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PROCEEDINGS OF INTERNATIONAL CONFERENCE ON VICTIMOLOGY AND VICTIMS ASSISTANCE IN INDONESIA

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PROTECTION OF MARITAL RAPE VICTIMS IN VICTIMOLOGY PERSPECTIVE (Study of Act No. 23 Year 2014)¹

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Abstract

Marital rape issue is still a controversy in Indonesian society. Legal protection of marital rape victim in Act No. 23/2004 about PKDRT and the handling of marital rape victim protection efforts in the perspective of victimology are a very interesting issue to be studied. This research is categorized as a normative juridical research. This research shows that according to the Act of PKDRT, marital rape offender can be sued, as a form of legal protection to the marital rape victim. However, there are weaknesses in its legal structure, legal substance, and legal culture. Meanwhile, in victimological approach, the protection is emphasized on the victimization risk, to prevent victimization and permanent marital rape victimization, as well as reducing the victim's suffering. In respond to the aforementioned issues, the strengthening of the legal structure, legal substance, and legal culture needs to be done, including the correct and timely victim response.

Keywords: victim, marital rape, protection, Act of PKDRT, victimology

INTRODUCTION

Family is the smallest part in the social life of human beings. This private domain has a tendency to close and lock the dynamics of the existing problems within it. The development of civilization of human thought, especially women promote the establishment of gender equality. Gender equality efforts, not only to improve the position of women in various sectors of life both in the economic, social, political, legal, cultural, but also began to reveal the dark side of domestic life in the form of domestic violence up on a marital rape (marital rape).

Marital rape is essentially a forcing sexual intercourse by a husband to his wife.² American legal definitions regarding marital rape is more varied, that marital rape can be defined as any unwanted intercourse or penetration (vaginal, anal, or oral) Obtained by force, threat of force, or when the wife is Unable to consent. In 1993, marital rape is defined as a crime in several countries.³ Marital rape has become a controversial issue in many countries, including Indonesia. The majority of Indonesia's population considers marital rape as something that does not make sense, but others believe that the rape of a wife by of her own husband actually exists.⁴

Most people who argue that there is no rape in marriage, assume that any sexual relationship between husband and wife within the bonds of lawful and religion and culture is some form of

¹ This article based on research with Dean Decree of Faculty of Law Universitas Jenderal Soedirman Number 007/UN23.05/DT.01.00/2015, Mei 4th 2015.

² Muh Endriyo Susila, "Wacana Kriminalisasi Marital Rape Dalam Timbangan Hukum Islam Dan Kosntitusi", *Jurnal Konstitusi*, Vol. 1 No. 1, November 2012, Jakarta: Mahkamah Konstitusi Republik Indonesia, page 18.

³ Raquel Kennedy Bergen, *Marital Rape*, National Electronic Netwoork on Violence Agains Women, March 1999, Page 1-2.

⁴ Muh Endriyo Susila, *Op.Cit*, page 20.

fairness, obedience, and religious act. This understanding was further strengthened with the concept of rape under Article 285 of Criminal Code (KUHP), which limits the conjugal rape committed outside marriage.

However, the reality shows just the opposite, where there have been various acts of forcing sexual intercourse committed by a husband against his wife. Several variants of forcing sexual intercourse frequently occur include:

"The imposition of sexual intercourse in accordance to sexual appetites of the husband but undesirable by the wife (when his wife is asleep; when she is menstruating / menstruation), performed many times in the same time while the wife is not willing, a husband who was drunk or using stimulants to extend sexual intercourse without mutual consent while the wife does not want it, forcing the wife to make a moaning sounds to increase sexual arousal, using psychological violence such as issuing threats and verbal abuse, physical violence or actions that physically hurt the wife, such as inserting objects into the vagina and other types of physical violence."⁵

Referring to the aforementioned issues, the legal protection for the wife, as a victim of marital rape eventually becomes a desideratum, particularly in the perspective of those who considers that the marital rape is exists. Currently, there is already an Act No. 23 Year 2004 on the Elimination of Domestic Violence (UU PKDRT). However, whether this law is able to provide legal protection for victims of marital rape is still being debated. Including the lack of handling of victim protection through victimology approach. Based on this, crime prevention of the perpetrators is not enough, considering that providing the protection for victims of marital rape needs to be performed in a comprehensive victim-oriented approach.

