

# Evaluation of Court's Decision as Effort of Legal Protection for Victims of Domestic Violence

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## Abstract

This research discusses about evaluation of court decision as effort of legal protection for domestic violence victim in and how is the effort in realizing the legal protection for domestic violence victim in Indonesian criminal system. This research is a normative juridical using statute approach and case approach. Data collection conducted by literary study and document study, observation, and interview. Analysis is conducted qualitatively to obtain proper conclusion from the observed problem. This research found that some judge decisions show the absent of legal protection for domestic violence victim, because judge still imposed the decision merely based on statement in Acts and only imposed punishment to the perpetrator

**Keywords:** Legal protection, victim, domestic violence, court's decision

## Introduction

During the past 20 years, the social science and criminal justice fields developed interventions designed to deter abuse and rehabilitate abusers so they will not abuse again. Central to these interventions has been the increasing role of the criminal justice system to enforce laws that regard the use of violence against one's intimate partner as a criminal act. Thus, domestic violence has moved from being viewed as only a social problem to also being viewed as a criminal justice mandate (Fleury-Steiner, Bybee, Sullivan, Belknap & Melton, 2006). The criminalization of domestic violence refers to efforts to address the issue of domestic violence through the passage and enforcement of criminal and civil laws (Buchbinder & Eisikovits, 2004).

Given the complexity of the aetiology of domestic violence (Bott et al, 2005; IOM, 2013), domestic violence prevention requires the use of an ecological framework (Heise, 1998). Such a framework can help to produce systematic and long lasting societal changes (Harvey et al, 2007).

The term "domestic violence" is extensively debated. The discussion concerns both words: "domestic" and "violence". The concepts of "violence" and "abuse" are frequently used interchangeably by those who study domestic violence (Gelles, 1985). However, the term "abuse" is viewed as problematic and confusing since it covers many types of abuse (not only physical violence), and because no consensus exists on the severity of violence required in order for an act to be considered "abuse" (Strauss & Gelles, 1986). Pope and Ferraro (2006) note that within the domestic violence debate, violence, abuse, and battering are often used interchangeably in political negotiations and ideological conflicts. However, since the terms "violence" and "abuse" have different meanings in different contexts, a precise description of the actual acts being referred to is important, rather than using summary terms that leave the interpretation unclear (Walker, 1999).

In Indonesia, the prevention of and protection against domestic violence is covered predominantly by one main legislative act. The definition of domestic violence appears to be somewhat narrower than the international standard. For example, it does not include economic harm. It also does not extend to de facto couples, divorced couples or gay, lesbian and transgender relationships. However, children are included under the domestic violence legislation and given extra protection under other Indonesian laws (The Thomson Reuters Foundation, 2013).

Data reported cases of violence presented by Linda Amalia Sari Gumelar, Minister for Women Empowerment and Child Protection, (KPPPA) revealed cases of domestic violence in the last 3 years has increased based on the data collected, in 2009 cases of domestic violence recorded by the police KPPPA based on the data as much as 143 586 cases. In the year 2010 amounted to 105,103 domestic violence cases. In 2011, as many as 119 107 cases of domestic violence.

National Commission on Violence Against Women, (2012:4) in CATAHU National Commission for Women in 2011, said that cases of violence in Indonesia, from the number of cases is 113 878 cases in the domestic sphere, more than 97% or 110 468 cases of violence against wives is, identified that in the domestic sphere, the most widely experienced psychological violence 103 691 cases, respectively 3,222 types of economic violence cases, 2,790 cases of physical violence, as well as 1,398 cases of sexual violence.

National Commission (Komnas) Women exposing annual record of violence against women showed a consistent increase in the number of cases and domestic violence significant. Other reason is to have a unique and distinct because the crime occurred in the domestic sphere and takes place in an intimate personal relationship, that between husband and wives, parents and children or between children with children or with people who work in the domestic sphere settle down. Domestic violence happens between husband and wife is based on the relationships within the institution of marriage which is also regulated by the Code of Civil Law or Act No. 1 of 1974 on Marriage. The position of the perpetrators and victims of domestic violence so this cause is still regarded as part of the settlement of private law that is more often directed to peacefully resolved internally or family.

