

Legal Protection of Wife as a Victim of Sexual Violence from Positive Law and Human Rights Perspective

Luthfiyyah Amalina Husna¹, Muchamad Iksan², Arief Budiono^{3,*}

^{1,2,3}*Law Science Department, Universitas Muhammadiyah Surakarta*

**Corresponding author: Email: ab368@ums.ac.id*

ABSTRACT

This research was conducted based on violent incidents often experienced by women in the domestic sector. As wives, women are often forced to undergo various obligations, while their rights are often neglected. Domestic violence is not a new event for Indonesian people, one of which is sexual violence in the household. However, sexual violence is a form of crime that has not received enough attention. In this case, the husband forces the wife to fulfill his sexual desires outside of her will. The wife is often positioned not as a subject who has an equal position with her husband, but rather as an object to satisfying desires. Therefore, the problem formulation in this research is how to protect the wife as a victim of sexual violence from the perspectives of positive law and human rights. This study aims to determine the legal protection for wives as victims of sexual violence from the perspectives of positive law and human rights. In answering this issue, the researchers conducted research using the normative juridical approach with a descriptive research type. The research data was sourced from secondary data, obtained from library research. Then, the data is analyzed using the qualitative method with a deductive way of thought. Hence, the results revealed that women must be protected from sexual violence anytime and anywhere, including at the home, because women are the same legal subjects as men. Wives are protected by laws and regulations supported by law enforcement agencies and other agencies that work together to provide appropriate protection to victims. In addition to government support and regulations, this issue also demands legal awareness of individuals.

Keywords: *Legal Protection, Sexual Violence, Wife, Positive Law, and Human Rights.*

1. INTRODUCTION

Everyone wants to have a happy family and to have a safe life that is free from all violence. A family is formed from a marriage that is legal from the perspectives of Indonesian law and religion. The purpose of marriage is, in addition to producing offspring, to form a *sakinah mawaddah warahmah* family, i.e., a family that is tranquil, full of love, and harmonious. Marriage is also defined as a legal act that binds two humans—a man and a woman—who will become husband and wife. Marriage has a value of

worship in the perspective of Islam. Marriage also results in the birth of some rights and obligations between them [1]. Every couple wishes for a balance between the rights and obligations of a husband and a wife and to live in peace. However, not all rights and obligations of husband and wife are applied equally in every marriage. This causes disharmony in the household and is often followed by violence.

Violence is defined as an act directed against an individual, often a woman, that results in physical, sexual, or psychological pain or suffering and/or neglect of the household, which includes threats to commit acts, coercion, or unlawful deprivation of

liberty within the household. This is stipulated in Article 1 Number 1 of Law No. 23 of 2004 concerning the Elimination of Domestic Violence. Violence often occurs in society, which results in the victim getting sick or injured. Sometimes, it even results in death.

A form of domestic violence is sexual violence or marital rape. In marital rape, a husband forces his wife with violence to have sexual intercourse. However, the wife does not want it, meaning that sometimes, the wife does not want to have sexual intercourse in unnatural ways, or the wife does not like it [2]. Sexual violence based on coercion will only be enjoyed by the husband, while as a victim, i.e., the wife suffers. Meanwhile, sexual violence, as referred to in Article 8 of the Law on the Elimination of Domestic Violence, is forced sexual intercourse carried out by people in the scope of the household. It also means forcing sexual intercourse against one person within the scope of the household to another person for commercial purposes or other purposes.

As a social fact, acts of domestic violence are not new in Indonesian society, where these crimes have happened for a long time and they still exist today. In this case, violence is one of the crimes with the highest number of cases. Based on the records of the National Commission on Violence against Women in 2021, the most prominent types of violence against women were in the personal or private sectors, namely domestic violence and personal relations, where there were 6,480 cases. Among them, violence against wives was ranked first with 3,221 cases. In addition, in 2021, there were 57 cases of marital rape [3]. This condition could be caused by the COVID-19 pandemic, which makes it difficult to report. This is due to the large-scale social restriction policy that causes victims and perpetrators to both be at home. It is also difficult to make complaints and access services. However, there is still a view that domestic violence is a disgrace, and some people still think that domestic violence is a common thing, so wives are reluctant to report it. Therefore, the available data may not represent the number of crimes that actually happened.

