

Dynamics And Effectiveness Of Domestic Violence Law In Indonesia (Law No. 23 Of 2004 On The Elimination Of Domestic Violence)

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Abstract

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Cases of domestic violence in Indonesia are still relatively high, even though it is known that the law governing it has existed since 2004. Then how are the main objectives that the law wants to achieve in dealing with cases of domestic violence and its effectiveness. In this literature review, researchers used a normative descriptive method supported by data in the form of books, journals, and other relevant research. The result is that the main purpose of the PKDRT law is to maintain the integrity of a harmonious and prosperous household, this is not in line with the sanctions given so that it has a negative impact on the perpetrators and victims who both have family relationships. Then another effort that is more in line with this law is restorative justice with certain considerations. Restorative justice is an implementation of past Islamic law that has been exemplified by the Prophet and his companions. Meanwhile, according to its effectiveness, Indonesian society has not effectively implemented this PKDRT Law due to a weak legal culture and legal awareness.

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I. INTRODUCTION

Domestic violence cases in Indonesia experience an erratic or fluctuating increase and decrease. From the beginning of January to May 2024, it was recorded in the KemenPPPA that there were 8,312 cases with a ratio of 1,825 male victims and 7,254 female victims. This compares to 29,883 cases in 2023 (6,332 male victims and 26,161 female victims) and 27,593 cases in 2022 (4,630 male victims and 25,053 female victims). From this data, it can be concluded that although the number of domestic violence cases fluctuates, the ratio of victims is always high for women. This generally occurs because women are weaker than men, be it physically or psychologically .

Whereas as it is known that a man is a leader for women and their families. In Islam this is stated in Surah An-Nisa verse 34 which reads

الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ ۚ فَالصَّالِحَاتُ قَنَاطٌ لِّلْغَيْبِ بِمَا حَفِظَ اللَّهُ ۗ وَالَّتِي تَخَافُونَ نُشُوزَ هُنَّ فَعِظُوهُنَّ وَاهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَاصْرَبُوهُنَّ ۚ فَإِنِ اطَّعْنَكُمْ فَلَا تَبْغُوا عَلَيْهِنَّ سَبِيلًا ۗ إِنَّ اللَّهَ كَانَ عَلِيمًا كَبِيرًا

From the verse above, it has been explained that men as priests are encouraged to treat, treat, educate, and guide women as their wives properly. In the story of the Prophet, the book of the Romantic Stories of the Prophet. Once Aisyah spoke loudly and loudly to the Prophet from the room. Abu Bakar as-Siddiq, who was then a guest at the Prophet's house, immediately knew that his son (Aisha) and his son-in-law (Rasulullah) were fighting. Finding this, Abu Bakar asked the Prophet's permission to meet his daughter. When he faced Aisha, Abu Bakr immediately raised his hand to hit Aisha for talking loudly with the Prophet. But then the Prophet prevented him. On the next day, Abu Bakr visited the Prophet's house. He witnessed that his son and daughter-in-law had gotten better and did not fight again that day. It is also said that once the Prophet was angry with Aisha for one or two things. Then the Prophet asked Aisha to close her eyes and come closer. At once Aisyah felt anxious because she thought she would be scolded by the Prophet. What Aisyah imagined was wrong. "My Khumaira (Rasulullah's affectionate call for Aisyah) has gone away my anger after hugging you," said Rasulullah. From the Prophet's story above, there are two lessons that can be learned. First, do not involve others. Household problems should be resolved by yourself, there is no need to involve other people even if it is your own parents or in-laws. The Prophet also prevented Abu Bakr, who was his own father-in-

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law, from 'interfering' in his household problems. Second, eliminate anger towards the wife by embracing her. As the Prophet did, when a husband or wife is angry or disputes with his partner, he should immediately hug his partner. Don't even slap or hit him. Especially how a husband should behave towards his wife when they quarrel. (Rochmat, 2018)

Even in Indonesia itself, domestic violence has clearly many legal umbrellas that regulate it, starting from the law that specifically regulates this act of violence, namely in Law No.23 of 2004 concerning the elimination of domestic violence, there is also article 116 letter d of the Compilation of Islamic law (KHI), which has clear strict sanctions that will result from the existence of domestic violence or domestic violence. However, this does not provide a deterrent effect or is not a sufficiently firm preventive effort against the perpetrators.

