Legal Protection Against Women: An Analysis Of Domestic Violence Crime

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Abstract: The purpose of this study was to: find and analyze the policy formulation of legal protection of women on the crime of domestic violence in Indonesia, find and analyze the policy of criminal law in the formulation of a system of criminal sanctions against the crime of domestic violence, find and analyze the constraints and solutions in the application of the crime of domestic violence. This study uses normative research and empirical jurisdiction, which is supported by field research conducted by interviewing. The data used is primary and secondary data. The data analysis used is qualitative analysis. The results stated first: Policy Formulation against the crime of domestic violence based on provisions of Law Domestic Violence does not have an effect in the form of illness or impediment to carry out daily activities. Criminal law in the formulation of a system of criminal sanctions against the crime of domestic violence according to the provisions of the Law on Domestic Violence using this type of system an alternative formulation.

Index Terms: Human Rights, Criminal Law Policy, Domestic Violence

1 INTRODUCTION

Actually, violence in the community is not a new thing, it is often performed in coincide with other forms of criminal acts. Lately, violence in the community seemed to increase, both in quality and quantity. Among the types of violence, violence against women a lot of attention due to the nature and broad impact for the lives of women in particular and society in general. This kind of violence has deep roots in the cultural factors that place women on unequal position in relation to men. Violence against women is one of the crucial social mechanisms which encourage women in a subordinate position compared with men. Meanwhile, in the Indonesian national legal system, both in terms of legal substance and attitude of law enforcement officials still regard violence against women is considered the same as other types of crime in general. Therefore, this type of crime are treated the same as other types of crime (classified into general crime). However, the public interest is violence against women (wives) especially if such cases occur within the scope of domestic so often is called the hidden crime. So called because the perpetrators and victims trying to conceal such actions from public view. Empirically, domestic violence is long-standing in the community; the form of violence is diverse ranging from persecution, rape and so on. Based on data collected by Kalyanamitra in 1996 recorded 37 cases of domestic violence and according to Central Bureau of Statistics recorded the number of domestic violence cases in 1998 there were 101 cases, in 1999 there were 113 cases and in 2000 there were 259 cases. Beyond this record there are quite many cases are not reported by the victims, because it is considered that the affairs of the household. Data from the National Commission for Women in 2014, the number of cases of violence against women amounting to 293,220. Meanwhile, throughout 2015, there were 704 cases of violence against women are addressed by LBH APIK Jakarta with details as in table 1.

It is quite understandable that not only the Constitution of Indonesia has firmly and clearly to protect human rights and protection against discrimination, but the incidents of domestic violence with a variety of modus operandi led to victims of domestic violence. From the side of the perpetrator, if the case was revealed and reported, usually arises a sense of regret, shame, punished, or choose to divorce anyway. Thus, requiring adequate arrangements, including protection against other forms of discrimination of women’ rights in the household. Some factors of domestic violence according to the author caused by many things, one of them as their pattern of behavior and thinking of society that domestic violence (especially affecting women and children) is a natural thing. Poverty and lack of education so that minimal level of knowledge about human rights or human obligation. Their understanding of religious texts is not comprehensive (only fragmentary) with lack of proper implementation which considers women are “property rights” of men so that can be treated at will and perception of family harmony improper. At the end, the domestic violence was not inevitable and often causing casualties. Depart from the background, this article is intended to analyze the policy formulation of criminal law in the context of tackling the domestic violence crime.

2. METHOD OF THE RESEARCH

This study uses normative- and juridical approach. Normative approach is intended to gather a wide range of legislation, theories and literature relevant to the issues to be studied. While the empirical approach is an approach to research by researching and collecting primary data obtained directly through the study of the object of research by observation and

Table 1. Types of violence against women according to LBH APIK 2015

<table>
<thead>
<tr>
<th>No</th>
<th>Types of Case</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Domestic violence</td>
<td>527</td>
</tr>
<tr>
<td>2.</td>
<td>Violence in Dating</td>
<td>23</td>
</tr>
<tr>
<td>3.</td>
<td>Sexual violence</td>
<td>28</td>
</tr>
<tr>
<td>4.</td>
<td>Criminal law</td>
<td>1</td>
</tr>
<tr>
<td>5.</td>
<td>trafficking</td>
<td>17</td>
</tr>
<tr>
<td>6.</td>
<td>Family civil suit</td>
<td>27</td>
</tr>
<tr>
<td>7.</td>
<td>Employment</td>
<td>11</td>
</tr>
<tr>
<td>8.</td>
<td>Eviction</td>
<td>60</td>
</tr>
<tr>
<td>9.</td>
<td>Etc</td>
<td>10</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>704</td>
</tr>
</tbody>
</table>


