

Legal Review of The Criminal Act of Murder of Women By Intimate Partners Based on The Provisions of The Act on Pkdrt

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Abstract

The phenomenon of domestic violence that results in the death of women by intimate partners shows a gap in the legal protection that should be provided by the state. This study examines how Law Number 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT) regulates and qualifies murder in domestic relations, and the extent of its effectiveness in implementation. The issues discussed include aspects of normative regulation and the application of law in the field. The methodology applied is normative legal research, using a legislative approach and a case approach. Data sources were obtained through literature studies from laws and regulations, court decisions, and relevant academic opinions, and analyzed qualitatively. The findings show that although the Law on PKDRT contains legal provisions regarding serious physical violence, including that which causes death, its implementation has not been optimal. The low understanding of law enforcement officers, the influence of patriarchal culture, and the lack of protection for victims are the main obstacles. Therefore, integration between the Criminal Code and the Law on PKDRT is needed, as well as increasing the competence of law enforcement officers so that victim protection becomes more effective and just.

Keywords: Intimate Partner Murder, Women, Domestic Violence Act.

Introduction

Indonesia is a country based on law as stated in Article 1 Paragraph (3) of the 4th Amendment to the 1945 Constitution of the Republic of Indonesia, which means that all forms of a person's behaviour are based on applicable law.¹ Therefore, the highest level of law in Indonesia is the power of the Republic of Indonesia to protect all Indonesian people.² However, it can be interpreted that law enforcement is not an easy

¹ Muhammad Baharuddin & Akhmad Khisni. "Effectiveness of Pleidooi by The Supreme Of Criminal Murder." LDJ: Law Development Journal 2, No. 2 (2020): 207.

² Cipto. "Protection To The Victims of Domestic Violence Crime (Case Study of Kudus Police)." JDF: Jurnal Daulat Hukum 1, No. 4 (2018): 928.

thing, as in fact so far there have been many criminal acts in this equatorial country which have caused difficulties for law enforcers, especially in enforcing criminal sanctions.³

In law enforcement efforts in Indonesia, cooperation and the role of law enforcers are needed to ensure legal certainty and justice.⁴ Law enforcers certainly have differences in their duties but must work in one system, which means that the work of law enforcers must be functionally related. Criminal justice is considered a system, because it consists of various institutions, each with different authorities and duties but has a common goal, namely to combat and prevent crime.⁵

The crime rate in Indonesia has been increasing lately, especially related to murder or crimes against life. Murder is a criminal behaviour that leads to the unlawful taking of a person's life. The crime of murder is listed in Book II Chapter XIX of the Criminal Code. Although there is a criminal threat related to the crime of murder contained in the Criminal Code with the aim of providing a deterrent effect and a lesson for the community, murder cases are still rampant. Currently, the criminal sanctions decided by the panel of judges in the trial are in fact unable to be a lesson for the community, so similar murder cases, even more concerning ones, are currently the victims of the majority of women and minors, which are individuals who should receive security from men.

Murder cases can happen to anyone, and nowadays, married couples often commit murder in a domestic situation against their partners or children. The desire to have a peaceful, happy, and peaceful home life is possessed by all married couples. However, the reality of life does not always go according to expectations. Disputes and quarrels in the household are common occurrences. Lack of ability to control emotions when facing problems often triggers an explosion of anger that is vented in the family environment. This situation can develop into physical violence, even leading to murder.

3Raynaldi Arya Danielli. "Analysis of Judge's Decision on Murder Case in Family Environment (Study in Sleman District Court)." *Journal of Atma Jaya University Yogyakarta* 1, No. 1 (2016): 1.

4Eka Rinda Wanto, Rakhmat Bowo Suharto, & Siti Rodhiyah Dwi Istimah. "The Capture Process In The Crime of Murder by A Special Team". *LDJ: Law Development Journal* 4, No. 2 (2022): 323.

5Andrian Subarjo & Umar Ma'ruf. "Mechanism for Investigating Criminal Acts Involving Children as Perpetrators". *LDJ: Law Development Journal* 3, No. 1 (2021): 162.

