



Women and Domestic Violence: Legal Protection Perspective

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Abstract

This study aims to describe the position of women in the family/household, violence against women, as well as how the protection of laws against women victims of domestic violence. This research is the juridical normative and prescriptive. In a family, woman as the wife is a member of the family besides father and son. Women have the same position with the other family members, including equality in rights and opportunities as well as the protection of rights in the field of civil, political, economic, social, cultural, and other fields. Violence against women is a violation of the rights of women in the household. The birth of the Domestic Violence Act, Number 23, the year of 2004 was the protection of women, carried out based on the principles of respect for human rights, justice, gender equality and non discrimination. Protection is based with a variety of considerations, among them is that every citizen has the right to get a sense of security and freedom from all forms of violence.

Keywords: Women; Domestic Violence; Law Protection

Abstrak

Penelitian ini bertujuan untuk mendeskripsikan kedudukan wanita dalam keluarga/rumah tangga, kekerasan terhadap wanita, serta bagaimana perlindungan hukum terhadap wanita korban kekerasan dalam rumah tangga. Jenis penelitian ini ialah yuridis normatif, bersifat preskriptif. Dalam sebuah keluarga, wanita sebagai istri merupakan anggota keluarga selain bapak dan anak. Wanita memiliki kedudukan yang sama dengan anggota keluarga yang lain, termasuk kesamaan dalam hak dan kesempatan serta perlindungan hak di bidang sipil, politik, ekonomi, sosial, budaya, serta bidang-bidang lainnya. Kekerasan terhadap wanita merupakan pelanggaran hak kaum wanita dalam rumah tangga. Lahirnya Undang-Undang PKDRT No. 23 Tahun 2004 merupakan perlindungan terhadap kaum wanita, dilaksanakan berdasarkan asas penghormatan hak asasi manusia, keadilan, kesetaraan gender, dan non diskriminasi. Perlindungan dilandasi dengan berbagai pertimbangan, antara lain bahwa setiap warga negara berhak mendapatkan rasa aman dan bebas dari segala bentuk kekerasan.

Kata Kunci: Wanita; Kekerasan Rumah Tangga; Perlindungan Hukum

A. INTRODUCTION

Marriage in its nature is a spiritual birth bond between a man and a woman with the intention of forming happy families and remaining upon the divinity of God the Almighty. Article 1 of the Indonesia Act of Marriage, 1974 (UU No. 1, 1974) stated, "Perkawinan ialah ikatan lahir bathin antara seorang pria dengan seorang wanita sebagai suami

isteri dengan tujuan membentuk keluarga (rumah tangga) yang bahagia dan kekal berdasarkan Ketuhanan Yang Mahaesa." The divine nature of the marriage, in addition is as a social institution which gives rise to obligations and rights of husband and wife,¹ and gives rise to reciprocal legal relationship of each party.² The obligations set forth in UU No. 1 1974 article 30 as stated, "*Suami isteri memikul kewajiban yang luhur untuk menegakkan rumah tangga yang menjadi sendi dasar dari susunan masyarakat.*" Also in article 33 as stated, "*Jika suami atau isteri melalaikan kewajibannya masing-masing dapat mengajukan gugatan kepada Pengadilan.*" Whereas the rights listed in article 34 paragraph (3) as stated, "*Jika suami atau isteri melalaikan kewajibannya masing-masing dapat mengajukan gugatan kepada Pengadilan.*" While in the context of protection of women as a wife by a husband, it is stated in article 34 paragraph (1) as stated, "*Suami wajib melindungi isterinya dan memberikan segala sesuatu keperluan hidup berumah tangga sesuai dengan kemampuannya.*"

The creation of women with men in the same position and complement each other. In the case of the presence of similarities, then the rights to be treated humanely inherent in women the same one attached to the male. Therefore it is not true to discredit women in various domains including in the realm of the household. Women are vulnerable to violence, caused insecurity in the enforcement of the law. Cases of violence only in a small percentage are revealed, though many cases violence actually occurs. The cause is that the victims are reluctant to report circumstances that affect them to the appropriate authorities. In the year 2017, based on the Indonesian Women Commission report, cases of violence against women during the year 2016 reach 259,150. The data are obtained from the Islamic Courts (358 cases), and from (13,602 cases) partners' service institutions 233 scattered in 34 provinces.³ Meanwhile the Detiknews provides reports of cases of violence against women during the year of 2017 of 348, 446

¹ Ahmad Tholbi Kharlie. (2013). *Hukum Keluarga Indonesia*. Jakarta: Sinar Grafika, p. 248.