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interviews. Thus, this study more specifically using literature and sociological studies. The location of study involved 2 (two) cities, namely DKI Jakarta and Bali, Indonesia. The populations in this study are the victims and perpetrators of domestic violence as well as some officials who have competence in handling the crime of domestic violence. Samples were obtained from law enforcement officials who are involved in cases of domestic violence, especially the prosecutor who had handled and the parties concerned.

3. ANALYSIS AND DISCUSSION

3.1 Implementation of Legal Protection against Women in Domestic Violence Crime

Domestic violence tends to be done by a group of men at a young age, not working, not in a valid marriage bond, and the presence of psychiatric problems that vary from depression to substance abuse. But those who committed violence in a conscious still take a greater proportion. Domestic violence perpetrators can be identified into 3 (three) categories: First, the “cyclically emotional volatile perpetrators”. Domestic violence perpetrators of this type have a dependency on the presence of his partner. In itself has developed a pattern of escalating emotions followed by aggressive action against the partner. When the perpetrator begins with psychological violence, such violence can lead to serious physical violence; Second, “over-controlled perpetrators”. Perpetrators of this type is the group that itself has formed a pattern of control that lead to psychological control than physical violence; Third, “psychopathic perpetrators”. Perpetrator that in itself does not form a relationship emotion or regret, and are likely also involved in the violence between men and other criminal behavior. Regret, and also tend to engage in violent or criminal behavior among men. If carefully traced in everyday life, typical figures of violence directed at women increased enough such as sexual violence; rape and sexual harassment that majority of victims are women. The violence can be understood as gender-based violence or gender violence. This concept actually refers to the subordination of women as relations of both reflecting powerless and powerful, in other words there is a power imbalance between women and men. In the system of patriarchal culture, a man will feel that he has the power and right to do anything against women. High bride price and responsibilities of men in support his family and a perception that women are weak, making the “Adam” man feel they have full power over the women and can do or treat anything of the women. Moreover, in some areas there are still indigenous cult male line firmly that family lineage, heritage and other fell into the hands of men. Customs like this are difficult to remove because it has been recognized and applied hereditarily so when violence against women in the household is only rated as an internal problem so that the neighbors and relatives would not be appropriate to intervene. Ideology and arguments as described above becomes a dilemma for the victim to continue the matter to the court. Domestic violence cases ended up being a hidden crime and allegedly little is revealed in the criminal courts, although there is legislation as its legal basis. And also the nature of legislation is a complaint (klacht delict), the purpose of this nature is to protect the “privacy” that are not easily “private trouble” becomes “public trouble”. Like “iceberg", the data of violence recorded is far less than it should be reported because not all women who have experienced violence are willing to report their cases. They are more hushing the problem to cover his family’s disgrace. Victims of domestic violence are mostly women in which the subordinate position reluctant to make a complaint. For them, need an enormous courage to decide complaints against their husband’s behavior, the victim will think a thousand times to report criminal acts that happened. Depression and life-dependency usually the biggest reason.

