

# PROTECTION OF WOMEN VICTIMS OF VIOLENCE IN INDONESIA: PERSPECTIVE OF CRIMINAL LAW

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## **PROTECTION OF WOMEN VICTIMS OF VIOLENCE IN INDONESIA: PERSPECTIVE OF CRIMINAL LAW**

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### **Abstract:**

This research aims to find out the protection arrangements for women victims of violence in Indonesia: Criminal law perspective. The methods used are qualitative descriptive with normative research referring to written regulations and other legal materials. The results showed that the completion of women victims of violence in Indonesia with mediation in a form of consensus deliberation and customary law and Islamic law.

**Keywords:** protection, women victims of violence, criminal law

### **1. Introduction**

Violence is a crime case different from other crimes. This is because the perpetrators and victims of domestic violence have a close relationship both kinship and emotionally (PKDRT Law article 2). It was legally protected by violence victims was based on the criminal code as a material legal source, using criminal code of the event. Legal protection for victims should be explicitly regulation in criminal code. For example, in crime in anticipation of the offender is also considered the losses suffered by the victim or the family of victim, so that the offender could be given criminal damages that may be more beneficial to the victim. Victims' access to judicial proceedings must also be considered. The victim has the right to know the progress of the case. Especially when it comes to offender who are not able to be responsible, then the victim is also possible to get compensation.

Similarly, refer to criminal code, the arrangement regarding victims is completely marginalized. Criminal code is more regulated regarding the protection of suspects, while the protection of victims is not fully eliminated. The rights granted by criminal code to the victim are very limited. Among them can be found in Articles 98-101 criminal code procedure. In this research, the regulation related to recompense procedure that might

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1 followed by the victim to article 98 of the criminal code procedure namely the complaint in exchange for damages.

The concept of retributive justice is employed in handling domestic violence cases. The culprit will be punished in accordance with his unlawful actions. The penalty imposed is also a reward for what he did and in accordance with the applicable law. Victims of domestic violence are only considered witnesses and whistleblowers only, do not have the right to choose what kind of justice he wants to get and does not even rule out the possibility after the convicted offender of the victim will even suffer more. According to the author, of course, the concept of retributive justice, if applied in the handling of domestic violence cases is not appropriate, because it cannot provide victims. Considering that domestic violence victims can not only experience material lost but it is very possible to experience immateril lost. Even according to Ridwan Mansyur, it would certainly be contrary to combine, protective and preventive purposes mentioned in Article 4 of the PKDRT Law.

Therefore, in solving the case needs a settlement that not only punishes the perpetrator in accordance with existing norms but also needs to be considered the recovery of domestic violence victims. In connection with this, Nigel Walker as quoted by Barda Nawawi Arief, once reminded the existence of limiting principles that should be taken into consideration in the imposition of criminal, among others: (1) Do not use criminal solely for retaliatory purposes; (2) Do not use criminal law to punish acts that are not harmful; (3) Do not use criminal law to a goal that can be achieved more effectively by milder means; (4) Do not use the criminal law if the loss/danger arising from the crime is greater than the loss/danger of the crime itself; (5) Prohibitions of criminal law shall do not of a more dangerous nature than the acts to be prevented; (6) Criminal law does not contain prohibitions that do not get public support (Arief, 2005).

## 2. Literature Review

The explanation of relevant research related to the topic of this research is as follows. Johnny (2011) discusses the factors that cause violence against women and form of violence in anticipation of women that occur at Banyumas Police law area. The methodology was used method of sociological constitutional approach with descriptive research designation. The results showed that the supreme aspects that caused violence in anticipation of women are economic factors of 70%, 15% ethnic factors, 10% of infidelity factors, and 5% of miscommunication factors. The confines of roughness involve physical violence, psychic violence, sexual violence, and domestic neglect. The case is resolved by litigation process based on criminal and non-litigation law such as conciliation. Hartono (2014) analyse about Form of Legal Protection of Women Whistle-blowers as Witnesses of Victims of Domestic Violence. This research aim at finding out the rules governing to protect of laws against female whistle-blowers as witnesses of victims of domestic violence. The results showed that the overall prevention, handling and recovery of victims was contained in Constitution No. 23 of 2004 and Government Regulation 2004 No. 4 of 2006.

