



The Effectiveness of Legal Protection for Abandonment of Wives by Husbands as a Form of Domestic Violence

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Abstract

Integrity and harmony in the household will depend on everyone in the household, namely husband and wife, children and people in the family. Disorganized home harmony will mainly emerge and can be seen from the level of quality of behavior and control of everyone in the household. According to Article 1 Paragraph (1) of the Law on the Elimination of Domestic Violence, it is any act against a person, especially a woman, which results in

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1. Introduction

The 1945 Constitution of the Republic of Indonesia stipulates that: "Everyone has the right to receive facilities and special treatment to obtain the same opportunities and benefits in order to achieve equality and justice". "Everyone has the right to personal protection, family, honor, dignity and property under his control, and has the right to a sense of security and protection from the threat of fear to do or not do something which is a human right".

The household is the smallest unit of the composition of community groups, the household is also the basic joint in fostering and realizing a country. Integrity and harmony in the framework of a happy, safe, serene, and peaceful household is the dream of everyone in the household. To realize this wholeness and harmony, it really depends on everyone in the household, especially the level of quality of behavior and self-control of everyone in the household. Integrity and harmony in the household can be disrupted if the quality and self-control cannot be controlled, which in the end can occur domestic violence so that insecurity or injustice arises against people who are within the scope of the household.

In order to prevent, protect victims and take action against perpetrators of domestic violence, in particular by neglecting their wives, the state and society are obliged to carry out prevention, protection and prosecution of perpetrators in accordance with the philosophy of Pancasila and the 1945 Constitution of the Republic of Indonesia. Domestic violence is a violation of human rights and a crime against human dignity as well as a form of discrimination.

Integrity and harmony in the framework of a happy, safe, serene, and peaceful household is the dream of everyone in the household. The State of the Republic of Indonesia is a country based on the One Godhead which is guaranteed by Article 29 of the 1945 Constitution of the Republic of Indonesia. Thus, every person in the household in carrying out their rights and obligations must be based on religion. The state is of the view that all forms of violence, especially domestic violence experienced by wives, are violations of human rights and crimes against human dignity as well as forms of discrimination. Discrimination against women can be defined as any distinction, exclusion, or restriction made on the basis of sex, which has the purpose or effect of preventing, nullifying the enjoyment or exercise of human rights and fundamental freedoms by women.

Wives who are often victims of violence or crimes are not only committed by a criminal, but can be carried out by family or close relatives. Violence in the household or family is mostly carried out by a husband, such as a husband committing violence against his wife by hitting or slapping his wife, kicking, and cursing with dirty words. The culture of society that prioritizes men can be ascertained that the position of women is subordinated to men. All forms of violence that occur to women always have the cultural legitimacy of society, because women's position is lower than men's. Prevention of violence is carried out continuously with the implementation of a legal system that is expected to overcome the problem of acts of violence against women, especially against wives.

According to data released by the Supreme Court of the Republic of Indonesia decided by the Religious Courts or the Syari'iyah Court (PA/MS), for all types of national cases in the period 2001-2015 there was an increase of 180%, from 159,299 cases in 2001 to become 445,568 cases in 2015. What is interesting is that 90% of all cases are divorce cases. Thus, when viewed from the data of the Supreme Court of the Republic of Indonesia, the increase in divorce cases has almost doubled in a period of 14 years. This shows that divorce is still considered as a solution or from problems and conflicts in a marriage.

Wives who become victims of violence because of an imbalance in the relationship between men and women in marital partner relationships, family, or intimate relationships. Article 1 of Law Number 1 of 1974 concerning Marriage states that the basis of marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy family or household. In fact, what is happening in the community is the opposite, violence against women is still widely carried out in various regions and in big cities. Women who are victims of domestic violence tend to choose silence to maintain the values of family harmony. As a result, women also tend to choose a civil settlement through divorce rather than suing the perpetrators of violence.

With the enactment of Law Number 23 of 2004 concerning the Elimination of Domestic Violence, protection for victims of domestic violence can be carried out optimally, where many parties can provide services to victims of domestic violence, such as the victim's family, friends of the victim, the police, volunteers, companions, spiritual guides and others. Likewise in terms of recovering victims of domestic violence, many parties can provide services to victims such as health workers, social workers, companion volunteers, and/or spiritual mentors.