Forcing sexual intercourse in the household is a violation of the wife's rights [4]. The wife's right to be protected from sexual violence is part of human rights. This problem becomes an obstacle to the country's development as many people still feel unsafe. For this reason, the government as the state administrator is

obliged to guarantee such protection. This is to create a just, safe, and peaceful society following Article 28D of the 1945 Constitution. This article states that every person shall have the right of recognition, guarantees, protection, and certainty before a just law, and equal treatment before the law.

Based on the description above, the researchers consider the significance of conducting a study on legal protection for wives as victims of sexual violence. Thus, the problem discussed in this research is how to protect the wife as a victim of sexual violence from the perspectives of positive law and human rights.

2. METHOD

This research used the normative juridical approach. It is a legal research approach that examines library materials as the basis for research. Then, the researcher conducted a search of various regulations and literature concerning the research problem [5]. The researchers arranged this research with a descriptive type to provide an overview or explanation regarding legal protection for victims. Then, this research was supported by secondary data sources obtained from literature studies, which are carried out by conducting studies on documents, laws and regulations, research results, books, and other literature [6]. Then, the researcher employed a qualitative analysis method to see the relationship and suitability between the data. Finally, the researcher drew conclusions utilizing the deductive method.

3. RESULTS AND DISCUSSION

3.1. *Legal Protection of Wives as Victims of Sexual Violence from the Perspective of Positive Law*

The Republic of Indonesia is a unitary state that was formed to protect all its people [7]. The existence of a guarantee of protection for citizens is summarized in the preamble and the body of the 1945 Constitution as the guideline. In addition, the protection of the nation's citizens is a commitment that the state must fulfill. The protection of the community means avoiding threats of fear, torture, and treatment that degrades human dignity, including violence.

A crime begins with the relationship and interaction between the subjects involved in the incident [8]. Events between the perpetrator, a husband, and the victim, a wife, start due to their legal ties in marriage. This relationship is like an exchange because the husband earns a living, while the wife surrenders herself to the husband who has given her a living [9]. However, sexual intercourse that is carried out in an undesirable manner that causes suffering to the wife is prohibited. The problem of violence against wives can lead to rape crimes because there are elements of sexual coercion.

In this case, the relationship between law enforcement and victims is to realize the fulfillment of victims' rights. In this, the state participates in protecting its citizens by ensuring the protection of women. These rights include protection from the family, police, prosecutors, courts, attorneys, social institutions, or other parties, either temporarily or based on a protection order from the court. People also have the right to obtain health services following their medical needs, spiritual guidance, special treatment concerning victim confidentiality, assistance from social workers, and legal aid. This is stipulated in Article 10 of Law No. 23 of 2004 concerning the Elimination of Domestic Violence.

As stipulated in Article 16 of Law No. 23 of 2004 concerning the Elimination of Domestic Violence, protection from the police is in the form of temporary protection within 1 x 24 hours after the protective measures up to seven days. The police must seek a court order for the protection order. The temporary police protection can be carried out in collaboration with health workers, social workers, volunteers, and spiritual guides to protect victims. In addition, domestic violence services must use a special police service room with systems and mechanisms to help victims, collaborating with easily accessible utilities. Police investigate and arrest perpetrators of domestic violence based on their obligations and authorities, with sufficient preliminary evidence and an arrest warrant or without an arrest warrant that can be issued after 1 x 24 hours.

Furthermore, an attorney protects by providing legal advice, mediation, or negotiations between victims and perpetrators of domestic violence, coordinating with other law enforcement agencies, and acting as companion volunteers or social workers who

assist victims in the prosecution and investigation processes.

In addition, protection based on a court order can be given for one year and it can be extended. Courts can arrest perpetrators of domestic violence with an arrest warrant for 30 days after violating a signed statement of ability to enforce a court protection order.

