

IMPLEMENTATION OF LEGAL PROTECTION FOR WOMEN VICTIMS OF DOMESTIC VIOLENCE FROM A HUMAN RIGHTS PERSPECTIVE

Diki Sahbana¹, Rehan suryananda², M.Fariz Kurnadi³, Endang Sutrisno⁴, Agus Dimiyati⁵

Universitas Swadaya Gunung Jati, Cirebon, Indonesia

E-mail: dikisahbana27@gmail.com¹, rehansuryananda@gmail.com², avanzania@gmail.com³, endangsutrisno94@gmail.com⁴, agus.dimiyati@ugj.ac.id⁵

ABSTRACT

The Indonesian government signed a declaration on the Elimination of Violence Against Women (1993) in 2014. However, at a technical level, violence against women still often occurs due to Domestic Violence (KDRT) in Indonesia. The purpose of this writing is to understand the implementation of laws and the protection of women's human rights against domestic violence from the perspective of international law. The research results show that the entry of the public law system into the domestic realm, namely domestic life, is one of the new developments in the field of human rights, especially in Indonesia. Domestic Violence (KDRT) has become a common agenda in the last few decades. The facts show that domestic violence has quite a negative effect on women as victims. The research that has been carried out is normative legal research which is focused on norms and also legal objects as the main data, and a book consisting of rules, and the truth of the research that has been carried out. All forms of violence have violated human rights as regulated in Law No. 23 of 2004 concerning the elimination of domestic.

Keywords: Legal protection; woman victims; Domestic Violence; Human Rights

Introduction

Violence has often occurred in the lives of Indonesian people. Often we can find acts of violence in public areas, even in households there are cases of violence that occur in them. Domestic violence commonly abbreviated as domestic violence often makes women (wives) the victims. In its development, victims of domestic violence find it very difficult to tell or submit the events of suffering they experience to law enforcers because most of the victims assume that what happens in the house, including the harsh treatment carried out by their husbands, is part of a private event (household affairs) (Muladi et al., 2002).

Violence after violence experienced by women turns out to leave a very heavy traumatic impact. In general, victims feel anxious, stressed, depressed, traumatized, and blame themselves. Meanwhile, the physical consequences are bruises, broken bones, damage to body parts, and even death.

Although women (wives) are victims of violence, they tend to survive. Although Indonesia has ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and has passed the Law on the Elimination of Domestic Violence (PKDRT Law) No. 23 of 2004, the number of domestic violence still shows an increase from year to year. This law is expected to provide legal protection for family members, especially women, from all acts of domestic violence. Violence can happen to anyone and anywhere. However, if traced carefully in everyday life, the number of acts of violence that are specifically aimed at women because they are "women" tends to increase and has a very serious impact such as sexual violence, acts of rape, and sexual harassment, the majority of which are aimed at women. Such violence is understood as gender-based violence or gender violence (Mahfud, 2020).

According to Law of the Republic of Indonesia No. 39 of 1999 on Human Rights, hereinafter referred to as the Human Rights Law, human rights are all rights inherent and contained in humans as God's creation, so these rights must be respected, and protected, and safeguarded by the state through its legal instruments. Human rights originate from God as their creator and must be protected by the state as the holder of the power to make regulations to protect these human rights.

Laws and Regulations Governing Human Rights Some of the regulations governing human rights in Indonesia include:

1. Article 28I(4) of the 1945 Constitution states that the protection, promotion, enforcement, and fulfillment of human rights is the responsibility of the state, especially the government.
2. Law No. 39/1999 on Human Rights This law regulates human rights specifically in Indonesia. Article 71 of Law No. 39/1999 states that the government is obliged and responsible for respecting, protecting, upholding, and promoting the human rights stipulated in this Law, other laws and regulations, and international human rights law accepted by the Republic of Indonesia.
3. Regulation of the Minister of Law and Human Rights No. 32/2016 on Public Communication Services on Human Rights Issues This regulation regulates public communication services related to human rights issues in Indonesia.
4. Right to Justice The right to justice is set out in Article 28 D of the 1945 Constitution and Articles 17-19 of Law No. 39 of 1999. Everyone has the right to fair legal protection and to be given justice.
5. Women's Rights The protection of women's rights is stipulated in Article 28 I of the 1945 Constitution and Articles 42-45 of Law No. 39/1999. These include the right to fair treatment, special protection for pregnant women, and the right not to be discriminated against.

