

Harmonization of Law Number 23 of 2004 concerning the Elimination of Domestic Violence Against Legal Protection for Victims of Domestic Violence in Indonesia

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Abstract: Domestic violence is an act of violence that occurs within a husband and wife or family relationship. Domestic violence is regulated in Law Number 23 of 2004 concerning the Elimination of Domestic Violence. The problem in this study is how to harmonize Law Number 23 of 2004 concerning the Elimination of Domestic Violence against legal protection efforts for victims of domestic violence in Indonesia. This type of research is normative-empirical research with descriptive research type. The problem approach used is the normative legal approach. The data used are primary data obtained by means of interviews, and secondary data obtained through literature studies such as literature books and scientific papers related to research problems. The results of this study are that the government provides legal protection efforts for victims of domestic violence in accordance with the applicable legal basis, namely Law Number 23 of 2004. Suggestions in this study are that the government and society can be more responsive in seeing cases of violence in the home households, in order to minimize the occurrence of acts of domestic violence.

Keywords: Harmonization, Legal Protection, Domestic Violence

1. Introduction

Family is a household that has ties or blood relations built by a husband and wife from forming a marriage bond. The family itself consists of the head of the family who is held by the father, then the mother and children. According to Article 1 paragraph (6) of Law Number 52 of 2009 concerning Population Development and Family Development, the family is the smallest unit in society consisting of husband and wife, or husband, wife and children, or father and children, or mother and children. Victims of acts of violence in the family are more likely to be experienced by groups that are vulnerable, namely women. What often happens in acts of violence in a family usually occurs from the husband who commits acts of violence against his wife. [1] The acts of violence experienced by the wife have violated the human rights of the wife, but those who can become victims besides the wife are also children, there are still many children who become victims of domestic violence in a family, violence against children can cause physical and psychological problems in child later. [2] Physically, it can be seen from all over his body that there are signs of scars from violence. Psychologically, children who are victims of violence can experience psychiatric problems such as: post-traumatic stress disorder, depression, anxiety, and psychosis. Parents often do not realize or find out too late that their children are victims of violence. [3]

Most of the perpetrators of domestic violence know what they are doing, among them there are those who deliberately commit violence to women, more precisely to their wives, and even the victims of such acts of violence appear to have the impression of being left alone by the perpetrators of the violence whether intentional or real. [4] is a modern phenomenon. Law Number 23 of 2004 forms of violence against women take many forms, the first form of violence is physical violence, which means that violence can cause injuries or scars on the victim's body or body, the second is a form of psychological violence, which in the sense that violence can cause mental or psychological trauma to the victim, then the third is sexual violence, in a husband and wife relationship it can lead to sexual violence that arises due to coercion in intercourse using violence, then finally there is household neglect, meaning the husband abandons his wife after marriage, abandonment in the sense leaving his wife in his life even though he has entered into a legal marriage. [5]

Domestic violence often occurs because one of them is the individual factor of the husband, in which there is a patriarchal culture within the husband which makes the man or husband at a higher level of power than the woman or wife, so that when married women are often considered as her husband's. [6] Injustice in gender equality also exists in civil law which is based on the view that women are weak and must be protected by their husbands, as found in several provisions in the Civil Code in Article 105; "The husband takes care of the wife's

assets", Article 106; "the wife must be obedient to her husband", and Articles 250-256; "Children born in marriage may be denied by their husbands." From some of these provisions, it can be the trigger that the household is the place where men's power begins over women, so that it can trigger an act of violence. [7] Injustice in gender equality also exists in civil law which is based on the view that women are weak and must be protected by their husbands, as found in several provisions in the Civil Code in Article 105; "The husband takes care of the wife's assets", Article 106; "the wife must be obedient to her husband", and Articles 250-256; "Children born in marriage may be denied by their husbands." From some of these provisions, it can be the trigger that the household is the place where men's power begins over women, so that it can trigger an act of violence. [8]

