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LAW ENFORCEMENT DOMESTIC OFFENDER VIOLENC: DOMESTIC VIOLENCE

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Abstract

Domestic violence according to Law Number 23 of 2004 is any act against a person, especially women, which results in physical, sexual, psychological, and/or domestic misery or suffering including threats to commit unlawful acts, coercion, or deprivation of independence within the scope of the household. This paper aims to find out how to enforce domestic violence or domestic violence laws. The method used is a descriptive method of analysis, which is to explore information that is in accordance with events in the field through the person concerned or respondent. while the approach used in this study is a qualitative approach. The results of this study show that the Law on Domestic Violence enforced through Law No. 20 of 2003 until now has not been fully enforced effectively to provide protection to victims of domestic violence. Various sociological factors that cause the ineffectiveness of law enforcement include the absence of a common paradigm among law enforcement officials regarding the protection of victims of domestic violence, uneven socialization of legal provisions, unbalanced legal facilities available with cases that occur, not optimal public legal awareness and friction between the values adopted by this law and the values that apply in some communities.

Keywords: *Domestic Violence, Law Enforcement*

INTRODUCTION

For almost four years, Indonesia has enacted Law Number 23 of 2004 concerning the Elimination of Domestic Violence or known as the Law on the Elimination of Domestic Violence (passed September 22, 2004). This law prohibits domestic violence against people within their household by means of physical, psychological, sexual violence or neglect in the household. People within the scope of the household in question are husbands, wives, children, and people who have family relationships due to blood relations, marriage, milk, upbringing, guardianship, settling in the household and people who work to help and settle in the household.

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The definition of domestic violence according to Law Number 23 of 2004 is any act against someone, especially women, which results in physical, sexual, psychological, and/or domestic misery or suffering including threats to commit unlawful acts, coercion, or deprivation of independence within the scope of the household.

The above definition shows for whom and why this law was made, that is, for all members of the household, both male and female. The mention of the word "especially against women" shows that the idea of lawmaking is inseparable from the sociological reality where domestic violence is more experienced by women than men. Household, referring to Article 1 number 30 of the Code of Criminal Procedure is another word for family, namely those who are related by blood to a certain degree or marital relationship. However, in this domestic violence law, the scope of the family is expanded to husband, wife, and children; persons related by blood, marriage, milk, upbringing, and guardianship, who remain in the household; and/or a person who works to help the household and stays in the household for a period of time while in a stable household (Davies, 2022).

The expansion of the definition of household in the above provisions that contain domestic workers can be said to be a concrete legal answer to the many cases of violence committed by employers against their workers. The fact is that the entry and residence of a worker in his employer's home almost certainly creates a pattern of unequal power relations in which the employer is much stronger as the holder of control over his workers and the worker can only follow policies without sufficient bargaining power (Kourti et al., 2021).

Domestic violence is also known as beating the wife, torture of the wife, torture of the spouse, marital violence or family violence. According to a 1994 World Bank Report, the most common form of violence against women is torture of wives or rather torture of women in intimate relationships that leads to a system of power and control, where torturers attempt to apply it to their wives or intimate partners through physical, emotional, social, sexual and economic torture. It also states that a woman in a situation of domestic violence may be abused by her husband, ex-husband, boyfriend, ex-boyfriend, her ex-boyfriend, her life partner, ex-partner or someone with whom she has a child. And please note that not all forms of violence in intimate relations take place between a male torturer against a woman

(victim), torture also occurs between homosexual couples (lesbians and gays), although the majority of *domestic violence* cases are committed by men against women (Black et al., 2023).

The Declaration on the Elimination of All Forms of Violence Against Women (UN, 1993) divides the scope of violence against women into 3 scopes, namely in the family or *domestic*, in the community or *public domain* and carried out by the state or *state*. This division of scope then reveals crimes that have been hidden and 'protected' from outside intervention to help victims of various forms of violence in the family, the latter of which is known as *domestic violence* (Union, n.d.).

It is noted that a number of countries have already enacted laws on *domestic violence* including Malaysia enacting the Domestic Violence Act (1994), New Zealand, Australia, Japan, the Caribbean, Mexico and several states in the United States. In Malaysia, physical abuse of women is quite high, the abuse is carried out by the victim's husband or male friend. In 1989 an estimated 1,800,000 (36%) Malaysian women over the age of 15 had been physically beaten by their husbands or male friends (Columbia, 2006).