Domestic violence (KDRT) is an urgent social and legal problem, especially in the context of protecting human rights. Domestic violence not only impacts the physical and

mental well-being of victims, but also includes violations of fundamental human rights. Legal protection for women victims of domestic violence is an important issue that requires serious attention, both in terms of policy and implementation in the field (Iskandar, 2022). Legal protection for women victims of domestic violence in many countries, including Indonesia, often faces significant challenges in its implementation (Smith, 2021). Even though there are various regulations and policies designed to provide protection, practices in the field are often not in line with established legal norms (Prawiro, 2023). This can be caused by various factors, including inadequate institutional support, low legal awareness, and social stigma that is still strong against victims (Hidayah, 2023).

In the context of human rights, legal protection must ensure that the basic rights of every individual, especially women victims of domestic violence, are recognized and properly protected. The application of human rights principles in legal protection policies and practices can increase the effectiveness of the legal system in handling domestic violence cases and support victims' recovery (Sari, 2022). This research aims to explore how legal protection for women victims of domestic violence is implemented from a human rights perspective, and to identify strengths and weaknesses in the existing legal protection system (Suhartini, 2021). By understanding this context, it is hoped that recommendations can be obtained for improving legal protection policies and practices that are more effective and in line with international human rights standards.

Research Method

This research uses an empirical juridical method, namely legal research on the enactment or implementation of normative legal provisions in action on every specific legal event that occurs in society. In other words, research conducted on the actual situation or the real situation that occurs in society with the intention of knowing and finding the facts and data needed, after the required data is collected then goes to problem identification which ultimately leads to problem-solving. This research was conducted at the Kuningan District Court and we decided to take a case example from the decision of the Kuningan District Court based on the decision of the Kuningan District Court Number 00/Pid.Sus/2023/PN Kng (Domestic Violence) That the defendant RUSTANDI Bin KUSNA on Saturday 25 March 2023 at approximately 08.00 WIB, or at least at some time in March 2023 or at least still in 2023, at the house located at Blok Manis Rt 001 Rw 001 Kaduagung Village, Karangancana Sub-District.

Result and Discussion

Implementation of the Law and Protection of Human Rights for Women Victims of Domestic Violence in the Perspective of Law and Human Rights

The state is responsible for establishing a legal instrument to fulfill its obligation to create protection and fulfillment of human rights for all elements of society, including women (Utami, 2017). This is known as the state's obligation to protect the interests of mankind (obligations erga omnes). International human rights instruments are usually characterized

by focusing on the state as the main factor and placing the state as the party that is obliged to implement the contents of the international human rights instrument. Thus, international obligations are imperative for every state, because the state cannot avoid these obligations if it does not want to be said to violate international law. Therefore, all state policies must be based on human rights (Nadilla & Kav, 2019).

Human rights conventions that are regulated and agreed upon internationally include articles on the elimination of all discrimination against women, namely:

1. Regarding the condemnation of all forms of discrimination against women and efforts to uphold women and efforts to uphold equal rights and obligations in the national constitution.
2. Concerning the obligation of state parties to legislate the elimination of discrimination against women in the political and public life of their countries;
3. On the obligation of state parties to legislate the elimination of discrimination against women in the fields of education, employment, health, and socio-economic life;
4. Concerning the obligation of state parties to provide for the equal rights of women before the law, the elimination of discrimination in connection with marriage and family relations;
5. Concerning the establishment of an international committee to assess the progress of implementation, taking as its base appropriate geographical considerations and elements of the various forms of human civilization of the major legal systems, the committee to be elected for a term of 4 years; and
6. The Convention shall not affect the distinction between women and men which may exist by legislation in a country. In addition, the convention is not rigid. Any country has the right to raise objections (Krisnalita, 2018).

Related to legal protection, Philipus M. Hadjon said that there are two means of legal protection, namely: means of preventive legal protection and means of repressive legal protection, means of preventive legal protection are mainly closely related to the principle of *freis er-messen* as a form of legal protection in general. Meanwhile, repressive means of legal protection in Indonesia are handled by bodies: Courts within the General Courts of Government Agencies which are administrative appeal bodies, and specialized bodies (Sinaulan, 2018).

