

Domestic Violence in The Perspective of Law and Human Rights

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Abstract : *Domestic violence is more and more happening and increasing and sometimes experienced by women in the household so that they become victims. The perception of violence here is in the physical sense of the body and full of wounds or bruises. At the same time, psychologically, it is caused by fear due to the perpetrator's treatment of their mental State and violence due to sexual harassment in marriage or frequent sexual intercourse that is excessive than usual without seeing the partner's readiness. The problem studied is how the implications of domestic violence are viewed from the Law and human rights, especially for victims in fulfilling their rights. The purpose of this paper is to find out how domestic violence is related to Law and human rights. The method used is normative juridical research because it examines or examines from the literature or literature or laws and regulations relating to existing problems, where the result is that domestic violence is also a legal aspect and is also a violation of human rights related to it human rights, so that it is not only problems or domestic disputes, but the perpetrators can be punished for violating the rights of the victims themselves.*

Kata kunci : kekerasan, rumah tangga, perempuan

Abstrak : Kekerasan dalam rumah tangga semakin banyak terjadi dan meningkat dan terkadang dialami oleh perempuan dalam rumah tangga sehingga menjadi korban. Persepsi kekerasan di sini adalah dalam arti fisik tubuh dan penuh dengan luka atau lebam. Sementara secara psikologis disebabkan oleh ketakutan akibat perlakuan pelaku terhadap keadaan mentalnya dan kekerasan akibat pelecehan seksual dalam perkawinan atau seringnya melakukan hubungan seksual yang berlebihan dari biasanya tanpa melihat kesiapan pasangannya. Masalah yang dikaji adalah bagaimana implikasi KDRT ditinjau dari Hukum dan HAM khususnya bagi korban dalam pemenuhan haknya. Tujuan dari tulisan ini adalah untuk mengetahui bagaimana kekerasan dalam rumah tangga dikaitkan dengan Hukum dan HAM. Metode yang digunakan adalah penelitian yuridis normatif karena mengkaji atau menelaah dari kepustakaan atau kepustakaan atau peraturan perundang-undangan yang berkaitan dengan permasalahan yang ada, dimana hasilnya KDRT juga merupakan aspek hukum dan juga merupakan pelanggaran HAM yang terkait dengannya. sehingga tidak hanya masalah atau perselisihan rumah tangga saja, tetapi pelakunya dapat dihukum karena melanggar hak-hak korban itu sendiri.

I. INTRODUCTION

Humans in their lives cannot live alone, but always need other people around them because humans are called social beings, meaning that they always need other people, are said to be in need because of a condition or help that cannot live alone, such as illness and so on. To continue the lineage, one must also find a life partner and carry out marriages in forming a prosperous and eternal household.

The relationship in the household does not only end there but also raises children with patience and love. In building a family, there is a need for loyalty, understanding, patience, and mutual trust between partners to maintain harmony in the household and not break up or part in the middle of the road¹.

But sometimes, in practice or reality, domestic violence often occurs, which usually leaves deep wounds and even torture between partners. Women are often vulnerable with each of the violence they experience, such as bruises and injuries on their bodies. others who have other bruises due to the violence of blunt and sharp objects that hit the body and require an examination from a doctor who states that the person has been exposed to physical violence and to get severe treatment immediately

The violence is not only physical but also psychological, as well as sexual and economic, which consequently harms the woman and can also cause other impacts for the sufferer or those who experience it, one of which can cause stress or depression and even trauma that a prolonged period where the family as a milestone in the search for peace turned out to have to provide bitter memories for the victims themselves.

Such things are usually referred to as violence in the household, namely because the family is no longer harmonious and causes cracks. As a result, it can also cause bad things for the children and often triggers a lot due to poor economic life. even though the need is increasing, it can also be due to an affair between one partner who has another ideal man or woman, resulting in the household falling apart²

Another trigger is also due to the existence of a dominant patriarchal culture that considers men to be more powerful than women, and ruling here over all aspects of life that are dominated by men, so that women seem to be unable to do anything, on the other hand, the victims who are the victims dominant is that women also experience torture or violence is a violation of human rights and the Law. As a result of the violence, the perpetrator can be punished because the violence is a form of persecution, either mild or moderate, or even severe.

