

Efforts to Protect Victims of Domestic Violence in Divorce Cases in Court

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ABSTRACT: The number of domestic violence cases continues to increase every year. The majority of the victims of violence are women. The purpose of this study is to determine the protection in the form of fulfilling the rights of domestic violence victims in divorce cases to achieve justice, certainty, and utility. This research uses a qualitative method by employing normative research that examines primary, secondary, and tertiary legal materials and utilizes descriptive analysis. The theory used is the theory of legal objectives, namely justice, certainty, and utility. This study analyzes efforts to protect victims by the domestic violence eradication law. Based on the results of this research, efforts in the divorce process include filing for protection and fulfilling rights, and the implementation of fulfilling the rights of domestic violence victims after divorce is not oriented towards legal certainty and utility as stipulated by the law. This includes requesting counseling services and an order for the husband to leave the shared residence until a legally binding decision is made. Additionally, the husband should continue providing financial support for the wife and children during the examination of the case.

Keywords: protection efforts, domestic violence, divorce

INTRODUCTION

Domestic violence has continued to increase over the past five years annually as of 2024, with 1,993 cases reported, comprising 427 males and 1,719 females. In 2023, there were 29,883 cases reported, including 6,332 males and 26,161 females. In 2022, there were 27,593 cases reported, with 4,630 males and 25,053 females. In 2021, there were 25,210 cases reported, with 5,376 males and 21,753 females. And in 2020, there were 20,499 cases reported, including 4,396 males and 17,574 females (Kemenpppa, 2020). Based on data from the Ministry of Women's

Empowerment and Child Protection, it is shown that the majority of domestic violence victims are women. The increase in domestic violence victims is also indicated by data from the Supreme Court, which shows a 10.9% increase in divorce filings in 2022 compared to 2021. This indicates a significant hope for domestic violence victims to be freed from the violence they experience by seeking justice through religious courts (Wantu & Sarson, 2020).

Law Number 23 of 2004 Concerning the Elimination of Domestic Violence and Law Number 35 of 2014 Concerning Child Protection serve as

formal and material legal foundations for domestic violence. Based on these laws, the fulfillment of the rights of violence victims can be used as a reference to achieve legal objectives, namely justice, certainty, and utility (Yustisianto et al., 2022). Efforts to protect violence victims can take the form of victims knowing the position of the case disclosure they are facing through various judicial systems; the right to justice in deterring perpetrators; and the right to recovery, which requires the state to build systems and mechanisms to protect victims to recover as they were before (Musawwamah, 2022).

In practice, although domestic violence continues to rise, many cases go unreported due to victims' fears of not receiving optimal protection, whereas the state should be responsible for fulfilling victims' rights to truth, justice, and recovery (Sumanto et al., 2021). To achieve protection against domestic violence, the law should refer to Law Number 23 of 2004 Concerning the Elimination of Domestic Violence and Law Number 35 of 2014 Concerning Child Protection in divorce cases on the grounds of domestic violence (Alfitri, 2020). Such efforts include ensuring that divorce judgments in religious courts and district courts adhere to the basic principle that judges must explore, follow, and understand the legal values and sense of justice prevailing in society. When adjudicating divorce cases, judges must act within their jurisdiction (Fauzan, 2005).

Based on the background provided, the author is interested in conducting further research to determine the extent to which the law provides protection for domestic

violence victims in divorce cases in fulfilling the rights of victims regulated by Law Number 23 of 2004 Concerning the Elimination of Domestic Violence and Law Number 35 of 2014 Concerning Child Protection, with the title "Efforts to Protect Domestic Violence in Divorce Cases in Court".

Based on this research background, the author formulates the research questions as follows: How are efforts to protect domestic violence victims during the divorce process and in court rulings formulated? And how is the implementation of fulfilling the rights of domestic violence victims after divorce? The aim and significance of this research are to further explore the extent to which the rights of domestic violence victims are fulfilled in divorce cases in court and the significance for legal practitioners to provide input in the preparation and formulation of a circular from the Supreme Court regulating the fulfillment of the rights of domestic violence victims according to Law Number 23 of 2004 Concerning the Elimination of Domestic Violence in court.

RESEARCH METHODOLOGY

The research method employed by the author is qualitative, utilizing a normative approach with doctrinal legal analysis, utilizing library resources or secondary data. Data in normative legal research is referred to as Legal Materials. The primary legal material used is documentation of rulings analyzed for divorce cases due to domestic violence. The secondary legal materials utilized include Law Number 1 of 1974 concerning Marriage, Law Number 23 of 2004 concerning the Elimination of Domestic Violence, and Law Number 35 of 2014 concerning Child Protection. The

data collection tools used in this research are as follows: Interviews and Library Research. After data collection, data analysis in this research is conducted through descriptive analysis by outlining systematically to answer the formulated problems.