In principle, it must be recognized that the legal protection of women should be based on Law No. 39/1999 on Human Rights, which in Chapter III on Human Rights and Basic Human Freedoms, especially in the Ninth Section of Articles 45-51 regulates the Rights of Women. That as part of society, as well as an individual, who is a person, women have the right to life. This is stated in the Human Rights Law Article 9 Paragraph (1) which reads "Everyone has the right to live, maintain life and improve their standard of living". This means that women as part of Indonesian citizens should have the right to live and have a decent life in all aspects of life. Because in her there is a myriad of hopes, needs, interests, and all potential. Thus women need self-actualization as optimally as possible for the sake of their own development, which in turn has a positive impact on human development in general. In the Criminal Code, especially the provisions relating to the legal protection of women in acts of rape violence contained in article 285 of the Criminal Code which read: "Any person who by violence or threat of violence forces a woman to have sexual intercourse with him outside

of marriage, shall, being guilty of rape, be punished by a maximum imprisonment of twelve years” In the Human Rights Law, it is stated that what is meant by human rights violations is: “Any act of a person or group of people, including state apparatus, either intentionally or unintentionally or negligently that unlawfully reduces, obstructs, limits or revokes the human rights of a person or group of people guaranteed by law, and does not get or is feared will not get a fair and correct settlement based on the applicable legal mechanism.” (Sopacua, 2016).

The Criminal Code, especially provisions relating to the legal protection of women in acts of rape violence are contained in Article 285 of the Criminal Code which reads: “Whoever by violence or threat of violence forces a woman to have carnal knowledge of him outside of marriage, shall, being guilty of rape, be punished by a maximum imprisonment of twelve years” In the Human Rights Law, it is stated that what is meant by human rights violations is “Every act of a person or group of people, including state apparatus, either intentionally or unintentionally or negligently, which unlawfully reduces, obstructs, limits, and or revokes the human rights of a person or group of people guaranteed by law, and does not get or is feared will not get a fair and correct settlement based on the applicable legal mechanism. ” (Fanani, 2018).

Domestic violence, in principle, is one of the phenomena of human rights violations so this problem is included as one of the forms of discrimination, especially against women. Discrimination itself has been formulated in various legal instruments in Indonesia such as Law No. 7 of 1984 which is a form of ratification of the Convention on the Elimination of All Forms of Discrimination against Women formulated by the United Nations, and more recently the PKDRT Law, but there is still no significant impact on the opportunities of women victims of discrimination. In fact, there are still very few who understand the contents, let alone apply this law from among law enforcers themselves. The PKDRT Law determines several criminal acts of domestic violence as complaint offenses as stipulated in Articles 51, 52, and 53 because of their private nature, making this law difficult to enforce optimally.

“Article 51: The crime of physical violence as referred to in Article 44 paragraph (4) is a complaint offense. Article 52: Criminal acts of psychological violence as referred to in Article 45 paragraph (2) shall constitute a complaint offense”. Article 53: The crime of sexual violence as referred to in Article 46 committed by a husband against his wife or vice versa shall constitute a complaint offense”.

The inclusion of a complaint offense in the PKDRT Law only strengthens the victim's reluctance not to report the violence they experience because the nature of this complaint offense can be interpreted that there is favoritism towards male-dominated perpetrators. Sociologically, humans tend to save their interests, including saving themselves from punishment. Wouldn't it then appear that a worse situation would arise, namely that the perpetrators would just silence the incident and even hide it because they were afraid of being convicted, while naturally it is clearly realized that women are weak and the perpetrator can intervene with the victim not to complain to the authorities so that the perpetrator has more power over the victim and arbitrarily commits violence? In essence, human rights do not differentiate human rights in terms of gender (female or male). Both are human beings and have the same human rights. This can be seen in human rights documents, such as the UDHR (Universal Declaration of Human Rights). Article 1: “All human beings are born free and equal

in dignity and rights." Article 2: "Everyone is entitled to all the rights and freedoms set forth in this declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion national or social origin, property, birth or other status."

The issue of justice and human rights in relation to criminal law enforcement is not a simple job to be realized. Many events in the life of the community, one of which is the crime of domestic violence, show that these two things do not get serious attention from the government. One example of the lack of attention to justice and human rights issues in criminal law enforcement is related to legal protection for victims of crime (Arini, 2005).

Legal protection under the human rights law for women

1. Law No. 39/1999 on Human Rights

This law defines human rights as, "...a set of rights inherent in the nature and existence of human beings as creatures of God Almighty and is His gift that must be respected, upheld and protected by the state, the law, the Government, and everyone for the sake of honor and protection of human dignity" (Article 1 paragraph (1)) The prohibition of discrimination is regulated in Article 3 paragraph (3), which reads: "Everyone is entitled to the protection of human rights and basic human freedoms, without discrimination". Article 1(3) and Article 3(3) make it clear that discrimination based on sex is prohibited by law. Other laws must eliminate discrimination in every aspect of life, social, political, economic, cultural, and legal. The articles in the Human Rights Law are always addressed to everyone, this means that all matters regulated in the Human Rights Law are intended for all people from all groups and of any gender.

