

MODEL OF LEGAL PROTECTION FOR WOMEN VICTIMS OF.pdf

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Submission date: 16-Aug-2023 03:28AM (UTC-0500)

Submission ID: 2146554162

File name: MODEL OF LEGAL PROTECTION FOR WOMEN VICTIMS OF.pdf (262.71K)

Word count: 5031

Character count: 26599

MODEL OF LEGAL PROTECTION FOR WOMEN VICTIMS OF DOMESTIC VIOLENCE (KDRT) IN DIVORCE CASES IN INDONESIA

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Abstract

kindly philosophical, the birth of Law no. 23 of 2004 concerning the Elimination of Domestic Violence, to provide women feel safe and free from all forms of violence. The purpose of this research is to find a model of legal protection for women victims of domestic violence in divorce cases in Indonesia. The research method, the type of normative legal research, with a concept approach, statutory approach, and comparative approach. This research concludes that the model of legal protection for women victims of domestic violence in divorce cases in Indonesia in the future a Special Court will be formed, namely the Family Court which combines civil and criminal settlements under one roof to provide access to justice for women.

Keywords: Legal Protection, Women Victims of Domestic Violence, Divorce.

INTRODUCTION

Philosophically, the birth of Law Number 23 of 2004 (UU No.23 of 2004) concerning the Elimination of Domestic Violence to provide women feel safe and free from all forms of violence in accordance with the philosophy of Pancasila and the 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia).¹ This is clarified again in the same law in Chapter II concerning the Principles and Purposes of this law where in Article 4 it is said to maintain the integrity of a harmonious and prosperous household.

At the level of implementation of Law No. 23 of 2004, it does not provide other solutions in solving domestic violence other than punishing the perpetrators, forcing the victim to continue to live with the perpetrators in order to maintain the integrity of the household, and hope that the relationship between husband and wife will be more harmonious after the violence.

Women try to find solutions to solve their problems through divorce, with divorce the husband and wife relationship will be broken through the courts, so that the violence can stop. In fact, Law No. 23 of 2004 cannot protect and is used by victims who wish to carry out a divorce. Komnas Perempuan noted that in 2020 there were 226,062 cases, and in 2021 there were 338,496 cases, an increase in the number of cases of violence against women in the household by 59.75%. A surge has also occurred in the Religious Courts, in 2020 there were 215,694 cases, and in 2021 there were 327,629 cases, an increase of 60.3%. Complaint data received by Komnas Perempuan, in 2020 there were 2134 cases, and in 2021 there was a spike in cases of 3838 cases, there was a spike in cases of 64.27%.

Complaint data to Komnas Perempuan also increased significantly by 80%, from 2,134 cases

in 2020 to 3,838 cases in 2021. This figure does not include divorce cases for reasons of quarrels/fights, irresponsibility and economic problems which are actually still included in the category of domestic violence (KDRT).

According to Budi Wahyuni, on average, more cases of domestic violence are resolved by choosing divorce rather than sentencing. This is because women victims of domestic violence feel taboo by reporting their own husbands to the police. Victims choose divorce because it is considered a quick and easy way. Divorce, according to Wahyuni, is considered an easy alternative to break the chain of violence. The justice system does not protect the interests of women as victims of violence, so that people are forced to be able to formulate and have their own meaning of justice, and not infrequently they are even able to create their own alternative dispute resolution forums.

Various experiences of women victims of domestic violence in seeking alternative justice by relying on state law and through the judicial process. Among law enforcers, the victim's perspective is not placed fairly, this happens in the Religious Courts which are intended for those who are Muslim, as well as the District Court for those who are non-Muslims. The focus of this research is on the legal protection model for women victims of domestic violence in divorce cases in Indonesia.

METHOD

Types of normative legal research (legal research), namely research that examines and analyzes laws and regulations, legal principles and legal norms, with a conceptual approach, statutory approach, and comparative approach. The sources of legal materials used are primary legal materials, and secondary legal materials that have topic relevance.

DISCUSSION

Definition of Legal Protection

There are several definitions of legal protection based on the opinions of experts, including:

1. The definition of legal protection, according to Satjipto Rahardjo, legal protection is to provide protection for human rights that are harmed by other people and this protection is given to the community so that they can enjoy all the rights granted by law.
2. Maria Theresia Geme "Legal protection relates to state actions to do something by (imposing state law exclusively) with the aim of providing guarantees for the certainty of the rights of a person or group of people".
3. According to Muktie Fadjar, the protection provided by law is also related to the existence of rights and obligations, in this case that are owned by humans as legal subjects in their interactions with fellow humans and their environment. As legal subjects, humans have rights and obligations to take legal action.

