

# *The Problematics of Legal Protection Toward Victims of Domestic Physical Violence in Indonesia*

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**Abstract--***People basically had psychological violence but do not realize that they are victims of domestic violence. Even though he is aware, there is a tendency to put aside the psychological suffering. The ignorance of psychological suffering can certainly affect a person's mental health, and may even have implications for worse for the victim and his / her environment. The method of this research used is qualitative, with a juridical normative or doctrinal approach. The result indicate that problem of legal protection for victims of psychological violence in the household can be identified in four aspects, including aspects of legal substance, legal structure, legal culture and victim factors. First, legal substance, several formulations that affect law enforcement that have not been optimal. Second, legal culture is the main problem in the perpetrator's complaint. Therefore, various problems in legal protection for victims, including law enforcement against perpetrators, need to be balanced with the optimization of legal protection for victims of psychological violence. In response, the strengthening of legal substance, structure, culture, and victim factor needs to be done.*

**Keywords-** *Legal Protection; Victims; Domestic Physical Violence.*

## I. INTRODUCTION

Internal problems within the household sphere often occur and tend not to be overt. Violence in this regard poses a real threat, some of which are visible and some are not. Violence in the domestic context is regulated in Article 1 Paragraph (1) of Law no. 23 of 2004 concerning the Elimination of Domestic Violence (Law No. 23 of 2004 concerning PKDRT), namely actions against someone, especially women, which cause suffering or suffering physically, sexually, psychologically, and / or neglect of the household including threats to commit acts, coercion, or deprivation of liberty. The statutory limitations classify 4 (four) forms of violence, including physical, psychological, sexual violence and household neglect that cause misery or suffering.

In connection with the above, psychological violence is a kind of violence that is different from sexual or physical violence. There is a tendency that physical and sexual violence is easier to see such as wounds or bruises, on the other hand victims who experience physical or sexual violence are definitely experiencing psychological violence, and conversely, people who experience psychological violence do not necessarily experience physical or sexual violence [1]. Many people basically experience psychological violence but do not realize that

they are victims of domestic violence. Even though he is aware, there is a tendency to put aside the psychological suffering he experiences. Payments for psychological suffering can certainly affect a person's mental health, and may even have implications for worse for the victim and his / her environment.

Another thing that needs to be considered is the scope of the term "household" as regulated in the provisions of Article 2 of Law no. 23 of 2004 concerning PKDRT that what is meant by household includes husbands, wives, children, people who have family relationships, both by blood, breastfeeding, caregiving and guardianship who live in the household and people who work to help the household and live in the house. the ladder within the time while in the house concerned. This shows that the scope of the household has a much broader aspect than the scope of the family. The family has a narrower scope, namely everyone who is related by blood or marriage, as in Article 1 to 30 of Law Number 8 of 1981 KUHP, that "Family is those who have blood relations to a certain degree or marital relationship".

Therefore, in the context of a household who is a victim or perpetrator of psychological violence, it is not only a member in a blood or marital relationship but also more broadly, including people who work to help households and other people who live permanently in the house. This is in line with the reality that household assistants and people who live in them often experience helplessness. In simple terms, psychological violence can be described as a bloodless wound.

The impact caused by psychological violence is certainly different from other violence, there is a description of concrete behaviour that is generally displayed by victims as a form of the psychological impact of the violence they experience. Not only a sense of helplessness, but also loss of self-confidence and loss of ability to act, fear, to severe psychological suffering which can be seen from the following behaviours: loss of interest in caring for oneself, loss of interest in interacting with others, depressive behaviour (ex : moody, easy to cry, blindfolded, difficulty sleeping or vice versa, etc.), activities or work becomes disturbed (ex: not being careful, often dropping things accidentally, often not coming in or being late for work and being late in collecting tasks, not providing food for children even though previously these things were done routinely), lack of self-confidence, loss

of courage (ex: not daring to express), post-traumatic stress (appearing in the form of being always alert, very afraid of seeing the perpetrator, easily startled, disturbance sleep), confusion and loss of orientation, self-harm or attempted suicide, excessive and unusual behaviour (ex: talking to yourself, laughing to yourself, shouting, messy speech), aggressive behaviour, to psychosomatic. [1].