PROBLEMS

Based on the discussion above, authors are interested to discuss on how the legal protection of victims of marital rape in Act No. 23 Year 2004 on the Elimination of Domestic Violence, and how the protection of victims of marital rape in the perspective of victimology.

RESEARCH METHOD

This research was conducted with normative juridical approach. Therefore, this research emphasizes on the study of literature and the disclosure of the meaning of a positive legal norm, in this case the Act No. 23 Year 2004 on PKDRT. The data used in this research is secondary data, carried out through the study of literature (library research). The results of the study, then, directed to the protection of victims of marital rape in the perspective of victimology.

DISCUSSIONS

Legal Protection of Marital Rape Victim in Act No. 23 Year 2004 on the Elimination of Domestic Violence

⁵ YLBH Apik Jakarta (Lembaga Bantuan Hukum Untuk Perempuan), "Pemaksaan Hubungan Seksual dalam Perkawinan adalah Kejahatan Pemeroksaan", obtained from website <http://www.lbh-apik.or.id/fact-60.htm>, accessed on April 14th 2015

One form of legal protection for the public is the accomplishment of the rules and policies that suit their needs, based on the basic rights mandated by the 1945 Constitution.⁶ Related to victims of marital rape, basically on the 1945 Constitution, we have guaranteed protection for every person as regulated in Article 28, paragraph D (1) and Article 28 paragraph G. This protection is also hampered by the limitation of definition of rape in Article 285 of the Criminal Code (KUHP), where the act must be done outside of marriage.

The birth of Act of PKDRT is a must for Indonesia as a country that has ratified several international conventions on women. Act of PKDRT has strategic values for the elimination of violence against women. The Act of PKDRT eventually becomes the answer for feminists in obtaining legal protection against wives who are victims of marital rape.

Article 5 of Act of PKDRT provides that every person is prohibited from engaging in domestic violence against people within the household by: (a) physical violence; (B) psychological violence; (C) sexual violence; (D) negligence of household. More specifically set forth in Article 8 that sexual violence as referred to in Article 5 letter c includes: (a) forcing sexual intercourse carried out against an individual living within the household; (B) forcing sexual intercourse against one within the household for commercial purpose and or a particular purpose.

Sexual violence that is mentioned in this Act, as stipulated in the explanation of Article 8 (a) that is every action in the form of forcing sexual intercourse, forcing sexual intercourse by means of unnatural and or disliked, forcing sexual intercourse with another person for commercial purposes and or a particular purpose. On the punishment for the perpetrator set out in Article 46 of Act of PKDRT, that every person who commits acts of sexual violence shall be sentenced to imprisonment for a maximum period of 12 (twelve) years or a maximum fine of Rp 36,000,000.00 (thirty-six million rupiah).

One form of the implementation of the above arrangement is the verdict of the Supreme Court (MA) No. 1456 K / Pid.Sus / 2012 of 2012, which punishes Ade Hari Purwanto (husband) who had raped his wife. This further proves that Indonesian positive law through Act of PKDRT has recognized marital rape as a form of crime and also as a form of legal protection for victims.

Legal protection is essentially a form of a guarantee or assurance given by law by the law (written and unwritten), both preventive and repressive that someone would get what has become their rights and obligations. In connection with the rights of victims, Act of PKDRT has regulated it in Article 10 of Act of PKDRT, which includes: (a) the protection of the family, the police, prosecutors, courts, lawyers, social agencies, or other parties either temporarily or by the establishment of a court order of protection; (B) health care in accordance with medical needs; (C) special handling related to the confidentiality of the victim; (D) counseling by the social workers and legal assistance at every level of examination process in accordance with the provisions of the legislation; and (e) service of spiritual guidance.