¹ Hotifah, Y. (2011). *Dinamika Psikologis Perempuan Korban Kekerasan Dalam Rumah Tangga*, Personifikasi : Jurnal Ilmu Psikologi, Vol. 2 (1), Page. 65

² Alhakim, A. (2021). *Kekerasan Terhadap Perempuan : Suatu Kajian Perlindungan Berdasarkan Hukum Postif Di Indonesia*, Jurnal Pendidikan Kewarganegaraan Undiksha, Vol. 9 (1), Page 117

II. METHODS

Using library legal research and carried out by researching library materials or secondary data is written in the legislation and related to the problem to be studied and used the literature to answer the problem.

III. RESULT AND DISCUSSION

Definition, Factors, and Impact of Domestic Violence

Violence comes from the word hard, but complicated here does not mean hard in the realm of weapons or anything else. Still, violence within the scope of a family, say a household, which is explained in more detail that a home is a place for the outpouring of love and affection between parents and their children to get love and attention from his family, it turns out to have to get something very uncomfortable, especially for those who are said to be vulnerable, namely children and women as a result of a man's treatment of his wife and child.

Violence also causes the relationship between husband and wife or children and parents to be not harmonious, and sometimes because it is not pleasant, it often creates fear for the child and also for the wife and considers the house to be no longer a comfortable place to rest or hold each other as if there were the fear of returning to their place of residence due to an unpleasant feeling when meeting someone who is considered to have caused the violence³

In addition, there are impacts in the household that need to be known, namely, the factors seen from the individual as well as the couple as well as socio-cultural as well as from the economy.

- 1) From the individual women because of the existence of unregistered marriages or also contract marriages according to religion or other customs, compared to those who are legally married and are legally recognized by the State and through civil registration or KUA.
- 2) Whereas from Spouse is the tendency for men or couples who have other partners to be at risk of violence compared to those who do not have partners, and teams who are unemployed and use narcotics are more likely to commit physical or psychological violence compared to those who do not use them⁴.
- 3) Economic factors, it is explained that women who come from low-income levels are compared to those who have a high level and are followed by aspects of education where with education a person will understand and understand the meaning of violence that causes pain and suffering for others so it should be avoided

³ Pratiwi, M.R.A.P (2020). *The Impact of Early Marriage in the Fulfilment of Women Rights*, The Indonesian Journal of International Clinical Legal Education, Vol. 2 (4), Page 457.

⁴ Budiana, I. N., Made Oka, C. W. (2021). *Researching Social Change In Bali Indigenoous Marriage Private*. Sociological Jurisprudence Journal, 4 (2). Page 75-85

- 4) Social culture results due to a sense of concern that afflicts most of those who live in rural areas rather than urban areas, wherein in rural areas, there is a tendency and matter about threats that threaten⁵.

In the existence of various existing roles that are carried out and are very decisive in making decisions, including noble values and gender justice, they must always be instilled. And from the beginning, it must always be communicated at the beginning of the formation of the family to the level of marriage. There needs to be a firm commitment built in each person to carry out the family and the present constructions. The commitment form is expected to create two-way communication between husband and wife so that the integrity of the family can be implicated and domestic violence cases can be eliminated.

