



Proceeding of 2nd Malikussaleh Internasional
Conference on Law, Legal Studies and Social
Science (MICoLLS) 2022

Legal Consequences Of The Revocation Of Complaints In Domestic Violence Crimes

Shira Thani, Fitria Mardhatillah, Eko Gani PG

Legal Consequences Of The Revocation Of Complaints In Domestic Violence Crimes

Shira Thani^{1*}, Fitria Mardhatillah², Eko Gani PG³

^{1,2,3}Faculty of Law, Universitas Malikussaleh

*Correspondent Author, e-mail: shirathani@unimal.ac.id

Abstract

According to Article 1 paragraph (1) of the UUPKDRT domestic violence is any act against a person, especially a woman, which results in the emergence of misery or suffering within the scope of the household. Domestic violence is commonly referred to as a hidden crime that has taken many victims from all walks of life. Some forms of criminal acts regulated in the UUPKDRT are complaints. Complaints are the right of the victim to be prosecuted or not to be prosecuted because it concerns the interests of the victim. The purpose of the complaint is to protect the aggrieved party and provide an opportunity for interested parties to resolve the case in force in society. The problem that was studied was how to protect the law for victims of domestic violence and how the legal consequences of retracting reports by victims of domestic violence crimes. This research uses normative legal research methods. The approach used is a statutory approach and a conceptual approach. Protection of victims is any effort aimed at providing a sense of security to the victim carried out by the family, advocates, social institutions, police, prosecutors, courts, or other parties either temporarily or based on court determinations. To optimize the protection of victims, restitution needs to be integrated into the criminal justice system. Considering that restitution is a criminal institution that can provide benefits to victims, perpetrators, the state, and society. In addition to restitution, compensation can also be given to victims of domestic violence as an effort to protect the law. In the formulation of the 2008 Criminal Code Bill in Article 135 of the Criminal Code Bill, it is also formulated about the protection of victims of domestic violence, the legal consequences caused if the complaint is revoked, the prosecution becomes void. The revocation of the complaint on the complaint is an absolute requirement for non-prosecution. However, if the revocation of the complaint does not meet the provisions in accordance with Article 75 of the Criminal Code, then the revocation of the complaint cannot stop the criminal case.

Keywords:

evocation Complaint, Domestic Violence Crime

1. Introduction

According to Article 1 paragraph (1) of Law Number 23 of 2004 concerning the Elimination of Domestic Violence (hereinafter referred to as UUPKDRT), domestic violence is any act against a person, especially a woman, which results in physical, sexual, psychological, and/or domestic neglect or suffering including threats to commit acts, coercion, or unlawful deprivation of independence within the scope of the household. Domestic violence issues are prevalent in families, but generally victims' families do not have clear space or information on whether their family issues deserve to be brought to justice.

So far, people consider that problems in the household are problems that are very personal in nature and are only resolved within the scope of the household. [1] Therefore, it is important for victims of domestic violence to receive assistance both legally, mediation and psychologically. The assistance leads to a single perspective of the process of legal and social change developing a legal model. [2]

UUPKDRT in addition to regulating the prevention and protection and recovery of victims of domestic violence, also regulates specifically violence that occurs in the household with elements of criminal acts that are different from the criminal acts of abuse regulated in the Criminal Code. In addition, the law also provides for the obligations of law enforcement officials, health workers, social workers, volunteer escorts, or spiritual advisers to protect victims so that they are more sensitive and responsive to household interests that from the beginning are directed towards the integrity and harmony of the household.

Domestic violence is commonly referred to as a hidden crime that has taken many victims from all walks of life. The forms of crime also vary and the causal factors are also varied. And the consequences are not only felt by the wife but the children also feel the suffering.

The commitment of the Government of Indonesia has been stated in the UUPKDRT dictum as follows:[3]

1. That every citizen has the right to a sense of security and freedom from all forms of violence in accordance with the philosophy of Pancasila and the 1945 Constitution of the Republic of Indonesia.
2. That all forms of violence, especially domestic violence, constitute violations of human rights and crimes against humanity and forms of discrimination that must be eliminated.
3. That victims of domestic violence, most of whom are women, should receive protection from the state and or society or others to report in order to avoid and be free from violence or threats of violence, torture or degrading treatment and dignity of humanity.
4. That domestic violence cases occur a lot, while the legal system in Indonesia has not guaranteed protection for victims of domestic violence.

