

# Victims' Perception against Domestic Violence and the Act 23, 2004: Socio-legal Research in Banjarmasin, South Kalimantan

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**Abstract:** Domestic Violence (DV) is a crime in the household. Wives are often the victims, while the husbands are associated as the perpetrators of violence. DV happened anywhere in the wide world. The purpose of this research is to describe how the women victims in Banjarmasin empowered themselves against the violence in their household, and how the victims understood the existence of Indonesia DV Act 23, 2004. This research used socio-legal method supported by regulatory approach and case study. Respondents were women victims and data were collected through deep interview. The experts' opinions were also collected to support the result of the research. This research used a qualitative analysis. The result of the research showed that many ways the women victims in Banjarmasin empowered themselves against the violence in their household such as to keep silence, fight and defend themselves; run away leaving the perpetrator; complain to the families or friends; complain and report to the NGO; complain and report to the authorities such as the police, the Office of Religious Affairs, Social Welfare Department or Syariah Court. Most of women victims are not aware of the legislation importance in relation with the prevention of violence in household. But in contrary, women victims of domestic violence in Banjarmasin agreed to Indonesia DV Act 23, 2014 with a view to protect women and the household members.

## 1 INTRODUCTION

Violence against women in the household is not a new issue. This issue has long occurred since men and women carried out household through marriage, and occurred in wide world including Indonesia. Indonesian Women Commission reported 259,150 cases of violence against women during the year 2016, the Islamic Courts reported 358 cases, Partners' Service Institutions reported 13,602 cases (Putra, 2016). Meanwhile the Detiknews reported 48,446 cases during the year of 2017, obtaining from several related agencies, and domestic violence was the highest, reaching 335,062 cases (Fitria, 2017).

Violence in household is often considered as a personal problem in family life, not as a social problem until this problem be recognized as something that has implication on healthy growth in the community. Indonesia enacted DV Act 23, 2004 as the protection of women, carried out based on the principles of respect for human rights, justice, gender equality and non discrimination (Arief, 2018). Philosophically the enactment of the DV Act

23 is to protect women or a house wife from violence, juridically DV is a violation of human rights and crimes against the dignity of humanity and a form of discrimination that must be removed, and sociologically due to the high level cases of DV, low sanction giving rise to injustice to the victims, particularly the wife. Meanwhile the legal system of Indonesia has not yet guaranteed the protection of DV victims (Rodliyah, 2017).

The DV Act 23, 2004 gives authority to the Social Ministry, Health Ministry, Police, Prosecutor's Office, Court and Social Organizations prevent violence. Problems to answer in this review are how the women victims in Banjarmasin empower themselves against the violence in their household, and how the victims' perception against the existence of Indonesia DV Act 23, 2004.

## 2 DISCUSSION

### 2.1 Victims' Empowerment

High experience to the existence of legislation may protect the victims such as making reports and official complaints to the authorities such as Police, the Office of Religious Affairs, Social Welfare Department, or the Syariah Court. These are the best ways to prevent continuous violence. On the other hand the negative and weak ways the victims are by keeping themselves survived and silent when hit by the perpetrator (Sari, 2018).

Based on the research, the ways the victims empowered themselves depend very much on the level of education and knowledge against the existence of solution and related legislation. The ways the victims used are to: keep silence (avoid violence worse); fight and defend themselves; run away leaving the perpetrator; complain to the families or friends; complain and report to the NGO; complain and report to the authorities such as the police, the Office of Religious Affairs, Social Welfare Department or Syariah Court. The effects of the empowerment were obtained from the the interviews with the victims. However there was the possibility that the victims used one or more ways of empowerment in the same time in addressing the problems of DV. The victims conducted these ways in accordance with the current needs of violence.

Most of the victims reported the case to the authorities officially and on the other hand there were some who reported the incident to the cluster support unofficially to simply get the views that needed to be, while others did not report at all. There were various reasons why victims refused formally to report and prefer to get support from informal cluster like friends and members of family. The reasons obtained are that the victims: (1) did not want to prolong the problem for fear of embarrassment and give rise to adverse effects on the family (Scribd.com, 2018); (2) fear the perpetrator would act more violent because of the increasing rage perpetrators (3) confident his case not be resolved effectively (www.feminist.org, 2018). (4) affected by changes of the perpetrators' attitude after going through of "honeymoon" with the hope that their husbands turn out to be good (Nazirah, 2004). (5) claimed the mistakes come from their own (self-blaming).

The research also showed that family and neighbourhood gave responds either:

1. A positive response by giving moral support, advice appropriate to meet the needs of the victims to divorce the perpetrator.
2. A negative response with ignorance of the victims against violence by the reason for not interfere with "privacy" of the victim family
3. In addition, there are families and neighbors who do not give respond in the cause of not aware of the occurrence of violence.

Meanwhile, from the experts the research obtained:

1. The community needed to educate how to save evidence relevant for the purposes of legal action when necessary. In many cases of household violence, the absence of evidence (such as medical reports, police reports, records of incidents and the like) may cause difficulty in an effort to bring the case to court when the needs arise.
2. The Center might channel cases to departments and public agencies to take immediate action. The victims were assisted to make official complaints and investigation begin as soon as the cases were reported to the authorities. If it was in need of protection, the authorities by doing specific procedures had to obtain a court order for the temporary protection of the victim.
3. For cases which required the services of those who supported from Non-Governmental Bodies, Legal Aid Bureau, Complaint Center might help to get a panel of lawyers who were suitable to begin the case if necessary or provided services for the purpose of conciliation or settlement of the case outside of the court.

The research showed that there were more inclination families and neighbourhoods to not interfere with family matters involving household violence. Conservative attitudes and understanding of violence problem in the household showed that the need for the advocacy and efforts to raise awareness among society about rights that might not be interrupted with the availability of treatment crime in their home environment (Trudy, 2018).