Meanwhile, the existence or impact of domestic violence can result in:

- 1) Inferiority. said to be low self-esteem, feel ashamed due to the disgrace in their household, and also feel they do not dare to meet the perpetrator or her husband because they feel like they are victims and this is not only because of physical abuse but also psychological
- 2) A sense of trauma causes fear because it has often been overshadowed by the face and attitude of the perpetrator, so meeting and facing each other again is not justified
- 3) Trauma due to the treatment of someone leaving deep wounds and still haunting him so that it becomes excessive fear for the victim, trauma is also due to the fear of meeting the culprit
- 4) Loss of trust and feeling unsure of what he is doing so that he feels what he did is wrong or correct and feels unsure so that sometimes he feels what he is doing as if he is not confident and utterly uncertain of his actions

Aspects of Human Rights

Human rights in the definition in Law Number 39 of 1999, which reads Human Rights are a set of rights that are inherent in the nature and existence of humans as creatures of God Almighty and are His gifts that must be respected, upheld, and protected by the State, Law, and regulations. Government, and everyone for the sake of honor and protection of human dignity. Domestic violence experienced by women is included in the violation of human rights, and the violation also causes a violation of a person's right to life. A person's right to life must not be violated and is free to carry out or act in his life and not be shackled in torture⁶.

The meaning in the Law on human rights above states that every human being and regardless of gender since birth, has inherent rights which are called rights and must not be violated or done intentionally to oppress or experience torture to those who have

⁵ Djubaedah, N. (2019). *Child Marriage and Zina In Indonesiaan Legislation In Islamic Law*, Jurnal Hukum dan Pembangunan, 49 (1). Page 202-223

⁶ Kurnianingsih, M., Absori., Johan Cahya, K.S., (2021). *Psychic Shackles Violence in Women and Children in The District Grobogan*, WaliSongo Law Review, Vol. 3 (1), Page 52

that right, and with the right that exists are respected and upheld and protected by the State, as well as Law and government, there is recognition from the State to preserve anyone related to their human rights, and everyone for the sake of honor and protection of human beings and their dignity, have the right to get it without interference from others⁷

The form of domestic violence apart from physical as well as psychological, there is also what is called sexual, where sexual in the scope of the home and household as well as in the marriage bond is still allowed even though it is said that there has been a legal marriage between the husband and wife, then violence is also not allowed. In sexual matters, the husband is not allowed to force his wife to have intercourse if one of the parties disagrees because if that happens, it will be called marital rape or commonly known as spousal rape. It is strictly forbidden to do so, or at least commit sexual violence regardless of the circumstances. The soul of his wife, whether he wants to or not, is based on consensual and mutual consent, and there should be no coercion between the husband and wife.

A right that has been violated if violence has occurred is the right to life. A person experiences torture and ill-treatment resulting in deep wounds or bruises and bruises all over his body due to someone's actions, so that a person cannot do anything because he has experienced suffering in his life. Because the rights have been taken or shackled earlier⁸.

Apart from human and human rights, it is also clear that violence has violated the Law because the Law is a set of rules that regulate the behavior of humans themselves. If violated, sanctions will be imposed on them. The Law here also lists the values of decency, decency, as well as Law and religion, so that those who violate them should be given sanctions so that there is a deterrent effect, of course, because violence can also be called persecution which results in injuries to the victim's body, the violence here is not only between husband and wife but also with children and includes other people who live under the same roof with the person concerned.

The application of sanctions given to perpetrators of domestic violence is due to the aspect of punishment in the Criminal Code, which includes violence in the realm of criminal acts, in the form of mild, moderate, and severe persecution, and not only in the aspect of the Criminal Code but also in the criminal code. Also, the Law on the Elimination of Domestic Violence, namely Law no. 23 of 2004,⁹ regulates sanctions for the perpetrators, with additional sanctions given to the suspect or his husband¹⁰.

However, because in the household there is a complaint offense that is not arbitrary people who can report exceptions there is permission from the victim, in this case, the victim must note, unless there is permission from the victim concerned may

⁷ Johny, R. H. (2011). *Tindak Pidana Kekerasan Terhadap Perempuan (Studi Etiologi Kriminal di Wilayah Hukum Polres Banyumas)*, Jurnal Dinamika Hukum, Vol. 11 (2), Page 117

⁸ Lestari, D. (2005). *Kekerasan Dalam Rumah Tangga Terhadap Perempuan*, Jurnal Hukum Pembangunan, 35 (3), Page 340

⁹ Undang-Undang Nomor 23 Tahun 2004 tentang Penghapusan Kekerasan Dalam Rumah Tangga

¹⁰ Makara, M.T., Weny, B., Syaiful. A. (2013). *Hukum Perlindungan Anak Dan Penghapusan Kekerasan Dalam Rumah Tangga*, Jakarta : Rineka Cipta, Page 76

report to law enforcement officials, on the other hand, the family or other people try to do and try to prevent domestic violence from happening.

