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ARTICLE

A Culture of Neglect: A Study in Indonesian Court Judgements Regarding Victims of Domestic Violence

Hamidah Abdurrachman*

Faculty of Law, Pancasakti University, Indonesia
*Corresponding Author: Dr Hamidah Abdurrachman, Senior Lecturer of Faculty of Law, Pancasakti University, Tegal, Central Java, Indonesia. E-mail: hamidah.azzahara@gmail.com

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Abstract

The United Nations Commission on Crime Prevention and Treatment of Offenders treats domestic violence as a serious offence that affects groups of vulnerable populations, such as children, women and ethnic minorities. In Indonesia, the National Commission on Violence Against Women notes that in 2015 alone, there are recorded reports of 11,207 cases of domestic violence and 60% of those cases are violence against spouses, especially wives. However, many studies that have been done on domestic violence tend to take an indirect route towards reformation in the criminal justice system. This study tries to address some major obstacles to establish a more responsive criminal justice system in handling domestic violence cases. Through a qualitative analysis with statute and case approaches of Indonesian court judgements, this study analyses the system's way of protecting/neglecting victims' rights. There are four main obstacles to be discussed. First, many judges still regard domestic violence as a less serious offence, especially in regard to psychological intimidation. Second, punishment for the perpetrators is quite moderate compared with the sufferings of the victims. Third, victims are only regarded in court as witnesses and denied their rights as victims. Fourth, there is a kind of social resistance from the community to report domestic violence as a crime. In sum, these obstacles illustrate a culture of neglect that is continuously reinforced by the community and the criminal justice system towards the victims' physical and mental sufferings in the case of domestic violence.

Keywords domestic violence; court judgments; victims' rights

Indonesia has ratified some international conventions on women, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) through Law No. 7/1984. After the ratification, Indonesia had to carry out law reform by referring to the legal principle in the convention. On 22 October 2004, Law No. 23/2004 on the Elimination of Domestic Violence was born. This law has strategic values in supporting the effort of eliminating violence against women. First,

the implementation of the Law on Elimination of Domestic Violence will turn the issue of domestic violence into a public issue. This shift is expected to be able to overcome the victims' psychological barrier to disclose their sufferings. Second, the Law on Domestic Violence gives the State a chance to intervene on domestic violence cases, allowing the State to give more optimum protection to citizens who need special protection (women and children) from violent acts. Third, the Law on Elimination of Domestic Violence will push the acceleration of the zero-tolerance policy toward women passed by the government a couple of years ago.

Domestic violence is an important issue to study considering the increased number of domestic violence cases throughout the years. Another reason is that domestic violence is unique and distinct in nature since the crime occurs in domestic spheres and takes place in an intimate personal relationship; between husband and wife, parents and children, between children and children, or with people who work in the domestic sphere (housemaid, house staff). Since domestic violence that happens between husband and wife is based on a relationship within the marriage institution, the crime is viewed as part of private law. This causes a tendency to direct the solution towards peaceful resolution within the internal community or family.

Another problem that needs to be addressed is the almost non-existent protection for domestic violence victims. In Victimology, the victim is referred to using several terms, such as forgotten man, forgotten person, invisible, a second-class citizen, a second victimization, and double victimization. The United Nations Declaration on the Prosecution and Assistance of Crime Victims firmly stipulates every State's obligations to, among others, in point 4 (Part I General Principles) as follows: "reparation by the offender to the victim shall be an objective on the process of justice. Such reparation may include (1) the return of stolen property, (2) monetary payment for loss, damages personal injury and psychological trauma, (3) payment for pain and suffering and (4) service to the victim". In Part II, Guidelines for Progress, point 4, it is even stated that if the perpetrator cannot properly give sufficient compensation, the compensation shall be given by the State to compensate the cost relating to physical injury, trauma, loss of earnings, burial and rehabilitation.

The definition of a victim, especially a crime victim formulated in an international instrument, includes various aspects as stated in The Protection of Human Rights in the Administration of Criminal Justice: a Compendium of United National Norms and Standard (Bassiouni 1994). From the Victimology point of view, an aspect that needs to be addressed beyond the normative definition is the characteristics attached to the said definition. The characteristics consist of two aspects: the existence of suffering and the existence of injustice. Therefore, the definition of a victim has to include the suffering and injustice aspects.