Jamaa (2014) analyzed the Protection of Victims of Domestic Violence in Indonesian Criminal Law. This research aims at finding out Protection of Victims of Violence in Indonesian Criminal Law. The results showed that the protection of victims of violence in Indonesian criminal law is Law No. 23 of 2004 called preventive and repressive from the police. Arief (2017) researched about Legal Protection against Woman Victim by The Indonesian Domestic Violence Act 23, 2004. This research aim at understanding domestic violence law 23 of 2004 protecting women victims of domestic violence. The results showed that domestic violence has 4 types, namely physical, psychological, sexual, and household neglect. Resolving case is done by domestic acts of constitutional roughness to change the behaviour of communities involve many parties. The results of relevant study above might conclude that the protection of victims of domestic violence is regulated at Constitution no. 24 of 2004. Protection is not solely from the police but in the real form and clear legal power of the government.

### 3. Material and Methods

The article method used in this research is normative legal research that has the object of study of the rules or rule of law (Waluyo, 2010). Normative legal research refers to written regulations and other legal materials. Collection using predominantly data and supporting data (Ngani, 2012). Predominantly data comes from primary legal materials related to violence regulations, such as the 1945 Constitution, the Law on the elimination of violence, regulations on domestic violence, procedures for the regulation of the regulation of laws and regulations and minutes of the House of Representatives. While secondary and tertian legal materials become supporters of primary legal materials. Data analysis uses content analysis of normative laws that are classified and grouped then in qualitative descriptive analysis (Moleong, 1999)

### 4. Results and Discussion

There are five principles in the Restorative Justice approach, namely: (1) complete participation and consensus (agreement); (2) Attempt to heal the damage or loss that exists due to the occurrence of no crime; (3) Provide direct accountability of the perpetrator as a whole; (4) Seeking reunification to citizens of communities divided or separated by criminal acts; (5) Provide resilience to the citizens in order to prevent the occurrence of the next criminal act (Siregar, 2007). Through the Restorative Justice approach, it is hoped that recovery for victims can be realized, the purpose of prosecution for offender will be successful and public order can be achieved. Restorative Justice is one of other solution to realize justice in accordance with legal objectives (Warassih, 2005). Justice will be obtained by all parties, both perpetrators, victims and the community.

Government Regulation of the Republic of Indonesia Number 4 of 2006 concerning on the Implementation and Cooperation of Recovery of Victims of Violence on the implementation of the recovery of domestic violence victims involving cooperation with various parties. According to Cooperation of Recovery of Victims of Violence, the

1 recovery of victims is all efforts to strengthen victims of domestic violence to be more empowered, both physically and psychologically (Cooperation of Recovery of Victims of Violence, Article 1). The implementation of recovery is all actions that include services and assistance to victims of domestic violence (Cooperation of Recovery of Victims of Violence, Article 1 (2)). For the sake of recovery, victims are entitled to services from health workers, social workers, companion volunteers, and/or spiritual leaders (Cooperation of Recovery of Victims of Violence Article 2 (1)).

According to Jeff Knight, in the implementation of restorative justice through the deliberation process, it is always directed to achieve satisfaction for all parties, and can be realized by the perpetrator of the crime. Agreements produced through deliberation usually contain things such as (Knight, 2019): (1) Apologies from criminal offenders to the victim; (2) Perform various unpaid work to the victim; (3) Financial compensation to the victim; (4) Voluntary work for social organizations; (5) Compensation in the form of money that is for social purposes; (6) Providing first aid at the time of the incident; (7) Keep the agreement with all your heart. The variety of agreements that may result from negotiations is unlimited, and the variation depends on each negotiation.

The implementation of restorative judicial proceedings in domestic violence cases aimed at achieving or realizing restorative justice in the process of solving criminal cases, can take place within the framework of the criminal justice system, but can also take place outside the framework of the criminal justice system. But it can also take place outside the frame of the criminal justice system.

#### 4.1 Indigenous Institutions in Preventive and Repressive Cases of Domestic Violence

First the settlement through customary law, customary law in the context of Minangkabau is more social punishment, punishment reconstructed by culture, the effect is more indicative of shame, the sense of being taught from all wrong actions. In the context of violence against women, those who commit violence with a sense of being visited or called customarily. This statement is an implication of the communal kinship system that took place in Minangkabau. Where a mother who is responsible for people is more punished by the social punishment that society gives to members of its people. The head of the people can be rained not because and can even be accused of not being.