² Rosnidar Sembiring. (2016). *Hukum Keluarga*. Jakarta: Rajawali Pers, p. 60-61.

³ Lutfy Mairizal Putra, (2016), *ada 259.150 Kasus Kekerasan Terhadap Perempuan*, <https://nasional.kompas.com/read/2017/03/07/19240821/2016.ada.259.150.kasus.kekerasan.terhadap.perempuan> (20 June 2018)

cases, obtained from several related agencies. The case of the most high is domestic violence, they are 335, 062 cases.⁴

B. METHOD OF THE RESEARCH

This is a normative legal research, that is is primarily used to investigate the function of norms which lay the law as an instrument of regulating and controlling society. The used legal materials are primary, secondary and tertiary. The collection of the metrials are due to the study of literature. This research is meant to examine the legislation of Indonesia Domestic Violence Act 23, the year of 2004 (*UU PKDRT 23, 2004*) as well as a variety of other libraries that are relevant to the object of research. The analysis are qualitative diskriptive, analyzing the issues around women, domestic violence and the protection of the law.

C. DISCUSSION

1. Women

In social life and family there is the division of tasks between men and women. Talcott Persons and Bales⁵ states that the family is a social unit which shows the difference between the roles of the husband and wife in order to be one with the others complement and help each other. The harmony of life will only be obtained if there is a difference of the role and task match between men with women.

The construction of gender in society has been formed over the centuries so that it formed a culture passed down orally and continuously from one generation to the next. The social system keeping the system patriarki increases the risk of violence against women.⁶ This is caused by the influence of the power structure in the household that puts men at higher status rather than women. The position of the weak woman has been the subject of an easily agitated and carried out violence against them. Therefore, the

⁴ Eva Fitria. *Kekerasan pada Perempuan Selama 2017 Didominasi KDRT dan Pelecehan*, Detiknews, (20 June 2018).

⁵ http://id.wikipedia.org/wiki/Teori_struktural_fungsional, (20 June 2018)

⁶ Rika Saraswati. (2006). *Perempuan dan Penyelesaian Kekerasan dalam Rumah Tangga*. Bandung: PT Citra Aditya Bakti, p. 15.

men that are more dominant and always dominate, molest, exploit and take opportunities to disrupt or persecute them.

In line with the philosophy of ancient Greece, nature is conceptualized in twins of cosmic conflict, such as, noon-night, good-bad, limited-free, wet-dry, single-double, bright-dark, sense-juice, soul-physic, men-women and so on. This means that there are two things always in the opposite position of symmetry and not balanced. In this case, there is a group considering that the existence of men has positive sense and a group considering that the existence of women has negative sense.⁷

Plato stated that women have low and cowardly soul. Although Plato put women in a low position, yet he still considered that women also have advantages compared to men. Plato's opinion was supported by Aristotle assuming that in equality among men is a natural thing, and that the strong should dominate the weak. According to Aristotle, men and women both have twin position requiring the existence of dominance of one party against the other party; such as soul dominates the body, intellectuality dominates feelings, man dominates woman and so on. The woman is considered as an odd, deviated from a prototype generic human, emotional and passive. Both men are considered to have active and accomplished mind, therefore women are considered lower than males.⁸

The feminists in the Marxist's doctrine of the modern theory⁹ mainly stated that if the source of income of women is weak, then the woman becomes more dependent upon males. Liberal feminism¹⁰ to believe that male dominance against women begins from the irrational prejudices. Therefore it can be solved with a rational debate. In addition, it can also be resolved if there is a social climate causing a society motivated to give support to the changes of social culture.¹¹ Husband-wife relationship in the context of domestic violence, the doctrine which states that a married woman has become the

⁷ Umi Sumbulah. (2008). *Spektrum Gendar*. Malang: UIN, p. 27.