This Act also governs the obligations of government and society, as provided in Article 11 through Article 15 of Act of PKDRT. The setting of protection against victims of domestic violence is stipulated in Article 16 through Article 38 of Act of PKDRT, while the recovery of victims of domestic

⁶ Sri Hartini, Tedi Sudrajat dan Rahadi Wasi Bintoro, "Model Perlindungan Hukum Terhadap Kebijakan Pelayanan Kesehatan Masyarakat Miskin di Kabupaten Banyumas", *Jurnal Dinamika Hukum*, Vol. 12 No. 3, September 2012, Purwokerto: Faculty of Law Universitas Jenderal Soedirman, page 9.

violence is stipulated in Article 39 through Article 43 of Act of PKDRT. Even though the Act of PKDRT has granted various rights to victims of sexual violence, it is not necessarily a guarantee of legal protection for victims of marital rape. This is certainly related to the components of the legal system, the components of the structure, substantive, and cultural.

In connection with the structural components, the criminalization of marital rape in Indonesia is still a controversial matter. However, law enforcement officials and government has made massive socialization that the perpetrator of marital rape can be punished by the Act of PKDRT and victims are entitled to legal protection. Even though this Act has been 11 (eleven) years old, the majority of Indonesian people still do not know that the perpetrator of marital rape can be imprisoned, and the number of a wife who are victims of marital rape that are willing to denounce her husband was still little.

Including within the substantive component, there are still loopholes (gap) within this Act. First, the absence of assertion that sexual violence as defined in this Act, also includes marital rape if it was committed by the husband against the wife. Even though the regulation in the Article 5, Article 8 and Article 46 of Act of PKDRT can ensnare the perpetrator, not all people can understand this. Second, the criminal penalties in Article 46 of Act of PKDRT certainly not intended for the victims but for the country. The problem is, who will pay for the cost of care and treatment of victims. Moreover, the risk of divorce is quite large, so it will be increasingly difficult for the victim's position to carry out her life in the future, especially if the victim is economically dependent on her husband all this time.

Barda Nawawi Arif argued that the protection of victims in the positive law is an abstract protection or indirect protection. Said that because the crimes under positive law does not refer to an act of assault or abuse the legal interests of a person (victim) personally and concretely, but only as a violation of the norm or the rule of law in abstracto. As a result, the protection of victims is not directly and in concreto.⁷ Fines related to the issue above, where the perpetrator does not provide compensation to victims of marital rape, justifying the above opinion. This even more banging on the desiderata of the feminists who believe in the existence of marital rape and requires legal protection in favor of the victim.

Cultural component becomes a problem that can not be avoided anyway. As we know, the culture of patriarchy has been attached to the majority of the Indonesian people. In the system of social, cultural (and religious), patriarchy emerged as a form of belief or ideology that men are more superior to women, that women must be mastered even regarded as the property of men. This patriarchal society entrenched in all life systems both in the social sphere, culture, education, language, politics, economics and law.⁸

Related to marital rape, the understanding of rape element within the Article 285 of the Criminal Code and the subordinate position of women to men, making sexual intercourse in all its forms is a form of wife's obedience to the husband. Patriarchal culture in the end often blamed as the causes of marital rape. This is what needs to be clarified by understanding the wise, which is basically

⁷ J. Hattu, "Perlindungan Hukum Terhadap Korban Kejahatan Ekonomi Di Bidang Perbankan", *Jurnal Sasi*, Vol. 16 No. 4, Oktober-Desember 2010, Ambon: Faculty of Law Universitas Pattimura, page 39.

⁸ Wahyuni Retno Wulandari, "Budaya Hukum Patriarki Versus Feminis: Dalam Penegakan Hukum Dipersidangan Kasus Kekerasan Terhadap Perempuan", *Jurnal Hukum*, Vol. 8 No. 3, January 2010, Yogyakarta: Universitas Islam Indonesia, pages 17-18.

this culture has a positive value and a favoring women position. In victimology, a woman has the risk of becoming a victim because it has biological and psychological weaknesses than men. Referring to this, if associated with the patriarchal culture, this culture can actually protect women from a crime. Based on this, the culture is not entirely bad for women. Factors causing the problem is behavioral deviation from the values of this culture, which then legalize all forms of discrimination against women, including marital rape.