Then is the law that has been in force in Indonesia weak? Or is there something else that is a factor in the weakening of this domestic violence law so that domestic violence cases are still often found and are still relatively high. So in this paper, the author will focus on the effectiveness of the Domestic Violence Law in Indonesia and the legal dynamics that occur in social life.

II. THEORITICAL FRAMEWORK

According to the large Indonesian dictionary or KBBI, violence is defined as something that is violent, or someone's actions that will cause physical injury. Whereas in Law Number 23 of 2004 concerning PKDRT article 1 bitir 1 states that domestic violence is any act against a person, especially women, which results in misery or suffering; physically, sexually, psychologically and or domestic neglect including threats to commit acts, coercion, or unlawful deprivation of independence within the scope of the household.(Putri Zaidhatul et al., 2023)

In general, forms of domestic violence include physical violence, psychological violence, sexual violence and domestic neglect. Physical violence in Article 6 of the PKDRT Law states that actions that cause pain, illness, or serious injury to victims. Secondly, what is meant by psychological violence according to Article 7 of the PKDRT Law is an act that causes fear, loss of self-confidence, loss of ability to act, helplessness, and or severe psychological suffering to the victim. Third, sexual violence listed in article 8 includes two

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things, namely coercion of sexual intercourse committed by someone who stays within the scope of the house and coercion of sexual intercourse on one person within the scope of his household with other people for commercial purposes and or certain purposes. Fourth, domestic neglect is regulated in Article 9 of the PKDRT Law. It states that there are two points that are categorized as domestic neglect, namely (1) every person is prohibited from neglecting a person within the scope of his household, even though according to the law applicable to him or because of an agreement or agreement he is obliged to provide life, care or maintenance to that person. (2) neglect as referred to in paragraph (1) shall also apply to any person who causes economic damage by restricting and or prohibiting proper work inside or outside the home so that the victim feels under the control of the person. (Indonesia, 2004)

Domestic violence cases in Indonesia experience an erratic or fluctuating increase and decrease. From the beginning of January to May 2024, it was recorded in the KemenPPPA that there were 8,312 cases with a ratio of 1,825 male victims and 7,254 female victims. This compares to 29,883 cases in 2023 (6,332 male victims and 26,161 female victims) and 27,593 cases in 2022 (4,630 male victims and 25,053 female victims). From this data, it can be concluded that although the number of domestic violence cases fluctuates, the ratio of victims is always high for women. This generally occurs because women are weaker than men, be it physically or psychologically. (Kemenpppa. Simfoni-PPA, 2024)



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Data on domestic violence cases in 2024 (source: simfoni-kemenPPA)



Data on domestic violence cases in 2023 (source: simfoni-kemenPPA)



Data on domestic violence cases in 2022 (source: simfoni-kemenPPA)

From the three data above, it can be concluded that domestic violence cases affect more female victims than male victims. In a study conducted by Evi Tri Jayanti, it was found that the cause of domestic violence occurring in women rather than men was caused by 5 factors including; infidelity, economy, patriarchal culture, third person interference, and gambling.

First, infidelity. The main factor in the occurrence of domestic violence against women is because the husband is cheating on his wife, which results in disharmony in the household relationship that leads to violence. Second, economic factors, some of the married couples began to be crushed from the economic side then required a wife to work, while a husband went to migrate but in the end there was no certainty of providing regular income. This is included in the domestic violence type of neglect of wife and children.

