

The existence of Criminal Justice System as Legal Safeguards for Women Victims of Domestic Violence

Syamsul Fatoni
Fakultas Hukum
Universitas Trunojoyo Madura
Bangkalan, Indonesia
syams.fatoni@yahoo.co.id

Dewi Muti'ah
Fakultas Hukum
Universitas Trunojoyo Madura
Bangkalan, Indonesia
Dewi.congir@gmail.com

Dodik Pranata Wijaya
Fakultas Hukum
Universitas Trunojoyo Madura
Bangkalan, Indonesia
dodik.p.wijaya@gmail.com

Abstract—Domestic violence is a form of crime against a person especially women that causes physical, sexual, psychological suffering and / or the marital abandonment, including threats to commit acts, coercion, or deprivation of liberty against the law within the scope of the household. The existence of the Criminal Justice System will have a direct impact on the protection of women victims of domestic violence. This research was a doctrinal law research with a statute approach in addition to a conceptual approach. While the analysis used were qualitative analysis and grammatical; as well as systematic interpretation. The results showed that the Criminal Justice System in Indonesia at the level of rules and concepts has provided legal protection for women victims of domestic violence, as stated in Article 1 of Law No. 23 of 2004 concerning the Elimination of Domestic Violence that there is an integrated effort, synergy between the government and the community. In addition, each stakeholders will provide services to victims of domestic violence in accordance with their respective fields ranging from the Police, health workers, social workers, volunteer assistants, spiritual advisers including the Prosecutor's Office and Court in prosecuting and delivering decisions on perpetrators of domestic violence becomes important to avoid the recurrence of cases of domestic violence in the community as a deterrent effect. In addition, the concept of mediation has emerged as an alternative thought in solving the problem of the criminal justice system, including the domestic violence cases.

Keywords—*criminal justice system, women, victims, domestic violence;*

I. INTRODUCTION

Conception of violence as a crime in the context of household life is an act against a person especially women which results in physical, sexual, psychological suffering and / or the marital abandonment, including threats to commit acts, coercion, or deprivation of liberty against the law within the scope of the household.[1]

In Criminal Law, the principle of "the principle of no criminal without error" is that a person cannot be convicted of a crime if there is no error against the law found in his action. The element of error can be intentional or negligent. In other words, an act against the criminal law is aimed at a

result caused by a prohibited act and the criminal threat is directed to the subject (the person who commits the crime).[2] Therefore, the perpetrators of crimes including domestic violence in which the perpetrators should be responsible for their actions in connection with the mistakes that have been committed and meet the formulation in the criminal law. Although in reality there are values that live in the community. In the Draft Criminal Code Article 1 it is stated that criminal offense not only fulfills the formulations in the criminal law, but also considers the values that live in the community. In addition, the existence of the Criminal Justice System will have a direct impact on the protection of women victims of domestic violence.

The research problem is: Does the Criminal Justice System in Indonesia have provided legal protection for women victims of domestic violence?

II. RESEARCH METHOD

This research is a doctrinal legal research which employed a statute approach in addition to a conceptual approach. Meanwhile, the analysis was done through qualitative analysis and grammatical interpretation, as well as systematic interpretation in which the interpretation was done by interpreting the law as part of the entire system of legislation by connecting it with other laws logically and systematically.

III. RESULTS AND DISCUSSION

A. *Shifting from Private to Public*

In the formation of law, it should be explored and empowered the law that comes and roots from cultural, moral, and religious values including the re-actualization of the values of Pancasila with a religious approach, therefore it can be realized the harmonization between physical and spiritual life.[3]

In addition there is a shift from Private Law to Public Law, in which the concept of Private Law was cited by Agung Ali Fahmi and DodikPranataWijaya:[4] "... *In the Harvard Law Review article, they argued that privacy was an issue that needed to be recognized. They said that the*

right to privacy was not something that was found by only looking at the Constitution. But cultural values and new technology also should have a significant role in developing a new understanding of the right. This is in contradiction with the fact or general opinion that domestic violence seems to be in private domain so that it has an impact on law enforcement. The existence of shifting or new paradigm in seeing legal events is also influence government policy. Problems within the family sphere including violence that involves family members are generally understood to be private matters so that they are categorized as Private Law. But in its development the shift from private matters in to public matters might be happened, which demands the role of the government in order to protect the rights of its citizens from unlawful acts (read: domestic violence which incidentally is a female victim) so that it can be categorized as Public Law.