Apart from the above, religious values are also often accused of causing sexual violence within marriage. Religious teachings basically give the values of kindness. Included also in the teachings of Islam, according to Muh Endriyo Susilo, that sex is sacred in Islam, even it worth of religious act so long conducted in accordance with the rules of Allah. Serving husband sexually is an obligation which is fundamental to the wife. Even said in a hadith, a wife who refused the husband's requests for sex without a reason justified by the Shari'ah will be condemned by the angels until morning. Although the obligation to serve husband's sexual desire is very strong in Islam, that does not mean there are no exceptions at all. Within certain circumstances, wife is allowed to reject the request of her husband, for example by reason of illness. The statute also becomes haram if the act occurs during the fasting of Ramadan, wife is menstruating, the wife was undergoing puerperal period, and trying to perform anal sex.⁹

With regards to marital rape, the majority of scholars view that kind of activity as not a rape, as has been generally understood. According to the concept which has been commonly understood, the perpetrator is someone other than her own husband. Quraish Shihab as quoted by Milda Marlia, regarding the possibility of the inclusion of marital rape in KUHP, Quraish tended to agree to put marital rape in the category of persecution than the rape itself. Abdul Wahib and Muhammad Irfan also explained that Islamic law did not recognize marital rape.¹⁰

Based on the description above, the legal protection of victims of marital rape in the Act of PKDRT is getting difficult, mainly due to the absence of similar perception regarding the existence of marital rape within legal culture.

Protection of Marital rape Victim in the Perspective of Victimology

There are several differences between the crime prevention strategy of the past and present. In the past, the focus of crime prevention is done through the improvement of both social economic conditions fundamentally. Presently, the crime prevention policy of has changed. This may include the policy of anticipation, recognition and attention to the risk of crime. Therefore, according to Cohn, Kidder and Harvey, the term crime prevention should be changed to the prevention of victimization. This prevention strategy focuses on anticipation towards the target of crime.¹¹ Starting from this, our perspective is not liberated from the victimology,¹² which is the science of victims.

At least there are three objectives within victimology, namely (1) To Analyze the manifold aspect of the victim's problem; (2) To explain the causes for victimization, and (3) To Develop a system

⁹ Muh Endriyo Susilo, *Op.Cit*, pages 21-23.

¹⁰ *Ibid*, pages 25-26.

¹¹ Yazid Efendi, 2001, *Pengantar Viktimologi: Rekonsiliasi Korban dan Pelaku Kejahatan*, Purwokerto: Universitas Jenderal Soedirman, page 10-11.

¹² Didik M. Arief Mansur dan Elisastris Gultom, 2008, *Urgensi Perlindungan Korban Kejahatan*, Jakarta: PT. Raja Grafindo Persada, hlm. 34.

of measures for reducing Human Suffering. Speaking about marital rape, essentially, has led to the victimology's third goal of creating a system policy in an effort to alleviate human suffering, which is indicated by the existence of the Act of PKDRT. However, the provision of legal protection against marital rape victims through the Act of PKDRT is not easily done, as previously described. Victims of marital rape suffer not only physically but also psychologically, it can even become "a second victimization in the criminal justice system", especially when it is difficult to prove the occurrence of rapes of her own husband and a lack of attention to the psychological condition of the victim in any stage of the criminal justice system.

Referring to the second victimology goal in the search for causes of the emergence of victimization, it can be affected due to the role of victims and the risk of casualties. Victimology examines the role of the victim by victim precipitation typology in the crimes. In this case, it is difficult if victim also contributed in the occurrence of marital rape, but on certain cases it can possibly happen. Regarding the risk of the victim itself, one may refer to the opinion of Hans Von Hentig,¹³ where one of them is "the female". Stephen Scahfer,¹⁴ includes the opinion that one of the victim's typology is biologically weak victims, those who physically has the disadvantage that causes them to become a victim.