3.2 Legal Policy of Criminal Law in Formulating Sanctions System against the Domestic Violence Crime

The criminal law determines sanctions against any infringements of the law. The sanctions were in principle an additional suffering by intentionally. It is also important that the difference between criminal law with other laws. According to Satochid Kartanegara, that sanction (criminal) it is torment or suffering, which by law criminal law is given to someone who breaks something norms prescribed by the law of criminal law, and torture or suffering with the judge’s decision handed down on themselves the blame it. In principle, sanctions are an additional suffering by intentionally. It is also important that the difference between criminal law with other laws. In practical terms, the decision to convict the perpetrator entirely in the hands of judges. When examined more in the Act on the Elimination of Domestic Violence (UUPKDRT) which adheres to the formulation of an alternative punishment, such as imprisonment or a fine, it could be the judge decides to impose criminal sanction only. The existence of this option will greatly benefit the offender, so that the perpetrators do not need to undergo imprisonment in a specified period. Perpetrators are still free to roam and likely arise feel unsafe and uncomfortable for the victim. While the inclusion of a maximum sanction of just providing opportunities for perpetrators of criminal sanctions are low in the absence of minimal restrictions. The final part of this UUPKDRT contains the provision of criminal, with some form of punishment that is imprisonment, criminal fines and criminal surveillance. The large of imprisonment and a fine in the range of one year up to fifteen years, which appears to refer to the provisions in the Criminal Code, for the determination of the parameters of this criminal, had never been described. With regard to the determination of the parameters of the criminal, the Criminal Code Drafting Team has a ranking based on the seriousness (gravity) of crimes. This ranking is divided into 5 (five) levels using a technique of semantic scale, from “very light” to “very serious” with a note that the criminal act were “very light” are not subject to depriving of liberty, while a criminal act very seriously is the crime charged sanction of imprisonment of more than seven years. It is unfortunate that the construction of this scale was not developed further. Efforts to determine this proportion is not at all easy, but very important for the sake of consistency, not only in the level of legislation but also at the level of implementation by the judiciary (the courts) later. The absence of these parameters can be ascertained is not just a technical problem, but also a philosophical problem, in connection with the absence of the philosophy of punishment. This condition is exacerbated because the legislative process as a political process that resulted in the law, until now it has not been satisfactory. There are some things that should be thought together from the perspective of criminal theory and purpose of the enactment of UUPKDRT. These things are: First, the application of short-term imprisonment in this case is not going to have a positive effect whatsoever, even the negative impact
such a bad stigma on offenders, breakdown of marital relations, and other consequences to children in families who experience domestic violence. The existence of short-term imprisonment has long been questioned in the study of criminal law, because more negative impact than an achievable goal; Second, if the judge is considering a variety of things that are easing the perpetrators, then the judge should apply criminal sanctions conditional, which has no negative impact at all. Even in this case the judge can give certain requirements that could potentially prevent perpetrator to repeat the action of domestic violence. Judge for example, can require that the perpetrator should not be said or rude to the victim, or doing household negligence during the probationary period, or requires the perpetrator to undergo special counseling in dealing with such violent behavior. Seeing this description, the determination of criminal sanctions effort must begin with an in-depth research to encompass the views and dynamics of society, and values that thrive in it. Only in that way, it will obtain an accurate picture of the determination of criminal sanctions in a variety of criminal provisions, including domestic violence. UUPKDRTR includes alternative arrangements of criminal sanctions for perpetrators and objectives also include corrective, preventive and protective are also based on the level of light and gravity of the offense of domestic violence. UUPKDRTR are laws that specifically regulate specific issues in particular that contain elements of lex specialis, i.e:

a) Preventive element against society
The existence of UUPKDRTR intended to prevent acts of domestic violence because so far the problem of domestic violence is considered a private matter so that violence is not easily intervening.

b) Protective element against victims
UUPKDRTR contains provisions that provide protection to victims of violence in domestic relations, especially against those subordinated (vulnerable groups of women and children)