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Third, patriarchal culture. According to Bhasin, patriarchy means a system that places the father figure as the ruler of the family. This is used in society to explain the place of men over women and children. This culture has implications for women who are more likely to feel weak and helpless without their husbands, so some fathers do not hesitate to commit violence against their wives and children under the pretext of teaching as the head of the family in control.

Fourth, the intervention of a third person. Where the third person in question is not from outside the family but is still in the same family, for example in-laws, siblings, uncles, aunts, and others. This also triggers domestic violence if the husband defends his parents/brothers/uncles/aunts more than his wife, which will then trigger a conflict of disharmony between the two. Fifth, playing gambling or drinking alcohol. When in a mediocre economic situation a husband likes to play gambling until he is addicted and never wins, it will often have an emotional impact that is brought into the household. Especially if the husband likes to drink alcohol, which damages human common sense. So this fifth factor is quite the most vulnerable to cases of violence. (Sahabat & Magelang, 2009)

Domestic violence cases in Indonesia are still relatively high, even though Law No. 23/2004 on the Elimination of Domestic Violence clearly states the sanctions that the perpetrators will receive, namely in Article 44 paragraph 1 which explains that

“setiap orang yang dilaporkan melakukan kekerasan fisik di lingkup rumah tangga akan dipidana dengan pidana penjara paling lama 5 tahun atau denda paling banyak Rp 15 juta.” (Indonesia, 2004)

The penalties listed in the law can be more severe if the physical violence received by the victim is more severe or causes death, but this has no impact on changing people's attitudes. Where is the fault in the law or the low human resources of the Indonesian people.

III. METHODOLOGY

This study is a library study using descriptive normative methods, namely research that aims to describe or describe in depth about certain events or situations which are then analyzed using the relevant theories, by describing and explaining the data and then analyzing it using a method appropriate to the data (Sudaryanto, 1993, p. 62). The

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descriptive method uses data in the form of word which are then observed and explained as they are (Zaim, M., 2014, p. 19). The data were then analyzed using a comparative descriptive and qualitative approach. The research results will be presented in a systematic descriptive form, so that the problem that have been formulated will be answered clerly. Sources in this research are books, articles, and other documents related to childfree from various literature then examined In this case, the theory of restorative justice in law and Islamic views as well as the effectiveness of the law associated with victims of domestic violence phenomena that are rampant in Indonesia. The data used comes from books, journals, and research results that are relevant to this study.

IV. RESULT AND DISCUSSION

Legal Dynamics of Domestic Violence

Domestic violence is one of the various forms of criminal acts of violence that occur in a special area of national and international concern. This specificity is related to the relationship between the victim and the perpetrator, which is usually within the scope of the family, be it blood, marriage, or employment.

This type of violence is also one of the factors that has the potential to damage the integrity of the family. This problem is not a trivial problem, but a serious problem because often people do not realize that the home that should be a comfortable place turns into a terrible place for family members. Regardless of its form and severity, domestic violence is considered important even for the State, including Indonesia.

In general, Indonesia has positive laws that are categorized into two judicial procedures, namely Criminal and Civil. Domestic violence falls into the criminal realm because it threatens the life or life of a victim. In criminal procedure law, those who commit a criminal offense must be given a criminal sentence. Seen in Article 10 of the Criminal Code, a person who commits a criminal offense is given sanctions in the form of first, main punishment, including: death penalty, imprisonment, confinement, fines, and closure; and second, additional punishment, including: revocation of certain rights, deprivation of certain goods, and announcement of the judge's decision. (Haryanto, 2021)

Because crimes of domestic violence are punishable by law, the existence of this law encourages the public to be more open and courageous in reporting the violence they have

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experienced. Currently, cases of domestic violence are handled in accordance with the same standards of criminal procedure as other criminal cases. If the defendant is found guilty of committing the criminal offense charged by the public prosecutor, it will result in the imposition of punishment.