Some forms of criminal acts regulated in the UUPKDRT are complaints, where in Articles 51, 52 and 53 it is expressly stated that: "Criminal acts as referred to in Article 44 paragraph (4) and Article 45 paragraph (2) and Article 46 are DelikAduan". However, it is interesting to discuss further, if the complainant complains about domestic violence after peace and then retracts the complaint with a grace period still within the limits of Article 75 of the Criminal Code.

Complaints are the right of the victim to have a prosecution or not to be prosecuted because it concerns the interests of the victim, for this reason, in the case of complaints, a period of revocation of the case is given as stipulated in Article 75 of the Criminal Code. This is done so that the victim can consider by looking at the impact that will be caused to the victim if the case continues or not, the holding of the complaint is to protect the aggrieved

party and provide an opportunity for interested parties to resolve the case that applies in society.

From the description above, the problem studied is how to protect the law for victims of domestic violence and how the legal consequences of revoking reports by victims of domestic violence crimes.

2. Method

The purpose of this study is to find out the extent of legal protection provided for victims of domestic violence and to know the legal consequences if there is a retraction of reports made by victims of domestic violence crimes. This research uses normative legal research methods, using secondary data consisting of primary, secondary and tertiary legal materials. The approach used is a statutory approach and a conceptual approach.

3. Discussion

A. Legal Protection for Victims of Domestic Violence Crimes

UUPDKRT is one of the progressive efforts in the criminal law system that aims to eliminate all kinds of domestic violence. However, in its implementation it focuses more on punishing the perpetrator. In addition, law enforcement officials often view domestic violence as a complaint. So that law enforcement officials want to be resolved in a familial manner. In his logic the judge's interpretation of the form of violence, is largely determined by what is visible alone, so psychic violence is also measured by the victim's daily physical condition. [4]

Some of the obstacles in handling victims of domestic violence include: First, domestic violence cases reported by victims are often not followed up because the victim is hesitant or does not understand that what is reported is a criminal act. Likewise, cases that have been processed by the Police are often withdrawn for various reasons, for example because the victim feels that he has forgiven the perpetrator, economic dependence on the perpetrator, domestic violence is still considered a family disgrace; Second, differences in understanding among law enforcement on forms of domestic violence; about the mechanism for providing protection and not all parties have supported efforts to protect victims of domestic violence; Third, the length of time between the event and the visum, so that the results of the visum become less supportive of the legal process; Fourth, the problem of budgeting for socialization to hard-to-reach areas, resulting in inadequate frequency, and shelter funding for both buildings and operations; Fifth, handling domestic violence cases has not been considered a priority, so the formation of PPT is still stalled; Sixth, the substance of the punishment as referred to in the provisions of Article 44 and Article 49 of the UUPKDRT does not yet contain a deterrent effect. In some cases (especially psychic domestic violence) judges impose a mild sentence because they only look at the victim's external condition without trying to explore the victim's suffering (inside). [5]

In relation to efforts to protect victims of domestic violence, Article 1 paragraph 4 of the UUPDKRT states that protection is any effort aimed at providing a sense of security to victims carried out by the family, advocates, social institutions, police, prosecutors, courts,

or other parties either temporarily or based on court determinations. And the mechanism has been regulated in chapter IV of the UUPKDRT.

To optimize the protection of victims, restitution needs to be integrated into the criminal justice system. Considering that restitution is a criminal institution that can provide benefits to victims, perpetrators, the state, and society. [6] as a substitute for financial loss, repair and/or treatment of physical injuries and psychological suffering as a victim of a criminal act that has befallen him.