METHODS

According to Sugiyono (2016) research methods are basically a scientific way to obtain data with certain purposes and uses. Furthermore, according to Silalahi (2015: 15) in a broad sense, research methods are systematic and organized ways and procedures to investigate a particular problem to obtain information to be used as a solution to the problem. According to Anggara (2015) suggests that research methods are also scientific ways and steps taken to find out the problems that exist in the research location while collecting data and indications that are considered to answer the problems studied.

Based on the description above, it can be concluded that the research method that the author uses is a descriptive method of analysis, which is digging up information that is in accordance with events in the field through the person concerned or respondent. while the approach used in this study is the approach Qualitative, which intends to understand phenomena about what is experienced by research subjects, such as behavior, perception, outlook, motivation, daily actions, holistically and with methods of description in the form of words and language (narrative) in a special natural context and by utilizing various natural methods. Furthermore, this qualitative approach is research that produces ideas and describes data related to the situation that is happening, views

and attitudes that occur in a society, conflicts between two or more circumstances. (Mabruri & Musnandar, 2020).

RESULTS AND DISCUSSION

Facts about domestic violence in Indonesia

Household violence is not a condition to which social norms aspire or legal norms. As a social institution, the household is expected to be a place of warm and intensive interaction between its members, a place to instill social values. [7] As a legal institution, the household is expected to be a safe and comfortable place for all its members, protecting each other, respecting each other, loving each other so that eternal happiness grows. The Marriage Law enacted in 1974 has contained this as a family ideal, it's just that the provisions are more regulatory and non-legal in the sense that they do not cause real legal consequences for husbands or wives who do not respect and love their spouses including by committing acts of violence. As a result, acts of violence that occur in the household are not considered as legal events, but as marital dynamics, thus people who experience violence by fellow family members are not entitled to protection from the state and society. The absence of these legal protections systematically causes domestic violence to be considered normal behavior. Someone who experiences domestic violence is only seen as someone who happens to have a less fortunate fate than one who happens to have a loving husband or wife(Danahy, 2022). Currently, Indonesia does not have national statistics for domestic violence. The recording of domestic violence case data can be traced from a number of institutions whose services are related as stipulated in the Law on the Elimination of Domestic Violence and Government Regulation No. 4 of 2022 concerning the Implementation and Cooperation of Recovery of Victims of Domestic Violence. The National Commission on Violence Against Women or Komnas Perempuan, noted that in 2022 as many as 22,512 cases of violence against women were served by 258 institutions in 32 provinces in Indonesia, 74% of which were domestic violence cases and the most were served in Jakarta (7,020 cases) and Central Java (4,878 cases)[3]. These institutions include RPK [Special Service Room] or Women and Children Protection Unit in the police, Integrated Crisis Centers & Integrated Service Centers [PKT & PPT] in Hospitals or Health Services, *Women's Crisis Centers* (WCC*) and Legal Aid Institutions (LBH) that provide assistance services for victims as well as Prosecutors, District Courts and Religious Courts.*

WCC Women's Partner data recorded that 87% of women victims of violence who accessed their services experienced domestic violence, where the most perpetrators of violence were their husbands and ex-husbands (82.75%). The facts also show that 9 out of 10 female victims of violence accompanied by WCC have mental health problems, 12 have attempted suicide; and 13.12% of them suffer from reproductive health disorders. The following diagrams are the statistics of cases accompanied by WCC Women Partners (20020-2022).