Currently, murders that occur within the scope of the household are included in the Domestic Violence Law, Article 44 paragraph (3), which in essence means that if the victim dies as a result of the perpetrator's actions, the penalty is a maximum fine of forty-five million rupiah or a maximum prison term of 15 years.

In the regulation above, it is explained that the punishment for perpetrators of domestic violence that results in the victim's death is hampered by the ambiguity of the intent and content of Article 44 paragraph (3) of the Domestic Violence Law. The Panel of Judges must be more careful in studying, examining, considering, and trying domestic violence cases that result in the victim's death.

The number of crimes in Indonesia targeting women has been increasing lately. Violence against women is clearly visible both in specialist circles and in the general public, as seen in print and electronic media. The patriarchal culture adopted by Indonesian society, which views women as creatures with limited physical and mental capacities, allows crimes against women to occur, resulting in them being very dependent on others, and being considered low or subordinate when faced with authority or domination.

Criminal acts require the presence of perpetrators and victims. In this case, victimology as a branch of science that focuses on victims, pays special attention to women who experience victimization due to criminal acts. One form of crime that is often experienced by women is murder, which generally takes place in the domestic or household sphere. Reality shows that violence against women as partners has serious and detrimental consequences for victims. Unlike crimes in general, crimes against women in domestic relationships have their own characteristics. This uniqueness can be seen from the similarity of the roles of perpetrators and victims who are in intimate relationships, as well as from the pattern of violence that tends to occur repeatedly, not just once.⁶

Women are often the target of crimes, one of which is domestic violence. Referring to the Annual Report of the National Commission on Violence Against Women, cases

⁶Aroma Elmina Martha, *Women and Domestic Violence in Indonesia and Malaysia* (Yogyakarta: FH UII Press, 2012), 1.

of violence against women recorded in 2015 amounted to 321,752 incidents. Among this number, domestic violence (hereinafter referred to as KDRT) is the most common category, namely 11,207 cases (69%). In the realm of domestic violence, sexual violence reached 3,325 cases (30%), psychological violence 2,607 cases (23%), economic violence 971 cases (9%), and physical violence 4,304 cases (38%). WHO reports that more than 5.3 million women worldwide are victims of violence perpetrated by their partners every year.

Therefore, it is important to examine in more depth how the criminal law provisions in the Domestic Violence Law regulate and qualify acts of murder committed by intimate partners against women, especially in the context of domestic relations. In addition, this study also needs to highlight the effectiveness of the implementation of the Domestic Violence Law in providing balanced legal protection and justice for victims of violence that results in death. This study is not only important to ensure that the perpetrators receive appropriate punishment, but also to assess the extent to which the available legal instruments are able to prevent the recurrence of similar crimes and ensure that women are protected at home. Referring to this urgency, this study will focus on two problem formulations, namely regarding the regulation and qualification of murder by intimate partners in the Domestic Violence Law and the effectiveness of the implementation of the law in providing adequate protection for victims.

Research Method

Types of research, approaches, sources of data and legal materials, procedures for collecting legal materials, data collection techniques, and strategies for analyzing data and legal materials are all covered in the research methodology.

The existence of normative difficulties, such as normative ambiguity, normative conflict, or empty norms, is the starting point of a paper that uses normative legal research methodology. Legislative, conceptual, and analytical techniques are the methods used. The legal document tracing method uses document study techniques, while the analysis uses qualitative assessment.

Results and Discussion

Legal Provisions In The Domestic Violence Law In Regulating And Qualifying The Crime Of Murder Of Women By An Intimate Partner

The problem of domestic violence is not simple and involves many aspects. In some cases, the perpetrator may not understand that his actions are classified as domestic violence. However, it does not eliminate the possibility that the perpetrator knows the nature of his actions, but chooses to ignore it because he feels justified by social norms that have long been embedded in the community. As a result, domestic violence is often seen as a common problem and a purely personal matter.⁷

The state sets certain parameters regarding domestic violence by using legal instruments to address this issue. Domestic violence is characterized in the Domestic Violence Law as any act committed against an individual, especially women, that causes physical, sexual, or psychological suffering. This behaviour includes threats, coercion, and unlawful deprivation of liberty within the household. The implementation of this law is the culmination of a protracted campaign for almost seven years, carried out by several factions of the women's movement.⁸

In formal legal terms, provisions regarding domestic violence have been in effect in Indonesia since 2004. This law was created as an expression of the state's dedication to eliminating domestic violence. This law empowers the state to prevent, prosecute perpetrators, and protect victims of domestic violence, an effort that was previously difficult to do due to the perception that domestic violence is a private matter.

