauzi Elhakim, domestic violence

Based on the cause of occurrence, it can be divided into 2 (two) parts, namely as follows:

1. Domestic violence as an expression of gradual emotional outburst. This type of violence is the first. Starting from non-physical violence, starting from unwanted attitudes and behavior, as well as hurtful statements directed at family members towards other family members. The process that occurs continues over time, resulting in a buildup of disappointment, annoyance and anger which ultimately leads to physical violence. This can occur as a result of an emotional outburst that can no longer be controlled. Manifestations of acts of violence can take the form of light abuse, serious abuse and murder
2. Domestic violence as an expression of spontaneous emotional outbursts is a form of violence that is carried out without prior planning, occurs suddenly (spontaneously) without being supported by a complete background of events. However, the facts before our eyes are felt to offend the perpetrator's self-esteem and dignity, in the form of a situation that the perpetrator does not want. Emotional explosions arise so quickly that the power of the mind to control oneself is defeated by mounting lust/emotions. Then the person concerned gave a strong reaction by committing acts in the form of other criminal acts in the form of abuse or murder of other family members.
3. How is the punishment of the perpetrator a form of protection for the victim?

Legal Sanctions Against Perpetrators of Domestic Violence

The criminal sanctions in Law Number 23 of 2004 concerning the Elimination of Domestic Violence are contained in Chapter VIII concerning Criminal Provisions in Articles 44-53, where sufficient sanctions include serious physical violence, which causes a person to fall ill or serious injuries

(maximum 10 years) and which causes the victim to die (maximum 15 years), and includes physical, psychological and sexual violence which causes the victim to not recover, lose memory, and abort or die of the fetus in the womb (20 years). Forms of violence in a household which is prohibited according to the UUPKDRT Law as stipulated in Article 5 UUPKDRT that, "Every person

it is prohibited to commit domestic violence against people within the scope of one's household, by means of:
Physical violence;

Physical violence in Article 6 of the PKDRT Law is as follows
following; "Physical violence as intended in Article 5 letter a
is an action that results in pain, illness or serious injury.

- a. Ordinary physical violence (article 44 paragraph 1 of the PKDRT Law)
- b. Light physical violence (article 44 paragraph 4 of the PKDRT Law)
- c. Physical violence results in people becoming ill or seriously injured (article 44 paragraph 2 of the PKDRT Law)
- d. Physical violence results in the death of the victim (article 44 paragraph 3 of the PKDRT Law)⁵³

2. Psychological violence;

Article 7 of the PKDRT Law provides an understanding
psychological violence, as follows: "Psychological violence as referred to in Article 5 letter b is an act that causes fear, loss of self-confidence, loss of ability to act, a feeling of helplessness, and/or severe psychological suffering in a person.

- a. Psychological violence (article 45 paragraph 1 of the PKDRT Law)
- b. Light psychological violence (article 45 paragraph 2 of the PKDRT Law)

3. Sexual violence; or

Sexual Violence in Article 8 of the PKDRT Law is
Sexual violence as referred to in Article 5 letter c includes:



- a. Forced sexual relations carried out on people living within the household;
- b. Forced sexual relations between someone within the household and another person for commercial purposes and/or certain purposes.

4. Household neglect

Household neglect in Article 9 of the PKDRT Law is;

- a. Every person is prohibited from abandoning people within the scope of his household, even though according to the law that applies to him or because of an agreement or agreement he is obliged to provide life, care or maintenance to that person.

b. Neglect as intended in paragraph (1) also applies to every person who causes economic dependence by limiting and/or prohibiting decent work in or on outside the house so that the victim is under the person's control. Forms of domestic violence against people in the household as referred to in Article 5 UUPDKRT do not necessarily have to fulfill all forms of as/dd but this provision emphasizes the choice

(alternative) of one of the forms has fulfilled the formulation, so it can be said to have fulfilled the element of violence in the household. In Chapter I article 1 of Republic of Indonesia Law number 23 of 2004 concerning Elimination of Domestic Violence (PKDRT) states that domestic violence means any act against someone, especially women, which results in physical, sexual, psychological misery and suffering, and/or domestic neglect, including threats to

carrying out acts, coercion, or deprivation of liberty in an aggressive manner
law in the household sphere

CONCLUSION

1. Regulation of legal protection for women victims of domestic violence in Indonesia regulated in Law number 23 of 2004 and Guidelines for adjudicating cases of women in conflict with the law based on perma number 3 of 2017 in article 8 explains that judges are to ask women as victims about losses, the impact of the case and the need for recovery and judges are to inform victims about the right to combine cases in accordance with Article 98 of the Criminal Procedure Code and/or ordinary lawsuits or requests for restitution as regulated in the provisions of statutory regulations.

2. The criminal sanctions in Law Number 23 of 2004 concerning the Elimination of Domestic Violence are contained in Chapter VIII concerning Criminal Provisions in Articles 44-53, where sufficient sanctions include serious physical violence, which causes a person to fall. serious illness or injury (maximum 10 years) and which causes the victim to die (maximum 15 years), and includes physical, psychological and sexual violence which causes the victim to not recover, lose memory, and abort or die of the fetus in the womb (20 years) .

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