Both formal laws of nagari. Since the Minangkabau people returned to nagari government as their local government, it has been born many formal laws of nagari government. One of the formal laws on the welfare of children and women. This formal legal product, supported by a set of institutions that enforce it, such as 'bundo kanduang, alim ulama, ninik mamak' and so on as seen in the scheme above. This formal law is a law born of a blend of customs and social development of the community, which is binding on all related in regulated matters. Nagari's formal law on cases of violence against women is regulated through nagari family law (Rani, 2016).

In comparison, regarding customary sanctions, it is still used in Siak Sri Indrapura. The household case is also inseparable from the application of customary sanctions. The customary sanctions are carried out based on the results of deliberations. So that, each problem can get a different sanction. The forms of customary sanctions that are



commonly applied in household problems are splitting beds (beds) for some time, splitting the house, paying fines, and it could be divorce or talaq. Customary sanctions in the form of divorce or talaq are usually applied in certain cases such as infidelity or cases that cannot be tolerated. However, it is more emphasized to the husband and wife not to commit acts that violate religious rules. So that, association the husband and wife are not encouraged to hit. In the event of husband and wife, it should only be snapped (speaking in a loud tone) but not allowed to say negative words (rude/dirty) (Rani, 2016). Establishing a pattern of awareness of the existence of society as a subject of law must be improved. Based on the results interview to the Siak Sri Indrapura community, most of the Siak Sri Indrapura community is still loyal to conventional mindsets. The conventional mindset is a way of thinking that considers the household as a private area, so that public law is considered unable to interfere with anything that happens in it. A basic understanding of domestic violence as a personal issue (personal disgrace) has limited the breadth of legal solutions to actively address the problem. In some Siak Sri Indrapura communities, domestic violence has not been accepted as a form of crime. Customary law does not separate in principle between civil law and public law. This is because the composition of Indonesian society contains religious and mystical traits, including the Siak Sri Indrapura community. The implementation and maintenance of customary law, carried out in a legal community, especially those in villages and rural areas that are still thick with the customs and culture of their ancestors (Rani, 2016).

Customary habits are basically tested naturally and certainly of good value, because they are social actions that are repeated and experiencing reinforcement. If an action is not considered good by society then it will not experience continuous strengthening. Movement naturally occurs voluntarily because it is considered good or good. Bad customs will only occur when there is coercion by the ruler. If so it does not grow naturally but is forced (Ayatrohaedi, 1986).

The traditional attitude that women are considered as subordinate to men, standardization of stereotyped roles, accompanied by traditional attitudes of women such as social and economic dependence on husbands and families as well as the fear and reluctance of women victims of violence to get justice, are the main causes among the many other causes that cause domestic violence to be unrevealed or unresolved. The traditional attitude that disturbs that what happens in the home is the best things to be solved in the home. Along with the limitation of legislation that can be used to resolve acts of domestic violence through legal routes, ranging from the cumbersome reporting process, the investigation and investigation process and submission to the court, and the court process. These are also reasons why not many victims complain to law enforcement agencies. Still rare is the women's crisis center and the ignorance of the victim about the agency that can help her solve the problem, which is also the reason that the victim chooses to curb her (Luhulima, 2000).

## <sup>1</sup> 5. Conclusion

The concept of regulating the protection of women victims of violence in the framework of criminal law reform can be done through Penal Mediation. The conception of penal mediation is very suitable for use in Indonesia, especially in the case of domestic violence, for several reasons, namely: (1) Indonesian culture that prioritizes peaceful resolution of disputes based on consensus deliberation, especially in domestic conflicts; (2) Customary Law and Islamic Law that are still alive and practiced by the community support and even prioritize the use of mediation in the peaceful resolution of disputes, including in the case of protection of women victims of violence in Indonesia; (3) The majority of the public still considers domestic violence cases to be internal household problems that should not be known by the public. This is in accordance with the nature of mediation that is mandatory to maintain the confidentiality of the settlement of a dispute; (4) Mediation promises a fast, cheap and simple domestic violence settlement compared to a settlement in court. This factor is important to shorten the suffering experienced by victims of domestic violence.

### Conflict of Interest Statement

The author declares no conflicts of interests.

### About the Author

The author, Susi Delmiati, works as lecturer at Universitas Ekasakti, Padang, West Sumatera, Indonesia. Her research interest are law and social education.

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