These acts often occur in relationships between spouses and between parents and children. This law, characterized by its unique provisions, regulates not only criminal sanctions but also procedural law and mandates the state's obligation to provide prompt protection to victims who report such incidents. Therefore, the enactment of this law

⁷Sinawati, V. (2021). Settlement of Domestic Violence (KDRT) Cases Through Customary Institutions (Case Study of Gampong Mulia, Kuta Alam District, Banda Aceh City) (Doctoral dissertation, UIN Ar-raniry).

⁸ Napitupulu, CN (2023). Legal Analysis of Domestic Violence Cases According to Law Number 23 of 2004 concerning the Elimination of Domestic Violence (Study of Makassar District Court Decision Number 811/Pid. Sus/2021/PN. Mks) (Doctoral dissertation, Indonesian Christian University).

represents a progressive and substantial advance in the promotion of human rights, especially in terms of protection for those who experience injustice in the family environment.

Based on various definitions and provisions in the Domestic Violence Law, there are several main types of domestic violence: physical aggression, psychological abuse, sexual violence, and neglect.

a) Physical Violence

Physical violence is an act that causes pain, and minor or serious injuries, to the point of endangering the physical safety of the victim. Examples include: beating, slapping, strangulation, or other acts that are directly injurious.

b) Psychological Violence

Psychological violence is behaviour that causes emotional suffering or mental stress to a person. The impacts can include fear, helplessness, severe psychological disorders, and a weakened ability to make decisions. These actions include verbal abuse, insults, threats of violence against wives and children, prohibitions on socializing with family or friends, excessive jealousy, control of personal property, threats of suicide, and manipulation of basic needs such as physical and spiritual sustenance.

c) Sexual Violence

Sexual violence includes:

- 1) Forcing a partner or family member to engage in sexual activity when they are at home.
- 2) Performing acts of forcing a third party to have sexual intercourse for commercial or other purposes. This violence can be manifested in the form of unwanted sexual advances, physical acts such as touching or kissing without consent, and direct sexual coercion.

d) Economic Abuse (Neglect)

Neglect is a form of domestic violence that occurs when someone intentionally does not fulfil the needs of their family members, even though legally or based on the applicable agreement, the person concerned has the responsibility to fulfil them. This form of violence also includes the act of prohibiting the right to obtain decent work, both inside and outside the home, thus causing economic dependence.

One of the most extreme forms of domestic violence is physical violence that results in death, or what is known as intimate partner murder. Legal regulations regarding this have been accommodated in the Domestic Violence Law. Although this law does not explicitly mention the term "murder", it categorizes physical violence that causes serious injury or death as a form of violence that can be subject to criminal sanctions.

If the torture is committed by a husband against his wife or an individual living under the same roof, then the act is classified as a domestic environment as stated in Article 2 of the Domestic Violence Law. In this context, the perpetrator can be charged with criminal penalties based on the Domestic Violence Law, and cumulatively or alternatively can also be charged with the Criminal Code, such as Article 338 or 340 of the Criminal Code, depending on the elements of intent and planning.

The Domestic Violence Law occupies a strategic position as a *lex specialis* that not only provides a legal basis for criminal enforcement against perpetrators of violence but also strengthens protection for victims, especially women, who are often the disadvantaged parties in domestic relations. Before the presence of this law, the state tended not to interfere in domestic affairs, because domestic violence was considered a private problem that had to be resolved internally. As a result, many victims experienced repeated violence but did not get proper access to justice due to minimal legal intervention. The Domestic Violence Law is here to correct this paradigm by emphasizing that domestic violence is a form of violation of human rights and is a criminal act that must be handled by law enforcement officers.