In addition to restitution, compensation can also be given to victims of domestic violence as an effort to protect the law. The difference is if compensation is a request of the victim and is paid by the community in the form of community and state accountability for victims due to acts of violence. Meanwhile, restitution is a form of liability whose nature is more likely to lead to the criminal offense that the defendant is responsible for as a criminal. [7]

To protect the human rights of witnesses and victims, it is regulated in Article 11 of Law Number 13 of 2006 concerning Witness and Victim Protection. In the Act, it is stated in paragraph (1) that the LPSK is an independent institution; subsection (2) LPSK domiciled in the capital of the Republic of Indonesia; paragraph (3) LPSK has representatives in the regions as needed. And article 28 of Law Number 13 of 2006 regulates agreements with the Witness and Victim Protection Agency (LPSK) for witnesses or victims of criminal acts.[8]

In the formulation of the Criminal Code Bill 2008,[9] the issue of domestic violence is regulated in Chapter XXIII with the title of Corporate Crime. More concretely, Article 135 of the Criminal Code Bill formulated on victim protection, namely: (1) If the defendant is sentenced and there is a victim who suffers material losses due to a criminal act committed by the defendant, the judge requires the convict to pay the loss to the victim, the amount of which is specified in his judgment; (2) If the convict does not pay the compensation referred to in subsection (1), the property of the convict is confiscated and auctioned to pay compensation to the victim; (3) If the convict attempts to evade to pay compensation to the victim, the convict is not entitled to a reduced term of sentence and is not granted parole; (4) In a conditional criminal conviction, a special condition may be specified in the form of the convict's obligation to pay damages to the victim; (5) Further provisions regarding the terms and procedures for confiscation and auction as referred to in paragraph (2) shall be regulated by a Government Regulation.

B. Legal Consequences of Retraction of Domestic Violence Reports by Victims

The regulation on complaints is regulated in Articles 72-75 of the Criminal Code. A complaint is a complaint that is tried if the interested or aggrieved complains about it. If there is no complaint, then the prosecutor will not prosecute. [10] Article 75 of the Penal Code makes it clear that the person filing the complaint, has the right to withdraw within three months after the complaint is filed.

The reason for the inclusion of a complaint in the Penal Code is because of the consideration that in some kind of crime, it will be easier to harm special interests

(*bizjondere striped*) because of the prosecution, than in the public interest by not prosecuting it.[11]

In addition, the reason for forming the law to establish a complaint is the consideration that in certain respects the importance of the aggrieved matter so that the case is not prosecuted is greater than the importance for the state to have the case prosecuted. The juridical consequence of such a determination is that law enforcement officials cannot take any legal action against the perpetrator, even if they know that a criminal act has occurred, if the victim of the crime makes a complaint. [12]

Basically, in a criminal case, the processing of the case depends on the type of offense. There are two types of complaints related to the processing of cases, namely complaint deliberations and ordinary deliberations. In ordinary cases, the case will still be processed by law enforcement officials even without the consent of the victim. Meanwhile, the complainant's complaint can withdraw its report to the police if both parties have been peaceful or do not continue the matter. [13]

Complaint delik can be distinguished from absolute *klachtdelicten* and relative *klachtdelicten*. [14] Absolute complaint delik is a delik which in all circumstances is a complaint such as Articles 284,297,293,310, 311, 315, 317, 318, 320, 321, 322, 323, 335 paragraphs (2) and 369 of the Criminal Code and Articles 51-53 of the UUPKDRT. A relative complaint is a complaint that in certain circumstances is a complaint delik, while the complaint is not a complaint. For example, theft between families, Articles 362, 367, 368, and 369. [15]

Those who are entitled to file a complaint according to Article 72 of the Criminal Code are:

- a. The person charged or the person who is the victim of the crime in question.
- b. In the event the person concerned is not old enough or immature or under the ownership of another person, then the person entitled to file a complaint is his legal guardian in civil cases.
- c. If the guardian is not present, then the one who has the right to complain is the guardian who supervises, the blood family in a straight line.
- d. In the event the person concerned dies, then the prosecution is carried out on the complaint of the father's mother, child or her husband (wife) who is still alive.