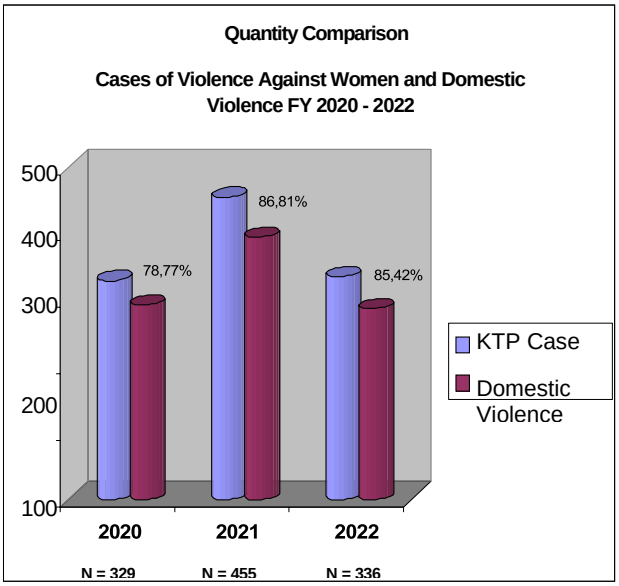


Diagram 1

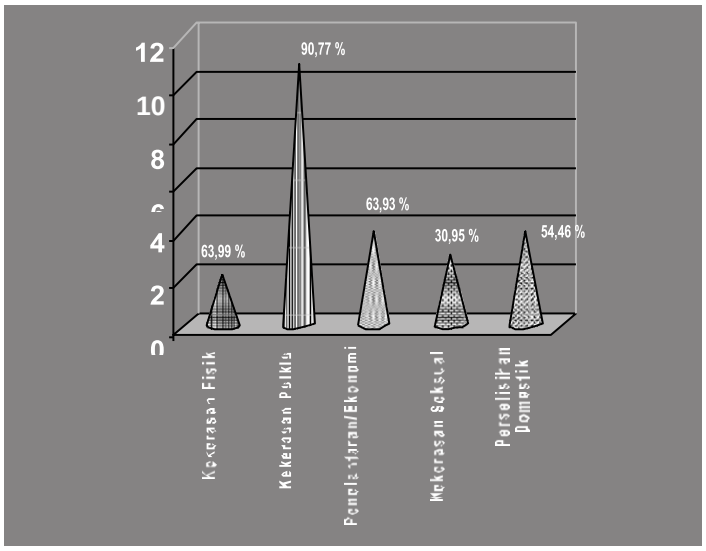


Diagram 2 Forms of Violence experienced by 336 Women Assisted by WCC Women Partners, 2022:

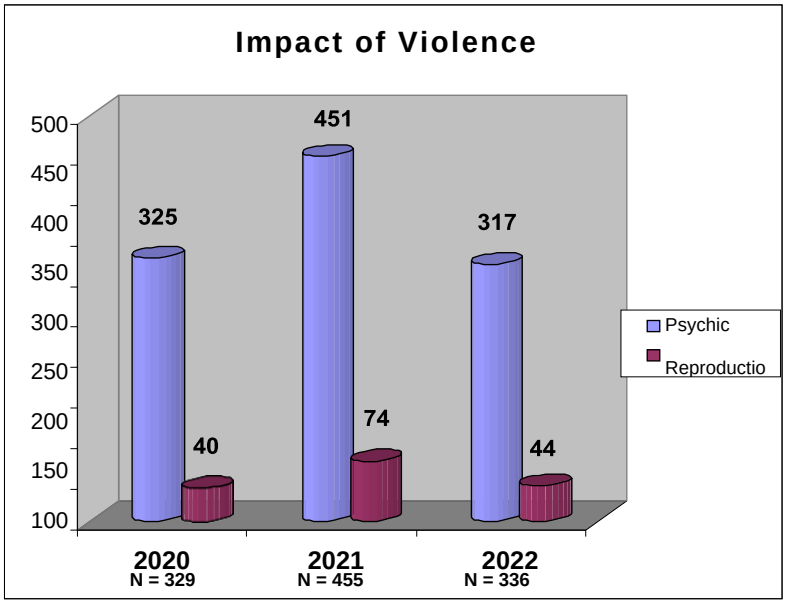


Diagram 3 Comparison of the Impact of Violence on Women's Psychological and Reproductive Health Assisted by WCC Women Partners, 2020-2022

The impact of rape and other sexual violence on the health of women who experience violence is very concerning because it has an impact on women's overall health, because sexual violence is always accompanied by physical and psychological violence.

One of the impacts that cause serious problems is the impact specifically on women's reproductive health, in addition to physical disorders or pain, mental health disorders and even the potential for death or suicide victims. Reproductive health problems experienced by women who experience rape include Reproductive Tract Infections (ISR), Sexually Transmitted Infections (STIs), including HIV and AIDS infection, unwanted pregnancy, spontaneous abortion, forced abortion, Low Birth Weight (BBLR), defects in the baby and damage to genital or reproductive organs.

Forcing unwanted pregnancies by rape victims will increase a woman's risk of pregnancy. The psychological pressure and trauma experienced by the pregnant woman will overshadow her life.