⁸ *Ibid.*, p. 28.

⁹ Maggie Humm. (2002). *Ensiklopedia Feminisme*, terj. Mundi Rahayu. Yogyakarta: Fajar Pustaka Baru, p. 100.

¹⁰ *Ibid.*, p. 17.

¹¹ Ihromi. (2002). "Hukum, Jender, dan Diskriminasi terhadap Wanita". *Jurnal Legality*, Vol. 9, No. 2, p. 267.

right of husband, and also as aspects influencing domestic violence. The dominance of the husband towards the wife is very high that the interests of the wife is strongly determined by husband.¹²

Meanwhile, socio-cultural changes due to the construction of the new perception has given rise to the position of women, including women in the context of households or wives. These changes have been shifting old perceptions regarding the position of women, either by way of replacing, transforming, or adding other newest things so that bearing the current perception of the position of women. Women now with all those advantages have been able to change the negative view long attached or labelled to themselves, such as the woman is weak, male's sexual satisfaction, etc. They are in various fields have now been demonstrated their abilities, as well as having the same social degree as man's.

2. Violence

Violence is an attack treatment physically and psychologically against one's honorary with the intention. The intention to injure, to insult the dignity, to surprise are an important issues that determine whether they are intentional or not. The World Health Organisation (WHO) states, the violence that was done on purpose is the use of power or physical violence, to squeeze or really do violence against groups or communities so that can cause damage, psychological impact, death, development resistance, and abandonment.¹³

Domestic violence is defined as the persecution of the husband towards the wife because of the domestic violence victims more experienced by wives than husbands. Other interpretations, including the persecution carried out by a person of family

¹² M. Abdul Kholiq, Ari Wibowo. (2016). "Penerapan Teori Tujuan Pemidanaan dalam Perkara Kekerasan terhadap Perempuan: Studi Putusan Hakim". *Jurnal Hukum IUS QUIA IUSTUM*, Vol. 23 Nomor 2, p. 187

¹³ *Keganasan*, (2008), <http://www.infosihat.gov.my/penyakit/Dewasa/Keganasan.pdf>, (20 June 2018).

members against family members, including wives, ex-wives, husbands, former husbands, parents, as well as violation against children and rape.¹⁴

Domestic violence is defined as any act against a person especially females, resulting in the incidence of misery or suffering physically, sexually, psychologically, and/or neglecting household including threats to doing the deed, coercion, or deprivation of freedom are against the law in the sphere of the household.¹⁵ The perpetrators of violence are not limited to age, education, religion, socioeconomic status, tribe, the state of psychopathology or from various backgrounds.¹⁶

In Islam violence as an act of crime against human being whether or not in the intentional deeds as stated in Surah Al-Maidah verse (45), "*Dan kami telah tetapkan terhadap mereka di dalamnya (At-Taurat) bahwasanya jiwa dibalas dengan jiwa, mata dengan mata, hidung dengan hidung, telinga dengan telinga, gigi dengan gigi, dan luka dengan luka (pun) ada qiyasnya. Barang siapa yang melepaskan (hak qisas)nya, maka melepaskan hak itu (menjadi) penebus dosa baginya. Barang siapa tidak memutuskan perkara menurut apa yang diturunkan Allah, maka mereka itu adalah orang-orang yang zalim.*"¹⁷ This verse confirms that sanctions for the perpetrators of the crimes are comparable to his actions, although there are no sanctioned capacity, but there should be a requirement i.e. the victim gives his forgiving to the perpetrator.¹⁸ Samilar to the Islamic view, in the juridical view the violence against women is considered as an act of a crime. Hence the rise of violence around the world caused the resurrection of the world community to oppose the violence overall using more proactive approach in addressing those problems.

Many states recognize that violence against women is one of the acts that violates human rights. Some resolutions and conventions have been produced to oppose all forms of oppression of women. One of the important declarations such as Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) which

¹⁴ Jal Zabdi Mohd Yusoff. (2004). *Jenayah Keganasan Rumah Tangga*. Kuala Lumpur: Universiti Malaya, p. 5.