RESULT AND DISCUSSION

Violence that occurs within the household encompasses various forms as regulated in Law Number 23 of 2004 concerning the Elimination of Domestic Violence. Acts of violence can be distinguished in several aspects: physical violence experienced by victims often resulting in injuries or even loss of life (Article 6); violence may not leave physical marks but its psychological and social implications are profound; sexual violence involves forcing sexual relations upon individuals residing within the household environment or upon someone within the scope of their household with others for commercial and/or specific purposes (Article 8), sexual violence is no longer defined as a moral crime but rather interpreted as violence that threatens an individual's bodily integrity; psychological violence entails actions resulting in fear, loss of self-confidence and ability to act, helplessness, and/or severe psychological suffering in an individual (Article 7); economic violence or household neglect as actions resulting in economic dependence by limiting or prohibiting suitable work either inside or outside the home, thereby placing the victim under the control of the perpetrator (Article 9 Paragraph 2).

The crime of violence is expressed by Soedjono Soekanto as a term used for physical and

psychological injuries. Violent crimes are part of a violence process that is sometimes allowed, hence rarely referred to as violence. Society usually categorizes certain behaviors as harsh or not. The less violence occurs in a society, the greater the concern happens (Santoso, 1985).

Cases of domestic violence often go unreported, as victims fear exposing a disgrace that would embarrass their families, leading to difficulties in obtaining support and assistance from the social fabric of society. Public stigma blaming the victim, limited legal knowledge, and contradictory legal frameworks are inhibiting factors, creating an imbalance in relations between men and women both in the household and in public settings; economic dependence of wives on husbands places them under the husband's control; society's tendency to overlook domestic violence; the belief that women should yield, endure, and keep family secrets is seen as an ideal family form. Constructive laws and policies also require stronger support in the form of derivative rules and more robust infrastructure to benefit victims (Tomlinson et al., 2021).

Similarly, concerns about the divorce process are felt by victims when questioned about reasons for filing lawsuits in court; victims sometimes fear revealing domestic violence as the cause of divorce because they receive threats from perpetrators not to disclose the violence they have experienced. However, if this is revealed in court, victims receive assistance and there are criminal implications for perpetrators post-divorce (Dzuhayatin et al., 2013).

Efforts to Protect Victims of Domestic Violence in Divorce Cases involve when the wife becomes a victim of domestic violence, she is entitled to protection from family members, the police, the prosecutor's office, the court, lawyers, social institutions, health institutions, and others. Special handling is seen based on the needs of the victim and the victim's assistance by social parties or legal aid and spiritual guidance services. Policies for protecting wives and children who are victims of domestic violence aim to provide security guarantees in the form of protection in the trial process and facilities for infrastructure to provide protection and create a conducive situation in the form of counseling rooms, lactation rooms, child-friendly spaces, and waiting rooms accompanied by lawyers and court security officers by Law Number 23 of 2004 concerning the Elimination of Domestic Violence Chapter IV Article 10. Other efforts may include protection in the form of health services according to Articles 21 and 22 where social workers will provide services to victims and are required to conduct counseling to strengthen and provide a sense of security for the victim and provide information about the rights of victims to receive protection.

It is necessary to review the articles in Law Number 23 of 2004 concerning the Elimination of Domestic Violence containing criminal complaints. Thus, domestic violence actions also become the responsibility of society and the government (Munifah, 2020). This is because victims who file lawsuits on the grounds of domestic violence, the author analyzes

that the victims should receive protection in the form of assistance according to Article 10 and health services in the form of counseling according to Articles 21 and 22. The Court should provide a legal advocacy team to victims who have been traumatized, as proven, but in practice, the victims have not yet received this legal advocacy team; therefore, the victims have not obtained legal certainty. Judges cannot enforce the provisions of Law Number 23 of 2004 concerning the Elimination of Domestic Violence if there is no lawsuit from the victim because the judge is bound by the principle of *ultra petita partium*. What is stated in the lawsuit is what is judged; if the judge in his decision violates or deviates from what is stated in the lawsuit, in principle, the judge should not be *ultra petita partium*. The judge may decide beyond the *petitum* but must be closely related to the substance of the case in the *petitum*, the plaintiff did not include punishment. In examining the matter added by the judge, it is closely related to the substance of the case (Yasardin, 2024).

Currently, there is assistance available, but it is limited to the divorce process only, without receiving protection from relevant agencies such as the Department of Social Affairs and the Ministry of Women's Empowerment and Child Protection. Assistance is expected to provide information regarding the rights of victims of domestic violence, such as filing lawsuits to request accompaniment during trial processes and protection according to Article 30 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence.