The conditions above show the enormous implications of psychological violence in the household. The recognition of psychological suffering as a form of suffering that is inherent in the victim is marked by the regulation of various legal instruments, including international provisions. Article 1 Paragraph 1 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power: "Victim means persons who, individuals or collectively, have suffered harms, including physical or mental injury, emotional suffering, economic loss or substantial impairment of the fundamental rights, through acts or omissions that are in violation of criminal laws operative within member states, including those laws proscribing criminal abuse of power"[2]. Law 31 of 2014 concerning Amendments to Law Number 13 of 2014 concerning Protection of Witnesses and Victims (Law No. 31 of 2014), also provides an understanding of victims, namely someone who experiences physical, mental, and / or economic loss as a result of a criminal act". This shows that talking about victims is inseparable from psychological (mental) harm and suffering.

Concrete psychological violence as a form of victim suffering is manifested in Article 7 of Law no. 23 of 2004 where Psychic violence is defined as an act that causes fear, loss of self-confidence, loss of ability to act, feeling helpless, and / or severe psychological suffering for a person. This is of course followed by the criminalization of psychic violence as a crime as regulated in Article 45 of Law no. 23 of 2004.

Becoming a classic problem, but difficult to solve until now, is related to the ensnaring of criminal acts of psychological violence. The cases of psychic violence that are revealed basically have not shown the number of existing realities. Some people still consider that responding to a psychological affliction in the household is considered excessive, where the pressure that occurs in domestic life is something that is normal and normal, even if someone is considered weak if he is a victim of psychological violence. This is a dangerous perspective, considering that the implications of psychological violence can have a domino effect, not only harm to himself but also to other family members and / or their social environment.

Even though the regulations explicitly stipulate the criminal sanctions for perpetrators of psychological violence in the household and the rights of victims. However, law enforcement on psychological violence is still foreign to society and difficult to do. As a result, victims of psychological violence in the household find it difficult to get out of the cycle of violence.

## II. PROBLEMS

First, what is the problem of legal protection for victims of psychological violence in the household. Second, how to optimize legal protection for victims of psychological violence in the household.

## III. RESEARCH METHOD

The research methodology used is qualitative, with a juridical normative or doctrinal approach. This research is trying provides a systematic explanation of the rules, analyses the relationship between the rules, explain areas of difficulty. In essence, research is carried out by examining secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials. [3]

## IV. DISCUSSION

### **The problem of criminal law enforcement for perpetrators of psychological violence in household**

The basis for the consideration of the birth of Law no. 23 of 2004, among others, every citizen has the right to be free from all forms of violence and to feel safe. Therefore, all forms of domestic violence are violations of human rights. [4] There is a significant difference in the investigation process between KUHAP and Law no. 23 of 2004. The substance in the Criminal Procedure Code gives priority to the perpetrator to be immediately processed for investigation, while Law no. 23 of 2004 prioritizes victim services to obtain legal protection first as victims of domestic violence.

According to Bambang Hartanto, there are several advantages in Law no. 23 of 2004, among others: First, this law has pushed domestic violence cases from the private jurisdiction to the public jurisdiction. Second, this law has made a new breakthrough in criminal procedural law, namely the principle of one witness is not a witness, in which this law provides for witnesses who are victims of domestic violence plus a doctor's certificate that meets the requirements to prove the existence of violence. Third, the scope of the household has been expanded by this law, namely husbands, wives, children and everything within the scope of the household. Fourth, the definition of violence in this law has been broadened not only physically but also psychologically, sexually and household neglect. [5]

In connection with the above, Law no. 23 of 2004 has criminalized psychic violence as a criminal act. This is as regulated in the provisions of Article 45 Paragraph (1) which essentially stipulates that "Every person who commits an act of psychological violence within the scope of the household shall be punished with imprisonment of up to 3 years or a maximum fine of Rp. 9,000,000.00". If it is related to Article 7, the psychological violence referred to is any person who commits an act that causes fear, loss

of self-confidence, loss of ability to act, feeling helpless and / or severe psychological suffering to someone. Whereas in Paragraph (2) Article 45 it is stipulated that "if the act is committed by a husband against his wife or vice versa which does not cause disease or obstruction to carry out his job or livelihood or daily activities, then he shall be punished with imprisonment of up to 4 months or not. a maximum fine of Rp. 3,000,000.00 ". The main element in Paragraph (2) focuses on the consequences of this psychological violence that do not cause illness or obstruction from carrying out occupational work or livelihood or daily activities. This provision becomes a legal snares for someone who has committed psychological violence in the household.