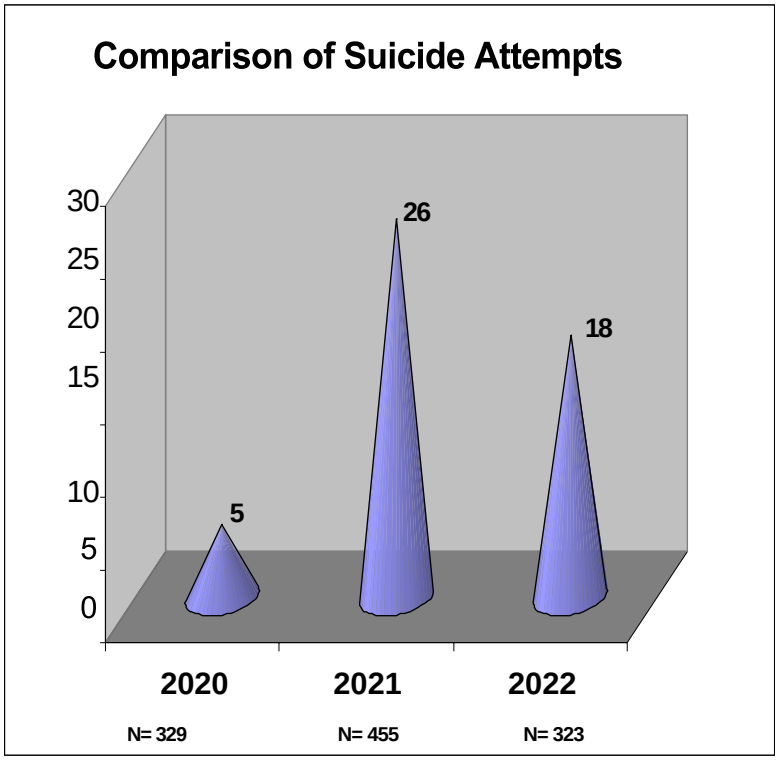


Diagram 4 Comparison of the Number of Attempted Suicide Cases of Women Victims of Violence Assisted by WCC Women Partners, 2020-2022

Law Enforcement of Domestic Violence Cases

In essence, law contains abstract ideas or concepts. The abstract idea is the expectation of a situation to be achieved by law. Against the prohibition of committing acts of domestic violence against others, at least an abstract idea can be felt that between human beings should love each other, not hurt each other, especially towards fellow family members. Roscoe Pound said law is a tool *of social engineering*. In this perspective, the prohibition of domestic violence can be said to be a tool to design the future of people who love each other, especially people who are bound by family relationships.

There are several legal protections that have been regulated in this Law on the Elimination of Domestic Violence. In addition to the sanctions that threaten imprisonment and fines that can be decided by the Judge, additional penalties can also be imposed by the Judge who tried this domestic violence case, as well as the establishment of temporary protection that can be determined by the Court from before the trial begins. The protection promised by the domestic violence law is an abstract idea, and the abstract idea will never become real if the law is left only limited to being compiled on a text sheet or simply announced its enforceability to the

public. Likewise, the design of a future society of mutual love as aspired to will not be realized. Thus, to realize idealized ideas and designs into reality requires an effort and process of alignment. That process is called law enforcement. Munir Fuady formulated law enforcement as all forces and efforts to describe legal rules into people's lives, so that the purpose of law in society can be carried out in the form of the realization of the values of justice, equality, legal certainty, protection of rights, public peace and others

Following up on the implementation of the domestic violence law, the government provides legal facilities that are quite varied and responsive. In addition to the provision of general legal facilities such as the provision of police stations, prisons, courts, prisoners' cars, stationery and others, domestic violence law enforcement is also equipped with special facilities. Some of the special facilities mentioned include, the provision of a Women and Children Protection Unit in each police station whose function is to handle domestic violence experienced by women and children, the opening of an Integrated Service Center which provides free services for victims of domestic violence in terms of medical, psychological, legal and social protection in almost every district, giving awards to areas with small domestic violence rates, and others. In addition, in some government and private institutions also provided telephone services or hotlines and letters are other means used by victims or witnesses to report domestic violence cases (Hornor, 2005).

However, the facilities provided so far can be said to be inadequate. The ratio between the population, area and facilities provided has not been balanced, so there are still many citizens, especially marginalized people, who do not know what domestic violence is, how the law regulates it, how to avoid it and how the procedure for requesting protection if it causes the actual data on domestic violence is not revealed, and victims cannot be protected as a whole.

Furthermore, awareness of the law itself is said to be important because it will make citizens avoid discriminatory treatment from others, including the government. In addition, they can take appropriate steps if in reality they really experience rights violations. In the case of domestic violence, the legal awareness expected by law at least includes:

1) Aware that there is a law that prohibits committing acts of violence against fellow members in a household.
2) Aware that every member of a household has the right to be free from domestic violence by other family members.

3) Aware that in every society there is an obligation to provide protection to victims of domestic violence according to their respective abilities.