Victim protection can be seen from two definitions. First, it is defined as "legal protection not to become a victim of a criminal act" (which means that protection of human rights or someone's legal interest). Second, it can be defined as "protection to get legal warranty/compensation for the suffering/loss of the crime victim" (identical to "victim compensation"). The form of compensation may be in forms of rehabilitation, recovery of mental balance (for instance by giving an apology), or giving compensations (restitution, compensation, guarantee/compensation of social welfare), etc. Victim protection in the criminal justice process cannot be separated from victim protection in accordance with the provision of the applied positive law. In the applied positive law, victim protection takes the form of an abstract or indirect protection. It is

because, according to positive criminal law, the criminal act is not an act of against/violating someone's interest (victim) in private and concrete manners, but it is only seen as a violation of norms/legal order *in abstracto*. Consequently, victim protection is "not directly and *in concreto*, but only *in abstracto*" (Nawawi Areif 1998:56).

After the 12-year application of the Law on Elimination of Domestic Violence in the law enforcement process, there are a number of observed obstacles that need to be addressed:

(1) Domestic violence offences as defined in the Law on Elimination of Domestic Violence appear to be weak because all forms of domestic violence are considered as a crime only on a complaint basis and are only being seen as violence that does not cause an effect (physically).
(2) The dominant perception of law enforcers regarding domestic violence as a private issue; thus not a priority.
(3) Law enforcers tend to categorize domestic violence based on its physical evidence, while neglecting the fact that domestic violence always causes a double impact; the physical and the psychological.
(4) The implementation of legal protection as defined in the Law on Elimination of Domestic Violence is hampered because, technically, there is no common and unified perception among law enforcers about the issue.
(5) The criminal law's perpetrator-oriented paradigm is not yet taking the victim's position into consideration. In wider effect, victims' rights have been severely neglected within the criminal justice system.

The data on domestic violence in Indonesia, as informed by the National Commission on Anti Violence against Women (Women's Commission), carry on increasing over the years. The Women's Commission Annual Notes in 2016 show that out of 321,752 types of violence against women, violence acts that happened in private spheres are the most dominant pattern, which is similar to the previous year's data. There are 11,207 cases in domestic/private spheres, 60% or 6,725 cases are in the form of violence against wives, 24% or 2,734 cases are violence acts that happened in courtship, and 8% or 930 cases are violent acts against girls. Afterwards, the Women's Commission divides problems of violence against women into three spheres: those that are private, community, and state.

Based on the number of cases accepted and processed, there are 321,752 kinds of cases of violence against women; the outstanding ones take place in the private sphere. Therefore, there is a rising number of reported sexual violence cases compared with the previous year. In 2015, sexual violence was in third place. However, in 2016, it was in second place, in the form of rape (72% or 2,399 cases). Meanwhile, in the form of sexual abuse, there are 18% or 601 cases, and in the form of sexual harassment, there are 5% or 166 cases. The high increase in number happened between the years of 2011 and 2012, reaching 35%. In 2015, the number of violence cases increased by 9% from the number in 2014.

PROBLEM FORMULATION

Indonesian criminal law enforcement regarding domestic violence is still heavily perpetrator-oriented and has not yet succeeded in delivering justice to victims.

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Furthermore, the judges are still excessively relying on legalism principles and acts that have not yet accommodated victims' rights. This has resulted in a culture of neglect towards victims within the criminal court system.

This study aims to, first, analyse the way some judges' verdicts were made in regard to domestic violence cases, and, second, to vision a better future in terms of law protection towards the victims of domestic violence.

RESEARCH METHOD

This research uses several approaches (Ibrahim 2006:299–322; Mahmud Marzuki 2006:93–95); first, the approach of law (Statute Approach), which is conducted by reviewing all laws and regulations relevant to the protection of the victims of domestic violence; second, a case approach by examining domestic violence cases which belong to court judgements that have binding legal force. The fundamental study in this approach is *ratio decidendi* or *motivering*, that is, the judge's consideration to come to a verdict. This study uses two techniques of data collection, namely literature review and regulation review. The results of the research were analysed qualitatively.

DISCUSSION

(1) Judges and the Disparity of Sentencing

There are several schools of thought that affected the development of Indonesia's criminal law, which originates from the Dutch Criminal Code, which is rooted in the Continental European system. The Continental European school grew rapidly in the 19th century because the rationalistic belief in natural laws nearly disappeared, mostly due to the impact of the *historische school* (historic school) culture. However, the rationalistic school natural law caused another legal idea to supplant it, namely legal positivism; also, frequently called "Legalism" (Utrecht 1957:9).

Legalism is devoted to the written law. This school of thought believes that there are no legal norms outside of positive laws, that all problems in society are regulated in written laws. The view that is devoted to written laws in legal positivism is basically an excessive regard to the power that creates written laws – it considers power to be the source of law and power is law (Amin 1952:16). A positivist, H. L. A. Hart, describes several meanings of "positivism" to include "law is order" (Rasjidi 1981:35): System Theory is the most significant theory in legal positivism. System Theory basically states that law is a *stelsel* (organized regulation) of rules relating organically and in a pyramid with each other of the norms that are formed hierarchically. This system is a closed system, meaning outside of it there is no law and all legal issues must be resolved through the system (Algra and van Duyvendijk 1983:139).