3.3 Ideal Concept of the Implementation of Domestic Violence Crime
Admittedly, UUPKDRTR is a progressive breakthrough in the criminal justice system, but in its implementation still focused on perpetrator punishment. If this happens then the victim’s husband (wife) will think long to forward its demands for the marital relationship that exists between them. In addition, law enforcement officers still regard domestic violence as a complaint-based offense that is always directed to be resolved amicably. Victims of domestic violence to take up the legal process for mistreatment many victims of domestic violence do not want to report. In domestic violence cases, the victim is willing to report the case to the police is still very minimal. They still lack the desire or the small number of victims of domestic violence to the legal process for mistreatment. Many victims of domestic violence do not report the cause of victims did not get right, especially in terms of the recovery of the injuries suffered. While the response from the public on domestic violence cases, recorded in cases where the victim has received persecution in the category of severe persecution then public act. However, at least people no longer view domestic violence as a private issue or a common household affair. In some cases, public try to attempt to help the victim. In principle, the enforcement of criminal law, functionally will involve a minimum of 3 (three) interrelated factors i.e legislation, officials/law enforcement and legal awareness. Legislation is related to the legislation of this criminal, Former Chief of Supreme Court R.I., Bagir Manan said that 2 (two) important aspects in the success of criminal law enforcement that is content/enforcement result (substantive justice) and procedures for law enforcement (procedural justice). For this legislation factor, related to the phases of formulize (legislative), applicable (judicial) and administrative (execution) policies, it can be said that at this stage of formulize policy is law enforcement “in abstracto”, which in turn will be embodied in law enforcement “in concreto”. In the context of Indonesian national law, so far has not had a “national punishment system” which includes “pattern of punishment” and “guidelines of punishment”, which is a reference for lawmakers in making/preparing legislation that contains sanctions criminal. Term of this punishment pattern is often also called “legislative guidelines”. Reviewing from the functions of its existence, this punishment pattern should have been more before the criminal law is made. Indeed, we already have the Act No.10 of 2004 concerning the establishment of legislation, but the substance of this legislation is more about a principle, process, procedure preparation, discussion, technical drafting and enforcement. This Act does not mention about the “punishment”, at least in matters relating about the types of crime (strafsoort), the criteria of less or more in the punishment (strafmaat) as well as the procedure of punishment (strafmodus). Although Indonesia has not “a pattern of punishment” with regard to the criteria of qualitative and quantitative in determination of special minimum punishment, but when realizing that the effectiveness of law enforcement was the starting point of the product quality legislative policy, then see the development of the doctrine of criminal and conduct a comparative study on some legislation criminal other countries that already regulates it is one solution. Moreover, considering the law as a process and justice is a result, to determine the perfection of the functioning of the law and the achievement of the Justice, it cannot be separated from a wide variety of contexts and circumstances. Nevertheless, always remains undeniable are the fact that both are linked in the idea of the state to create a feeling of security and justice for every citizen. Because of institutional support coming from the state is too small, then the judge will perform his function is based on the quality of the individual. The vulnerability of quality force every judge to have and uphold conscience and deepest conviction that any decision to be taken. Beliefs and conscience is also not only help the judge made a decision that is fair, but also see that the cases of violence against women are cases that could gain the authority to create the atmosphere of the trial which is not detrimental to women. In general, women victims of violence to advance to trial did not easily erase the memory of the pain and fear that must be faced when meeting with the perpetrator. The courtroom is not the room that psychologically gives a sense of security to the victim. On this basis, then it is proper if the judge authorizes assistance to victims. Victims support who come from families, psychologists, home of victim protection or NGO does not have any authority to intervene jurisdiction over the proceedings, but the presence of a companion in the atmosphere of the trial were pressing strongly supports the courage of victims to continue the trial until adjudicated by the judges. In Article 10 of UUPKDRTR, victim support has been allowed in court but in practice there
are still many judges stick to the Criminal Code that do not accommodate the needs of mentoring. The National Commission for Women alone with its partners has submitted an application to the Chief of Supreme Court to issue Surat Edaran Mahkamah Agung (SEMA) relating to the right to request assistance but has not received a positive response. As a result, there is no uniformity of standards in court proceedings in cases of violence against women. The absence of litigation standard above that regulates the needs and support rights of victims of it compel the judge to not interpret Criminal Code rigidly. By understanding the difficulties of victims both psychologically and legally, then in fact the judge had opened the door of the deepest conscience as fellow citizens. Judge’s confidence to accept or grant the presence of an escort for the victim during the trial process is one of the qualities of sensitivity judge to issue an injustice done to women.

4 CONCLUSION
The policy of criminal law in the formulation of sanctions system according to the provisions of the Act on Elimination of Domestic Violence (UUPKDR) using the type of alternative formulation. Punishment imposed is not specified the minimum but the maximum limit only. The constraints experienced were: 1) restrictions on what is meant by physical violence, psychological violence and household neglect needs further explanation; 2) need further to define special service room or safe house belonging to the Government; 3) provision and development of systems and mechanisms of services program cooperation to victims of domestic violence who need further clarification; 4) need distinction explicitly and further explanation of the term “social worker” and “volunteer”; 5) need longer experience for investigators to able handling the domestic violence cases. Required review of the Act on Elimination of Domestic Violence such as the criminalization of an act and sanctioning system. In addition to the maximum sanction, it should be the inclusion of more assertive in terms of the minimum limit of the imposition of criminal sanctions both imprisonment and fines for the certainty of law. Because, if only to use an alternative system for a criminal such as domestic violence was classified as severe, this is not fair for the victims.

REFERENCES