Requests for counseling for the psychological recovery of violence victims, therefore, the author analyzes that judges *ex-officio* may summon doctors or psychiatrists from the Department of Social Affairs or in collaboration with other institutions. Requests for a decree for the husband to leave the marital home until there is a legally binding decision; and the husband continues to provide maintenance costs during the case examination process to the wife and children according to Law Number 1 of 1974 Article 41 letter c jo. Compilation of Islamic Law Article 149.

The lawsuit requests for maintenance, *iddah*, and *mut'ah* according to Supreme Court Regulation Number 3 of 2017 concerning guidelines for adjudicating cases of Women Facing the Law, and the lawsuit in the amount of *mut'ah* for victims of domestic violence must consider the sense of justice and the need for physical and psychological recovery through a cumulative process with divorce lawsuits. The legal construction of the lawsuit is in the *positum* stating the evidence of domestic violence committed by the husband and in the *petitum* requesting the husband to be sentenced to counseling. With such legal construction, the Panel of Judges will examine the grounds for the lawsuit through valid evidence according to the law, so the Panel of Judges can grant the *petitum* by issuing a verdict that sentences the husband to attend counseling. Evidence of domestic violence in the context of divorce does not necessarily require a forensic examination, but rather sufficient with witness testimony and photos of

bruised or bruised body parts due to domestic violence (Bahri, 2020).

Looking at the jurisprudence of the Supreme Court, granting more than demanded, deciding only on part of all that is submitted, or deciding on matters not demanded as long as there is a connection and does not violate Article 178 Paragraph 3 of the Indonesian Civil Code, so judges can use *ex-officio* in providing protection and fulfilling the rights of victims to achieve justice. Judges see the law as the legal basis for divorce on the grounds of domestic violence, but protection in the trial process and its verdicts have not yet provided security personnel and fulfilled the rights of violence victims.

In handling divorces due to domestic violence, the meaning of justice for women must be based on women's experiences as victims of gender inequality because the fulfillment of justice fundamentally must show partiality towards the victims. Social constructions that guarantee gender justice are expected to emerge as the basis for redefining legal systems, cultural norms, regulations, and policies, including religious understanding known as *fiqh* (Kodir & Mukarnawati, 2013). The inclusion of victims' rights not only considers the victim's elements but also other aspects experienced by each victim, listening to the victims' voices is an important part of the recovery from the challenges posed by perpetrators that are not always borne by the victims. The author analyzes that the realization of law enforcement ensuring legal certainty is the hope of all justice seekers, the fulfillment of protection for victims should be applied because its

substance already exists, then the judge ex-officio in deciding divorce cases on the grounds of domestic violence can provide protection in the verdict to restore the victims as before by punishing the perpetrator to be responsible for physical and psychological recovery regulated in Law Number 23 of 2004 Concerning the Elimination of Domestic Violence but still within its competency limits.

Children who are neglected due to divorce have the right to receive protection according to Article 13 letter c and Article 41 letter c of the Compilation of Islamic Law regulating the cost of children's living expenses borne by their father, then the judge can determine the amount of maintenance by considering the costs of the child's recovery as victims of physical or psychological violence. Ahmad Kamil reveals that child protection is efforts to maintain, guarantee, or safeguard possibilities that may bring harm to children (Analysis, 2019). According to Huraerah, violence against children in the family can take the form of emotional or verbal abuse, physical abuse, sexual abuse, and neglect. Child protection encompasses all activities aimed at ensuring the safety, protection, and rights of children so that they can grow, develop, and participate optimally according to their dignity and human dignity, as well as being protected from violence and discrimination. Special protection for children who are victims, as regulated in Law Number 35 of 2014 Concerning Child Protection, ensures that children who are victims of domestic violence experience both psychological and physical trauma and receive recovery.

CONCLUSION

The efforts to protect victims of domestic violence during divorce proceedings in court involve requesting protection during the trial process and the provision of facilities and infrastructure to create a conducive situation. This includes requesting counseling services and an order for the husband to leave the shared residence until a legally binding decision is made. Additionally, the husband should continue providing financial support for the wife and children during the examination of the case. However, the implementation of fulfilling the rights of domestic violence victims post-divorce is not oriented towards legal certainty and utility because judges are hesitant to make decisions due to being bound by the principle of *ultra petita partium*. Their rulings are limited to the claims of the plaintiff, whereas judges should use Law Number 23 of 2004 concerning the Elimination of Domestic Violence and Law Number 35 of 2014 concerning Child Protection. This includes the husband providing financial support for the recovery of the wife and children, as well as their physical and psychological care post-divorce in religious court alimony such as *Iddah*, *Madhliyah*, and *Mut'ah*, and post-divorce, considering the amount of child support to achieve a sense of justice for victims of domestic violence.

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