Birth of Law Domestic Violence has strategic value for the elimination of violence against women. In the enforcement of the Act P-domestic violence are a number of obstacles: First, domestic violence offenses defined in the Law on Domestic Violence-"half-hearted" so that the execution of nearly all forms of domestic violence is considered a crime on complaint and "stuck" as the violence does not lead to a result ( physically); Second, biased perceptions of law enforcement against domestic violence from an early stage that domestic violence is often considered a private issue and less a priority; Third, law enforcement tends to view domestic violence is physical violence so that evidence on the impact of violence seen only visible only when domestic violence is always a double impact, fourth, the legal protection defined in the P-Domestic Violence Act in implementation was hampered because technically there is no common perception of law enforcement , fifth, criminal law paradigm that moves only between actions and the resulting casualties and have not touched the victim's position in the criminal justice system is still not considered.

In addition, there are a number of obstacles Harkristuti (200) judge in criminal proceedings for acts of domestic violence against women, among others, as in the criminal justice process there are a number of issues such as: (a) the difficulty to obtain witness statements; (B) lack of understanding and expertise of law enforcement in dealing with cases of violence against women; (C) paradigm based on the principles of evidence (one witness is not a witness) except in the violence in the domestic sphere is justified but one witness shall be equipped with a recognition of the perpetrator (d) lack of involvement of social workers in handling intensive cases of violence against women

#### **Problem Formulation**

First, what form of legal protection for victims of domestic violence in the judge's decision? Second, how efforts to achieve legal protection for victims of domestic violence in the criminal justice system in Indonesia?

#### **Research Objectives**

First, examine and analyze forms of legal protection for victims of domestic violence in the Court's decision. Second, proposed the concept of legal safeguards for victims of domestic violence in the criminal justice system in Indonesia, especially in the Court's decision.

#### **Methods**

This study used several approaches, ie approaches of law (Statute Approach) is done by reviewing all laws and regulations relevant to the protection of victims and domestic violence. The second approach was Case (Case Approach) by way of examination of cases of domestic violence has been a court decision that has to have binding legal force. Fundamental studies in this approach are that consideration judge to come to a decision. Techniques of data collection in this study using three main techniques, namely the study of documents, observation, and interviews. The results are analyzed in qualitative research, starting by examining all the data available from various sources, from interviews and observations that have been written in the field notes, personal documents, official documents, images, photographs, and so on, through data analysis procedure that is data reduction, unitization of data, categorization of data, and interpretation of data.

#### **Results and Discussion**

Based on the research results of domestic violence in deciding cases judges decide based only on the article as written in the law (textual). For example, the application of Article 44 Paragraph (4) of Law No. 23 of 2004, the judge came to the conclusion by asking the question "whether, after being hit mother can work again or not?" It seems the South Jakarta District Court Number: 1352/Pid.B / Jeffrey Rush 2008/PN.JKT.Sel where the defendant acts of physical violence ", the judge considered the elements associated with the notion of physical violence, according to Article 44 paragraph (4) is light that is not physical violence or disease poses a barrier for victims. Physical violence experienced by Henny Kentjanawati resulting bruises and pain, but the pain was not a barrier for witnesses Henny Kentjanawati conduct its activities. Which case is evident from the failure by the witness drove their children to school and to witness bertemua ND Hariman in Senayan City.

The interpretation of the judge's verdict resulted in a very mild punishment imposed (only 2 months in prison) and no deterrent effect to the perpetrators, as said Cesarre Beccaria and Jerome Bentham in their theory that

emphasizes the aspect of deterrence theory of punishment or on aspects of the criminal justice system, i.e. starting from the formulation of the threat of crime, the investigation, prosecution, law enforcement, sentencing process until all of which are geared towards the occurrence or onset of the deterrent effect of deterrence or as a primary goal, this will prevent the same crime over and over. Further said by Beccaria and Bentham, and the punishment aspect of the criminal system can only be effective and deterrent effect (deterministic) when the punishment contained in the elements: the threat of penal sanctions is quite burdensome (severe); threat of punitive sanctions are balanced (fit) with the evil deeds done, not too heavy and not too light when compared to the act of doing and the penalty should be immediate, which is given when after the evil deed done (celerity) and any element of certainty in the implementation of punishment (certainty).