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4. According to Soerjono Soekanto, legal protection is all efforts to fulfill rights and provide assistance to give witnesses and/or victims a sense of security, which can be realized in forms such as restitution, compensation, medical services, and legal assistance.
 5. According to Philipus M. Hadjon, there are two types of legal protection facilities, namely: means of preventive legal protection, the aim is to prevent disputes from occurring, and means of repressive legal protection, the aim is to resolve disputes.

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Thus, legal protection means protecting human rights, in fulfilling rights and providing assistance to provide a sense of security to witnesses or victims that can be realized in forms such as restitution, compensation, medical services, and legal assistance

Women Victims of Domestic Violence in Divorce Cases in Indonesia

The purpose of eliminating domestic violence is based on Article 4 UU.No.23 of 2004, as follows:

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- a. preventing all forms of domestic violence;
 - b. protect victims of domestic violence;
 - c. take action against perpetrators of domestic violence; And
 - d. maintain the integrity of a harmonious and prosperous household.

According to the psychiatrist par perpetrators of domestic violence with "psychiatric problems have the same motives, methods and goals". The same pattern was repeated over and over again. Very reasonable in the end many victims of domestic violence choose divorce rather than convict the perpetrator, in this case her husband. Punishment is ultimum remedium which means that criminal law should be used as a last resort in terms of law enforcement, in Law No. 23 of 2004, according to the author, punishment is the main thing with the aim of providing a deterrent effect for perpetrators in accordance with Oksidelfa Yanto's statement that criminal sanctions Prison aims to have a deterrent effect.

Based on the statement above, the legal steps that are currently being taken by victims through divorce do not create a deterrent effect on perpetrators, so more efforts are needed to protect women as contained in Law No. 23 of 2004.

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Law No. 23 of 2004, is a form of preventive legal protection where protection is all efforts aimed at providing a sense of security to victims carried out by family, advocates, social institutions, police, prosecutors, courts, or other parties, either temporarily or based on a court order.

There are several interests that must be protected by law, namely:

1. Interests in the state as a juridical body;
2. Interest in the state as guardian of social interests;
3. Interests to individuals consist of personal (privacy).

To protect the above interests, the law must be implemented strictly. Implementation of the law is intended to prevent the occurrence of violations of the law (preventive) but some are carried out after the occurrence of violations of the law (repressive). Law violations occur because of violations of applicable legal rules and/or norms, this can be seen or felt when legal subjects do something that violates the rights of other legal subjects. Violations of the rights of these legal subjects must be dealt with strictly by law, and legal subjects who are harmed must receive legal protection.

UU no. 23 of 2004, it has regulated the rights of victims who need to receive legal protection. The rights of the victims referred to are regulated in Article 10, namely:

- a. protection from the family, police, prosecutors, courts, advocates, social institutions, or other parties, either temporarily or based on a stipulation of a protection order from the court;
- b. health services according to medical needs;
- c. special handling related to the confidentiality of the victim;
- d. assistance by social workers and legal assistance at every level of the examination process in accordance with the provisions of laws and regulations; And
- e. spiritual guidance services.

It is hoped that the rights of victims can be given to victims, especially women as a form of law enforcement against legal protection. In reality on the ground, all of these rights are not felt by women victims of domestic violence. The difficulty of the divorce process is that it is shrouded in criminal acts experienced by victims. They collide with the rigid rules of the Civil Procedure Code which are firmly adhered to by judges, so that victims with all their limitations are no longer able to fight for justice. Based on Article 1 number 6 of Law No. 13 of 2006, what is meant by Protection is all efforts to fulfill rights and provide assistance to provide a sense of security to Witnesses and/or Victims. This is interpreted as legal protection not to become a victim of a crime "meaning protection of human rights or for the benefit of someone's law"; also interpreted as "protection to obtain legal guarantees/compensation for the suffering/losses of people who have become victims of criminal acts" (synonymous with victim compensation). The form of this compensation can be in the form of restoration of good name (rehabilitation), restoration of equanimity (among other things, with forgiveness), compensation (restitution, compensation, social welfare guarantees/benefits), and so on.