The problems in this paper that the author raises are:

- a. How is the legal settlement mechanism for neglecting the wife by the husband as a form of domestic violence related to Law Number 23 of 2004?
- b. How is the effectiveness of legal protection for neglect of wife by husband as a form of domestic violence related to Law Number 23 of 2004 concerning Elimination of Domestic Violence?

2. Method

This research will use a qualitative approach as the method to be used. Sources of data are secondary data originating from different research results or previous research that is still related to The Effectiveness of Legal Protection for Abandonment of Wives by Husbands as a Form of Domestic Violence. The data that has been collected will be analyzed to find out the results to be achieved.

3. Result and Discussion

3.1 Legal Settlement Mechanism for Abandonment of Wives by Husbands

The family is born from a marriage that is sacred and sacred, it is said to be sacred because marriage in some of the customs that exist in Indonesia is a ceremony that has magical value or belief in something that has supernatural values and marriage is an inner and outer bond between a man and a woman as husband and wife. with the aim of forming a happy family or household based on God Almighty.

The wholeness and harmony of a happy, safe, peaceful, and peaceful household is the dream of everyone in the household. The Republic of Indonesia is a state based on the One Godhead which is guaranteed by Article 29 of the 1945 Constitution. Thus, every person in the household in exercising their rights and obligations must be based on religion. This needs to be continuously developed in order to build the integrity of the household. This wholeness and harmony really depends on everyone in the household, especially the level of quality of behavior and self-control of everyone in the household. Integrity and harmony in the household can be disrupted if the quality and self-control cannot be controlled, which in the end can occur domestic violence so that insecurity or injustice arises against people who are within the scope of the household. In general, the problem of domestic violence is closely related to women's lack of access to sources of economic data (financial capital and immovable objects such as land and other sources of welfare), age, education, religion and ethnicity. Domestic Violence (KDRT) experienced by women is also multi-layered, meaning that the form of violence experienced by women can be better than one form of violence, physically, psychologically, sexually and economically. Therefore, domestic violence is any act against a person, especially a woman, that results 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.

On the other hand, perpetrators of criminal acts of Domestic Violence in the application of criminal provisions. This dualism occurred, namely, with the enactment of Law Number 23 of 2004 concerning the Elimination of Domestic Violence (PDKRT), it turns out that the rules in the Criminal Code are still valid.

The definition of the Elimination of Domestic Violence (PKDRT) contained in Law Number 23 of 2004 states that: "Any act against a person, especially a woman, which results in suffering, or suffering physical, sexual, psychological, and/or neglect. household, including threats to commit acts, coercion, or unlawful deprivation of liberty within the scope of the household". The article implies the existence of forms of violence such as physical violence, psychological violence, sexual violence, and economic violence (domestic neglect). Violence against women is an action or attitude carried out with a specific purpose so that it can harm women both physically and psychologically. Another important thing is that an accidental event is not categorized as violence even though it causes harm to women.

Article 6 of the Law on the Elimination of Domestic Violence explains that physical violence is an act that causes pain, falls, or is seriously injured. Whereas in Article 7 Psychological violence is an act that results in fear, loss of self-confidence, loss of ability to act, feeling helpless, and/or severe psychological suffering on a person. Such sexual violence includes:

- a. Forced sexual intercourse against a person who resides within the scope of the household:
- b. Forced sexual intercourse against one person within the scope of his household with another person for commercial purposes and/or certain purposes.

Furthermore, every person is prohibited from abandoning people within the scope of his household, even though according to the law that applies to him or because of an agreement or agreement it is obligatory to provide life, care, or maintenance to that person. Neglect also applies to anyone who causes economic dependence by limiting and/or prohibiting proper work inside or outside the home so that the victim is under the control of that person. Violence committed by the perpetrator as a husband has an impact on the psyche of the victim (wife and children). The psychological impact generally makes the victim hate the perpetrator and the victim experiences deep inner pressure (especially the wife) so that some victims no longer want to accept the perpetrator.

The desire to resolve cases of Domestic Violence as mandated by Law Number 23 of 2004 concerning the Elimination of Domestic Violence is a shared hope/aspiration for all elements in this country, especially parties who competent, both from the Police or the Government as well as from the community or institutions that represent them. In providing temporary protection to victims of domestic violence, the police can work together with health workers, social workers, companion volunteers, and/or spiritual mentors to assist victims.