The influence of legalism is highly obvious in the form of written laws (Rasjidi 1981:35). Legalism believes that all social problems will be immediately resolved when laws are issued to regulate them. Laws are everything, even though in reality this is not true. The influence of legalism is also felt in Indonesia's applicable criminal law, as stipulated in Article 1 Paragraph (1) of the Criminal Code, which states: "No action may be punished unless on the basis of regulations with legal power that exists prior to the existence of the action".

Judgements are the general and abstract implementation of law to concrete events (*in concreto*). Therefore, judges must select the legal regulations that they will

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implement, interpret it to determine (find) the type of behaviour stipulated in such regulations, and find its meaning to determine its implementation, and interpret all facts to determine whether these facts are included in the implementation of the specific legal regulation. Therefore, by resolving concrete cases in the process of justice, law formation may also occur (Sidharta 1999).[1] The Court is not just the mouthpiece or trumpet of the government's laws and regulations, but the Court also forms new laws, even though it is limited by the methods of interpretation that it uses (Hartono 1975:9).[2]

In law formation, judges will find the standard or pattern of use for the law in public life, in the same way as found by legislators (Cordozo 1949), i.e. judges obtain knowledge in the same way as legislators obtain it: from experience, investigation and reasoning; in brief, from life itself. There is a connection here between the work of legislators and the work of judges, but they each do their work within the limits of their competence. It is beyond a shadow of a doubt that the scope of a judge's work is narrower. Judges only create laws to cover gaps, to fill open spaces in the law.

Relating to the Court and the work of judges, the law that has the elements of order, obligation and sanction are only positive law, i.e. the law applicable at a specific place and specific time, namely, law based on sovereign authority (Ali 2004:36). On this basis, judgements will not contain more or less than what is contained in laws that relate to concrete events.

Laws decree that judges, as the upholders of law and justice, must delve, follow and understand the legal values that live in society, so that they can issue judgements that both follow the law and the sense of justice. In interpreting and constructing laws, judges must adhere to the general principle of law and the general principle of natural justice. In this case, "justice" does not only mean that the punishment imposed has the long-term effect of eliminating violence against women, but judgements must also serve the rights of the victim.

Judges as decision-makers in the legal process are also faced with the same risk: error in judgement will generate large impact on human lives. In terms of reviewing the limit of the right or wrongness of a judgement, one of the issues faced by judges in judging is the disparity of sentencing. Disparity of sentencing is the implementation of different sentences against the same crime, or against a crime whose dangers are comparable, without clear justification (Nawawi Arief 1996:52). The causes of disparity, whether internal or external, originate in judges. Hood and Sparks state that the internal and external are sometimes difficult to separate, because they are integrated as a person's attributes generally called as "human equation" or "personality of the judge", which broadly means the inclusion of the influences of his/her social, educational and religious backgrounds; his/her experience, character and social behaviour.

The disparity is then related to the judges' perception of the "philosophy of punishment" and the "aims of punishment", which according to Molly Cheng is "the basic difficulty" with an important role in declaring the sentence (Nawawi Arief 1996:58). The disparity of sentencing has long been the subject of research and discussion by law and legal process experts, whether in Indonesia or internationally.

[1]Sudikno Mertokusumo explains that the discovery of law is a human craft. This means that each implementation of law must be preceded by a subjection selection of the relevant events and regulations.

[2]See also Amendments I and II UUD 1945.

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Table 1. Disparity of sentencing the crime of domestic violence (Abdurrachman 2010)