The problem deed interpretation of the elements, the main one is because it is more authentic interpretation can be justified by the law, while extracting the values that exist in society relates only to cases that are no regulations governing or no ambiguity in the legislation. In the work of judges only implement sound just laws. This proves the strength of the legal positivistic view of the handcuff judges, to enforce laws and regulations textually. In fact, "the law is the work of a man who works with instructions human behavior, and human will is a reflection of how society should be developed and brought to the direction where. Therefore, the law contains footage selected ideas from the legal community was created, namely the idea of justice

Faced with such an attitude that the judge may be questioned where lies the moral and legal relationship? Komariah (2003) answer hiding in people's moral principles of law, as said Scholten legal principles exist in the inner life. Law No. 23 of 2004 establishes the legal principle: respect for human rights, justice and gender equality, non-discrimination and the protection of the law, should be the judge in deciding a case of domestic violence apply these principles in its decision to grant the rights of victims.

In practice, interpretation of the judge to the form of violence, it is determined by what looks alone, so that the psychological violence also measured by the physical condition of the daily sacrifice. Some constraints in handling of Victims of domestic violence include: First, the case of domestic violence reported victims, often not followed up because of victims of hesitation or not understand that the reported it is a crime. Similarly to the case that has been processed Police also often drawn back with a variety of the reason, such as victims feel already forgive actors, economic dependence of the perpetrators, domestic violence still regarded as a disgrace family; Second, different understanding between law enforcement of the form of domestic violence; mechanisms of the provision of protection and have not all parties support efforts protection against victims of domestic violence; Third, the length of time span between the events and post mortem, so that the results of post mortem become less support to the legal process; Fourth, the problem budgeting for socialization to the area is difficult to reach, so that the frequency of inadequate, and funding shelter good for building and operational; Fifth, handling of the case of domestic violence has not considered priorities, so that the formation of PPT still hampered; Sixth, the substance of punishment as referred to in the provisions of Article 44 and Article 49 Law PKDRT have not contain the deterrent effect.

In some cases (especially domestic violence psychic) judges dropped criminal light enough because only see conditions outside the victim without trying to explore the suffering. In the judge's decision under study, not found any provision of victim's right of the form of compensation or compensation in the form of material to the victims of the harm they experienced. The implementation of regulations compensation which is good is gives the possibility to the victim to freely participate as well as stated his opinion. This is very important because concerning his fate.

According to Angkasa (2003), restitution needs to be integrated into the criminal justice system. This integration with consideration that the restitution is the institutions criminal that can provide benefits for victims, actors, the country, and society as a replacement of financial loss, repair and/ or treatment of the physical injuries and suffering psychological as a crime victims who has happened. Restitution will be very means, crime victims current tends to double victims; first, are victims of the crime happened; second, a victim when entering the criminal justice system that the paradigm is still- oriented to the perpetrators.

Restitution basic models seem most aligned and appropriate to use domestic violence case verdict, by paying through the courts will be more controlled, in the sense of avoiding the risk of extortion committed against the victims and the perpetrators of the denial of the offender to pay restitution obligation, as well as make it easier for law enforcement when There are those who infringe. Legal Safeguards against victims of domestic violence in the future

The problem of domestic violence, formulated in the bill of the Criminal Code years 2008 in Chapter XXIII, with the title Crime Against the Agency, Part Three Domestic Violence, consisting of three paragraphs. Settings criminal acts of Domestic Violence is a leap mindset a very proud, given still kentalnya public perception about the domestic violence as a problem private to be resolved internally family. Criminalization of domestic violence

into crime in the Criminal Code indicates a good will the government to carry out the mandate of the Declaration on violence against Women. Criminalization is the process to make an act which was originally not a criminal act to be a crime. In the subsequent development of criminalization can be interpreted as well as to actualize the rules of criminal law to be more effective; also can be said in an effort to expand the entry into force of criminal law.

The formulation of physical violence in Article 587 bill of the Criminal Code arguably is taken as a whole of Law on the Elimination of Domestic Violence. Definition of violence in Article 178 bill of the Criminal Code, violence is any act of abuse physical strength with or without using a means of unlawfully and cause danger like a loss, lives, independence, physical suffering, sexual, psychological, including making the faint or powerless. In the Act of the Elimination of Domestic Violence, between the physical violence, psychic, economic and neglect formulated its own given the characteristics of each of the violence. Another thing is the bill of the Criminal Code include the threat of specific minimum if the physical violence the result in the victim fell ill, serious injury or death