Victims of violence should receive compensation, but victims of domestic violence do not receive compensation (restitution) because Law No. 23 of 2004 does not regulate this, unlike Law No. 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons (TPPO), Article 48 paragraph (1) which stipulates that every victim of the crime of trafficking in persons or their heirs has the right to obtain restitution. According to the former deputy chairman of the Witness and Victim Protection Agency (LPSK), Lies Sulistiani, the LPSK continues to seek restitution for victims of domestic violence using the approach of Law No. 21 of 2007, starting to produce results where requests for restitution for victims of domestic violence began to

receive attention from law enforcement officials, prosecutors The Public Prosecution began to include it in the charges. The panel of judges who tried the domestic violence case,

The establishment of Law No. 23 of 2004, to protect victims of domestic violence, can adopt the concept of restitution, as stipulated in Law No. 21 of 2007, this is intended as a form of protection that should be regulated by the state solely to protect the dignity of citizens who do not may be treated unconstitutionally

Along with the development of modern times, state intervention is urgently needed so that the position of men and women is equal in various aspects, this according to the author will have a major impact on the number of domestic violence, if women and men know their rights and obligations in the household, and get - their rights, and the state participates in carrying out their duty to protect them, then the act of domestic violence will automatically decrease, and in the end there will be no more women who are oppressed for reasons of domestic violence who are wrapped up in religious law or customary law.

Various countries in the world regulate laws that aim to protect women's rights to be free and avoid acts of domestic violence, such as in the following countries:

1. Singapore

Singapore is a country whose government invests heavily in developing people's capabilities and encouraging them to work hard and adapt to the global environment. The results of the Convention on Human Rights in Vienna in 1993 were part of universal human rights which then in 1994 the International Convention on Population and Development (ICPD) in Cairo laid the basis for recommendations relating to women's reproductive health and the 1995 Convention Fourth World Women in Beijing mentions "Women and Health".

The international convention encourages Singapore to ratify the results of the convention by amending the Constitution to Article 9 in the Singapore Law which aims to improve the position and rights of women in Singapore.

The management of domestic violence / family violence in Singapore is the responsibility of the Ministry of Family Development and Sports which is related to protocols and procedures with an extensive network system. This model approach is considered effective for serving families with problems in relation to violence.

The services coordinated by the Ministry of Family Development and Sports for families affected by violence include:

- a. Counseling and support services for families and groups by providing support, providing shelter for victims experiencing crisis, medical assistance through hospitals, police. The intervention carried out by the perpetrator was imprisoned for more than one year, and while in prison, special counseling was provided;
- b. Policies for cases of violence in the family that arise before being transferred to the court level will be:
- c. Cases of violence must be handled as soon as possible to save the parties;

- d. Courts should increase victims' access to courts;
- e. Courts must be sensitive to power imbalances or there are other cases that are not mediated through courts.

The victims of domestic violence in Singapore can immediately ask for protection from the courts in Singapore because the courts in Singapore must know that there is a danger that was committed in acts of violence, even the courts in Singapore can issue a quick order of protection or orders that are given without the first trial of the victims. In addition, Article 65 (5) (b) in The Women's Charter or the law in Singapore emphasizes that part of the Women's Empowerment Charter gives a mandate to the Court, that victims, perpetrators and children must be counseled, the program is managed properly and adequately funded to rehabilitate perpetrators and provide support to victims and their children.

This is what the author has not seen in the actions of the government/state in Indonesia where Komnas Perempuan as a resource center (information) about women's human rights as human rights and violence against women as human rights violations, as a negotiator and mediator between the government and the victim community, and the community of women's human rights defenders has not been able to run optimally. There are still many victims of domestic violence in areas far from the center of government, struggling alone without assistance, and attention from the government, namely; government agencies, courts that have direct knowledge of the case and the divorce court process lack initiative, to provide protection and victims' rights without special requests, and are not well socialized to the community, even to get physical and psychological health services after the occurrence of violence which is part of the victims' rights that should be provided by the Indonesian government, cannot be obtained free of charge but must be fully pursued by victims.

2. Malaysia

Malaysia is the first Asian country to have laws to protect victims of domestic violence and recognizes domestic violence as an issue that is increasingly worrying many people. The term domestic violence in Malaysia is Domestic Violence. Malaysia's commitment to the elimination of domestic violence is evident in the 1994 Domestic Violence Act (Deed 521).

Domestic violence according to Section 2 of the Domestic Violence Act (Deed 521) is an act of a) intentionally placing or trying to place the victim in a state of fear of physical violence; b) causing physical violence against the victim with an act that is known or should be known to result in physical violence; c) coerce the victim by means of threats to perform sexual acts or any acts of a sexual or other nature that the victim has no right to do; d) confine or detain the victim without the victim's consent; and e) commit treason or damage to property with the aim of causing sorrow or hatred for the victim.

The concept of domestic violence is explained in the 1994 Domestic Violence Act (Deed 521), namely deliberately placing or trying to place the victim in a state of fear of physical violence and causing physical violence against the victim with an act that is known or should be known to result in physical violence.