Number of judgement	Form of domestic violence	Sentence
Judgement of the Panel of Judges of the District Court of Bangkinang Number 6/Pid.B/2008/PN.Bkn	"Physical violence in domestic scope" (Article 44 Paragraph (1) Law Number 23 Year 2004: Auth.)	Imprisonment for 1 year and 6 months
Judgement of the Panel of Judges of the District Court of Bangkinang, Sentence Number 301/Pid/B/PN.BKN	"Physical violence in domestic scope that causes victim to become ill" (Article 44 Paragraph (2) Law Number 23 Year 2003: Auth.)	Imprisonment for 6 months
Judgement of the Panel of Judges of the District Court of Bandung Number 1143/Pid.B/2006/PN. BDG	"Perpetrating physical violence in domestic and familial environment that causes victim to become ill or badly injured", declared as a violation of Article 44 Paragraph (2) Law Number 23 Year 2004 concerning the Elimination of Domestic Violence	Imprisonment for 1 year and 4 months
Judgement of the Panel of Judges of the District Court of Brebes Number 32/Pid.B/2009/PN.Bbs	"Perpetrating physical violence in domestic scope that causes victim to become ill or badly injured"	Imprisonment for 3 years
Judgement of the Panel of Judges of the District Court of Jogjakarta Number 01/Pid.B/2009/PN.YK	"Action of physical violence in domestic scope" (Article 44 Paragraph (1) Law Number 23 Year 2004: Auth.)	Imprisonment for 2 months
Judgement of the Panel of Judges of the District Court of Tapaktuan Number 19/Pid.B/2005/PN.TTN	"Domestic violence" (Article 44 Paragraph (1) Law Number 23 Year 2004: Auth.)	Imprisonment for 3 months

The United Nations, through the United Nations Asia and Far East Institute (UNAFEI), even regularly discusses the "formation of sound sentencing policy" (Wani, Chaerani, and Junaedi Karnasudirja 1997:54). For an overview of the disparity of sentencing regarding the crime of domestic violence, see Table 1.

The disparity of sentencing in domestic violence cases may be caused by gender bias against women as victims. Some literature states that there are various forms, manifestations, and effects of gender bias in the Court. Issues relating to this matter include: (1) invisibility of gender bias and non-acknowledgement of gender bias as a reality in Court proceedings; (2) double victimization or double dangers faced by women; (3) negative attitudes against women victims by Court officers and personnel; and (4) trivialization of gender crimes (Irianto and Cahyadi 2008:12).

Victims as women are viewed lowly by law enforcement officers, and the position of victims as mere witnesses makes judges lack sympathy for the victims. Double victimization or double danger faced by women has the definition that women who are victims of violence who become witnesses in Court face a double risk. This fact is frequently documented by women's groups and government agencies in charge of

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handling sexual and physical violence. Women who suffer sexual violence, for example, are victimized twice: first, as victims of the crime; and, second, as victims of blame for the crime. It is frequently found that women who are victims of rape, for example, are blamed and accused as the cause of the occurrence of the rape.

(2) Victims' Rights in Judgements

A study of judgements in domestic violence has discovered the following:

(a) Judges only judge according to the exact sound of the Article as written in the laws (textual). For example, the implementation of Article 44 Paragraph (4) Laws Number 23 year 2004 in the Judgement of the District Court of South Jakarta Number 1352/Pid.B/2008/PN.JKT.Sel, wherein the accused, JR, has "perpetrated an action of physical violence", the judges consider this element in relation to the definition of "physical violence" according to Article 44 Paragraph (4), i.e. "light physical violence that causes no illness or hindrance to the victim".

The Judges concluded that the physical violence experienced by the victim caused bruises and pain, but the pain does not hinder the victim to do her activities such as taking her child to school and meeting with a witness in Senayan City mall. In this case, the judges are insensitive to the victim's suffering for the violence that she has endured, but they are more concerned with the elements of action taken by the perpetrator, i.e. that it satisfies the statement of "light physical violence that causes no illness or hindrance to the victim" so that they only impose a light punishment.

The interpretation of the action element is mainly *authentic interpretation*, because it can be more accountable according to law, while the delving into values that exist in society to the case are not regulated by any laws, or the laws are vague in this issue. The judges only execute the letter of the law in discharging their work.

This proves that strong legal positivistic views still restrain judges, so that they only uphold existing laws and regulations textually, while dismissing the concept that "the Law is a human work that contains guidelines for behaviour that reflects the human will on how the community should be guided and where they are taken to". Therefore, the law is a record of ideas that the society selected from the place where law is created, i.e. the idea of justice. (Rahardjo 1996:18).

In trying a case, judges take several steps: i.e. receiving, reviewing and judging criminal cases according to the principles of freedom, honesty and non-partisanship. This is in accordance with the methods regulated in the Laws of Criminal Proceeding, i.e. reviewing cases according to sufficient evidence. Judges must check each piece of evidence, analyse them, and finally determine a judgement against a case based on law and justice. A difference of judgement that occurs can be caused by a difference in the kind of crimes brought before the court, and differences in the judges' assessments of the same or similar cases.