Based on data reported on the official national women's commission website, it shows that throughout 2020 there were 299,911 cases of violence in Indonesia. [9] This number has decreased compared to the previous year in 2019, namely 431,471. based on information from national women's commission, the decrease in the number of cases in 2020 does not mean that the number of cases of women in 2020 has decreased, but several things, namely victims are close to the perpetrators because in 2020 during the pandemic, victims tend to complain to their families instead of making complaints to national women's commission, literacy issues technology, the complaint service model is not ready for pandemic conditions. Based on the description above, the problem in this study is how is Law No. 23 of 2004 concerning the Elimination of Domestic Violence harmonization of legal protection efforts for victims of domestic violence in Indonesia.

2. Research Methods

The research method used is a normative research method, using a statute approach related to the Harmonization of Law Number 23 of 2004 concerning the Elimination of Domestic Violence Against Legal Protection for Victims of Domestic Violence in Indonesia. The statute approach is to examine matters relating to legal principles, views and legal doctrines, and laws and regulations related to the Harmonization of Law Number 23 of 2004 concerning the Elimination of Domestic Violence Against Legal Protection for Victims of Domestic Violence In Indonesia, with accurate data and can be accounted for the truth. Apart from that, an in-depth examination of the legal facts was also carried out to then seek solutions to the problems that arise in the symptoms in question. [10]

3. Results and Discussion

a. Harmonization of Law Number 23 of 2004 concerning the Elimination of Domestic Violence Against Legal Protection for Victims of Domestic Violence in Indonesia

Every citizen has the right to get protection to prevent unwanted things from happening, one of which is to avoid acts of violence, all forms of violence are acts that violate human rights, all acts of violence, including acts of domestic violence, which are often occurs with a wife who is a victim of domestic violence. Acts of domestic violence can result in physical, sexual, psychological misery or suffering, and/or neglect of the household including threats to commit acts, coercion, or unlawful deprivation of liberty within the household sphere. [11] Therefore, victims of acts of domestic violence have the right to receive legal protection in order to protect victims and provide a sense of comfort and security, as well as provide justice to victims for what the victims have experienced. Harmonization is a process of aligning or adjusting something that is considered inappropriate, inappropriate, or inappropriate so as to produce something that is good or harmonious in one thing. Harmonization of laws and regulations itself has a function to prevent and overcome the occurrence of legal disharmony. Harmonization can also guarantee the process of drafting laws that comply with the principle of legal certainty. In principle, harmonization of laws and regulations is to create harmonious norms between laws and regulations. [12]

The report entitled global status report on Prevention of Violence against Children in 2020 revealed that 88% or almost all countries in the world have laws protecting children from violence, but only less than half or 47% of countries say law enforcement has been implemented. "There is never an excuse for violence against children. We have evidence-based tools to prevent it, which we ask all countries to adopt. Protecting the health and well-being of children is at the heart of protecting the health and well-being of all of us, now and for the future future," said WHO Director General Dr Tedros Adhanom Ghebreyesus. The report stated that 40,150 children aged 0 to 17 years died as a result of violence globally. A total of 28,160 were boys and 11,190 were girls. Nearly three out of four children or around 300 million children experience physical punishment or psychological violence from their parents or caregivers. The report also revealed that a quarter of the world's children under the age of five live with mothers who are victims of domestic violence. [13] One in three children aged 11 to 15 years experienced bullying in the past month at school. Meanwhile, children aged 13 to 15 years experienced physical fights in the past year. Most are done by boys by 45 percent and girls by 25 percent. Furthermore, the report also revealed that as many as 120 million girls and young women under the age of 20

experienced sexual harassment. Adults who experienced physical, sexual, and psychological abuse as children are seven times more likely to engage in the same acts as perpetrators. Or 30 times more likely to attempt suicide. When adults have experienced violence as children, adult males are 14 times more likely to be the perpetrators of physical or sexual violence against their partners. Meanwhile, adult women are 16 times more likely to get physical and sexual violence from their partners. [14]