Article 108 of the Penal Code also states that those who have the right to make complaints are the following:

- a. Any person who is aware of a criminal event;
 - b. Any person who experiences a criminal event;
 - c. Any person who sees a criminal event;
 - d. Everyone who witnesses a criminal event;
 - e. Any person who is a victim of a criminal event;
 - f. Any person who knows adnaya malicious manufacturing to commit a criminal offence is exposed to public peace and security;
 - g. Every civil servant in carrying out duties who knows the occurrence of criminal events.
- [16]

In domestic violence crimes, the submission of a complaint has the right to be made by the victim directly can authorize the family or other person to report the domestic violence crime he has experienced to the police. If the victim is a child, then the complaint can be made by the parent, guardian, caregiver or the child himself, based on the provisions of the laws and regulations.

Whether or not a prosecution is held in a complaint case is the right of every victim. The provision for the withdrawal of this complaint provides for the possibility that after the complaint is filed, the complainant changes his mind because for example the maker has apologized and expressed his misconduct, then the complainant can withdraw the complaint long as it is within three months after the complaint is filed. Once the complaint is withdrawn it cannot be filed again. [17] If the complaint is made by letter, then the period of the complaint is calculated from the date of the complaint letter, not the date from the date the letter was received. The method of retraction of complaints is not regulated in the Criminal Code or in the UUPKDRT.

Some of the reasons why domestic violence complaints are revoked (withdrawn) by victims are as follows:

1. The two sides reconciled, where the husband apologized to the wife for the deeds he had done to his wife, the husband realized and admitted that what he did was wrong and it was a momentary emotion, and the husband promised not to repeat the deed again.
2. Resolved in a familial manner, between the two parties, namely the husband and wife have resolved their domestic problems in a familial manner with deliberation and consensus between the families of both parties. [18]

The retraction of the complaint contains consequences for the public prosecutor in exercising his authority, The consequences in question are:

1. With the revocation of the complaint, the public prosecutor loses his authority to conduct the prosecution;
2. If the filing process has been carried out in the court hearing, the charges are dropped;
3. If the charges are continued, the judge must decide to dismiss the proceedings. [19]

The legal consequences if the complaint is dismissed, the prosecution becomes void. The revocation of the complaint on the complaint is an absolute requirement for non-prosecution. However, if the revocation of the complaint does not meet the provisions in accordance with Article 75 of the Criminal Code, then the revocation of the complaint cannot stop the criminal case. Except for the crime of adultery (Article 284 of the Criminal Code), the complaint can be retracted, as long as the event has not begun to be examined in court hearings.

4. Conclusion

The protection of victims is any effort aimed at providing a sense of security to the victim carried out by the family, advocates, social institutions, police, prosecutors, courts, or other parties either temporarily or based on court determinations. To optimize the protection of victims, restitution needs to be integrated into the criminal justice system. Considering that restitution is a criminal institution that can provide benefits to victims,

perpetrators, the state, and society. In addition to restitution, compensation can also be given to victims of domestic violence as an effort to protect the law. In the formulation of the 2008 Criminal Code Bill in Article 135 of the Criminal Code Bill, it is also formulated about the protection of victims of domestic violence, the legal consequences caused if the complaint is revoked, the prosecution becomes void. The revocation of the complaint on the complaint is an absolute requirement for non-prosecution. However, if the revocation of the complaint does not meet the provisions in accordance with Article 75 of the Criminal Code, then the revocation of the complaint cannot stop the criminal case.