"Difference in determining sentences is in practice caused by the fact that the crimes brought before the court show differences and, such differences include the judges' different views while assessing the data in the same or equal cases" (Seno Adji 1980:24–5). Disparity of judgement also affects society's views and assessment of the legal process. This can be seen as a disturbing form of injustice. In this case, disparity of judgement is inseparable from the discretion of judges in meting out punishment in a criminal case (Ashworth 2005:72). Disparity of judgement relating to difference in sentencing for similar cases is still regarded as a problem in law enforcement,

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Table 2. Sentencing against domestic violence

No.	Number of case	Form of domestic violence	Sentence
1	Number 15/Pid.Sus/2015/PN Bantul (Domestic Violence)	Physical violence	Imprisonment of ANC for 2 months
2	Number 38/Pid.Sus/2016/PNRan	Physical violence	Imprisonment of AH for 4 months
3	Number 141/PID SUS/2016/PT PBR	Physical violence	Imprisonment of R for 8 months
4	Number 31/Pid.Sus/2016/PN. Cag. (Domestic Violence)	Physical violence	Imprisonment of S for 10 months
5	Number 579/Pid.Sus./2016/PN. Trg	Physical violence	Imprisonment of P for 5 months
6	Number 350/Pid.Sus/Domestic Violence/2014/PT.BDG	Physical violence	Imprisonment of MS for 2 months
7	Number 67/K/Pid.Sus/2012	Physical violence	Imprisonment of TS for 4 months
8	Number 85/Pid.Sus/2016/PN.Kln	Neglect in domestic scope	Imprisonment of T for 6 months
9	Number 154/Pid.Sus-Domestic Violence/2015/PT.BDG	Neglect in domestic scope	Imprisonment of LS for 1 month
10	Number 219/PID.SUS/2013/PTR	Neglect of dependents in domestic scope	Imprisonment of IS for 3 months
11	Number 411/Pid.Sus/2014/ PN Bgl	Psychological violence	Imprisonment of T for 2 months with probation of 4 months

because it is based on the independence of judges. There are many factors that cause the disparity of judgement, but, in the end, it is the judges who most determine the occurrence of the disparity.

(b) Sentencing is very light, and does not cause a deterrent effect to perpetrators. The author attempts to update the judgement of the Court to ascertain the punishment made by judges, as shown in Table 2.

As seen in Table 2, in making their judgements, judges show a tendency to disregard the unwritten law, i.e. laws that live in society as part of the consideration process. It is important to note that the judges' duty, other than to implement the law, is also to *discover* the law (*rechtsvinding*), as the handling of criminal cases emphasizes material truth. In making their judgements, judges also show a tendency to disregard standard doctrines when handling their cases. This tendency might be caused by the lack of understanding of standard doctrines in criminal law, especially those relating to victims' rights and the double suffering endured by victims.

Cesare Beccaria and Jeremy Bentham in their Deterrence Theory emphasize the importance of the sentencing aspect, or the criminal legal process and system, to be directed towards the occurrence or arising of a deterrence effect as its main purpose. Starting from the formulation of a criminal accusation, the investigative process, charges, law enforcement, until the imposition of punishment, all are meant to prevent the same crime from reoccurring.

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Beccaria and Bentham further stated that the punishment and sentencing system is only effective and causes deterrence when it contains the following elements: threat of sufficiently severe punishment; threat of punishment that fits the crime, i.e. not too heavy and not too light in comparison with the act; and the punishment must be imposed immediately, i.e. imposed as soon as possible after the crime occurs (celerity) and there is certainty in the punishment (Muladi and Nawawi Arif 1992:109).

(3) Upholding Victims' Rights in Law

In terms of political crimes, Law Number 23 Year 2004 can be said to be social defence for society, i.e. there is a wish to eliminate all types of violence, especially, in the case of domestic violence, which is not only a violation of human rights, but also a crime against human dignity and a form of discrimination. The concept of social defence is further described as the basic principles of respect to human rights, justice and gender equality, non-discrimination and victim protection, with the purpose of preventing all forms of domestic violence by protecting the victims of domestic violence, punishing the perpetrators of domestic violence, and maintaining the harmony and welfare of an integrated household.

The realization of the protection concept can also be seen in the Government's commitment to provide protection to victims of domestic violence, especially women. By declaring domestic violence as a crime punishable with imprisonment and/or fines, women have a chance to be freed and prevented from violence or threats of violence, torture, or other actions that degrade human dignity and honour.

Some types of domestic violence include: physical violence, psychological violence, sexual violence, and domestic neglect. "Physical violence" is an action that causes pain, illness or bad injury. "Psychological violence" is an action that causes fear, loss of confidence, loss of ability to act, feeling of helplessness and/or heavy psychological suffering in someone.

"Sexual violence" is enforced sexual relations against a person in domestic scope, or enforced sexual relations against a person in domestic scope with other people for commercial and/or other purposes.

