

Legal Protection For Wives Who Are Victims Of Domestic Violence Based On Law Number 23 of 2004

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Abstract

Violence against Wives committed by Husbands is often ignored and not seen as a serious problem. In addition, it is necessary to clarify the responsibility of the Husband as the perpetrator of domestic violence and find out how to resolve it legally. And the formulation of the problem in my thesis is How is the Law Enforcement Regarding Domestic Violence Based on Legislation, How is the Legal Protection for Wives Who Are Victims of Domestic Violence and How is the Legal Analysis of the Criminal Act of Committing Physical Violence in the Household Scope Committed by Husbands Against Wives in Decision Number 1329 / Pid.Sus / 2023 / Pn Mdn. The nature of the research in writing the thesis uses descriptive analysis, the type of research uses Normative law while the data collection method uses Library Research, and the type of data in this study uses Primary Data. Many settlements of domestic violence cases do not fulfill a sense of justice, especially for victims in the household. law enforcement in implementing protection for victims of domestic violence according to Law Number 23 of 2004 concerning the Elimination of Domestic Violence is very much needed, especially domestic violence. The results of this study conclude that the occurrence of domestic violence shows the imbalance of the position of husband and wife in living a household life. Legal protection for victims of domestic violence according to Law Number 23 of 2004 concerning the Elimination of Domestic Violence is very much needed because of all forms of violence, especially domestic violence.

Keywords: *Legal Protection, Wife, Victim, Domestic Violence*

INTRODUCTION

The Republic of Indonesia is a state of law based on Pancasila and the 1945 Constitution of the Republic of Indonesia which means that all actions and behavior patterns of its citizens must be in accordance with the norms and provisions that have been regulated by the state. The objectives of the Republic of Indonesia have been stated in paragraph IV of the 1945 Constitution of the Republic of Indonesia which states that the State aims to protect all Indonesian people and all of Indonesia's territory, advance public welfare, educate the nation's life, participate in world peace efforts based on independence, eternal peace and social justice. In connection with this, it is only right that the Indonesian people receive protection against safety and security that is real in aspects of life.

However, as time goes by, coupled with the increasing number of domestic violence cases, we are made aware that this action can no longer be tolerated and is no longer an individual (private) problem but has become a state (public) problem because there has been a denial of human rights and is classified as an unlawful act as regulated in Law Number 23 of 2004 concerning the Elimination of Domestic Violence in Article 1 paragraph (1) which states that: "Domestic violence is any act against a person, especially women, which results in physical, sexual, psychological misery or suffering, and/or neglect of the household including threats to commit acts, coercion, or unlawful deprivation of liberty within the scope of the household."

One example of a case of Domestic Violence (KDRT) is contained in the Medan District Court Decision with case number 1329/Pid.Sus/2023/PN Mdn, where the defendant is the husband of the victim (Nur). The incident of domestic violence began on Thursday, April 20,

2023 at around 09.30 WIB, the defendant husband came to the wife's parents' house in Medan City by calling his wife "where is Nur.." at which time the wife was hiding behind, then the defendant husband said "where are Nur's clothes.." then the wife came out then the defendant husband pulled the bag that the wife was using then the wife pulled the wife's bag back so that there was a tug of war between the wife and the defendant husband so that the wife fell to the ground then the defendant husband took the wife's bag so that the wife stood up and pulled the wife's bag back then the wife pulled the defendant husband's clothes until they were torn then the defendant husband hit the wife's left arm 3 (three) times then the defendant husband kicked the wife's stomach 1 (one) time.

From the description of the case example above, it can be seen that the actions of a husband towards his wife are reprehensible and despicable, where men are leaders for women, because Allah has given some of them (men) more priority than others (women), not the other way around, hurting and physically injuring a woman, let alone a wife. Therefore, with the enactment of a law that specifically regulates acts of violence that occur within the household, namely Law No. 23 of 2004 concerning the Elimination of Domestic Violence, more or less the problems of domestic violence have been answered and become a "legal umbrella" that can provide protection for victims. As for perpetrators and potential perpetrators, the existence of Law No. 23 of 2004 concerning the Elimination of Domestic Violence is a warning that violence that occurs within the household is an act that can be punished.

In this case, the author is interested in conducting research related to the rights of children who are victims of the crime of sexual abuse by raising the title "Legal Protection for Wives Who Are Victims of Domestic Violence Based on Law No. 23 of 2004 (Analysis of Decision No. 1329 / Pid.Sus / 2023 / Pn Mdn)".