Considering that the law on domestic violence is a public law, in which there is a threat of imprisonment or a fine for those who violate it, the wider community, especially men, in their position as heads of families should know what domestic violence is. As for who is included in the household scope, are:

- a. Husband, wife and children including adopted children and stepchildren;
- b. People who have family relationships with people as referred to in letter (a) because of blood relations, marriage, breastfeeding, care and guardianship who live in the household and/or;
- c. People who work to help the household and stay in the household. People who work to help the household and stay within the scope of the household are

considered as family members for the period of time they are in the household in question.

The forms of domestic violence as mentioned above are carried out by husbands against family members in the form of:

- 1) Physical violence that results in pain, illness or serious injury;
- 2) Psychological violence that causes fear, loss of self-confidence, loss of ability to act, feeling helpless and others;
- 3) Sexual violence in the form of sexual coercion in an unnatural way either for the husband or for other people for commercial purposes or certain purposes; and
- 4) Abandonment of the household that occurs within the scope of the household which according to law is required for it. In addition, neglect also applies to anyone who causes economic dependence by limiting and/or prohibiting proper work inside or outside the home, so that the victim is under the control of that person.

This leads to the provisions of Article 15 of the Law on the Elimination of Domestic Violence (PKDRT) which states that "Everyone who hears, sees, or knows of the occurrence of domestic violence is obliged to make efforts according to the limits of his ability to prevent the occurrence of criminal acts, provide protection for victims, providing emergency assistance and assisting in the application process for the determination of protection", it is the obligation of the community and the State to prevent acts of domestic violence, so that there are no criminal acts.

The mechanism that can be carried out by someone who experiences acts of domestic violence as regulated in the Law on the Elimination of Domestic Violence (PKDRT) is to take the following actions:

- a) The victim has the right to directly report domestic violence to the police, both at the place where the victim is and at the scene of the case.
- b) The victim can authorize the family or other people to report domestic violence to the police, both at the place where the victim is and at the scene of the case. (Article 26)
- c) In the event that the victim is a child, a report can be made by the parent, guardian, caregiver, or the child concerned which is carried out in accordance with the provisions of the applicable laws and regulations. (Article 27)
- d) Within 1 x 24 (one time twenty four) hours from the time of knowing or receiving a report of domestic violence, the police must immediately provide temporary protection to the victim.
- e) Temporary protection as referred to above is given no later than 7 (seven) days after the victim is received or handled.
- f) Within 1 x 24 (one time twenty four) hours as of the granting of the protection as referred to above, the police are obliged to request a letter of stipulation of a protection order from the court. (Article 16).
- g) In providing temporary protection, the police may cooperate with health workers, social workers, companion volunteers, and/or spiritual mentors to assist victims. (Article 17).
- h) The police are obliged to provide information to the victim regarding the victim's right to receive services and assistance. (Article 18).

- i) The police must immediately conduct an investigation after knowing or receiving a report about the occurrence of domestic violence. (Article 19).
- j) Protection orders can be given for a maximum period of 1 (one) year. Protection orders can be extended upon court order. The application for the extension of the Protection Order shall be submitted 7 (seven) days prior to the expiration of its validity period. (Article 32).
- k) The police can arrest for further detention without a warrant against the perpetrator who is believed to have violated the protection order, even though the violation was not committed at the place where the police officer was assigned.
- l) The arrest and detention as intended must be given a warrant for the arrest and detention after 1 x 24 (one time twenty four) hours. The suspension of detention does not apply to such detention. (Article 35).
- m) Victims, police or accompanying volunteers may submit a written report regarding an alleged violation of the protection order. In the event that the court obtains a written report, the perpetrator is ordered to appear within 3 x 24 (three times twenty four) hours for an examination. The examination is carried out by the court where the perpetrator lived with the victim at the time the violation was alleged to have occurred.

3.2 The Effectiveness of Legal Protection for Abandonment of Wives by Husbands

The purpose of the Law on the Elimination of Domestic Violence is to protect everyone within the household who is a victim of violence. The Law on the Elimination of Domestic Violence (PKDRT) defines a victim of domestic violence as a person who experiences violence and/or threats of violence within the household. Where, which is included in the household scope, includes:

- a. Husband, wife and children including adopted children and stepchildren;
- b. People who have family relationships with people as referred to in letter (a) because of blood relations, marriage, breastfeeding, care and guardianship who live in the household and/or;
- c. People who work to help the household and stay in the household. People who work to help the household and stay within the scope of the household are considered as family members for the period of time they are in the household in question.