B. Protection of Women Victims of Domestic Violence

In providing legal protection for women victims of domestic violence, it cannot be separated from the existence of the Criminal Justice System in which each sub-system synergizes with one another to realize the protection of women victims of domestic violence.

b.1 Role of Government and Society

In accordance with the rampant domestic violence in the community it is necessary to take action. However, preventing and providing protection to victims of domestic violence is not simple, therefore socializing and handling domestic violence is a complex problem. This cannot be separated from the culture of our society as the main factor. Our society considers internal family problems as a private things or secret thing within family members. Culture in our society "demands" the wife to keep her family secret, to keep the family disgrace. Conversely, it considers as taboo / inappropriate to interfere other people household problems. Ideally, family problems should be solved by the family members. But if it fails, the rumors will spread; maybe it's time to involve legal mechanisms and formal social control. Domestic violence is categorized as a complaint offence, meaning that only victims (including parents and those authorized) can report this incident to the authorities. However, community members who are aware of the occurrence of domestic violence are required to provide protection to victims as much as possible through particular procedures.

Therefore, government and the community should take their role in overcoming domestic violence cases. Finally, it is necessary to realize the elimination of domestic violence (prevent the occurrence of domestic violence, crack down on perpetrators of domestic violence and protect victims of domestic violence as it is stated in Article 1 Law No. 23 of 2004 concerning the Elimination of Domestic Violence) that should be

carried out in an integrated effort, and there should be synergy coming from government and the community.

The Government role as regulated in Article 11 paragraph (1) of the Domestic Violence Act) is to formulate a policy on eliminating domestic violence; organizing communication, information and education on domestic violence; organizing outreach and advocacy on domestic violence. In order to provide services to victims of domestic violence, the central and regional governments should take role based on their respective functions and tasks to make efforts: the provision of special service spaces (RPK) at the police station; provision of officials, health workers, social workers and spiritual mentors; creation and development of systems and mechanisms of cooperation in service programs involving parties that are easily accessed by victims; provide protection for the victim's companion, sanctions, family and friends (Article 13 of the PKDRT Law).

Meanwhile, the community is expected to give more care toward domestic violence as their effort to prevent domestic violence and provide protection (providing a sense of security to victims of domestic violence). Therefore every person who hears, sees or knows the occurrence of domestic violence acts should make efforts in accordance with the limits of their ability to: prevent criminal acts; provide protection to victims; provide emergency assistance; assist the process of submitting application for protection determination (Article 15 of the Domestic Violence Act).

b.2 Protection of Women Victims of Domestic Violence

Victims of domestic violence directly or through family and other people are given the power to report domestic violence acts to the police (or the head of NGOs or UPP who will later refer / help reporting to the police) both at the victim place and crime scene. Furthermore, within 1 x 24 hours of receiving the report, the police (social institutions or other parties) will provide temporary protection, before issuing a protection order from the government. In providing temporary protection, the police will cooperate with health workers, social workers, volunteer assistants and / or spiritual mentors to assist victims. Each party will provide services to victims of domestic violence in accordance with their respective fields:

1. The Police will explain the right of victims to get assistance services;
2. Health workers will do the medical checkup of the victim and make *visumetrepertum*.
3. The social worker will (a) provide psychological assistance usually with counseling to strengthen and provide security for victims. In the counseling process victims are invited to formulate problems, find solutions and are encouraged to make the best decisions. This process is important to help victims understand themselves and their problem, and (b)

escort the victims to the shelter (temporary shelter used to provide protection to victims according to predetermined standard, for example: trauma center or shelter) or to the alternative residence (a place where the victim live temporary to avoid and stay away from the perpetrator);

4. The companion volunteer will inform the victim right to get one or several assistance and assist the victim at investigation, prosecution and examination in court by guiding the victim to objectively and completely expose the violence he experienced, as well as listen empathetically to the victim's testimony and actively provide psychological and physical assistance to victims (Article 23 of the PKDRT Law);
5. Likewise the spiritual guide will explain the rights, obligations and strengthen victims' faith and piety to God.
6. In addition, the Prosecutor and the Court become an important aspect in prosecuting and issuing decisions towards the perpetrator of domestic violence. The decision made is expected to give a deterrent effect and make the society avoid the recurrence of domestic violence.

Generally, what is regulated in the new PKDRT Law is the starting point to form a happy, prosperous family, because the most important of all is its implementation, making it happen. Domestic violence should be eradicated. Just waiting for help from the government and doing nothing are useless. Awareness and concerns from the community is needed to eradicate the domestic violence. And this law will be meaningless, if it is not followed by real efforts to implement them.

Therefore, the formation of legislation through the National Legislative Program (Proleknas) and the Regional Legislative Program (Prolegda), could be created based on the aspirations of the community, which is regulated in Law No. 12 of 2011 Article 18 letter H and Article 35 letter D

In relation to Regional Government, this aspiration principle is affirmed in Law No. 23 of 2014: Article 1 Number (6), Article 45 letter C; Article 209 and in Elucidation of Law about Regional Government. In addition, in the "history and culture" in which Von Savigny stated that good law is to pay attention to the law that lives and develops in society.[5]

Therefore, the *first principles* used in providing protection to women victims of domestic violence include: implementing values in the community which are then enshrined in Pancasila such as the values of God, Humanity, Unity, Deliberation and Consensus and Justice, which can be used as a basic principle in settlement of domestic violence cases.