Marital rape victims in this case are in a clashing position. When a wife understand the risks of existing weaknesses inside herself and then reported her husband, she may suffer as well because it can lead to divorce, negative stigma society, or other forms of suffering. As when the victim keeps silent, she forever will suffer in her household life. It is not in spite of the lack of protection of victims of marital rape handling through victimology approach that suppress the risk of a woman becoming a victim, whether conducted by the government, law enforcement officers, the public and victims themselves. Ultimately marital rape become a problem that conventional, both in terms of preventing the victim, the permanent victim and reduces the suffering of the victims.

Lack of handling of the protection through victimology approach undertaken by the government, law enforcement officers, the public and the victims themselves are as follows. Government action, first, does not hold a forum on Marital Rape perception. Ineffective application of the Act of PKDRT in providing legal protection for victims of marital rape is caused by the attitude of victims who are still highly connected to the values that have been entrenched. This is mainly due to the absence of strengthening legal culture through organizing a forum of perceptions about marital rape, which was attended by various elements, both elements of religion, custom, law, psychology, and government. Basically, this forum has a strategic value, which aimed to explore the same perception regarding the criminalization of marital rape, and if a common ground cannot be agreed, then the forum should look for a joint solution for the protection of victims. This is to encourage the confidence of wives who are victims of marital rape regarding preventive and repressive actions that must be done, so they do not get stuck on a misunderstanding in the handling of marital rape.

Second, the lack of massive socialization of the Act of PKDRT. Government representatives still appear to not socialize the Act of PKDRT massively, that husbands who commit sexual violence may be convicted and wife as the victims are entitled to legal protection. This is evidenced by the lack of

¹³ Yazid Efendi, *Op.Cit*, page 31.

¹⁴ Didik M. Arief Mansur dan Elisastris Gultom, *Op.Cit*, page 50.

marital rape victims who report her husband. Third, the absence of improvement efforts of Act of PKDRT. As previously explained, the Act of PKDRT does not provide clarity on the definition that marital rape included in the sexual violence referred in this Act. Another major thing is the absence of punitive damages given by the perpetrator to the victim. Policies oriented to the victim become even more distant, in which up until now there is no efforts to repair the Act of PKDRT.

In connection with the actions of law enforcement officers, law enforcement officials seem to have a lack of understanding in the substance of Act of PKDRT, making the victims difficult to know their rights. Even though in the Act of PKDRT sexual violence is a crime complaint, it cannot be used as a reason for law enforcement agencies (mainly police) not to undertake preventive measures. Initiatives help in terms of providing physical and psychological protection still seems minimal, in which the tendency of waiting for complaints of victims still dominates. Most people still imprisoned with the perspective that the problem of household is a private area of the victim. Even though we cannot be force the perception of the public that marital rape is there, but at least it is necessary to strengthen the cultural component to build public awareness in terms of their willingness to prevent the occurrence of marital rape.

Actions of the victim are the first step and the most crucial in protecting himself. This is because the personal factors of marital rape victims vary, both the forms of the misery and the interests of the victims have are differences with each other. Therefore there are several factors that affecting the handling of marital rape. First, the lack of "Early Detection of Husband Sexual Disorder". Lack of early detection performed by the victim, included victim's knowledge regarding the whole personality of the prospective husband before marriage, and after marriage, especially at the beginning of the marriage where the husband's sexual relationship behavior deviations began to be seen. At this stage, the help of psychologists, psychiatric and clergy have strategic values to help and avoid her husband became permanent violent sexual offenders and can prevent herself become a permanent victim.