Legal protection is all efforts made by law enforcers to protect the rights of legal subjects so that these rights are not violated. This law enforcement is carried out as an effort to carry out the applicable legal provisions. A protection can be said to be legal protection if it contains various elements, namely the government's protection of its citizens, guarantees of legal certainty, and relates to citizens' rights. Legal protection can be called legal protection if it has the following elements:

- 1) There is protection from the government for its citizens;
- 2) Guarantee of legal certainty;
- 3) Related to the rights of citizens; and
- 4) There are sanctions for violating parties

Efforts to protect the law is an action taken to provide protection or provide security to victims of domestic violence. For Law Number 23 of 2004 concerning the elimination of violence in the household itself, it is contained in Article 10 regarding victims' rights, in which victims are entitled to protection rights from the family, police, prosecutors, courts, advocates, social institutions, or other parties that can provide protection for victims from acts of domestic violence, both temporary and temporary protection. based on a court ruling of protection.[15] Victims are also entitled to receive health services in accordance with the victim's medical needs, both physical and mental medical needs, special treatment related to victim confidentiality, as well as assistance by social workers and legal assistance at every level of the examination process in accordance with statutory provisions, as well as victims entitled to spiritual guidance. To make efforts to protect victims of such acts of violence, not only one party, but many parties provide such protection efforts. Based on the elements of legal protection, legal protection efforts for victims of domestic violence are:

1) There Is Protection From The Government To Its Citizens

The government has a responsibility in efforts to prevent domestic violence. In which the government has the responsibility to carry out the provisions in the form of formulating policies on eliminating domestic violence, organizing communication, information, and education regarding acts of domestic violence, organizing outreach and advocacy about domestic violence, and organizing education and training. gender sensitive and issues in the household as well as establishing gender sensitive service standards and accreditation.

Handling victims of acts of domestic violence, the government and regional governments must carry out the administration of victims of acts of domestic violence, which can be in the form of efforts to provide special service rooms at the police station, then provision of apparatus, health workers, social workers and spiritual guides , then it can also be in the form of efforts to create and develop systems and mechanisms for cooperation in service programs involving parties that can be easily accessed by victims of acts of domestic violence, and also the government and local governments must be able to provide protection for companions, witnesses, families, and friend of the victim of domestic violence, because it is possible for the perpetrator to do something that could threaten the security of parties related to the victim of domestic violence. To make efforts to provide services to victims of acts of domestic violence, the government and regional governments are in accordance with their respective functions and duties, within regional government it is the function of the Service.

Women's Empowerment and Child Protection can carry out their duties in collaboration with the community or can also work with other social institutions. Referring to Article 15 of Law Number 23 of 2004, everyone who sees, hears, and knows an act of domestic violence within a family, be it neighbors, friends, family, or people closest to them or people who have never known someone mentioned, anyone who commits an act of domestic violence, is obliged to make efforts within the limits of his ability such as:

- a) Prevent acts of domestic violence
- b) Provide protection to victims of domestic violence
- c) Provide emergency assistance
- d) As well as assisting the process of filing an application for the determination of protection.

If it has exceeded the limit of its ability to take preventive measures, the rest will be handled by the authorities, because the people around the victim can only do as much as they can in handling the victim. Based on Law Number 23 of 2004 the parties that provide protection for victims of domestic violence are:

a) Regional Government Cooperation with the Police in Providing Protection to Victims of Domestic Violence

Protection for victims of domestic violence, the government and local government work together with the local police. Within 1x24 hours from knowing or receiving reports of acts of domestic violence, the local police must immediately provide temporary protection to victims of domestic violence. And within 1x24 hours of providing protection to victims of domestic violence, the police are required to request a letter of determination of a protection order from the court.