RESEARCH METHODS

This study uses a normative legal research method which is part of the doctrinal research typology. The research approach used is a conceptual and legislative approach. The data sources obtained in this study were obtained from secondary data obtained indirectly which is a literature study and the secondary data is divided into several parts, namely, primary legal materials and secondary legal materials and tertiary legal materials. Primary legal materials are data that have legal force such as laws and regulations, while secondary and tertiary legal materials are supporting data on primary legal materials such as previous studies that discuss the research being written and that has been published and related books. The legal materials that have been obtained are then analyzed using descriptive-qualitative analysis to obtain conclusions that can be scientifically accounted for regarding the comparative analysis of the Criminal Act of Committing Physical Violence in the Household Scope Committed by Husband Against Wife in Decision Number 1329 / Pid.Sus / 2023 / Pn Mdn.

The data is analyzed using methods of qualitative analysis. The data analysed qualitatively will be presented in the form of a systematic description by explaining the relationship between various types of data as appropriate. All data is selected and processed, then analysed descriptively so that some conclusions can be drawn from this discussion. (Tampil Anshari Siregar, 2015).

RESULT AND DISCUSSION

Indonesian criminal law still provides threats to every perpetrator of domestic violence or other crimes. Several criminal threats for perpetrators of violence in the Criminal Code which before the enactment of the Domestic Violence Law as a reference for law enforcement officers as a legal instrument to protect women from violent crimes.

These articles (Articles 351, 352, 353, 354 and 355 of the Criminal Code) include a single criminal system, namely imprisonment. This system requires the judge to determine, stipulate, or impose a prison sentence on the perpetrator, but there is no mention of compensation that can be obtained by victims of domestic violence due to the perpetrator's actions. It can be said that these articles are a form of indirect protection because they do not include direct or concrete protection, for example, compensation given by the perpetrator to the victim. The Criminal Code as a legal system has stipulated five articles related to criminal acts of violence. In this case, the Criminal Code builds a legal protection system for every victim of violence with minimum and maximum criminal threats for perpetrators of acts of violence. This system can be called a repressive system when these articles become the basis for criminalizing perpetrators of crimes against all forms of violence in society. Therefore, efforts to overcome and prevent violence in society before the enactment of the Law on the Elimination of Domestic Violence are the Criminal Code.

The articles related to the provisions of the law on domestic violence have made it possible as a means or effort for law enforcement officers to be used as a reference for law enforcement officers' actions for perpetrators of domestic violence. In the Domestic Violence Law, there are several acts of violence that are part of violence against women, such as the formulation of Article 5 of the UUPKDRT concerning the definition of domestic violence which includes physical, psychological, sexual violence, and family neglect. Several of these articles are very clear about the direction that the UUPKDRT wants to achieve. One of the goals to be achieved is to provide legal protection for victims of domestic violence. The following is an explanation of the articles related to criminal threats in cases of domestic violence as shown in the following table.

In the articles listed above related to legislation on domestic violence, it is possible as a means or effort for law enforcement officers to be used as a reference as a repressive action for perpetrators of domestic violence. In the UUPKDRT in the formulation of Article 5 concerning the definition of domestic violence which includes physical, psychological, sexual violence and family neglect. This article is the direction that the UUPKDRT wants to achieve. This is the focus of discussion in the following chapters which is in line with one of the goals to be achieved, namely providing legal protection for victims of domestic violence.

This case began when the defendant Husband on Thursday, April 20, 2023 at around 09.30 WIB or at least at another time in April 2023 or still in 2023, located in Medan City, North Sumatra Province or at least in a place that is still included in the jurisdiction of the Medan District Court, "Any person who commits an act of physical violence in the household as referred to in Article 5 letter a", Starting on Thursday, April 20, 2023 at around 09.30 WIB, the defendant Husband came to the Wife's parents' house in Medan City by calling the Wife "where is Nur .." which at that time the Wife was hiding behind, then the defendant Husband said "where are Nur's clothes .." then the Wife came out then the defendant Husband pulled the bag that the Wife was using then the Wife pulled the Wife's bag back so that there was a tug of war between the Wife and the defendant Husband so that the Wife fell to the ground then the defendant Husband took the Wife's bag so that the Wife stood up and pulled the Wife's bag back then the Wife pulled the defendant Husband's clothes until they tore then the defendant Husband hit the Wife's left arm 3 times (three times).

The way the defendant husband committed domestic violence against his wife was by the defendant husband pulling the bag that the wife was using then the defendant husband hit the wife's left arm 3 (three) times so that the wife fell to the ground then the defendant husband took the wife's bag then the wife snatched the wife's bag back so that the defendant husband kicked the wife's stomach 1 (one) time; - That as a result of the defendant husband's actions, the wife suffered bruises on the left arm and the wife's stomach felt sore and the right knee was bruised due to being dragged so that the wife reported the defendant's actions to the Medan Police.