### 2.2 Victims' Obstacles to Obtain Rights and Interests

Women are facing a lot of obstacles in the fight for their rights and interests to rise again after experiencing in domestic violence. The causes are such gender discrimination, creed problem of violence as a personal that has to resolve by himself, and in an effort to get help and support in particular legal services. Not all victims are easy to obtain

these services. A large amount of money need to be issued to settle the case. On the other hand, in the case alike, it is clear the spouse became "victims" with the costs of legal services should have been borne by the perpetrator and not the victims.

Many ways how victims may be supported morally and economically in the their uphold justice. Some are:

1. Provide legal services in preparation.
2. Support documents and information.
3. Provide places of protection to find the safety of themselves and their children.
4. Victims fund is established by the Government to ease financial casualties including legal services fund.

Based on the research, once after complaints were accepted, most of the victims were interviewed to find information about their cases and the referred to the Social Welfare Department. The victims and the perpetrators through the process of counseling, were trying to return to a truce. However, in extreme cases where good relations were not refundable, the parties should find a way to handle the case and suggested the case be settled by legislation. Responsible officer should refer to the legislation for assistance in getting legal services especially for the victims who were not fortunate. Commonly Social Welfare Officers and Police will help to get the Temporary Protection Order. However, legal assistance through Legal Aid Bureau should also be simplified, especially for those who were qualified to manage cases until completed.

### 2.3 DV Act 23, 2004 Enforcement

DV Act 23, 2004 highly depends on other legislation to function in providing protection and prevention of violence in the household. The other legislations backed up to ensure implementation and enforcement of the DV Act include;

1. Criminal Procedure (KUHP)
2. Criminal Code (KUHP)
3. Child Protection Act 35, 2014
4. Police Act, 2/2002

The research showed that the DV Act 35, 2004 was based on other legal enforcement efforts, this made the Act too dependent on other legislations to be successful in the enforcement. Technically violence in household is a specific crime and it has specific legislation for the purpose of implementation. In the principle of the adoption of legislation (Erez, 2007), the specific act overrode the general Act, in the context of the implementation of the DV Act in Indonesia. In principle and technical

application of the legislation, this was a lack of complete and beautiful legal but could not enforce the law solely. This gave rise to the situation that some author or legal experts said as "toothless tigers" by the reason to enforce this legislation need enforcement support such as Penal Code (KUHP) and Criminal Procedure (KUHP).

### 2.4 Domestic Violence: Public Criminal, Not Personal Problem

Violence in households is often considered as personal problem instead of legal problem due to assumption of marital relations that legalizes any act of family members, especially husbands against wives. This may cause that the personal right does not arise particularly when husband is considered as a decision-maker. Therefore, wives have obligation to comply with the decisions. In terms of violence in households mainly comprising wives as victims, misunderstand of cultures and religions has caused violence was not brought to court.

Based on the research, women especially wives in households felt stigma in dealing with problems of violence because of the dilemma situation to deal with the community. With that understanding, the applicable duty of reporting violence in the household was ignored by the victim based on various reasons such as assuming that the victims had the right not to report in the cause of no legal provisions specifically requiring the victims to report the case. On the other hand it should be carefully studied that violent behaviour was recognized as a form of crime. Thus, any crime committed put responsibility to the public prosecutor (Government representatives) to prosecute the perpetrator, as a way of prevention of these criminal acts. It is clear, violence in the household was deemed to threaten the well-being of the community, rather than the personal impact to the victim.

### 2.5 Victims' Awareness of DV Act Importance

Most of victims are not aware of the importance of legislation concerning the prevention of domestic violence. Superficial legal knowledge among the community is not aliened, what else about the importance and implications of the adoption of specific legislation such as Indonesia DV Act 23, 2004, as other legislation that play roles to:

1. Manage public order and security in social life;
2. Resolve conflicts in the community;
3. Protect lives and property in the community;

4. Maintain the structure of civilization in a society, and
5. Protect fundamental freedoms as set by the constitution of a country (www.paralegal.laws.com, 2018).

Lack of knowledge and awareness on the importance and role of law may cause community have choice in determining their behaviour. In fact, human life has been structured by law in the course of their everyday lives. The level of education may become the cause of why the communities and the victims do not see the problems of domestic violence. No weakness of the victim to report the violence is highly close to them. The level of victim's education influenced the victims in taking action to prevent domestic violence.

Today's legislation has at least eight major functions. Among them are to:

1. Maintain peace.
2. Influence and enforce standards of conduct.
3. Facilitate changes on a regular basis.
4. Allow maximum self-needs.
5. Oversee planning and meet reasonable expectations,
6. Enhance social justice, and
7. Provide mechanism for principles and solution (The Function of Law, 2018).

Based on the research, the victims of domestic violence in Banjarmasin viewed that DV is a crime against human dignity, and agreed to the existence of Indonesia DV Act 23, 2004 with a view to protect women and members of the family in a household. Deeper understanding of legal provisions has made it easier for more socialization, application, and implementation of prevention against acts of violence in the household.

### 3 CONCLUSIONS

Many ways the women victims in Banjarmasin empowered themselves against the violence in their household such as to keep silence, fight and defend themselves; run away leaving the perpetrator; complain to the families or friends; complain and report to the NGO; complain and report to the authorities such as the police, the Office of Religious Affairs, Social Welfare Department or Syariah Court. Most of women victims are not aware of the legislation importance in relation with the prevention of violence in household. But in contrary, women victims of DV in Banjarmasin agreed to

Indonesia DV Act 23, 2014 with a view to protect women and members of family in the household. The victims viewed that DV is a crime against human dignity.

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