¹⁵ Undang-Undang PKDRT Nomor 23 Tahun 2004 Section 1 ayat (1)

¹⁶ The Family Violence Prevention Foundation of Australia. (2009). *An Evaluation of Interventions with Domestic Violence Perpetrators*. Australia: Malbourne University, August.

¹⁷ Al-Kamil. (2016). *Al-Qur'an dan Terjemahannya Disertai Tema Penjelas Kandungan Ayat*, Cet. ke 10. Jakarta: CV Darus Sunnah, p. 116.

¹⁸ Zainuddin Ali. (2007). *Hukum Pidana Islam*, Cet I. Jakarta: Sinar Grafika, p. 35.

defines violence against women as any act of gender-based violence both in the realm of public or private result in injury victims physically, sexually or psychologically including threats of such acts, occurred in public or in private life, as stated “*Any act of gender based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary, deprivation of liberty, whether occurring in public or in private life.*”

3. Legal Protection

Domestic violence is a very serious crime that must be dealt with seriously. This may lead to the impression that the existing law is considered have yet to actually provide adequate protection against the victim, or it can even be said that law enforcement have failed in ensuring certainty, maintaining a sense of community justice that expect fair enforcement. In addition it is the failure to get the benefit of the law for the sake of organizing social life of the community.¹⁹ The increase of violence against women in the household may give you an idea of the condistions of the applicable law in a country, due to the prevailing regulations lost in the implementation as well as having various weaknesses causes the offender easily avoid punishment. As a result, the expected justice failed to achieve.

The patriarchis legislation may suppress or discriminate more women than men in the cause of more interst to the woman that makes easy for the men do the persecution and injustice. In contrast, gender-sensitive legislation can reduce gender bias that may give justice to women. Therefore, the legislation that does not provide protection and prevention against victims of domestic violence may lead to a lack of public confidence in the system of legislation in force in a country.

Many countries in the world have been creating and enacting legislation relating to violence against women that is triggered by an increase in cases of violence, not the existence of a form of protection for the victims of violence, as well as the existence of thought to punish the perpetrator through law.

¹⁹ Siswanto Sunarso. (2012). *Vitimologi dalam Sistem Peradilan Pidana*. Jakarta: Sinar Grafika, p. 83

The Declaration of the Elimination of All Forms of Violence against Women (UNO 1993), has set this violence as a form of crime, and generally it is because of the discrimination between the position of the offender with the victim. It is also said, this violence as any action that leads to misery or suffering women either physically, sexually or psychologically, including threat, coercion or deprivation of freedom arbitrarily either in public, private or personal life environment.²⁰

To prevent domestic violence, the Government of Indonesia has been carrying out prevention efforts, protection and perpetrators' act by enacting legislation of domestic violence imbued on State Philosophy of Indonesia "PANCASILA", and the Indonesia Constitution of 1945 (UUD 1945).²¹ The UUD 1945 stated, "*Setiap orang berhak atas perlindungan diri pribadi, keluarga, kehormatan, martabat, dan harta benda yang di bawah kekuasaannya, serta berhak atas rasa aman dan perlindungan dari ancaman ketakutan untuk berbuat atau tidak berbuat sesuatu yang merupakan hak asasi.*".

The various forms of domestic violence is regarded as offences of the principles of human right, crimes against human dignity, and discrimination. It shows that violence is realistic that needs to have an adequate legislation to prevent crime. This condition has forced Indonesia Government to enact a special legislation of domestic violence, namely *UU PKDRT, 23 2004*.

The establishment of the domestic violence is an existence of Indonesia reaction towards the large number of cases of domestic violence, in which the woman mostly become the victims. Previously, the Government had ratified the CEDAW based on Indonesia Legislation, number 7 the year of 1984.

The legalization of *PKDRT 23, 2004* is the momentum of history to the people of Indonesia, especially for women and groups of people who have had the awareness of the problem of violence against women. The establishment of this legislation has formed part of the enforcement of human rights and democracy, by the reason that every citizen has the right to get a sense of security and freedom from all forms of violence. Therefore,

²⁰ Kekerasan terhadap Perempuan. (2007). *www.kesrepro.info/?q=node/278* - Cached-Similar. (20 June 2018).