Domestic violence is included in the category of physical violence as regulated in articles 5 and 6 of Law No. 23 of 2004 concerning the Elimination of Domestic Violence. Physical violence here can be in the form of severe or light physical violence. So a husband who beats his wife can be prosecuted criminally with a complaint offense and the sanctions for the perpetrator are regulated in article 44 of Law No. 23 of 2004 concerning the Elimination of Domestic Violence. Actions against the perpetrator, namely criminalization by giving legal sanctions in the form of imprisonment, fines or additional penalties, namely restrictions on the perpetrator's movement, both with the aim of distancing the perpetrator and the victim at a certain distance and time, as well as restrictions on certain rights of the perpetrator and determining the perpetrator to participate in a counseling program to provide more optimal legal protection for children who are victims of domestic violence. In the author's opinion, the articles related to the provisions of the legislation on domestic violence have made it possible as a means or effort for law enforcement officers to be used as a reference for actions by law enforcement officers for perpetrators of domestic violence. In addition to legal aid provided by the government, the community is also encouraged to provide legal aid through legal entities whose numbers and activities are increasing in providing legal aid to victims.

The author disagrees with the verdict of the Medan District Court Number 1329/Pid.Sus/2023/Pn Mdn, the panel of judges only sentenced the defendant to 5 (five) months of imprisonment for domestic violence, because according to the author the 5 (five) month criminal sanction is not enough to heal the wounds received by the victim in this case the wife, namely both physical and psychological. And does not create justice for the victim. The author also believes that the panel of judges at the Medan District Court Number 1329/Pid.Sus/2023/Pn Mdn should have sentenced a perpetrator of physical violence in the household based on "the provisions of Article 44 paragraph (1) can be punished with a maximum imprisonment of 5 (five) years or a maximum fine of IDR 15,000,000, - (fifteen million rupiah), if this physical violence results in the victim getting sick or seriously injured, then Article 44 paragraph (2) determines that the perpetrator can be punished with a maximum imprisonment of 10 (ten) years or a maximum fine of IDR. 30,000,000,- (thirty million rupiah).

In the author's opinion, for perpetrators of psychological violence based on the provisions of Article 45 paragraph (1) every person who commits an act of psychological violence within the scope of the household as referred to in Article 5 letter b shall be punished with a maximum imprisonment of 3 (three) years or a maximum fine of Rp. 9,000,000.00 (nine million rupiah) and Article 45 paragraph (2) states that in the case of acts as referred to in paragraph (1) carried out by a husband against a wife or vice versa which does not cause illness or obstacles to carrying out work or livelihood or daily activities, shall be punished with a maximum imprisonment of 4 (four) months or a maximum fine of Rp. 3,000,000.00 (three million rupiah)."

In the author's opinion Domestic violence is a complex issue that involves various aspects, including human rights, cultural norms, and family welfare. It is important to find a balance between strict law enforcement against perpetrators of violence and providing solutions that support rehabilitation and restoration of healthy family relationships. Efforts to overcome domestic violence must be supported by education, victim empowerment, and social change that supports gender equality and respect for human rights. Physical domestic violence committed by

a husband against his wife is a complex problem that involves various sociological, psychological, legal, and cultural factors. Efforts to overcome this must involve a multidisciplinary approach that includes education and socialization about gender equality, strict law enforcement, provision of support for victims, and changes in cultural values and norms that support violence

CONCLUSION

Legal Protection for Wives Who Are Victims of Domestic Violence is Legal protection for victims of domestic violence according to Law No. 23 of 2004 concerning the Elimination of Domestic Violence is very necessary because all forms of violence, especially domestic violence, are crimes against human dignity and violations of human rights. Victims of sexual, psychological, physical violence, and neglect experience losses and suffering, so that the victim's rights need to be protected in order to obtain justice and the Decision of Case Number 1329 / Pid.Sus / 2023 / PN Mdn which determined that the defendant was legally proven to have violated Article 44 paragraph (1) of Law Number 23 of 2004 is not in accordance with the application of the Article. However, the author does not agree with the judge's verdict which sentenced the defendant to only 5 (five) months. The judge should have given the defendant a criminal sanction in Article 44 paragraph (1) with a maximum imprisonment of 5 (five) years or a maximum fine of IDR 15,000,000.00 (fifteen million rupiah).

It is better to conduct legal counseling on violence committed by husbands against wives to all levels of society must always be carried out, should be carried out by law enforcement officers who really understand the knowledge of domestic violence, what the impacts and actions are and the criminal sanctions imposed on the perpetrators in accordance with the provisions of Law number 23 of 2004 and It is better for the government, law enforcement officers and members of the community to participate more actively and responsibly in the issue of legal protection, for victims of violence committed by husbands against wives. Supported by improving the quality of self-identity by studying religious teachings and increasing the level of faith and piety for each individual in terms of developing personality so that they think more in committing a crime

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