In the context of murders of women by intimate partners, the Domestic Violence Law allows law enforcement officers to build a more comprehensive legal construction, not only viewing the incident as an ordinary murder but also as part of a pattern of systemic domestic violence. Therefore, in the process of handling cases, law enforcement officers must be able to see the background of the violence that occurs repeatedly, unequal power relations, and emotional and economic dependency factors that are typical characteristics of cases of intimate partner violence. This is important so that victims are not merely positioned as objects of violence, but as legal subjects whose rights must be protected by the state.

Furthermore, the Domestic Violence Law also provides preventive and curative protection mechanisms for victims, such as the issuance of a protection order (SPP), the provision of counselling services, temporary housing, and legal aid. With these provisions, it is hoped that not only the perpetrators will be subject to criminal sanctions, but also the victims will receive adequate recovery, both physically, psychologically, and socially. Therefore, the legal regulations in the Domestic Violence Law have substantively answered the need for handling and qualifying the crime of murder in intimate partner relationships, by placing the interests of the victim as the main priority and strengthening the role of the state in ensuring justice and protection within the household.

The Effectiveness Of The Implementation Of The Domestic Violence Law In Providing Legal Protection And Justice For Victims Of Murder Of Women By Intimate Partners

In the realm of positive law, protection for victims of domestic violence has been comprehensively regulated through the Domestic Violence Law. This regulation is designed to guarantee the fulfilment of human rights for victims, especially women who are often vulnerable groups in the dynamics of domestic violence. Although the legal norms cover various stages, from the investigation process to the implementation of legal sanctions, implementation in the field still encounters various obstacles. A large number of victims do not want to legally handle the violence they experience due

to social pressure and negative stigma from the surrounding environment. In fact, when reports have been submitted, it is not uncommon for follow-up from law enforcement officers not to run as they should.

One of the main problems in the implementation of the Domestic Violence Law is the low level of understanding of law enforcement officers regarding the rights of victims and the procedures for handling domestic violence cases properly. This has an impact on the minimal sense of security felt by victims during the legal process so many of them choose to stop the process. In addition, the lack of supporting facilities such as integrated service centers for the physical and psychological recovery of victims also becomes an obstacle in realizing effective legal protection. This situation shows that even though regulations are available, optimizing their implementation still requires strengthening in terms of institutions and awareness of law enforcement officers.⁹

In line with that, increasing preventive and repressive efforts in protecting victims of domestic violence is very crucial. In the preventive aspect, the police together with related agencies need to actively conduct counselling programs to build public understanding regarding the dangers of domestic violence.¹⁰ Through ongoing education, it is hoped that the community will be more sensitive to indications of violence and encouraged to participate in efforts to protect victims. For example, a number of non-governmental organizations have initiated campaigns that reach local communities to provide an understanding of victims' rights and available reporting procedures, so that they can support victims to be more courageous in reporting the incidents they have experienced.

Meanwhile, in the repressive aspect, law enforcement after violence occurs is very vital, including the imposition of punishment on the perpetrator. Based on the provisions of the Domestic Violence Law, after a report of domestic violence is submitted, the police are obliged to provide initial protection to the victim and

⁹Bernad Arif Sipahutar, "Legal Protection for Women Who Are Victims of Domestic Violence," *Jurnal Rechten: Riset Hukum dan Hak Asahan Manusia* 4, no. 1 (2022): 8–12

¹⁰Fatah Rafi Ardiansyah, Hamidah Abdurrachman, and Kus Rizkianto, *Domestic Violence as a Trigger for Other Criminal Acts* (Pekalongan: NEM Publisher, 2024).

immediately submit an application for a protection determination to the court. However, the obstacle that often arises is the low courage of victims to report the cases they experience. Factors such as social stigma, shame, and fear of the perpetrator's reaction are often the main obstacles. In fact, the law has guaranteed the victim's right to obtain protection and justice through legal channels. Therefore, serious efforts are needed to create a sense of security and reduce fear among victims. In its implementation, the synergy between integrated service centres and optimization in the context of the quantity of APH through special training is a strategic step in creating a more supportive environment for victims to dare to report.¹¹

In the implementation of law enforcement related to domestic violence, the role of the police, prosecutors, and courts is very crucial. However, in practice, law enforcement officers are often faced with complex challenges, especially when social and cultural norms still strongly influence perceptions about domestic affairs. This often causes the handling of domestic violence cases, especially those that result in murder by an intimate partner, to not run optimally. Law enforcement officers need a deep understanding of the dynamics of gender-based violence in order to act fairly and effectively, without getting caught up in stereotypes or prejudices that hinder the legal process.