Medical services are also vital, especially concerning sanctions against perpetrators of domestic violence. Based on their profession, health workers make a written report on the health examination results. At the request of the police investigator, they can also make a *visum et repertum* or legally valid evidence. They are required to submit other medical certificates. Then, accompanied by social services, they provide information on the victim's right to protection and advice on strengthening and fostering the victim's sense of security.

Moreover, the institution that responds to the issue of women's rights as human rights, especially on the issue of sexual violence against women, is the National Commission on Violence Against Women (*Komnas Perempuan*). This commission was created to prevent and overcome the problem of violence against women and to eliminate all forms of violence against women [10]. *Komnas Perempuan* exists to develop conducive conditions to eliminate all forms of violence against women and to enforce women's human rights in Indonesia. Then, there is the Witness and Victim Protection Agency (*LPSK/Lembaga Perlindungan Saksi dan Korban*), an independent institution responsible for providing protection and assistance to witnesses and victims as referred to in Law Number 13 of 2006 concerning Witness and Victim Protection. All efforts to fulfill rights and provide assistance in giving witnesses and/or victims a sense of security must be carried out by LPSK and other institutions.

Other institutions include the Gender Mainstreaming Institution (PUG), community institutions, and P2TP2A (Integrated Service Centers for the Empowerment of Women and Children). They are often found in every city or region. P2TP2A is an integrated service center to empower women in various fields of development and protect women and children from various types of discrimination and violence, including human trafficking, established by the government and the community. It can be in the form of a referral center, business consultation center,

reproductive health consultation center, legal consultation center, integrated crisis center, integrated service center, trauma recovery center, women's crisis center, training center, science and technology information center, shelter, halfway house, etc.

These various rights are expected to provide recovery services in the form of counseling and cooperative work to strengthen and/or provide a sense of security for victims in the form of legal support facilities as a means of protection. It is because, for the victim, the occurrence of a crime against her will destroy her trust. The regulation of criminal law and other laws serves to restore that trust.

Further, law enforcement in handling domestic violence cases that afflicts wives in sexual violence needs to be dealt with seriously under existing regulations that do not override the rights of victims. As an effort to prevent the occurrence of sexual violence in the household, it is hoped that everyone who hears, sees, or knows about it immediately reports the case. This is to prevent the occurrence of criminal acts, to protect victims, to provide emergency assistance, and assist in the process of submitting a request for determining the suitable protection.

3.2. Legal Protection for Wives as Victims of Sexual Violence from the Perspective of the Human Rights

Human rights are universal rights that are inseparable, interdependent, and interrelated [11]. Basically, human rights are rights inherent in nature, which are gifts from God Almighty, and no one can challenge them. The following are some characteristics of human rights possessed by humans [12]:

- a. It is universal that human rights are general, which means that it is owned by everyone without exception and not because of their position.
- b. Equality represents the concept of respecting the inherent worth and dignity of all people. Specifically, Article 1 of the Universal Declaration of Human Rights (UDHR) states that "All human beings are born free and equal in dignity and rights."
- c. Non-discrimination is integrated into equality. This principle ensures that no one can deny the human rights of others because of external factors, such as race, skin color, gender, language, religion, politics

or other views, nationality, property, birth status, etc.

- d. Individual rights cannot be revoked (inalienability), assigned, or transferred.
- e. It cannot be divided (indivisibility). Civil, political, social, cultural, or economic, human rights are all basically fixed. In other words, it is inherent in human dignity. Everyone's right to live fairly is indisputable. This right is a fundamental right for everyone to enjoy other rights, such as the right to health or education.
- f. It is interrelated and interdependent. The fulfillment of one right often depends on the holistic or the partial fulfillment of another right. Violations that arise against a right will be interrelated so that the loss of one right reduces the fulfillment of other rights.

Unfortunately, in Indonesia, the patriarchal culture which places women in a lower position than men is rooted in this country's culture [13]. There is a term in the Javanese language which says that women are "*konco wingking or macak, manak, masak*" [14] which means that women are wives who are required to dress up, give birth, take care of children, and cook. This term means that women are only meant to stay at home to take care of everything in the domestic sector. But in fact, women also have rights but are often forgotten.