A person who is a victim of domestic violence will be protected by the state in accordance with applicable laws and regulations. The protection referred to is all efforts aimed at providing a sense of security to the victim carried out by the family, advocate, social institution, police, prosecutor, court, or other party, either temporarily or based on a court order. Temporary protection is protection that is directly provided by the police and/or social institutions or other parties, prior to the issuance of a protection order from the court.

The government is responsible for preventing domestic violence. The government's responsibilities are related to the following matters:

- a. Formulate policies on the elimination of domestic violence;
- b. Organizing communication, information, and education about domestic violence;
- c. Organizing socialization and advocacy on domestic violence; and

d. Organizing gender-sensitive education and training and issues of domestic violence and establishing gender-sensitive service standards and accreditation.

To carry out the efforts referred to above, the government and regional governments in accordance with their respective functions and duties may cooperate with the community or other social institutions. Likewise, everyone who hears, sees, or knows of the occurrence of domestic violence is obliged to make efforts within the limits of his ability to:

- 1) Preventing the occurrence of criminal acts;
- 2) Provide protection to victims;
- 3) Provide emergency assistance; and
- 4) Assist in the application process for the determination of protection.

In the context of efforts to recover victims of criminal acts of domestic violence, companion volunteers play a very important role in the recovery of these victims. One way to recover victims of domestic violence is to establish cooperation between related parties. According to Government Regulation No. 04/2006, cooperation is a systematic and integrated way among recovery providers in providing services to recover victims of domestic violence. Furthermore, the recovery organizers are health workers, social workers, companion volunteers and/or spiritual guides.

Recovery services and technical implementation that can be carried out by companion volunteers are:

- a. Assistance for victims is carried out by health workers, social workers, volunteer companions and/or spiritual guides by providing therapeutic counseling, spiritual guidance and advocacy for the strengthening and self-recovery of victims;
- b. Counseling is provided by social workers, companion volunteers and listens empathetically and explores problems for psychological strengthening of victims.

4. Conclusion

The mechanism for legal settlement of acts of domestic violence associated with Law Number 23 Year 2004 are; a) the victim has the right to report directly or through the granting of power of attorney, domestic violence to the police, both at the victim's location and at the scene of the case; b) within 1 x 24 hours (one time twenty four) hours counted from knowing or receiving a report of domestic violence, the police must immediately provide temporary protection to the victim, no later than 7 (seven) days after the victim is received or handled; c) in providing temporary protection, the police may cooperate with health workers, social workers, companion volunteers, and/or spiritual guides to assist victims; d) the police are obligated to provide information to the victim regarding the victim's right to receive services and assistance; e) the police must immediately conduct an investigation after knowing or receiving a report on the occurrence of domestic violence; f) protection orders can be issued for a maximum period of 1 (one) year. Protection orders can be extended upon court order. The application for the extension of the protection order is submitted 7 (seven) days before the expiration of its validity period; g) the police can make arrests for further detention without a warrant against perpetrators who are believed to have violated a protection

order, even though the violation was not committed at the place where the police officer was assigned.

With regard to neglect of a wife, which is more of a subjective nature, the complaint offenses required by the law on the elimination of domestic violence are sometimes a problem, given the difficulty of proving to be carried out, so it is possible even though neglect (against the wife) has been carried out for a long time, but due to the lack of data and materials for evidence, due to its subjective nature, so that sometimes cases of neglect of the wife become raw in the legal process, especially at the time of filing at the Police. This causes many cases of neglect of wives related to domestic violence, which in the police cannot be proven, so the case cannot be continued. In this case it can be said that the law on domestic violence enacted through Law no. 23 of 2004, until now it has not been fully enforced effectively to provide protection for victims of domestic violence, especially neglect of women/wives that can be done by husbands.

The mechanism for legal settlement of acts of domestic violence contained in the Act. No. 23 of 2004 has been well regulated, however, in its implementation, a mechanism that can be simplified is needed, considering that domestic violence is something that sometimes is not brought up by the family when acts of violence occur, especially matters concerning neglect of the wife by the husband.

Responding to the fact that the law on domestic violence has not been fully enforced effectively through Law no. 23 of 2004, in order to provide protection for victims of domestic violence, especially neglect of women/wives that can be carried out by husbands, law enforcement officers, especially the police, need and are obliged to provide protection and recovery for victims of domestic violence. So that law enforcement and protection provided by law enforcement officers can really be said to be efficient in an effort to deal with criminal acts of domestic violence, especially those related to neglect of a wife committed by a husband.

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