²¹ Mohammad Taufik Makarao, et al. (2013). *Hukum Perlindungan Anak dan Penghapusan Kekerasan dalam Rumah Tangga*. Jakarta: Rineka Cipta, p. 175.

everyone has the right to obtain formal protection, freedom without discrimination.²² Thus it may be said that any form of violence especially domestic violence is a violation of human rights.

The importance of *UU PKDRT 23, 2004* is based on the experiences of the women victims of violence. Legal and social systems that exist do not provide sufficient protection and service on the victims. Formulations in statutory rules are also a still discriminative and ineffective in providing access to law and justice, and this is a stand for women.

Before the legislation of *PKDRT 23, 2004*, Indonesia already has criminal law called *Kitab Undang-Undang Hukum Pidana (KUHP)* and criminal procedure called *Kitab Undang-Undang Hukum Acara Pidana (KUHAP)*. But in the formula or basis and norm strictly contain discrimination against women. The status of women is regarded as things that are not important to be formulated in the legislation. The example is in article 285 of *KUHP* as stated, "*Barang siapa dengan kekerasan atau ancaman kekerasan memaksa seorang wanita bersetubuh dengan dia di luar pernikahan diancam karena melakukan perkosaan dengan pidana penjara paling lama dua belas tahun.*"

That article implicitly demonstrates that men are strong physically, and with his power may force the woman to obey their will. But in fact this is not the case now, many women are physically stronger than men and with her strength also may force the party men keep her preferences.

There are several reasons why such things happen: (a) early on, violence against the integrity of a woman's body has been regarded as a violation of morality norm. In this issue, protection is designed for the people not for the women as victims. In *KUHP*, the crime chapter against the integrity of the body and sexuality of women be included in the crime article against decency, so that the approach is not associated with the state of the victim; (b) the rules of proof that does not acknowledge their experiences and the context of violence against women and children (c) the existence of a law enforcement bias raises stigma toward women. In any check process, effects blaming victim or victim participating, i.e. women who are allegedly victims will be asked to prove that she really

²² Pasal 3 ayat (3) Undang-Undang Nomor 39 Tahun 1999 tentang Hak Asas Manusia

will not partake in the event taking advantage; (d) the incomprehension law enforcement agencies toward the context of the violence experienced by victims as well as the existence of various factors especially the power relationship effect the law enforcement and make easy the victimss to be suspected as perpetrators of crime; (e) the rights of perpetrators or suspects that do not apply in cases of violence against women; and (f) a lot of law enforcement agencies are reluctant to use the instrument of legislation that has long existed.

Before the enactment of the legislation of *PKDRT 23, 2004*, the settlement of cases of domestic violence just is based upon the articles in *KUHP* and even used as a primary reference, although the *KUHP* is considered not yet provide enough protection and justice to women victims of violence or any article less receives and gives justice to the victims of violence,²³ in the cause of the formulation is limited and only to the scope of physical violence. While the violence may be in other forms such as emotional violence and more, and this is not regulated in the *KUHP*.

In *KUHP* violence is included in persecution, namely crimes against the body of another person (Article 351 to 358), which in detail is distinguished into five types and torture, such as: light (section 352), ordinary (Article 351), planned ordinary (Article 353), heavy persecutions (Chapter 354), and heavy with planned (Article 355). That is why not all forms of violence against women are not included in the category of violent treatment, and the other hand *KUHP* itself does not include the form of domestic violence. As a result, not all cases of violence within the household may use the clauses in *KUHP*. Forms of domestic violence are not found in *KHUP* such as marital rape, psychological violence and economic violence. Similarly, the penalties in *KUHP* does not provide enough consideration for the victims' physical suffer or psychological trauma.