However, in reality the provisions above are not effective or even not used at all to ensnare the perpetrator. There are problems in the legal protection of victims of psychological violence in the household, especially in law enforcement against the perpetrators. This problem is very complex, varied but at the same time a relative nature that cannot be equated with one household problem. However, identification of problems related to law enforcement against perpetrators of psychological violence needs to be done in order to obtain optimal legal protection for victims.

At least one can identify the problem of legal protection for victims of psychological violence in the household from the aspects of legal substance, legal structure, legal culture, and victim's personality, as described below. *First*, the legal substance that this law is sufficiently oriented towards the interests of victims, which is seen from the provisions of Article 4 that the elimination of domestic violence does not only aim to prevent all forms of violence, protect victims, and take action against perpetrators of domestic violence, but also maintain the integrity of the home, harmonious and prosperous stairs. This is in line with the provisions of Article 52 that the criminal act of psychological violence as referred to in Article 45 paragraph (2) is a complaint offense. This means that it is back in the interests of the victim whether or not he is willing to report the criminal act of psychological violence that he has experienced. On the other hand, this has its own consequences, where there is a tendency for victims who experience mild psychological violence to prefer to maintain the integrity and harmony of their household rather than having to leave the cycle of violence that causes the perpetrators to be convicted. This is of course a dilemma for the victim and has the potential to increase into psychological violence with serious consequences.

The system for formulating criminal sanctions in Law no. 23 of 2004 is an alternative formulation system. This can be seen in the formulation of criminal sanctions that use the word "imprisonment or fines". This provision has provided ample space for judges to impose fines. This is understandable, given the fact that some victims and other families still need the figure and support of the perpetrator, so what will be their fate if the perpetrator is subject to imprisonment. However, on the other hand, the strict application of the *ultimum remedium* even exclusion

of harsh crimes such as imprisonment, does not necessarily prevent victims from becoming victims again in their domestic life. Especially for psychic violence, where it cannot be denied that the tongue is much sharper than a knife.

Article 2 Paragraph (1) letter c concerning the scope of the household, where included the person who works helps the household and lives in the household. It is further explained in Paragraph (2) that the person who works is considered a family member for the period of time he is in the household concerned. There is an issue regarding the unclear indicator regarding "the period of time while in the household concerned", whether it means living or staying in the household. If so, of course, it will be difficult to accommodate household assistants who do not stay or live, but instead work for a certain time.

The second aspect relates to the structural component. Basically, victims who experience psychological violence when entering the investigation stage will be examined by an expert, namely a psychiatrist who is a specialist doctor who specializes in the diagnosis and management of emotional disorders which treats mild, severe mental disorders using psychiatry (science psychiatry). It should be noted that in this case what is proven is not the suspect or the defendant, but the victim, namely whether the result of the psychological violence causes the victim to experience mental disorders or mental pressure or assistance. In this case, investigators cannot see whether the victim experienced psychological violence, because psychological violence cannot be seen with the naked eye. Therefore, the investigator is assisted by a doctor (expert) psychiatrist. Psychologically examining the victim is not enough in a short time, but it takes a long time, including conducting interviews. This is to determine whether the victim has a disturbance to the category of mild, moderate or severe disorders. Another role of the Psychiatrist is to issue a written letter or statement which is the result of the examination of the victim. The examination result letter is in the form of *visum et repertum* which is known in the psychiatric world as *visum et repertum pshiatricum*. [1].

However, the lack of knowledge of law enforcement officers regarding psychological violence ultimately becomes the main problem. This relates to the qualifications of a field of expertise, where law enforcement officers are not doctors / experts in the field of psychiatry, so it is only natural that they do not have the ability to analyse a person's psychological condition. However, this condition is faced by the limited resources of doctors / psychiatrists in the regions. There is a trend Law enforcement officers do not respond well to victims who experience psychological violence in the household. More response is given when the victim experiences physical violence, where the harm and suffering are visible from the outside that are easily visible. Unlike the case with psychological violence, which is not visible from the outside. Another obstacle is that there is a tendency for psychological violence to have relative limits from the

perspectives of law enforcement officials, victim assistance and so on.