Second, the lack of "Victim's Openness to the Trusted People of Her Society". Not all victims are willing to reveal their personal problems (household life) to others in the community who they trusted. The openness of the victim can actually reduce the psychological burden of victims and find the right solution measures, especially for victims who are weak physically and psychologically. Another benefit is that other people can take steps to prevent and provide protection to victims. Third, the lack of victim's complaints to the law enforcement authorities. The use of criminal law through the Act of PKDRT should be done wisely, given that penalizing her own husband must have consequences of its own. However, allowing herself to be constantly subjected to sexual violence is not the right step. This effort is the last alternative in order to end the suffering of the victims or prevent a recurrence of marital rape.

CONCLUSIONS

Under the Act of PKDRT, the perpetrator of marital rape can be convicted of sexual assault, as well as a form of legal protection for victims of marital rape. As such, the legal protection for victims of marital rape is not easily done, because of the weakness in both the structural, substantial and cultural components.

This also includes the lack of handling of protection of marital rape victims through victimology approach, whether conducted by government, law enforcement officers, community, and victims

themselves. This is certainly a limiting factor in preventing the occurrence marital rape, preventing the marital rape victim becoming a permanent victim, and reducing the suffering of victims of marital rape.

SUGGESTIONS

Legal protection of victims of marital rape, for the people who believe in the existence of marital rape, should be done by strengthening structural, substantial and cultural components. In the component structure, massive socialization that the perpetrator of marital rape can be convicted and the rights of victims should be done, as well as the handling of law enforcement officials by taking into accounts the rights and psychological condition of the victim. As for the substantive component, it is required to clarify that marital rape also included in the sexual violence referred to in this Act, and the existence of regulations governing the compensation from the perpetrator to the victim. In the cultural component, it is required to hold a forum to find similar perspective and understanding of marital rape, build public awareness to prevent marital rape and provide aid to the victims. Including also, the actions of the victim themselves to perform early detection of husband's sexual disorder, the victim's openness to the trusted people of her society, and denounce the perpetrator of marital rape to law enforcement as the last alternative.

REFERENCES

- Bergen, Raquel Kennedy. *Marital Rape*. National Electronic Network on Violence Againsts Women. March 1999;
- Efendi, Yazid. 2001. *Pengantar Viktimologi: Rekonsiliasi Korban dan Pelaku Kejahatan*. Purwokerto: Universitas Jenderal Soedirman;
- Hartini, Sri. Tedi Sudrajat dan Rahadi Wasi Bintoro. "Model Perlindungan Hukum Terhadap Kebijakan Pelayanan Kesehatan Masyarakat Miskin di Kabupaten Banyumas". *Jurnal Dinamika Hukum*. Vol. 12 No. 3. September 2012. Purwokerto: Faculty of Law Universitas Jenderal Soedirman;
- Hattu, J. "Perlindungan Hukum Terhadap Korban Kejahatan Ekonomi Di Bidang Perbankan". *Jurnal Sasi*. Vol. 16 No. 4. Oktober- Desember 2010. Ambon: Faculty of Law Universitas Pattimura;
- M, Didik. Arief Mansur dan Elisastris Gultom. 2008. *Urgensi Perlindungan Korban Kejahatan*. Jakarta: PT. Raja Grafindo Persada;
- Susila, Muh Endriyo. "Wacana Kriminalisasi Marital Rape Dalam Timbangan Hukum Islam Dan Kosntitusi". *Jurnal Konstitusi*. Vol. 1 No. 1. November 2012. Jakarta: Mahkamah Konstitusi Republik Indonesia;
- Wulandari, Wahyuni Retno. "Budaya Hukum Patriarki Versus Feminis: Dalam Penegakan Hukum Dipersidangan Kasus Kekerasan Terhadap Perempuan". *Jurnal Hukum*. Vol. 8 No. 3. January 2010. Yogyakarta: Universitas Islam Indonesia;
- YLBH APIK Jakarta (Lembaga Bantuan Hukum Untuk Perempuan). "Pemaksaan Hubungan Seksual dalam Perkawinan adalah Kejahatan Pemerkosaan". obtained from website <http://www.lbh-apik.or.id/fact-60.htm>. accessed on April 14th 2015.