Another crime is domestic neglect of a person, where according to law applicable to the caretaker or because of an agreement or covenant, the caretaker must provide living, care or maintenance to the neglected person. Neglect is also applicable for everyone that causes economic dependence by limiting and/or prohibiting a person's opportunity for decent occupation inside or outside the house, so that the victim is under the person's control.

Criminal sanctions against the actions prohibited in the Elimination of Domestic Violence Law can be found in the provisions of Article 44, Article 45, Article 46, Article 47, Article 48, Article 49 and Article 50 of Law Number 23 Year 2004. Unfortunately, provisions concerning the rights of domestic violence victims are not made in any law. In Resolution of MU-PBB 40/34, what is meant by "victim" is person(s), whether individually or collectively, who suffer due to any action (that they do not do) that violates criminal law applicable in a country, including regulations that prohibit the abuse of power. Law Number 23 Year 2004 concerning the Elimination of Domestic Violence states that a "victim" is a person who suffers violence and/or threat of violence in domestic scope.

The definition of "harm" according to this resolution includes physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights.

The compensation for a victim's suffering is related to the system of "restitution", which in Victimology definition is related to compensation or restoration for physical, moral, and property losses, and the loss of the victim's rights caused by the crime. The main character of restitution indicates the accountability of the perpetrator for the demand for criminal restitution action in criminal cases, which, in Victimology definition, is related to compensation or restoration for physical damage.

The difference with compensation is that compensation is required by a demand, and if granted, must be paid by society or the state. On the other hand, restitution is demanded by the victim to be decided by the Court. If the demand is granted, it must be paid by the perpetrator of the crime. Victim protection in the criminal legal process system is naturally inseparable from victim protection according to the provisions of the positive laws applicable. In the current applicable positive criminal law, victim protection is mostly "abstract protection" or "indirect protection", meaning, with the existence of various formulations of criminal action in the rules and regulations for this subject, essentially there is "*in abstracto*" or indirect protection against the various law interests and the human rights of the victim (Nawawi Arief 1997:8).

Victims' rights must be integrated in the criminal legal process system by providing aid and support in the form of compensations and restitutions, by considering that the restitution process should be conducted by an institution that can benefit victims, perpetrators, the state and society (Angkasa 2003:244). The restitution should encompass financial loss, correction and/or treatment for physical injuries, and/or psychological suffering of victims because of the crime that they endure. Restitution will mean much to the crime victims, who currently tend to be doubly victimized: first, as the victims of the crimes that they endure; second, as the victims of the criminal legal process system whose paradigm is still perpetrator-oriented.

According to Schneider (Karmen 1984:182), there are five methods of restitution:

(1) "Basic restitution" model, wherein the perpetrator pays to the Court, and the Court then gives the money to the victim;
(2) "Expanded basic restitution" model, wherein the perpetrator is provided with an occupation (for the perpetrator is young and/or has a low income);
(3) "Victim assistance" wherein the perpetrator is given the opportunity to assist the victim so that the victim receives full compensation;
(4) "Victim assistance–offender accountability" model, wherein a resolution that satisfies both parties is achieved through negotiation, or sometimes by holding a meeting between the parties;
(5) "Community accountability–deterrence" model, wherein the restitution procedure is carried out by having a group of people request it as representatives of society. Request for restitution includes types of work that must be done, in the schedule for restitution payment.

The "basic restitution" model seems to be the one most harmonious and suitable for use in judgements of domestic violence cases: paying through the Court means that it will be more controlled, in terms of avoiding the risk of extortion by the victim against the perpetrator when the perpetrator denies the obligation to pay the

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restitution. Law enforcement is also made easier when there are parties that abuse it. Therefore, in Law Number 23 Year 2004 concerning the Elimination of Domestic Violence, provisions concerning the service of victims' rights in the form of compensation and restitution are not stipulated, with the consequence that victims' rights cannot be accommodated in the Court.

The Government then issued Government Regulation Number 4 Year 2006 concerning the Execution of, and Cooperation in, the Recovery of the Victims of Domestic Violence, which confirms that "victim recovery" encompasses all efforts to strengthen domestic violence victims so that they become more empowered, both physically and psychologically. "Recovery" refers to all actions that include service and counselling to domestic violence victims. Recovery of victims is executed by central government agencies, regional government, and social institutions according to their respective duties and functions, including providing the necessary facilities for recovery of the victims.

Victim recovery activities include: (a) health service; (b) victim attendance; (c) counselling; and (d) spiritual guidance; and (e) re-socialization. Victims also reserve the right to obtain services from health workers, social workers, attendant volunteers and/or spiritual guides.