2. Law Number 23 Year 2004 on the Elimination of Domestic Violence

Domestic violence (DV) was initially not considered a violation of women's human rights. Its location in the domestic sphere makes domestic violence a type of crime that is often untouched by the law. When domestic violence was reported to the authorities, it was usually answered by resolving it within the family. Prior to the issuance of Law No. 23/2004 on the Elimination of Domestic Violence (PKDRT), victims did not receive adequate legal protection. Domestic violence cases, prior to the issuance of the PKDRT Law, were always identified as something domestic, so talking about domestic violence in a family was a disgrace to the family concerned. So law enforcement against domestic violence cases is still small. The lack of law enforcement against domestic violence cases is caused by several things, including an understanding of the root causes of domestic violence itself from the perspective of law, religion, and culture. For this reason, efforts to disseminate women's human rights must be carried out effectively to reduce the number of victims who fall victim to domestic violence.

With the enactment of the PKDRT Law, the issue of domestic violence, which was previously considered a domestic problem, was raised to the public domain, so that the protection of victims' rights received a clear legal umbrella. The scope of households in this law does not only include husbands, wives, and children but also people who have a family relationship and live in the household and people who help the household and live in the household (Article 2). The principle of PKDRT itself as explained in Article 3 is to:

1. respect for human rights;
2. General justice and equality;

3. nondiscrimination; and
4. victim protection.

The objectives of PKDRT as stated in Article 4 are to:

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

Violence against women, more specifically, is often categorized as gender-based violence. This is because violence against women is often the result of gender inequality, with unequal power relations between men and women. This can be reflected in domestic violence, which is more often committed by people who have more power over weaker victims. Gender-based violence is also seen in cases of rape, which are more often committed by men against women than vice versa. This gender-based violence places special emphasis on the root causes of violence perpetrated against women, namely that between the perpetrator and the victim there is a gender relationship where in their position and role the perpetrator controls and the victim is the one who is controlled through the act of violence. This is what is meant by historical inequality in the 1993 Declaration on the Elimination of Violence against Women.

The causes that assume the occurrence of violence against women include:

- a. There is a perception of something in the mind of the perpetrator, and often what underlies this act of violence is not something that is faced in reality. This is evidenced by the reality in the field which shows that perpetrators have committed these acts of violence without a fundamental reason.
 - b. Laws that regulate violence against women are still gender biased. Often the law is not in favor of women who are victims of violence, this impartiality is not only related to the substance of the law that does not pay attention to the interests of women or the victim but even the absence of legal substance that regulates the fate of victims of violence, which is generally experienced by women."
5. Law No. 12/2006 on Citizenship

Among the special principles that form the basis for the enactment of the Law on Citizenship is the principle of non-discrimination, which does not differentiate treatment in all matters relating to citizens on the basis of ethnicity, race, religion, class, sex, and gender. Another principle is the principle of recognition and respect for human rights in all matters relating to citizens, which must respect, protect, and glorify human rights in general and citizens' rights in particular. Arrangements that eliminate discrimination on the basis of sex include allowing a wife, who is in a marriage of different nationalities, to choose her own nationality. The wife is allowed to choose to remain in her Indonesian citizenship or to change her citizenship to follow that of her husband, even if the law of her husband's country of origin requires the wife's citizenship to follow that of her husband as a result of the marriage (Article 26 paragraphs (1) and (3). The previous Citizenship Law (Law 62/1958) resulted in a wife losing her Indonesian citizenship if she married a foreigner, as she had to follow her husband's citizenship.