The third aspect, Legal Culture. There is a tendency in the public mindset that psychological violence is not considered as something serious in domestic life. Psychic violence is still considered something normal, common and often occurs in household life. In fact, there is often a stimulus that every household must have a storm and everyone in it must be able to survive for the sake of the good name of the family. This causes the hurt and depression suffered by the victim to be considered excessive. As a result, the victim was reluctant to examine his psychiatric and was reluctant to solve the problem through the law enforcement process.

Fourth, the victim's personal. There is a tendency for victims not to know and understand if they victims of psychological violence, including the psychological changes they have experienced as a result of psychological violence. Even though they know, the victim is apathetic to report this to the authorities or someone closest to her, and is afraid that she is considered to have a mental disorder if she has to go to a psychologist or psychiatrist to recover her mental condition and thinks she will recover over time and improve conditions in the household. The majority of victims in this regard still consider that family dignity and family harmony are the priority of the victims. This is what causes the rights of victims as regulated in Law no. 23 of 2004, as well as criminal sanctions by the perpetrator did not function by the victim.

### **Optimization of Legal Protection for Victims of Psychic Violence in the Household**

The rights of victims of domestic violence are basically regulated in Article 10 of the PKDRT Law. In essence, these rights include: (a) protection from various parties, namely family, social institutions, advocates, police, prosecutors, courts or other parties; (b) Health services; (c) confidentiality of the victim; (d) Assistance by social and legal aid workers at all stages of the audit process; and (5) Spiritual guidance service. However, many victims of psychological violence in the household cannot enjoy this right, because victims are reluctant to process the perpetrators.

According to Barda Nawawi Arief, protection of crime victims can be seen from two meanings: first, it can be interpreted as "legal protection not to become victims of criminal acts" (meaning protection of human rights or for one's legal interests). Second, it can be interpreted as "protection to obtain legal guarantees / compensation for the suffering / loss of a person who has been a victim of a criminal act" (identical to victim assistance). The form of compensation can be in the form of restoration of good name (rehabilitation), restoration of inner balance (among others, with forgiveness) the provision of compensation (restitution, compensation, social welfare security / compensation), and so on. [6]

Optimization of legal protection for victims of psychological violence in the household needs to be done,

among others: *First*, Increasing preventive legal protection efforts, which include (a) Socialization of Law no. 23 of 2004 regarding the rights of victims of psychological violence in the household and the threat of punishment for perpetrators of psychological violence in the household; (b) Increasing the sensitivity and legal awareness of the community in preventing psychological occurrences in household households; (c) There needs to be a local government program in preventing and overcoming victims of psychological violence in the household; (d) It is necessary to increase the practice of independent psychologists and psychiatrists in the field of household counselling in the regions.

*Second*, increasing repressive legal protection efforts, including (a) Victims are willing to report psychological violence they have experienced to the authorities and / or law enforcement officials and the surrounding community to act pro-actively to help victims get their rights. This is quite crucial considering that apart from being the starting point for victims to obtain legal protection services, victim reporting is very helpful in exposing the reality of psychological crimes in the household; (b) Accompanying victims in advancing the rights of victims; (c) There is a need for alignment between law enforcement officers against the limits of psychological violence in household; (d) It is necessary to have commitment from law enforcement officials in taking action against perpetrators of psychological violence in the household; (e) There needs to be a special program from the Gender and Child-Based Integrated Service Center in each region to follow up on the problems of psychological violence that often occur in society.

## V. CONCLUSION

The problem of legal protection for victims of psychological violence in the household can be identified in four aspects, including aspects of legal substance, legal structure, legal culture and victim factors. In the aspect of legal substance, there are several formulas that affect law enforcement against perpetrators of psychological violence that have not been optimal, including those related to complaint offenses, alternative criminal sanctions systems, and formulations of household scope. Meanwhile, the aspect of the legal structure shows that the resources of doctors / psychiatrists in the area are limited, on the other hand, law enforcement officials are not competent to analyse the psychology of victims, therefore physical violence gets a faster response from the authorities because the suffering is visible from the outside which is easily visible. The aspect of legal culture and the attitude of the victim itself is the main problem in the perpetrator's complaint.

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