The recovery of domestic violence victims is executed by an agency working specifically in empowering women and children, in order to ensure convenience of service to victims; improving effectiveness and efficiency of the victim recovery process; and improving cooperation and coordination in efforts to recover victims.

In practice, the agencies that handle domestic violence victims do not perform the above provisions optimally, because regional governments do not consider the handling of victims as an important and priority action, so that existing agencies have difficulties in terms of budgets, structures and facilities, and access to networks with other agencies. In the future, the Government needs to immediately consider the realization of the service to victims' rights integrated in the Law, so that judges can accommodate victims' rights when judging cases of domestic violence.

CONCLUSION

(1) The criminal legal process system must be reorganized. It must consider a wider interest, i.e. not only focused on repaying the perpetrator of the crime, but also focusing on the interests of the victim, on the basis of victim-oriented restorative justice that focuses on the protection of crime victims.

(1) Victim protection must be accommodated in future Criminal Proceedings Laws, so that there is a shift of perspective from offender-oriented retributive justice into victim-oriented restorative justice, for the sake of consistency and equal position before the Law and the Court.
(2) Indonesia needs to develop an integrated criminal legal process system format. In this case, the victim will be positioned as the main actor (subject) who has the right to have her testimonial heard, to obtain information concerning ongoing, legal efforts, to have her sense of justice satisfied, and to have her situation recovered from the enforced seizure of her rights and the violence that she suffered. Such rights include: the right to obtain information, the right to justice, and the right to have reparation or restitution, and fair recovery for her losses through compensation and restitution.

(3) Victims' rights must be integrated in the criminal legal process system by providing aid and support in the form of compensations and restitutions, by considering that the restitution process should be conducted by an institution that can benefit the victim, the perpetrator, the state and society. Restitution should encompass financial loss, correction and/or treatment for physical injuries, and/or psychological suffering of the victim because of the crime that she endures.

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TRANSLATED ABSTRACTS

Sinopsis

La Comisión de las Naciones Unidas sobre Prevención del Delito y Tratamiento del Delincuente considera la violencia doméstica como un delito grave que afecta a grupos de poblaciones vulnerables, como niños, mujeres y minorías étnicas. En Indonesia, la Comisión Nacional sobre la Violencia contra la Mujer observa que solo en 2015, se registraron 11.207 casos de violencia doméstica. El 60% de esos casos son violencia contra los cónyuges, especialmente las esposas. Sin embargo, muchos estudios que se han hecho sobre violencia doméstica tienden a tomar una ruta indirecta hacia una reforma en el sistema de justicia penal. Este estudio trata de abordar algunos de los principales obstáculos para establecer un sistema de justicia penal más receptivo en el manejo de casos de violencia doméstica. Mediante un análisis cualitativo con enfoques sobre casos y estatutos de las sentencias judiciales indonesias, este estudio analiza la forma en que el sistema protege y descuida los derechos de las víctimas. Hay cuatro obstáculos principales que deben discutirse. En primer lugar, muchos jueces siguen considerando la violencia doméstica como un delito menos grave, especialmente en casos de intimidación psicológica. En segundo lugar, el castigo para los perpretadores es bastante moderado en comparación con los sufrimientos de las víctimas. En tercer lugar, la víctima solo es vista en la corte como testigo y negada de sus derechos como víctima. En cuarto lugar, existe un resistencia social de la comunidad para denunciar la violencia doméstica como un delito. En resumen, estos obstáculos ilustran una cultura de negligencia que se ve reforzada continuamente por la comunidad y el sistema de justicia penal hacia los sufrimientos físicos y mentales de las víctimas en el caso de la violencia doméstica.

Palabras clave: violencia doméstica; sentencias judiciales; derecho de la victima

Résumé

La Commission des Nations Unies pour la prévention du crime et la justice pénale considère la violence domestique comme une infraction grave qui touche des groupes de populations vulnérables tels que les enfants, les femmes et les minorités ethniques. En Indonésie, la Commission nationale sur la violence contre les femmes note que seulement en 2015 on a enregistré 11 207 cas de violence domestique. 60% de ces cas sont des actes de violence contre les conjoints, en particulier les épouses. Cependant, de nombreuses études sur la violence domestique ont tendance à prendre une voie indirecte vers une réforme du système de la justice pénale. Cette étude tente de résoudre certains des principaux obstacles à la mise en place d'un système de justice pénale plus adapté aux cas de violence familiale. À travers une analyse qualitative des approches jurisprudentielles et des jugements des tribunaux indonésiens, cette étude analyse la manière dont le système protège / néglige les droits des victimes. Il y a quatre obstacles principaux à discuter. Premièrement, de nombreux juges considèrent toujours la violence domestique comme une infraction moins grave, en particulier en ce qui concerne l'intimidation psychologique. Deuxièmement, la punition pour les auteurs de violences conjugales est assez modérée par rapport aux souffrances des victimes. Troisièmement, la victime n'est considérée par la justice qu'en tant que témoin et privée de ses droits en tant que victime. Quatrièmement, il existe une résistance sociale de la part de la communauté à signaler

la violence domestique comme un crime. En résumé, ces obstacles illustrent une culture de la négligence qui est continuellement renforcée par la communauté et le système de justice pénale à l'égard des souffrances physiques et mentales des victimes en cas de violence conjugale.