Article 4 of the Law on the Elimination of Domestic Violence actually has objectives including to prevent all forms of domestic violence, protect victims, take action against perpetrators of violence, and maintain the integrity of a harmonious and prosperous household. From this article it appears that households should actually have a good and harmonious relationship and be far from problems. So as to create a comfortable, peaceful and intact family in the family.

The process of resolving domestic violence cases carried out through the criminal justice system shows a working mechanism in crime prevention using the basis of a system approach. (Full Thesis, n.d.) In accordance with the mandate of Law No. 23 of 2004 which begins with investigation, prosecution, examination in court until the execution of sentences in correctional institutions. However, in practice this law can cause problems which will result in losses for both victims and perpetrators. When the perpetrator is a husband or family leader who is required to provide maintenance but on the other hand must undergo imprisonment, resulting in neglect of his wife and children as victims.

As stated in Article 4 of the Law on the Elimination of Domestic Violence above, this law aims to ensure that households are intact and prosperous. When viewed from this goal, criminal punishment is not the way to resolve domestic violence behavior given the consequences that will be caused in this situation. The right solution for this violence because it involves the realm within the family or the relationship between the victim and the perpetrator can be held deliberations, which are often referred to as restorative justice as an effort to resolve peacefully in cases of criminal acts of violence in the family. Or it can also be seen in the juvenile justice law, namely the existence of a settlement through diversion with certain conditions in the law which become a mandatory consequence for the perpetrator to do. (Rosalin, 2023)

Restorative justice aims to empower victims, perpetrators, families and communities to repair an unlawful act by using awareness and conviction as the basis for improving social life. Restorative justice can be interpreted as an alternative to solving a criminal case.

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Where in its application, it will cause a shift in the purpose of the direction of punishment which is to punish the perpetrator which is supposed to repay the fine with punishment to carry out punishment by healing the original state before the criminal event.

Restorative justice is an approach that focuses on the needs of both the victim and the perpetrator of the crime. The concept of Restorative Justice no longer measures justice based on retribution from the victim to the perpetrator either physically, psychologically or through criminal punishment but rather the hurtful act is healed by providing support to the victim and requiring the perpetrator to take responsibility, with the help of family and community when necessary. The process of resolving criminal offenses through restorative justice by the police, prosecutor's office is in line with the objectives of the theory of benefit that provides welfare and peace by taking into account the interests of the Victim and other protected legal interests, avoidance of negative stigma, avoidance of retaliation from the punishment system with absolute theory, community response and harmony; and decency, decency, and public order. It is important to emphasize that if the conditions have been met, it does not necessarily mean that a case will be resolved with a restorative justice approach. In this case, there is a variable that should be considered or considered that is not fulfilled. So even if the conditions are met, settlement by means of restorative justice cannot be carried out. (Rosalin, 2023)

So in general, the community expects the presence of the law to be a solution that provides benefits, not losses or other problems when a law is implemented or enforced. This restorative justice effort can be a solution to the problem of violence that occurs in the family sphere. On the other hand, with this restorative justice effort, the divorce rate will also decrease due to the impact of an intact and prosperous family as expected by the PKDRT Law.

Restorative justice in Islamic law is commonly referred to as *islah* (peace), *al 'afwu* (forgiveness from the victim or his family) and *Tahkim* (peace with a mediator). The three are only different in terms of concepts but in their implementation they are the same, namely both forgiving the perpetrator. These three concepts have been exemplified by the Prophet and the Companions. One of them was by Umar bin Khattab r.a “return the settlement of the case, between relatives so that they can make peace, because in fact the court settlement caused a bad taste”. (Fakultas et al., 2014)

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In the main source of Muslims, namely the Qur'an, it has also been explained in Surah an-Nisa verses 128 and 135 which read as follows;

