

The Application of Criminal Sanctions againsts the Perpetrators of the Domestic Violence Crime

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Abstract

The law was created to protect the public interest. One of the prevailing norms in the society, the rule of law must be fortified by firm sanctions for the perpetrators of offenders. The law must be enforced, law enforcement can only be done in the form of application of the law, but can also be carried creation of law. Country through law enforcement and in particular the application of sanctions for the perpetrators of the crime of domestic violence, is still far from desirable, because of the many cases, the sentences given to the perpetrators of the crime of domestic violence, is still in a minimum standard. Such the sentences, has not spawned a deterrent effect for offenders and also for the community.

Key Words: Criminal Sanction, Crime, Domestic Violence.

Introduction

Increase cases of domestic violence which makes unrest in society, as in the case Mulberry area that researchers take as a material to be studied. The law was created to protect the public interest. One of the prevailing norms in the society, the rule of law must be fortified by firm sanctions for the perpetrators of offenders. The law must be enforces, law enforcement can only be done in the form of application of the law, but can also be carried creation of law.

Specialized in the crime of domestic violence, the law enforcement that may be made to the perpetrators, is the application of Law No. 23 of 2004 on the elimination of domestic violence. The rule of law relating to the crime of domestic violence, was enacted on 22 September 2004, and found to apply to everyone, without exception.

The consideration of the issuance of Law No. 23 of 2004 are:

- a. That every citizen is entitled to feel safe and free and all forms of violence in accordance with the philosophy of Pancasila and the laws of the Republic of Indonesia in 1945
- b. That all forms of domestic violence, is a violation of human rights and crimes against human dignity and the forms of discrimination that should be removed.

- c. That victims of domestic violence who are mostly women, should get protection from the state or community in order to avoid violence, torture or degrading treatment and human dignity.
- d. That in fact a case of domestic violence prevalent, while the legal system in Indonesia has not guaranteed the protection of victims of domestic violence.

Based on the above considerations, it is seen that Indonesian law before the Law No. 23 of 2004 on the elimination of domestic violence. Weakness owned by the Criminal Code in resolving the cases of domestic violence, people's expectations that with the Law No. 23 of 2004 on the crime of domestic violence can to removed, minimally reduced significantly, the Act No. 23 of 2004, concerning crimes of violence in households still raises a question mark, because until now there are many people who do not understand the rule of law as stated in Law No. 23, 2004.

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Theoretical Framework

The theoretical framework is a framework or a grain of opinion or theory about a case or problem, which the researcher becomes a comparative material, which may be of theoretical grip he agrees or not approved, it is an external input for researchers.

The researchers used the theory of criminal sanctions in particular on the *double track system*. *Double track system* is a two-track system in the application of different types and forms of sanctions in the form of criminal sanctions and the sanctions act as sub-systems in the criminal system

The process of *restorative justice*. Basically done via discretion (discretion) and this diversion, a diversion efforts of the criminal justice process outside the formal process to be resolved amicably. Completion through deliberation is actually not a new thing for the Indonesian nation. Before the occupation of the Netherlands, our nation already has its own laws, namely customary law. Customary law does not distinguish between the completion of the criminal case with the civil cases, all cases can be settled amicably with the aim to get a balance data state election.

The difference between criminal sanctions and sanctions the action is rooted in the basic idea, in the sense of criminal sanctions rooted in the basic idea why it held convictions. Criminal sanctions focusing on sentencing, that the offender not to repeat the same act (deterrent), while the sanctions measures, oriented so that the perpetrator can change attitudes.

This idea is very appropriate to be applied to the crime of domestic violence, because the criminal act of domestic violence, punishment for the perpetrator, not only deter the perpetrators are, but also realize that the act is not exactly justified either in law or national law.

Regarding violence can be interpreted as an act of deliberate or some form of action or acts that constitute negligence, which to all is a violation of criminal law, which is carried out without a defence or justification and sanctioned by the state as a serious criminal acts or acts infringing on the law lightly.

Indonesian dictionary, violence is defined as concerning the nature, characterized by loud, the act of a person or group of persons who caused the injury or death of another person or cause the damage of physical or other people's stuff.

Definition of violence not only against the law or the law, but also an act that is contrary to the *conduct norms*, that acts contrary to the norms that exist in society even though the action was not incorporated or organized under the laws.

Criminal Code in its articles no secar firmly set on the definition of violence, but is vague can be seen in 89 penal Code states that "makes people helpless swoon or equated with violence."

Sound Criminal Code Article 89 above do not clearly say what exactly the acts of violence, or in other words what exactly the actions that can result in the person becomes unconscious and helpless no explained.

In another article that described in article 285 Criminal Code that "whoever by force or the threat of violence to force a women have sex with her outside of marriage, threatened for rape with a maximum imprisonment of twelve years. "Violence referred to in Article 285 Criminal Code clearly above the determined actions and thus should not be a violent sense of floating."

From the above description it can be said in this section that the kinds of violence that is set in the criminal Code are: 1) Violence that resulted in someone becomes unconscious and helpless, and 2) Violence in the case of rape.