Apart from patriarchal culture, stereotypes, subordination, and marginalization of women also encourage domestic violence [15]. From generation to generation, the stereotype that keeps on repeating is that women have different characteristics from men. Then, there is the subordination of men and women, which tends to judge women as having lower positions. Then, the marginalization of women has the perspective that women are deemed as unimportant, unable or incapable to have a voice. This condition makes women more vulnerable to violence, discrimination, and other violations.

Women are also citizens who have inherent human rights that must be respected, protected, and fulfilled. This is stipulated in Article 1 Paragraph (1) Law No. 39 of 1999 concerning Human Rights. As legal subjects, the root of human rights is dignity. Thus, it includes all genders, sexual orientations, gender expression, children, disability groups, and other differences. All will return to basic human dignity. In addition,

recognition of the equal rights of citizens in the Constitution stipulates that there is no difference between men and women before the law and the government. Therefore, women also have rights and obligations that are simultaneously regulated in law. Thus, women are obliged to comply with existing laws and are entitled to the same protection as men. Women also have the right to a livelihood, to obtain recognition, guarantee, protection, and legal certainty that is fair and equal before the law. Women's human rights must be protected by the government, in this case, the state.

Human rights will remain attached until the woman dies and they will not change even if she is a wife. Likewise, there are rights and obligations to obey the husband in religion, but the wife's rights and obligations must remain and be respected. The most important thing in this problem is to carry out a cultural restructuring to reinterpret religion that places sexuality as the right of men and women [16]. This right is in the sense that a person can channel and convey his/her sexual desire. However, a woman as a wife is under no obligation to respond, only if she wishes so, and can reasonably refuse if she is not physically and mentally ready to undergo intercourse. Meanwhile, the husband must tolerate his wife's unreadiness. It is recommended by religion to implement love and humanity in humans, especially in partners.

In addition, existing laws and institutions certainly can not work without public awareness. Public awareness of the law is crucial for these laws and institutions to function effectively. Legal perception is understood as the willingness of citizens to submit to the law, obey orders, and avoid prohibitions. Raising awareness of citizens' rights is crucial since it helps them avoid discrimination. Besides, the community can take appropriate measures if it turns out that these rights have been violated. Legal awareness of domestic violence as required by the law is in the least, an awareness that there is a law that prohibits committing acts of violence against fellow members in a household, the awareness that every one of them has the right to be free from domestic violence carried out by other family members, and the awareness that every community must protect victims of domestic violence according to their abilities.

4. CONCLUSION

The protection of citizens is a commitment that the state must fulfill. More specifically, women must be protected from sexual violence anytime and anywhere, including at home, because it has physical, psychological, and traumatic consequences. Sexual violence is a violation of human rights, a crime against human dignity and a form of discrimination. Here, the state protects its citizens and guarantees the protection of women. Such protection can be carried out by the family, law enforcement, social institutions, or other parties, either temporarily or based on a protection order from the court. Other protection includes the provision of health services following the victims' medical needs, obtaining spiritual guidance, obtaining specific treatment confidentially, and obtaining assistance from social workers and legal aid. State institutions, such as *Komnas Perempuan* and LPSK, also play an essential role in protecting victims, especially women. It is because women are also in the same position as men as legal subjects, whose rights and obligations are regulated by law. Women's rights and obligations also remain the same even when they are wives, which in essence, their rights are inherent in nature and cannot be separated. Thus, women also have human rights to be respected, protected, and fulfilled, which are inherent in themselves. The most important thing in this matter is to carry out a cultural restructuring to reinterpret religion, which, in turn, places sexuality as the right of men and women. This right is in the sense that a person can channel and convey his/her sexual desire. In addition to government support and regulations, the community also needs legal awareness within the individual.

AUTHOR'S CONTRIBUTIONS

Luthfiyyah Amalina Husna came up with the idea of the paper, created the concept of the paper, wrote the first draft and drew the conclusion.

Muchamad Iksan collected sources of material from scientific journals and websites. He wrote the methods section and arranged the references according to the requirement of the journal.