وَإِن مَّرَأَةٌ خَافَتْ مِنْ بَعْلِهَا نُشُورًا أَوْ إِعْرَاضًا فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يُصْلِحَا بَيْنَهُمَا صُلْحًا وَالصُّلْحُ خَيْرٌ وَأُحْضِرَتِ الْأَنْفُسُ الشُّحَّ وَإِنْ تُحْسِنُوا وَتَتَّقُوا فَإِنَّ اللَّهَ كَانَ بِمَا تَعْمَلُونَ خَبِيرًا

Artinya : “Jika seorang perempuan khawatir suaminya akan nusyuz atau bersikap tidak acuh, keduanya dapat mengadakan perdamaian yang sebenarnya. Perdamaian itu lebih baik (bagi mereka), walaupun manusia itu menurut tabiatnya kikir. Jika kamu berbuat kebaikan dan memelihara dirimu (dari nusyuz dan sikap tidak acuh) sesungguhnya Allah Maha Teliti terhadap apa yang kamu kerjakan”. [an-Nisa (4) : 128] (Qur'an Kemenag, 2019)

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ وَلَوْ عَلَىٰ أَنْفُسِكُمْ أَوِ الْوَالِدِينَ وَالْأَقْرَبِينَ ۚ إِن يَكُنْ غَنِيًّا أَوْ فَقِيرًا فَاللَّهُ أُولَىٰ بِهِمَا ۚ فَلَا تَتَّبِعُوا الْهَوَىٰ أَنْ تَعْدِلُوا ۗ وَإِنْ تَلَّوْا أَوْ تُعْرَضُوا فَإِنَّ اللَّهَ كَانَ بِمَا تَعْمَلُونَ خَبِيرًا

Artinya : “Wahai orang-orang yang beriman, jadilah kamu penegak keadilan dan saksi karena Allah, walaupun kesaksian itu memberatkan dirimu sendiri, ibu bapakmu, atau kerabatmu. Jika dia (yang diberatkan dalam kesaksian) kaya atau miskin, Allah lebih layak tahu (kemaslahatan) keduanya. Maka, janganlah kamu mengikuti hawa nafsu karena ingin menyimpang (dari kebenaran). Jika kamu memutarbalikkan (kata-kata) atau berpaling (enggan menjadi saksi), sesungguhnya Allah Maha Teliti terhadap segala apa yang kamu kerjakan.” [an-Nisa (4) : 135] (Qur'an Kemenag, 2019)

The two verses above encourage justice and forgiveness. Even in an-Nisa verse 128 above, Allah gives a direct example in the case of nusyuz or violence committed by a husband or wife, that the best solution is to make peace. In addition, in maqasid shari'ah or the purpose of Islamic law, the most important is to emphasize benefit.

Restorative justice is also in line with Indonesian cultural values. As stated by Daniel s.Lev quoted by Wukir Prayitno that the legal culture in Indonesia in resolving conflicts has its own characteristics due to certain values. Compromise and peace or commonly known as musyawarah mufakat is a commendable effort so that in resolving conflicts manifested in the form of choosing a compromise, without emphasizing retaliation alone.(Doktor et al., 2021)

Legal Effectiveness of Domestic Violence

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The effectiveness of the law is a measure of the success rate of legislation both from the application and law enforcement officials so that law enforcement runs in accordance with legal norms as a guide to individual behavior in the life of society and the State.(KBBI, 2022)

According to Lawrence M. Friedman's view, there are three elements that must be considered in law enforcement including legal structure, legal substance, and legal culture.(M.Khozim, 2009) These three elements are closely related to obedience and legal awareness in society. People who obey and comply with a law will have an impact on an orderly and safe society so that the achievement of an effective application of the law. The awareness and obedience of law enforcers and the public to a law determines whether or not the implementation of the legislation is effective.