In addition, most cases of domestic violence have not been resolved properly due to a lack of reporting and obstacles in the legal process. This low number of reports shows the need for a more proactive and responsive approach from law enforcement and related institutions. Therefore, continuous training and education for law enforcers is very important to increase their sensitivity and ability in handling domestic violence cases. Thus, not only formal legal aspects are enforced, but also protection and justice for victims can be realized in real terms.

Furthermore, the results of Sopacua's research revealed that the main obstacle in the process of enforcing the law on domestic violence cases often stems from the

¹¹Karenina Aulery Putri Wardhani, "Legal Protection for Women Victims of Domestic Violence (KDRT) at the Investigation Level Based on Law No. 23 of 2004 Concerning the Elimination of Domestic Violence (UUPKDRT)," *Journal of Legal Research* 1, no. 1 (2021): 21–31.

victim's willingness to resolve the conflict non-litigationally.¹² This condition results in many reports of violence not being forwarded or even withdrawn by the victims. This phenomenon indicates the need for a renewed approach in the legal system so that legal provisions can support victims to continue reporting the violence they experience and ensure the continuation of the legal process even though there is pressure from the surrounding environment. Protection of victims in this case involves cross-sector roles, such as medical personnel, social workers, and volunteer companions, who collectively provide support for victims of domestic violence. The study emphasizes that collaboration between institutions is a key element in ensuring that victims receive proper protection.

However, in cases of violence that result in the murder of women by intimate partners, the effectiveness of the implementation of the Domestic Violence Law still faces a number of obstacles. Although physical violence that causes death can be subject to criminal sanctions for murder under the Criminal Code, the special protection of the Domestic Violence Law is often not optimally integrated into the legal process. This is because the handling of murder cases often focuses on general criminal aspects without including the perspective of gender-based violence which is the core of the Domestic Violence Law. Therefore, in order for legal protection and justice for victims of domestic murder to be realized effectively, stronger synergy is needed between the Domestic Violence Law as a special regulation and the Criminal Code as a general regulation, as well as optimization in terms of quantity and capacity of law enforcement officers in understanding and applying a gender-sensitive approach. Thus, victims not only receive normative legal protection but also receive substantive justice that respects the rights of women as victims of domestic violence.

With this, increasing the effectiveness of the implementation of the Domestic Violence Law must be a primary concern in the context of the Indonesian justice system. This is important so that legal protection for victims, especially in cases of murder by an intimate partner, is not only normative but also able to provide

¹²Sopacua, Margie Gladies. "The Ideal Concept of Preventing Domestic Violence Against Women." *Journal of Indonesian Legal Development* 4, no. 2 (2022): 213–26.

comprehensive and sustainable substantive justice. This effort requires synergy between various law enforcement agencies, cross-sector support, and increased capacity of law enforcement officers in implementing a gender-sensitive approach. With these steps, it is hoped that victims of domestic violence can obtain maximum protection while eliminating impunity for perpetrators, thus creating a just and safe legal environment for all people.¹³

Conclusion

The Domestic Violence Law has provided a strong legal basis for regulating domestic violence, including physical violence that can lead to murder by an intimate partner. This law emphasizes that domestic violence is a human rights violation and a criminal act that must be followed up by law enforcement officers, while also providing a comprehensive protection mechanism for victims. Thus, the Domestic Violence Law strengthens the position of victims as legal subjects who have the right to receive protection and justice and changes the paradigm of domestic violence from a private problem to a serious legal issue.

However, in practice, the implementation of the Domestic Violence Law still faces various challenges such as low awareness and understanding of law enforcement, social stigma that hinders victim reporting, and limited facilities to support victim recovery. Handling cases of violence that result in murder often does not optimally integrate the perspective of gender-based violence. Therefore, it is necessary to increase the capacity of law enforcement officers and cross-sector synergy in order to realize sustainable legal protection for victims. Optimizing the implementation of the Domestic Violence Law will be very important in providing substantive justice while eliminating impunity for perpetrators of domestic violence.

¹³Ibid.

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