But because domestic violence is considered a disgrace to someone, usually and sometimes they don't want to report for fear of the disgrace of their family being known by many people or being exposed in the news. Moreover, her husband is respected, so the act is covered up by assuming this. What is normal and will be goodwill return again, without many people knowing, and there is an assumption that in the household quarrels are common. It is a spice in the household because some think it is a common thing and does not need to be exaggerated so that without a complaint or report from someone, the case cannot be processed unless it is caused or caught red-handed.

Relationship between Human Rights and Law

Human rights and the Law are an essential relationship, namely the existence of a fundamental connection, so it is said that violations or crimes committed by a person can be subject to sanctions or punishment because they have violated the rights of independence of a person. Without any reason, it is not allowed, in the presence of various rights and guarantees of protection, of course, with the application of sanctions that are ultimatum remedial, namely as a last resort given to the suspect or perpetrator¹¹.

In criminal acts related to domestic violence, the party who feels aggrieved in this case is the wife or woman who is the victim, is often reluctant to report, and it is enough to resolve it by deliberation, meaning that the case or violence that has occurred her is not written or is not forwarded to the court. So that sanctions can be applied to the perpetrators. Sometimes they are kept quiet and resolved amicably¹².

Even though the Law is made to protect the community, the legal rules that are implemented must follow the applicable rules and lead to the protection of the entire nation and State, so that sometimes the case does not want to be known by the public, so that the perpetrator is not given strict sanctions because after committing a crime that causes violence against the victim.

The right that has been violated as a result of this crime or crime is the right to life, where this right must guarantee that everyone must be free to live without torture or internal violence that befalls him. It is not allowed for someone to abuse another person even though his wife or in the sphere of household and marriage, one of which is that everyone has the right to respect and acknowledge the existence of everyone's human rights¹³.

Violations or crimes that are considered contrary to human rights, especially the right to one's life, are not only sanctions in the Criminal Code in general but are also

¹¹ Devaney, J. (2015). *Research Review : The Impact of Domestic Violence on Children*, Irish Probation Journal, Vol. 12, Page 82

¹² Suryamizon, A. L. (2017). *Perlindungan Hukum Preventif Terhadap Kekerasan Perempuan Dan Anak Dalam Perspektif Hukum Hak Asasi Manusia*. Marwah: Jurnal Perempuan, Agama dan Jender, 16 (2), Page 124

¹³ Amirthalingam, K. (2005). *Women's rights, international norms, and domestic violence: Asian perspectives*. Human Rights Quarterly 27 (2), Page 687

subject to additional criminal sanctions regulated in Law Number 23 of 2004 concerning Elimination Domestic Violence, that is, temporarily, the perpetrator is not allowed to meet the victim, because the consequences or impacts of the victim will be harrowing, and cause an intense trauma so that they are shunned and are not allowed to meet for a while¹⁴.

Domestic violence is included in persecution and can also be categorized as mild, moderate, and severe. If the abuse can result in disability or even death, the perpetrator will be subject to harsh sanctions or punishment following the provisions of the applicable legislation. To prove the existence of violence, it is necessary to have an examination from a doctor by providing a *visum et repertum* which states that there has been an act of violence that has occurred a person and resulted in disability or death, and that it is a crime and a violation of a person's right to life.

IV. CONCLUSION

Violation of domestic violence is a violation of the right to life, namely a fundamental right that is protected by both the community, law enforcement, and the State. The protection provided to victims is counseling, medical rehabilitation, social rehabilitation, and compensation.

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¹⁴ Gultom, M. (2014). *Perlindungan Hukum Terhadap Anak dan Perempuan*, Bandung : Refika Aditama
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