In another view put forward by Clearence J. Dias, that there are five conditions for the effective or not of a law. The five conditions are; whether or not the meaning or content of the legal rules is easily captured, whether or not there is a wide range of people in society who know the contents of the rules, whether or not the mobilization of legal rules is efficient and effective with the help of administrative officials and the people involved, whether there is a dispute resolution that must not only be easily contacted and entered by the community but must be effective enough to resolve disputes, and whether there is an evenly distributed assumption and recognition among citizens of the community regarding these rules.(Salim et al., 2017) The effectiveness of law in society itself, 2017) The effectiveness of law in its own society will have an impact on the achievement of the ideal functions of law including; legal certainty, legal benefits and legal justice.(Fatoni., 2016)

From the theory of legal effectiveness above by looking at the phenomenon of domestic violence cases that occur in Indonesia itself, it can be said that the Domestic Violence Law has not been fully effective. If viewed from the three elements of Lawrence M. Friedman, namely; first, the legal structure which includes fair and responsible law enforcement officials in trying domestic violence cases has certainly been fulfilled.

However, when viewed from the substance of the law, in this case the PKDRT Law is still said to be weak, in proving that domestic violence cases are still a scourge in handling domestic violence cases. Moreover, this case occurs not only to the extent of physical domestic violence but verbal which is difficult to prove. Meanwhile, the procedural law in

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Indonesia is still rigid where two witnesses are required to be presented as evidence. It is often difficult for victims to prove the occurrence of domestic violence cases, especially psychological or non-physical cases. In the same case, namely proof, when there is a case of physical domestic violence, it is also required to have post mortem evidence. Generally, the results of the post mortem do not match the events that occurred because generally the post mortem is done after a few days after the incident. Meanwhile, the incident may occur at any time without knowing the time.

Then the third is seen from the legal culture. Legal culture is often associated with public legal awareness. Where legal culture is said to be high if people do not have a tendency to violate the law. This means that looking at the high number of domestic violence cases proves that the community does not have high legal awareness of the PKDRT Law.

Meanwhile, to measure legal awareness, it is divided into several levels; first, legal knowledge, at this level the community already has the knowledge that there are certain actions in society that are clearly regulated by law, both in the form of written law (such as laws, regional regulations, circulars, and other instructions from authorized officials) and unwritten law (customary law, traditions, customs). Second, understanding of legal norms, this level of understanding generally means that people begin to appreciate the content of the rules that apply in society. The community began to analyze the purpose and duty of the law. Third legal attitude, at this stage the community has a tendency to give its assessment of the applicable law (positive law) as well as the norms that live and grow in society. And fourth legal behavior, people are able to behave in accordance with applicable legal rules. This means that the community has a fairly high legal awareness. Legal behavior in this case also includes awareness of demanding their rights so that the demands only want to be sought through the channels of applicable legal norms. (Sudarsono., 2001)

Looking at the benchmarks of legal awareness above, it can be concluded that in general the Indonesian people only know the existence of the law in this case the PKDRT Law without being followed by an understanding of the purpose of the law. This means that Indonesian people are still at the first level of legal awareness.

V. CONCLUSION

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The process of resolving domestic violence cases carried out through the criminal justice system shows a working mechanism in crime prevention using a basic system approach. In accordance with the mandate of Law No. 23 of 2004 which begins with investigation, prosecution, examination in court until the implementation of punishment in correctional institutions. However, in practice this law can cause problems which will result in losses for both victims and perpetrators. When the perpetrator is a husband or family leader who is required to provide maintenance but on the other hand must undergo imprisonment, resulting in neglect of his wife and children as victims. So that restorative justice efforts are more in line with the main objectives of this PKDRT Law. Restorative justice in Islamic law is generally referred to as *islah* (peace), *al 'afwu* (forgiveness from the victim or his family) and *Tahkim* (peace with a mediator), where this effort has also been exemplified by the Prophet and his companions. As for the effectiveness of the law, in general, Indonesian people only know that there is a law in this case the PKDRT Law without being followed by an understanding of the purpose of the law. This means that Indonesian society is still at the first level of legal awareness.

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