Temporary protection, the police can work together with health workers, social workers, companion volunteers and spiritual guides to provide assistance to victims of domestic violence, from there the police are obliged to provide information to victims about the rights of victims to receive services and assistance in accordance with regulations. in force, namely Law Number 23 of 2004. And the police also have an obligation to immediately conduct an investigation after knowing or receiving a report about the occurrence of domestic violence. And the police also have an obligation to convey information to victims according to Law Number 23 of 2004 concerning the identity of officers to identify victims, to inform victims that acts of domestic violence are crimes against human dignity, and to inform that it is the duty of the police to protect victims.

b) Efforts of Health Workers, Social Workers, and Companion Volunteers in Carrying out Protection for Victims of Domestic Violence

In an effort to treat victims, medical personnel are needed, because no one knows what has happened to the victim, according to Article 21 of Law Number 23 of 2004 in providing health services to victims, health workers are required to examine the victim's health according to professional standards, then make a written report on the results of the examination of the victim and post mortem et repertum at the request of the police investigator or a medical certificate that has the same legal force as evidence, the health service is carried out in health facilities owned by the government, regional government, or the community.

For social workers in providing services to victims of domestic violence, they must conduct counseling to strengthen and provide a sense of security for victims, provide information about victims' rights, namely:

- 1) To obtain protection from the police and stipulation of a protection order from the court
- 2) Take the victim to a safe house or alternative place of residence owned by the government or local government, or belonging to the community so that the victim can avoid threats from the perpetrator
- 3) Carry out integrated coordination in providing services to victims with the police, social services, social institutions needed by victims.

In providing services, companion volunteers can inform victims of their rights to get one or several companions. People who accompany victims must accompany victims at the level of investigation, prosecution or examination by guiding victims to objectively and completely describe the domestic violence they have experienced, listen empathetically to all the narratives of victims so that victims feel safe because they are accompanied by these companions, and provide active psychological and physical reinforcement to the victim.

And also victims need spiritual guidance to restore the strengthening of faith and piety to victims, therefore in providing spiritual services, spiritual guides must provide explanations regarding rights, obligations, and provide spiritual strengthening to victims.

c) Protection Efforts From Advocates To Victims

Victims of acts of violence also need protection and services from advocates, and advocates are required to provide legal consultations which include information about victims' rights and the judicial process, accompanying victims at the stages of investigation, prosecution and examination in court proceedings and assisting victims to fully describes the domestic violence he experienced, and coordinates with fellow law enforcers, volunteer companions, and social workers so that the judicial process runs as it should so that what the victim wants can go according to what he wants.

In the context of reporting, victims have the right to report directly on the domestic violence they experience to the police both where the victim is and at the scene of the incident. But in the case of the victim who is a child, the report can be made by the parents, guardians, caregivers or the child concerned which is carried out in accordance with the provisions of the applicable laws and regulations. Then for the chairman of the court, within a period of 7 (seven) days from receipt of the application, he must issue a decision letter containing an order to protect the victim and other family members, except for appropriate reasons. For an application intended to obtain a protection order, it can be submitted by parties related to the victim, namely by:

- 1) The victim or the victim's family;
- 2) Friend of the victim;
- 3) Police;

- 4) Companion volunteers; or
- 5) Spiritual guide

The request for a protection order itself is submitted either orally or in writing. In the event that an application is submitted orally, the local district court clerk is obliged to record the application. If a request for a protection order is filed by the family, friends of the victim, the police, volunteer companions, or a spiritual companion, the victim must give his consent. But in certain cases, the application can be filed without the victim's consent. At the request of the victim or his attorney. The court may consider setting a special condition, changing or canceling a special condition of the protective order. However, in granting additional protection orders, the court is obliged to consider information about the victim himself, health workers regarding the victim's health, social workers, companion volunteers, and/or spiritual guides. For consideration of the harm that may arise or occur, the court may state one or more additional conditions in the order for the protection of the victim. And in granting additional conditions in a protective order, the court is obliged to consider information from victims, health workers, social workers, accompanying volunteers, and/or spiritual advisers.