Arief Budiono collected sources of material from books, checked the validity of the data in the paper, and

corrected the format of the paper to adjust to the requirements of the journal.

ACKNOWLEDGMENTS

The writers would like to thank Universitas Muhammadiyah Surakarta.

REFERENCES

- [1] D. P. Ayu, "Tinjauan Maqashid Syari'ah Terhadap Akibat Tindakan Marital Rape dalam UU No.23 Th. 2014 dan RUKHP," *J. Huk. dan Pranata Sos. Islam*, vol. 1, no. 2, p. 51, 2019.
- [2] S. Ruben, "Kekerasan Seksual Terhadap Istri Ditinjau Dari Sudut Pandang Hukum Pidana," *J. Lex Crim.*, vol. 4, no. 5, p. 95, 2015.
- [3] The Indonesian Nasional Commission for Women, "Perempuan dalam Himpitan Pandemi: Lonjakan Kekerasan Seksual, Kekerasan Siber, Perkawinan Anak, dan Keterbatasan Penanganan di Tengah Covid-19," *Komnas Perempuan*, 2021. <https://komnasperempuan.go.id/siaran-pers-detail/catahu-2020-komnas-perempuan-lembar-fakta-dan-poin-kunci-5-maret-2021> (accessed Sep. 01, 2021).
- [4] T. S. Putra, "Pemaksaan Hubungan Seksual Terhadap Istri Dalam Uu No 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga (PKDRT)," *Legalite*, vol. 2, no. 2, p. 7, 2015.
- [5] S. Soekanto and S. Mamudja, *Penelitian Hukum Normatif (Suatu Tinjauan Singkat)*. Jakarta: Rajawali Pers, 2001.
- [6] J. Supranto, *Metode Penelitian Hukum dan Statistik*. Jakarta: PT. Rineka Cipta, 2003.
- [7] I. G. A. B. Darmawati, "Terbentur Untuk Perubahan, Terbentuk Demi Keadilan," 2021.
- [8] M. Indah, *Perlindungan Korban: Suatu Perspektif Viktimologi dan Kronologi*. Jakarta: Prenadamedia Group, 2016.
- [9] H. Ilyas, "Bedah RUU PKS: Marital Rape dalam RUU-PKS?," 2020.
- [10] D. Kania, "Hak Asasi Perempuan dalam Peraturan Perundang-Undangan Di Indonesia," *J. Konstitusi*, vol. 12, no. 4, p. 748, 2015.
- [11] R. Maryam, "Menerjemahkan Konvensi Penghapusan Segala Bentuk Diskriminasi Terhadap Perempuan (Cedaw) ke dalam Peraturan Perundang-Undangan," *J. Legis. Indones.*, vol. 9, no. 1, p. 103, 2012.
- [12] Wahyono, "Memahami Karakteristik Hak Asasi Manusia," *HAM Indonesia*, 2021. <https://ham.go.id/2016/06/14/memahami-karakteristik-hak-asasi-manusia/>.
- [13] S. Apriliandra and H. Krisnani, "Perilaku Diskriminatif Pada Perempuan Akibat Kuatnya Budaya Patriarki di Indonesia Ditinjau dari Perspektif Konflik," *J. Kolaborasi Resolusi Konflik*, vol. 3, no. 1, p. 6, 2021.
- [14] A. C. Budiati, "Aktualisasi Diri Perempuan Dalam Sistem Budaya Jawa (Persepsi Perempuan terhadap Nilai-nilai Budaya Jawa dalam Mengaktualisasikan Diri)," *Pamator*, vol. 3, no. 1, p. 51, 2010.
- [15] F. N. Nazah, "Posisi Perempuan Menurut Perspektif Kompilasi Hukum Islam Di Indonesia (Kajian Gender Dan Feminisme), Hukum dan Keadilan," *Huk. dan Keadilan*, vol. 7, no. 2, p. 272, 2020.
- [16] I. Abdilah, *Islam dan Konstruksi Seksualitas*. Yogyakarta: Pustaka Pelajar, 2002.