Mots-clés: violence familiale; jugements des tribunaux; droit de la victime

摘要

联合国预防和治疗罪犯委员会将家庭暴力视为一种严重的犯罪行为，认为此类犯罪行为对儿童、妇女和少数民族等弱势群体造成了严重影响。印度尼西亚妇女权益保障委员会指出，仅在2015年，有记录的家庭暴力事件就有11.207例，其中60%的暴力行为指向配偶，而妻子往往是遭受的暴力的一方。然而，目前关于家庭暴力的研究大多采用了间接的路经，来研究刑事司法系统的改革。而本研究提出了在处理家庭暴力案件中， 如何建立反应更为灵敏的刑事司法体现所面临的阻碍。本研究通过印尼法院规约和法院判决案例的定性研究，分析了该制度对受害人权益的保护，也指出了不足之处，其中有四方面需要进一步讨论。首先，许多法官仍然认为家庭暴力是并非是严重的罪行，尤其就心理恐吓而言。其次，与受害者遭受的伤害相比，对施暴者的惩罚相当温和。再次，在法庭上，受害者被视为目击证人，否认其受害者的权益保护。最后，部分阻力来自社区，社区不愿将家庭暴力作为犯罪行为上报。综上所述，以上四点体现了社区和刑事司法系统对家庭暴力案件受害者所遭受的身体痛楚和精神痛楚的严重忽视。

关键词：家庭暴力，法庭判决，受害人的权利

ملخص

تؤثر خطيرة جريمة المنزلي العنف المجرمين ومعاملة الجريمة لمنع المتحدة الأمم لجنة تعتبر ،إندونيسيا وفي .الإثنية والأقليات والنساء الأطفال مثل ،الضعفاء السكان فئات على عن تقارير سجلت ،وحده 2015 عام في أنه المرأة ضد بالعنف المعنية الوطنية اللجنة تلاحظ أن غير .الزوجات اسيم لا ،الزوجين ضد عنف هي الحالات هذه من 60٪ و منزلي عنف حالة 11.207 نحو مباشر غير طريق اتخاذ إلى تميل المنزلي العنف بشأن أجريت التي الدراسات من العديد الرئيسية العقبات بعض معالجة إلى الدراسة هذه وتسعى .الجنائية العدالة نظام في الإصلاح .المنزلي العنف قضايا مع التعامل في استجابة أكثر جنائية عدالة نظام إنشاء دون تحول التي تحلل الدراسة وهذه ،الاندونيسية المحكمة احكام من والحالة القانون نهج مع نوعي تحليل خلال من ، أولا .مناقشتها ينبغي رئيسية عقبات أربعة وهناك .الضحايا حقوق إهمال / لحماية النظام طريقة يتعلق فيما سيما لا ،خطورة أقل جريمة المنزلي العنف يعتبرون القضاة من العديد يزال لا معتدلة التحريريين المترجمين على المفروضة العقوبة فإن ،وثانيا .النفسي بالتخويف من وتحرم كشاهد المحكمة في إلا الضحية إلى ينظر لا ،وثالثا .الضحايا معاناة مع بالمقارنة جدا المنزلي العنف عن إبلاغ خلل المجتمع من الاجتماعية المقاومة من نوع هناك ،رابعا .كضحية حقوقها ونظام المحلي المجتمع يعزز ها التي الإهمال ثقافة توضح العقبات هذه إن القول وخلاصة .كجريمة .العائلي العنف حالة في والعقلية البدنية الضحايا معاناة أجل من باستمرار الجنائية العدالة الضحية حق ،المحاكم أحكام ،المنزلي العنف :الرئيسية الكلمة

الضحية حق ،القضائية الأحكام ،المنزلي العنف :الرئيسية الكلمات

Hamidah Abdurrachman is a senior lecturer at Pancasakti University in Tegal, Indonesia. She graduated with a doctorate dissertation in Penal Law and criminal justice system from Padjajaran University. Her field of interest comprises law enforcement, violence against women, victimology, and higher education management.

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