Constitution mandate regarding the protection of the community particularly in the household is regulated in the *UUD 1945* which then specifically manifested in the formation of the *UU PKDRT 23, 2004*. This is the answer to the reality issues in the society regarding the large number of acts of violence in the household. Before the

²³ Neni Utami Adiningsih. *Penghapusan Kekerasan Dalam Rumah Tangga*, (2004), <http://www.suarapembaruan.com/news> (20 June 2018).

inception of legislation of the *PKDRT 23, 2004*, the problem of domestic violence is considered as the ideology of the harmonization of the family embraced by the community. So this household problem needs the protection from the State.

Women have equal rights with men (gender equality), i.e. a situation in which women and men enjoy equal status and have equal conditions in realizing fully their human rights and potential to find integrity and continuity of a household. In the development, the women victims have difficulty to find justice on the law enforcement, because of the strong view that the rough treatment of a husband to his wife is part of the private events (home affairs). As a result of the suffering of victims pose a prolonged domestic violence without protection.

The domestic violence is still a problem anyway after the promulgation of *UU PKDRT 23, 2004*. This is because the wives who experienced in domestic violence are doubtful to report their husbands to the police. The victims are worry that their husbands will be more applicable rough against them after the victims returned to their house due to the absence of legal protection from the police and or the courts. There are even some wives who become victims of domestic violence prefer holding the suffering rather than their husbands deal with the police.

Prevention of crime as well as legal protection for the victims be given by means of giving sanctions or penalties against the perpetrators of the crime. Sanctions or penalties contained in *UU PKDRT 23, 2004* are influential in maintaining the effectiveness of the legislation as a means of overbearing so that someone adhering to the norms in force. in order to achieved peace in life together. Peace has the meaning of a harmony between the order with the serenity or between the alliance with freedom as the objectives of the law, so that the law is nothing other than to achieve a harmony between the law certainty with the law equality. Moreover, *UU PKDRT 23, 2004* derives article with has one type of criminal deeds ordinary crime together with complaint crime. This is intended to facilitate the disclosure of domestic violence cases, for not only the victims should report, but also the public who view and watch the violence. In accordance with article 1 to 24 KUHAP, the notification report is delivered by someone in the cause of the rights and obligations under the act to the competent authority about the occurrence

of criminal event has or is alleged to be. The criminal provisions in UU PKDRT 23, 2004 are in article 44 as stated:

- (1) *Setiap orang yang melakukan perbuatan kekerasan fisik dalam lingkup rumah tangga sebagaimana dimaksud dalam pasal 5 huruf a dipidana dengan pidana penjara paling lama 5 (lima) tahun atau denda paling banyak Rp 15.000.000,00 (lima belas juta rupiah).*
- (2) *Dalam Hal perbuatan sebagaimana dimaksud pada ayat (1) mengakibatkan korban mendapat jatuh sakit atau luka berat, dipidana dengan pidana penjara paling lama 10 (sepuluh) tahun atau denda paling banyak Rp 30.000.000,00 (tiga puluh juta rupiah).*
- (3) *Dalam hal perbuatan sebagaimana dimaksud pada ayat (2) mengakibatkan matinya korban, dipidana dengan pidana penjara paling lama 15 (lima belas) tahun atau denda paling banyak Rp 45.000.000,00 (empat puluh lima juta rupiah).*
- (4) *Dalam hal perbuatan sebagaimana dimaksud pada ayat (1) dilakukan oleh suami terhadap istri atau sebaliknya yang tidak menimbulkan penyakit atau halangan untuk menjalankan pekerjaan jabatan atau mata pencaharian atau kegiatan sehari-hari, dipidana dengan pidana penjara paling lama 4 (empat) bulan atau denda paling banyak Rp 5.000.000,00 (lima juta rupiah).*

Section 45 stated:

- (1) *Setiap orang yang melakukan perbuatan kekerasan psikis dalam lingkup rumah tangga sebagaimana dimaksud pada Pasal 5 huruf b dipidana dengan pidana penjara paling lama 3 (tiga) tahun atau denda paling banyak Rp 9.000.000,00 (sembilan juta rupiah).*
- (2) *Dalam hal perbuatan sebagaimana dimaksud pada ayat (1) dilakukan oleh suami terhadap istri atau sebaliknya yang tidak menimbulkan penyakit atau halangan untuk menjalankan pekerjaan jabatan mata pencarian atau kegiatan sehari-hari, dipidana penjara paling lama 4 (empat) bulan atau denda paling banyak Rp 3.000.000,00 (tiga juta rupiah).*