6. Research locations and case examples

This research was conducted at the Kuningan District Court and we decided to take a case example from the decision of the Kuningan District Court based on the decision of the Kuningan District Court Number 00/Pid.Sus/2023/PN Kng (Domestic Violence) That the defendant RUSTANDI Bin KUSNA on Saturday 25 March 2023 at approximately 08.00 WIB, or at least at some time in March 2023 or at least still in 2023, at the house located at Blok Manis RT 001 RW 001 Kaduagung Village, Karangkencana Sub-District, Kuningan Regency or at least at a place still included in the jurisdiction of the Kuningan District Court which has the right to examine and try the case, committing physical violence within the scope of the household.

based on the results of Visum Et Repertum Number: 122/RSES/Visum/IV/2023 dated April 06, 2023, Examining Doctor Dr. HERLINA against the witness KORBAN, with the following examination results:

1. Anamnesic examination: A female patient came to the emergency room at 10:25 a.m. asking for Vi-sum, according to the patient there had been an act of violence by the patient's own husband which took place at the patient's house on Saturday, March 25, 2023, at around 8:00 a.m. WIB. According to the patient, the patient was hit on the upper right hand, and the right neck until the patient's head hit the wall and fell and the left hand was grabbed. The patient complained of pain in the left heler, swallowing pain and sore throat, and pain in the left knee and right thigh. The patient had long brownish-black hair, and tan skin, wore a blue batik shirt, brown underwear, blue jeans, black flip-flops, and carried a blue sling bag.
2. Physical Examination Fisik
 - a. General Condition: Good
 - b. Consciousness: Fully conscious
 - c. Circulatory awareness vital signs: Blood Pressure 120/80 mmHg: pulse: 100/min, breathing: 22 times/minute temperature: 36,1 °C
 - d. Locality status:
 - 1) There was a bruise on the right upper arm measuring five by three centimeters (5x3 cm) and three by one centimeter (3x1 cm).
 - 2) There is tenderness on the right side of the neck
 - 3) There is a bruise on the left upper arm measuring three point five by one centimeter (3.5x1cm) and one by one centimeter (1x1) cm.
 - 4) There is a bruise on the right thigh with a size of one by one centimeter (1x1 cm)
 - 5) There is a bruise on the left knee with a size of one by one centimeter (1x1 cm).

A woman aged twenty-first was examined, and during the physical examination the above injuries were found, these injuries are injuries caused by blunt force trauma, the actions of the Defendant are regulated and punishable in Article 44 paragraph (1) jo Article 5 letter a of Law No. 23 of 2004 on the Elimination of Domestic Violence;

Considering Article 44 paragraph (1) Jo. Article 5 letter A of Law Number 23 of 2004 Concerning the Elimination of Domestic Violence and Law Number 8 of 1981 Concerning Criminal Procedure, as well as other relevant laws and regulations; The result of the decision of the Kuningan District Court is:

1. Stating that Defendant Rustandi Bin Kusna mentioned above, has been legally and convincingly proven guilty of committing the crime of physical violence within the scope of the household as stated in the single charge;
2. To punish the Defendant therefore with 8 (eight) months imprisonment;
3. Determine that the period of arrest and detention that has been served by the Defendant shall be fully deducted from the punishment imposed;
4. Stipulate that the Defendant shall remain confined;
5. Determine the evidence in the form of: - 1 (one) short-sleeved nightgown with a pink plaid pattern; and,
 - a. 1 (one) piece of long sleeping pants with a pink plaid pattern; All of which were returned to the Witness;
 - b. 1 (one) red marriage book with Number 0105/028/VII/2017 dated July 17, 2017; and,
 - c. 1 (one) family card with Number 3208290608080002; All of which were returned to the Defendant;
6. Charges the Defendant with paying court costs in the amount of Rp5,000.00 (five thousand rupiah).

Conclusion

With the existence of Law No. 23/2004 on the Elimination of Domestic Violence, the protection of victims of domestic violence has been regulated, but in reality, in seeking justice for victims of violence, especially women, such protection is difficult to obtain, so that access to justice for victims is hampered and even lost their rights, this is due to the lack of understanding of the authorities about the rights of victims to obtain legal protection. In relation to human rights. Violence against women is any form of violence that causes pain or suffering to women including threatening, inhibiting, restraining, or denying enjoyment, and it is a violation of human rights that results in physical, psychological, or sexual suffering both outside and within the scope of the household itself.

Acknowledgments

Law enforcement officials should be more responsive to reporting on domestic violence, it must be made easier for victims to get access to justice so that victims can be more open to reporting domestic violence because there is a guarantee in law enforcement and the reform of criminal law (formal and material) which is also victim-oriented needs to be given a strong foundation so that the interests of victims and people who suffer and are disadvantaged get legal protection so that law enforcement policies and justice that are oriented towards victims by considering the perspective of victims and restorative justice need to be considered, among others, through amendments to Law No. 23 of 2004 concerning Eradication of Domestic Violence, especially Article 10 relating to victims' rights.

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