If we look at the articles described in Article 351 to Article 355 Criminal Code are articles about the persecution in accordance with sub-chapter headings, namely Chapter IX of persecution. Definition of domestic violence in article 1 of Law eraser domestic violence stated that: Any action against someone, especially women misery or suffering physical, sexual, psychological, and or negligence of household including threat to commit an act of coercion, or deprivation of independence is against the law in the domestic sphere.

From the definition above looks for whom this legislation enacted is not solely for the benefit of women but for all the people and those who have subordinated in fact, not just women, either adults or children but men, both adults' and children alike. "

The violence that occurred in the household according to article 5 of the law the elimination of domestic violence covered: physical violence, psychological violence, abused and neglect household sexual. Physical violence according to article 6 of the law the elimination of domestic violence is: "the act resulting in pain, sickness, or serious injury".

Then what is meant by psychological violence in accordance with article 7 of the law violence deletion in the household is Acts that lead to fear, loss of confidence, loss of ability to act, a sense of helplessness or serious psychic suffering on someone"

Then, what is meant by sexual violence according to article 8 of the law elimination of domestic violence is:

- a. Coercion sexual intercourse carried out against an individual living within the scope of the household.
- b. Forcing sexual intercourse against one in the scope of the household for commercial purpose and / or a specific purpose.

This provision is actually quite important because sexual harassment is an interfere act with a person and pose a threat to a person because it can lead to sexual violence. Sexual harassment also includes an unpleasant act that is done in the form of behaviour, such as physical contact and flattery, show of pornographic images and sexual demands, whether by words or actions, which should be eliminated because it can cause health and safety problems.

Furthermore, the abandonment of households by Article 9 of the law elimination of domestic violence is:

1. Every person is prohibited displaced people within the scope of the household, whereas according to the enactment of the law for him or because he is obliged to consent or agreement proclaim life, maintenance, or maintenance to the person.
2. Negligence referred to in paragraph (1) also applies to any person resulting economic dependence by restricting and / or banning to work properly inside or outside the home so that the victim was under the control of the person.

As for example, "including also does not provide for his wife, then let his wife work for the husband controlled her income, even hired her as his wife and the wife's dependence economically utilize to control his life."

From the above description, it can be mentioned that to anyone who commits domestic violence, shall be punished in the form of criminal sanctions. Punishing the perpetrator is a law enforcement in the field of criminal law.

According to Sudikno Mertokusomo, in the presence of law enforcement, legal eat can be seen in reality. Furthermore, according to him in law enforcement known as a term "*flat justia et pereat mundus*", which means that even though the world is crumbling law must be upheld. What is proposed by Sudikno Mertokusumo above, conformed to the legal theory developed by Aristotle about justice. Aristotle said there are two kind of justice, that is: distributive justice and corrective justice. The justice is the first concerns about the distribution of goods to each person according to his place in society, requires that people who have the same position to obtain equal treatment before the law anyway. Medium justice the second, provides a measure for enforcing the law, every day, we have to have a standard that is common

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to fix (recover) the consequences and actions that people do in relation to one another, for example criminal functioned to repair what has been done by crime. Another example of recovery to repair what has been done by the crime. Another example of a civil fault repair restoration, carried out by way of compensation, these standards should be applied regardless of the people and for all of them subject to an objective standard.

Justice theory developed by Aristotle, both enforcement law on everyone and recovery state due to the violation, can be implemented as a blade of analysis in this study. The reason the author says so, that the perpetrators of the crime of domestic violence, should be given appropriate punishment, for what he has done, but use the legal standards that Act No. 23 of 2004 on the elimination of domestic violence, the expectation that sentencing will also bring changes to the character or character of person towards better. Therefore, the criminal policy in cases of domestic violence, should cover two things: the policy of penal and non-penal policies. This is what is meant by the theory of *"double track system"*

Conclusion

- 1) Addressing the crime of domestic violence not create or invent systems and legislation that are criminal but what about the role of government and the public aware of a couple of ruler and obligations.
- 2) Provide sufficient and adequate knowledge of the husband as head of the household so that she has the ability or skill in terms of employment in accordance with his expertise as a household so she could afford and be turned on because the family is based on the observation that the tendency of domestic violence caused by the economic situation,
- 3) There are several models or trait or habit and character and personality of each couple from the beginning or by circumstances that the husband has a hard nature, selfish always justify themselves and vice versa wife have the nature, character and personality same. In this case the necessary role of psychologist and religious leaders.

Suggestion

- 1) In order to provide the government and provide a means for the prospective couple who will get married to provide education for at least one month to provide information so that the prospective husband and wife understand their rights and obligations due in accordance with the law that philosophy marriage in Indonesia created a marital relationship that is eternal and eternal happiness and prosperity in accordance with the will of God Almighty.
- 2) That there is a special institution that pre marriage to educate the prospective husband and wife who will hold the role of marriage in which the institution providing religious education, culture customs and expertise in accordance with their respective fields candidates for husband and wife to be able to work.
- 3) In order for the government to revise the law in domestic violence prevailing today.

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