Section 46 stated:

“Setiap orang yang melakukan perbuatan kekerasan seksual sebagaimana dimaksud pada Pasal 8 huruf a dipidana dengan pidana penjara paling lama 12 (dua belas) tahun atau denda paling banyak Rp 36.000.000,00 (tiga puluh enam juta rupiah). Pasal 46 ini berkaitan dengan Pasal 53 dari undang-undang yang sama, yang berbunyi: “Tindak pidana kekerasan seksual sebagaimana dimaksud dalam pasal 46 yang dilakukan oleh seseorang terhadap istri atau sebaliknya merupakan delik aduan.”

In addition, an extra penalty or an alternative punishment is a limitation of perpetrators' motion from the victims and the decision for the perpetrators to follow counseling program under supervision of certain institutions as it has been agreed. The UU PKDRT 23, 2004 lists the mechanisms that are based on the needs and interests of victims, such as:

1. The duty of society and the state to protect the victim;
2. The command of victim protection as well as the command of perpetrators' motion;
3. Legal assistance for victims;
4. Protection against witness
5. Alternative procedure for claims;
6. The evidentiary procedure is not difficult for the victims. The testimony of the victim may be used and reinforced by the information of the experts, so that the matter may be continued to be submitted to the prosecution.

In Islam a protection against people is included into Islam orders. Any crime is strictly prohibited in Islam and prevented. Such event solely for the benefit of human beings on this earth. Any perpetrator is sanctioned by God to prevent people in order not to do violence, and the weigh of sanctions in accordance with the magnitude of the crimes that he did. Although essentially a person permitted to live and have the right to live as long as he is not doing any form of violence. God says in surah Al-Hujarat subsection (13), *"Hai manusia! Sesungguhnya Kami menciptakan kamu dari seorang laki-laki dan seorang perempuan dan menjadikan kamu berbangsa-bangsa dan bersuku-suku supaya kamu saling kenal-mengenal. Sesungguhnya orang yang paling mulia di antara kamu di sisi Allah ialah orang yang paling taqwa di antara kamu. Sesungguhnya Allah Maha Mengetahui lagi Maha Mengenal."*²⁴

In line with the above verse, the Prophet Muhammad said, as narrated by Abu ' Isa At-Tirmidhi from Abu Hurairah, *"Pelajarilah silsilah kalian yang dengannya kalian akan menyambung tali kekeluargaan, karena menyambung tali kekeluargaan itu dapat menumbuhkan kecintaan di dalam keluarga, kekayaan dalam harta dan panjang umur."* The main idea of this hadist is that peace is the purpose of the creation of God over human good men and women to know each of them know each other, and with it anyway the family bond and peace will be realized.

²⁴ Al-Kamil, *Op.Cit.*, p. 515.

D. CLOSURE

Domestic violence is a form of crime committed by a person in one family against the other members of the family. In a narrow sense, domestic violence is only an evil husbands against wives, by the reason that women are more experienced rather than men or other family members in domestic violence.

The legislations in fact have already provided enough legal protections to the woman to avoid all forms of persecution such as *UUD 1945*, *KUHP*, *KUHAP*, *UU No 7, 1984*, *UU No. 1, 1974*, *UU No. 39, 1999*, and *UU PKDRT 23, 2004*. Criminal deeds in *UU PKDRT 23, 2004* include both general and complaint. The criminal deeds are put in article 44, 45 and 46 with alternative criminal sanctions in prison and/or in price depending on the type of crime committed, from 4 months up to the longest 15 years, or a fine, from 3,000,000.00 (three million the rupiah) to 45,000,000.00. (forty five million rupiah).