So far, Indonesian people's awareness of domestic violence law shows varying levels, both when they are victims, perpetrators and witnesses. This diversity points to aspects of quality as well as quantity. For example, Puspita Sari's research on the level of legal awareness of wives who are victims of domestic violence on the coast of Probolinggo shows that out of 100 wives who were the subjects of the study admitted that all of them experienced violence by their husbands. But none of them attempted legal action to protect themselves. Let alone reporting her husband to the police, or filing for divorce, they even claimed not to know that her rights were violated as a result of the violence. Furthermore, they do not know that there are laws in place that allow them to stop being victims of violence, including not knowing the term domestic violence. From the aspect of rights and obligations, it can be said that the level of legal awareness among this community is very low.

Application of Imprisonment and Fines

From the results of monitoring domestic violence cases in Jakarta, Bogor, Tangerang, Depok and Bekasi, law enforcement in addition to using Law No. 23 of 2004 concerning the Elimination of Domestic Violence also uses the Criminal Code and Law No. 23 of 2002 concerning Child Protection. There are a number of prison sanctions between 6 months to 2 years and 6 months. which has been decided by the District Court using articles of Law No. 23 of 2004 including Article 49 jo Article 9 and Article 279 of the Criminal Code for neglect and husband remarrying without wife's permission; Article 44 for acts of physical violence; Article 45 for acts of psychological violence in the form of threats. While the Court's decision with a higher prison sentence of up to 6 years was decided on a number of cases in domestic violence relations, which were charged and prosecuted using articles of the Criminal Code (Articles 351, 352, 285, 286 jo 287, 289 and 335 for cases of child maltreatment and child rape); Articles 81 and 82 of Law No. 23 of 2002 and Articles 287 &288 of the Criminal Code for child rape cases. There have been no charges that use the threat of imprisonment or maximum fines as stipulated in this Law on the Elimination of Domestic Violence (Kourti et al., 2021).

Additional Criminal Application

Until now, there has been no court decision imposing additional criminal penalties on perpetrators of domestic violence as stipulated by Law No. 23 of 2004. Article 50 of the Law provides:

"In addition to the crimes referred to in this chapter, the Judge may impose additional penalties in the form of:

a. *restrictions on the movement of the perpetrator both aimed at keeping the perpetrator away from the victim within a certain distance and time, as well as restrictions on certain rights of the perpetrator;*
b. *Determination of perpetrators to follow counseling programs under the supervision of certain institutions."*

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This Court ruling is expected to be a form of protection law for victims' rights and responds to the need to prevent the continued threat of domestic violence. In addition, there is also a need to organize counseling programs aimed at guiding perpetrators to make corrections for domestic violence acts that have been committed. The initiative to design programs and provide counseling for perpetrators of domestic violence has been initiated by Mitra Perempuan in collaboration with a number of male counselors from related professions and BAPAS officers who prepare modules for the required counseling services(Walby, 2004).

Data in *WCC* recorded that a number of women pursued civil legal remedies by stating the reasons for domestic violence in divorce lawsuits to the District Court or Religious Court. This is chosen by those who do not intend to criminalize their husbands, but require legal remedies in order to break the chain of violence that

carried out by her husband during marriage.

Application of Protection for Victims by the Court

One form of legal protection that is also specifically designed to respond to the needs of victims of domestic violence crimes and their family members is a determination containing a protection order that can be determined by the Court as stipulated in Articles

28 to Article 38 of Law No. 23 of 2004. The Chief Justice shall issue a decree containing the protection order within a grace period of 7 (seven) days from the receipt of the application unless there is a reasonable reason (Article 28). The request can be submitted in oral or written form(Cole, 2022).

CONCLUSION

The law on domestic violence enacted through Law No. 20 of 2003 to date has not been fully enforced effectively to provide protection to victims of domestic violence. Various sociological factors that cause the ineffectiveness of law enforcement include the absence of a common paradigm among law enforcement officials regarding the protection of victims of domestic violence, uneven socialization of legal provisions, unbalanced legal facilities available with cases that occur, not optimal public legal awareness and friction between the values adopted by this law and the values that apply in some communities.

Some records on law enforcement and the application of Law No. 23 of 2004 concerning the Elimination of Domestic Violence for almost the last 4 (four) years, are enough to illustrate that efforts to eliminate domestic violence are efforts that involve many parties and require consistent law enforcement. Dissemination of the Law on the Elimination of Domestic Violence and its Government Regulations as well as technical information on its implementation among law enforcement and the wider community is an urgent need that needs to be planned properly. Law enforcement to implement the Law on the Elimination of Domestic Violence which is full of protection of the rights of victims and their families requires a strong commitment with high respect for the values of justice, non-discrimination and human rights as guaranteed by the constitution. In addition, law enforcement conditions that are free and clean from corruption, bribery and collusion are also needed in all levels of law enforcement agencies, social services and related public services.

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