The police can arrest and then carry out detention without a warrant against the perpetrator who is believed to have violated the protection order, even though the violation was not carried out where the police were on duty. For the arrest and detention of perpetrators, an arrest and detention warrant must be issued after 1x24 hours. And the suspension of detention does not apply to his detention. To provide protection to victims, the police can arrest perpetrators with sufficient preliminary evidence for violating protection orders. For the arrest itself, it can be continued with detention accompanied by a detention order within 1 x 24 hours. Victims, the police, or accompanying volunteers can submit a written report regarding an alleged violation of the protection order. And in the event that the court receives a written report, the perpetrator is ordered to appear before 3x24 hours to be examined by the authorities. This examination was carried out by the court where the perpetrator lived with the victim at the time the violation was alleged to have occurred. However, if the court knows that the perpetrator has violated the protection order and is suspected of committing further violations, the court may oblige the perpetrator to make a written statement containing the willingness to comply with the protection order. However, if the perpetrator does not heed the written statement, the court can detain the perpetrator for a maximum of 30 days. The detention in question is accompanied by a detention order. For the benefit of the victim, such as in the interests of recovery both physically and mentally or mentally, the victim can obtain direct services from local health workers, social workers, companion volunteers from the local government, and spiritual mentors determined by the authorities in dealing with cases of violence in the household. In the framework of this recovery, the parties involved in the recovery period for victims of domestic violence can work together to make it easier to find out the physical and mental status of the victim. However, further details regarding the implementation of recovery efforts and cooperation are regulated by a Government Regulation.

b. Guarantee of Legal Certainty

For the sake of guaranteeing the safety and comfort of citizens, citizens have the right to have guarantees of legal certainty, especially in the context of violence, because the existence of violence that occurs in society can give a sense of insecurity that could injure and even kill victims of acts of violence. That is to provide a sense of security to all people, people must have guaranteed legal certainty in a country. In our country, Indonesia, the guarantee of legal certainty is contained in the 1945 Constitution contained in Article 28D paragraph (1) which reads "Every person has the right to recognition, guarantees, protection and fair legal certainty and equal treatment before the law". The community also has a guarantee of legal certainty regarding domestic violence which is contained in Law Number 23 of 2004 concerning the Elimination of Domestic Violence which is contained in Article 5 which reads "Every person is prohibited from committing domestic violence against people within the scope of his household." so that within a family has guaranteed protection from acts of domestic violence.

c. Relating to the Rights of Citizens

Every citizen has rights that have been obtained since he was born into this world, in Article 27 of the 1945 Constitution it is stated that every citizen has the same position before the law, which means that every citizen regardless of status, race, ethnicity, custom, and others have the same position in the eyes of the law. Likewise victims of domestic violence, they have rights that must be fulfilled, it is stated in Law Number 23 of 2004 concerning the Elimination of Domestic Violence to be precise in Article 10 where victims have the following rights:

- 1) protection from the family, police, prosecutors, courts, advocates, social institutions, or other parties, either temporarily or based on a stipulation of a protection order from the court;

- 2) health services according to medical needs;
- 3) special handling related to victim confidentiality;
- 4) assistance by social workers and legal assistance at every level of the examination process in accordance with the provisions of laws and regulations; and
- 5) spiritual guidance services.

4. Conclusion

Law Number 23 of 2004 concerning the elimination of domestic violence itself is contained in Article 10 concerning the rights of victims, in which victims are entitled to protection rights from the family, police, prosecutors, courts, advocates, social institutions, or other parties which can provide protection for victims of acts of domestic violence, both temporary protection and based on the stipulation of a protection order from the court. Victims are also entitled to receive health services in accordance with the victim's medical needs, both physical and mental medical needs, special treatment related to victim confidentiality, as well as assistance by social workers and legal assistance at every level of the examination process in accordance with statutory provisions, as well as victims entitled to spiritual guidance. To make efforts to protect victims of violence, not only one party, but many parties provide protection. Efforts to protect the law is an action taken to provide protection or provide security to victims of domestic violence. With the success of the government in carrying out efforts to protect victims of domestic violence by using the legal basis of Law Number 23 of 2004, it can be interpreted that Law Number 23 of 2004 has harmonization with the efforts that have been made by the government in implementing protection for victims. this domestic violence.

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