Furthermore Article 588 bill of the Criminal Code formulate a criminal act psychological violence but not equipped with understanding. In fact psychological violence in the Law of domestic violence involving all actions that impact on the psychological victims, so that such action is not only physical violence alone but with other acts, for example through the words, a nickname degrading, restrictions on the space, independence, etc.. In Article 589- 590 bill of the Criminal Code of sexual violence, also not found understanding as well as contained in the laws of domestic violence. Only the bill of the Criminal Code impose minimum limit specialized in terms of the occurrence of sexual violence, although the threat of imprisonment of lighter than the threat contained in the laws of domestic violence; whereas the threat of criminal fines bill higher compared to the law of domestic violence. Regarding the economic violence, the bill of the Criminal Code enter as a crime displaced people, which specifically formulated in Articles 524 bill of the Criminal Code. Compared to the laws of domestic violence, the formulation of economic violence which resulted in economic dependence not found in the formulation of the bill of the Criminal Code.

With the formulation of the problem of domestic violence in the Draft Criminal Code, is an answer to questions that have been developed, namely the law of domestic violence has no "legal basis" in the General Rules. On the other hand the implementation of the two laws would cause "chaos" in law enforcement, especially if law enforcement officers do not yet have a sense of the victims, especially victims of domestic violence. With this principle, the dualism in criminal law should be able to be eliminated. Updates criminal law- oriented to the victims( victim oriented) required as perjudan the implementation of the country Indonesian law where everyone gain access justice( not just offenders) and as a policy of a balanced( balance) in the renewal of criminal law. So updates criminal law does not give priority to the protection of the interests of offenders only and ignore the interests of victims, or give priority to the protection of the interests of victims and ignore the interests of offenders.

The development orientation of criminal law, if the original criminal law- oriented to act( crime) the target is the prevention of crime, the next to the person( offender) the target is the treatment of offender, then developed to the victims( victims) the target is the treatment of victims. The existences of attention to victims, in accordance with the development of today in order to criminal law abolishing the impression as if only spoil the perpetrator rather than the victim. This is the need to remember suffering of crime victims ignored by the criminal justice system. The other side in the policy against crime prevention through criminal justice system is too focused to the perpetrators (offender centered) and not thinking a result of crime on the victim in any decision making. Crime victims experience victimization secondary caused by reaction formal against crime by the authority of the criminal justice system

The formulation of a more concrete victim protection is the provisions of Article 135 bill Criminal Procedure Code, namely:( 1) If the defendants sentenced to and there are victims who suffer losses material due to criminal acts committed by the defendant, Judge requires convicted person to pay compensation to the victims of the amount specified in its decision;( 2) If convicted person do not pay compensation referred to in paragraph( 1), property convicted person confiscated and auctioned to pay compensation to the victims;( 3) If convicted person trying to avoid to pay compensation to the victims, convicted person does not entitled to a reduction of the criminal and do not get parole;( 4) In the imposition of criminal conditional can be determined special requirements in the form of the obligation convicted person to pay compensation to the victims;( 5) Further provisions regarding the terms and procedures for confiscation and auctions as referred to in paragraph( 2) is set by Government Regulation.

### **Conclusion**

Based on the above description can be concluded that, Law on the Elimination of Domestic Violence has not

accommodate the rights of the victim to get compensation material on the suffering experienced in the form of restitution as well as compensation; it appears in the Court verdict, the judge decided based solely on the " what it says" in the laws and not enter the rights of victims in lieu of suffering. The parties related among other public prosecutor, legal counsel suspect/ defendant, witnesses( victims) as well as judges with supported evidence that there, tend to focus in the evidence on charges of the public prosecutor against suspects/ defendant. The process of justice more dwell on the deeds suspect/ defendant to meet the formulation of Article criminal law violated or not. The interpretation of the judge resulted in the verdict sentencing imposed tend to light and vary greatly so it does not deterrent effect for perpetrators.

The renewal of criminal law( formal and material)- oriented to the victims need to be given a strong foundation in order to the interests of victims and communities who suffer and disadvantaged get a legal protection but considering the renewal of criminal law requires the process of a relatively long while the fate of victims need to immediately got the attention of the policy law enforcement and justice- oriented to the victims of taking into account the perspective of victims and justice restorative need to lot of rethinking among others through changes Law No. 23 2004 on Combating Domestic Violence in particular Article 10 related rights victims.

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