The second principle is the basic principles of the 1945 Constitution, as confirmed in Article 3 Paragraph (1) of Law no. 12 of 2011 concerning the Formation of

Legislation "the 1945 Constitution of the Republic of Indonesia is the basic law in the Statutory Regulations".[6] Furthermore, it is explained what is meant by "basic law" is the basic norm for the Formation of Legislation Regulations which is a source of law for the Formulation of Legislation under the 1945 Constitution of the Republic of Indonesia.

The third Principle, a criminal justice system that is built on restorative justice that reflects more justice for the perpetrators, victims and the community in connection with the occurrence of domestic violence cases.

b.3 Restorative Justice Concept in Settling Domestic Violence Cases

The concept of Restorative Justice is a concept of thought that responds to the development of the criminal justice system by emphasizing the involvement of community and victim through the existing criminal justice system mechanism. On the other hand, restorative justice is also a new thinking framework that can be used in responding to a criminal offense for law enforcers and workers.[7] Furthermore, according to Muladi, the characteristics of Restorative Justice include:

- a. The focus of attention in solving the problem of future responsibilities and obligations;
- b. Normative nature is built from dialogue and negotiation;
- c. The role of victims and perpetrators of crime is recognized both in the problem and in the settlement of the rights and needs of the victim; criminal offenders are encouraged to take responsibility;
- d. Crimes are understood in a holistic way, including the moral, social and economic context;
- e. Promoting reciprocal assistance;
- f. Stigma can be removed through restorative action;
- g. Helpful encouragement to repent and forgive is possible;
- h. Target of attention on repairing social losses.[8]

Community needs have led to the resolution of legal problems that occur in the community (including in criminal law), not all are resolved through legal provisions procedures. The litigants interest to find solutions, avoidance of the long criminal justice process, and various criticisms directed at the criminal justice system have led to various kinds of thinking about alternative systems for solving the case. Mediation is chosen because it not only seeks a legal certainty but also presents the facts so that truth and decisions to solve the problems of both parties can be obtained without any pressure.

Mediation in criminal offense is often carried out and is considered a deviation. But we could not deny that the public wants fast and low cost problem solving that provide mutually satisfying results for both parties. To achieve this, all the various kinds of comparisons of the

most beneficial legal system should be used to achieve the objective of establishing the law, to create public welfare.

IV. CONCLUSIONS AND SUGGESTIONS

Criminal Justice System in Indonesia in the level of rules and concepts has provided legal protection for Women Victims of Domestic Violence, as it stated in Article 1 of Law No. 23 of 2004 concerning the Elimination of Domestic Violence, explaining that an integrated effort must be made, synergy between the government and community. In addition, each party will provide services to victims of domestic violence in accordance with their respective fields ranging from the Police, health workers, social workers, volunteer assistants, spiritual guides who will explain the rights, obligations and strengthen faith and piety of victims. In addition, the Prosecutor and the Court become an important aspect in prosecuting and issuing decisions towards the perpetrator of domestic violence. The decision made is expected to give a deterrent effect and make the society avoid the recurrence of domestic violence.

Mediation emerged as an alternative thought in solving the problem of the criminal justice system, including in domestic violence cases. This idea originally comes from the restorative justice discourse that tries to accommodate the interests of victims and perpetrators of crime, and to find solutions to overcome various other problems of the criminal justice system.

ACKNOWLEDGMENT

This research is funded by Law Faculty, Universitas Trunojoyo Madura.

REFERENCES

- [1] Undang-undang Nomor 23 Tahun 2004, *Penghapusan Kekerasan Dalam Rumah Tangga*. 2004, p. Pasal 1 angka 1.
- [2] D. Muti'ah, "Kebijakan Formulasi Pertanggungjawaban Pidana Terhadap Pelaku Kejahatan Cybersquatting," *J. Recstens*, 2019.
- [3] S. Faton, "PEMBAHARUAN HUKUM PIDANA MELALUI AKTUALISASI NILAI-NILAI PANCASILA BERORIENTASIKAN PENDEKATAN RELIGIUS," *Ahkam J. Huk. Islam*, 2015.
- [4] A. Ali Fahmi, "Does Indonesia's Corruption Eradication Commission (KPK) in Spying on People Violate the International Human Rights Laws in Protecting the Right to Privacy?," in *1st International Conference on Social Sciences (ICSS 2018)*, 2018, p. 226.
- [5] S. Soekanto, *Pokok-Pokok Sosiologi Hukum*. Bandung: Rineka Cipta, 1980.
- [6] Undang-Undang Nomor 12 tahun 2011,

Pembentukan Peraturan Perundang-Undangan. 2011.

- [7] "Definisi Keadilan Restoratif," 2009. [Online]. Available: www.evacentre.blogspot.com. [Accessed: 20-Nov-2009].
- [8] Muladi, *Kapita Selekta Sistem Peradilan Pidana*. Semarang: BP Undip, 1995.