BIBLIOGRAPHY

Books:

- Ahmad Tholbi Kharlie. (2013). *Hukum Keluarga Indonesia*. Jakarta: Sinar Grafika
- Al-Kamil. (2016). *Al-Qur'an dan Terjemahannya Disertai Tema Penjelas Kandungan Ayat*, Cet. ke 10. Jakarta: CV Darus Sunnah.
- Jal Zabdi Mohd Yusoff. (2004). *Jenayah Keganasan Rumah Tangga*. Kuala Lumpur: Universiti Malaya.
- La Jamaa, Hadijah. (2008). *Hukum Islam dan Undang-Undang Anti Kekerasan dalam Rumah Tangga*. Surabaya: Bina Ilmu.
- Maggie Humm. (2002). *Ensiklopedia Feminisme*, terj. Mundi Rahayu. Yogyakarta: Fajar Pustaka Baru.
- Mohammad Taufik Makarao, et al. (2013). *Hukum Perlindungan Anak dan Penghapusan Kekerasan dalam Rumah Tangga*. Jakarta: Rineka Cipta.
- Rika Saraswati. (2006). *Wanita dan Penyelesaian Kekerasan dalam Rumah Tangga*. Bandung: PT Citra Aditya Bakti.
- Rosnidar Sembiring. (2016). *Hukum Keluarga*. Jakarta: Rajawali Pers.
- Siswanto Sunarso. (2012). *Vitimologi dalam Sistem Peradilan Pidana*. Jakarta: Sinar Grafika.
- Zainuddin Ali. (2007). *Hukum Pidana Islam*, Cet I. Jakarta: Sinar Grafika.

Journals:

- Ihromi. (2002). *"Hukum, Jender, dan Diskriminasi terhadap Wanita"*. *Jurnal Legality*, Vol. 9, Nomor 2.
- M. Abdul Kholiq, Ari Wibowo. (2016). *"Penerapan Teori Tujuan Pemidanaan dalam Perkara Kekerasan terhadap Perempuan: Studi Putusan Hakim"*. *Jurnal Hukum IUS QUIA IUSTUM*, Vol. 23 Nomor 2.
- Musdah Mulia. (2002). *"Kekerasan Terhadap Perempuan (Mencari Akar Kekerasan dalam Teologi"*. *Journal Women in Islam*, Edisi I
- Umi Sumbulah. (2008). *Spektrum Gendar*. Malang: UIN.

Legislations:

- Undang-Undang Dasar Republik Indonesia 1945.
- Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan.
- Undang-Undang Nomor 7 Tahun 1984.
- Undang-undang Nomor 39 Tahun 1999 tentang Hak Asas Manusia.
- Undang-Undang Nomor 23 Tahun 2004 tentang Penghapusan Kekerasan dalam Rumah Tangga.
- Keputusan Presiden Republik Indonesia Nomor 181 Tahun 1998 tentang Komisi Nasional Anti Kekerasan Terhadap Wanita.

Internasional Declarations:

- Convention on the Elimination of All Form of Discrimination Against Women (CEDAW)*

Internet Access:

- [http://id.wikipedia.org/wiki/ Teori_struktural_fungsional](http://id.wikipedia.org/wiki/Teori_struktural_fungsional), (20 June 2018)
- (2008), *Keganasan*, <http://www.infosihat.gov.my/penyakit/Dewasa/Kegana-san.pdf>, (20 June 2018).
- (2007), *Kekerasan terhadap Perempuan*, www.kesrepro.info/?q=node/278 - Cached - Similar. (20 June 2018).
- Eva Fitria. *Kekerasan pada Perempuan Selama 2017 Didominasi KDRT dan Pelecehan*. Detiknews, (20 June 2018).
- Lutfy Mairizal Putra. (2016). *ada 259.150 Kasus Kekerasan Terhadap Perempuan*. <https://nasional.kompas.com/read/2017/03/07/19240821/2016.ada.259.150.kasus.kekerasan.terhadap.perempuan> (20 June 2018).

Neni Utami Adiningsih, (2004) *Penghapusan Keganasan Dalam Rumah Tangga*, <http://www.suarapembaruan.com/news> (20 June 2018).

The Family Violence Prevention Foundation of Australia, (2009), *An Evaluation of Interventions with Domestic Violence Perpetrators*, Australia: Malbourne University, August.