5. References

- Angkasa, "Kedudukan Korban Dalam Sistem Peradilan Pidana", *Disertasi*, Program Doktor Ilmu Hukum UNDIP Semarang, 2003, pp. 244.
- Shinta, Analisis Terhadap Lembaga Perlindungan Korban dan Saksi yang Berdaya dalam Undang-Undang Nomor 13 Tahun 2006 tentang Perlindungan Saksi dan Korban, "Jurnal Hukum dan Republika". Vo.7, No.1, Tahun 2007, pp 27-23. Dalam Ayu Setyaningrum dan Ridwan Arifin. DOI: <http://dx.doi.org/10.31604/jim.v3i1.2019.9-19>
- Ayu Setyaningrum dan Ridwan Arifin, Analisis Upaya Perlindungan dan Pemulihan Terhadap Korban Kekerasan Dalam Rumah Tangga (KDRT) Khususnya Anak-Anak dan Perempuan, "Muqoddimah", Vol 3, No.1, Februari 2019, pp.15. DOI: <http://dx.doi.org/10.31604/jim.v3i1.2019.9-19>
- Chazawi, Adami, Pelajaran Hukum Pidana Bagian 2, PT Raja Grafindo Persada, Jakarta, 2005. pp.43
- Eva Achjani, Gugurnya Hak Menuntut, Ghalia Indonesia, Jakarta, 2010, pp.11.
- Muhammad Satria, Zainal Asikin dan Ufran. Peran Penyidik dalam Upaya Penyelesaian Tindak Pidana Kekerasan Dalam Rumah Tangga (KDRT) Secara Restorative Justice (Studi Polresta Mataram). "Open Jurnal System" Vol.14 No.5 Desember 2019. Pp. 2683. DOI: <https://doi.org/10.33758/mbi.v14i5.394>
- Wizaenadi Laksono, Syaiful Asmi Hasibuan, Fitri Ramadhani Siregar. Penerapan Tingkat Penyidikan Tindak Pidana Kekerasan Dalam Rumah Tangga. "Jurnal Rectum", Vol.4, No.2, Juli 2022. pp. 551. DOI: <http://dx.doi.org/10.46930/jurnalrectum.v4i2.2092>
- Hamidah Abdurrachman, Perlindungan Hukum Terhadap Korban Kekerasan Dalam Rumah Tangga Dalam Putusan Pengadilan Negeri Sebagai Implementasi Hak-Hak Korban, "Jurnal Hukum", Vol.17, No.3, Juli 2010, pp. 484. DOI: <https://doi.org/10.20885/iustum.vol17.iss3.art7>
- Mudjiati, "Implementasi Undang-Undang Nomor 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga Suatu Tantangan Menuju Sistem Hukum Yang Responsif Gender", Jurnal Legislasi Indonesia, Vol. 5, No. 3 September 2008, pp. 65. DOI: <https://doi.org/10.54629/jli.v5i3.297>
- RUU Kitab Undang-Undang Hukum Pidana, Direktorat Jenderal Peraturan Perundang-undangan, Departemen Hukum dan Hak Asasi Manusia, 2008
- Samidjo, Pengantar Hukum Indonesia, Armico, Bandung, 1985, pp 154.

- SatochidKartanegara, Hukum Pidana Kumpulan Kuliah Bagian II, BalaiLekturMahasiswa, Bandung, tt, pp.165
- E Utrecht, Hukum Pidana II, Pustaka Tinta Mas, Surabaya, 2000, pp 257
- M. Iqbal Ali Bazhar, “TinjauanYuridisPencabutanLaporanKepolisianDalamTindakPidana” Thesis, Universitas Wiraraja, 2021. pp. 2
<http://repository.wiraraja.ac.id/id/eprint/1372>
- R. Soesilo, Pokok-pokok Hukum PidanaPeraturanUmum dan Delik-delikKhusus, Bandung, 1948, pp. 94
- Y. Arafah, “PenyelesaianPerkaraDelikAduanDenganPerspektif Restorative Justice,”Borneo Law Review” Vol.1, No.2, Desember 2017. Pp.128. DOI.
<https://doi.org/10.35334/bolrev.v1i2.714>
- S. Soerodibroto, KUHP dan KUHAP dilengkapiYurisprudensiMahkamahAgung dan Hoge Raad, RajaGrapindoPersada, Jakarta, 1991, pp. 403.
- M. Yusuf Siregar, dkk, AnalisisPutusan Hakim PengadilanPidanaTerhadapPencabutanPerkaraDelikAduan (StudiPutusanMahkamah Agung No.1600K/PID/2009),“USU Law Journal”,Vol,I,II, No.1, Februari 2014, pp.192
- Dwi Ratna Kamala Sari Lukman, Pencabutan Pengaduan dalam Tindak Pidana Kekerasan Dalam Rumah Tangga, “Widya Karta” Vo.2, No.2, November 2019, pp. 97-98