The forms of physical violence according to the concept of the 1994 Household Malignancy Act (Deed 521), namely:

- a. Doing and trying to do physical violence such as holding, pinching, shaking, slapping, hitting, biting, twisting the arm, kicking, hitting with a blunt object, stabbing, shooting.
- b. Obstruction or neglect to obtain or provide resources needed to maintain health such as medication, drugs, wheelchairs, food or fluids, sleep, cleaning assistance, forced drinking of alcohol or taking drugs

From this explanation the authors see that the Malaysian Government is more serious in providing protection to victims of domestic violence/domestic violence, even to be able to provide protection to its people in federal territory, the Malaysian Government has made 12 mosques in federal territory as counseling and complaint centers for victims of domestic violence. stairs (KDRT). This was conveyed by Deputy Minister for Women, Family and Community Development Datuk Siti Zailah Mohd Yusoff. In addition, two regional mosques and the Al Ghufron mosque in Taman Tun Dr Ismail Kuala Lumpur will serve as transit centers for the victims.

The seriousness of the Malaysian Government needs to be appreciated and even duplicated by the Government of Indonesia by creating integrated posts (mosques) for the protection of victims of domestic violence, in each area with religious leaders as mediators in disputes based on domestic violence. With a Malay religious and customary background which is almost the same as Indonesia, there is a very significant difference seen by the authors where the mosque is used by the State of Malaysia as a center for counseling and complaints for victims of domestic violence, while in Indonesia, where the majority are Muslim, they believe complaints of housing problems the stairs are a disgrace that should not be conveyed to outsiders, in this case counseling centers,

3. America

Cases of domestic violence often occur in Uncle Sam's country, the United States. The culture of American society is also not much different, they also position men as superior and women as inferior. According to Sylvie Meiliana, men are the heads of the family who must be respected because of their position as breadwinners, while women are wives who have the obligation to take care of the household, serve their husbands and take care of the children.

Sylvie Meiliana also explained that the cause of domestic violence which is increasingly rampant in America, is that there is still a public perception that domestic violence is a private matter. There are people who view this phenomenon from a patriarchal perspective. That is why domestic violence continues to be an unresolved phenomenon.

According to Heather Variava, Deputy Ambassador of the United States to Indonesia, the annual report from the Commission for the Protection of Women in America stated that more than 430,000 cases were objects of violence in 2019. The high number of violence received serious attention by the President of the United States at that time, Donald Trump, who later designated October as National Household Awareness Month. Trump called on all Americans

to stand firm in condemning domestic violence and supporting those who survived this crime.

US President Barack Obama previously passed the Violence Against Women Act, a 1984 breakthrough law designed to limit domestic violence. According to him, this revised law guarantees that perpetrators of violence against Indian women can be caught and tried on Indian soil.

Not only crimes, in 2014 during a visit to Indonesia, the Prosecutor's Office and the Family Justice Center Office (FJC) New York, United States (US) stated that in the system in effect in New York, United States (US), if the victim wishes to request compensation to the perpetrators for damage to their goods, then it can be submitted to the state. According to him, with regard to compensation restitution given to victims, if they make a report to the police they can submit an application. There are several things that can be given, such as medical expenses, counselling, reimbursement of ambulance costs, replacement of property for those who were damaged as a result of the acts of violence they experienced.

After making comparisons with other countries, in Indonesia legal protection for women victims of domestic violence is given the freedom to sue for divorce through the Marriage Law, fight for the rights of victims in the Law on the Elimination of Domestic Violence, and file a lawsuit where the plaintiff is located. stay in accordance with the principles in the procedural law, namely; the principles of fast, easy and low cost, so that in the future a Special Court is needed, namely the Family Court which combines civil and criminal settlements under one roof to provide access to justice for women.

CONCLUSION

A model of legal protection for women victims of domestic violence in divorce cases in Indonesia in the future will form a Special Court, namely the Family Court which combines civil and criminal settlements under one roof to provide access to justice for women.

SUGGESTION

The government should reform the Civil Procedure Code, as well as the material law in the form of the right to support for women victims of domestic violence who are seeking divorce through the Marriage Law, as well as victims' rights in the Law on the Elimination of Domestic Violence. The government needs to improve facilities related to the implementation of the policy of implementing legal protection for victims of domestic violence in the regions in accordance with the rights of victims regulated in Law Number 23 of 2004 concerning the Elimination of Domestic Violence, in Article 10, namely: protection from the family, a special room at the police office, prosecutors, courts, advocates, social institutions or other parties either temporarily or based on a court protection determination. Health services according to medical needs, psychological services, and spiritual guidance services

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