



Analysis of Domestic Violence Cases Committed by Wives Against Husbands Based on Feminist Legal Theory Perspectives

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ABSTRACT

This research is aimed at studying domestic violence committed by wives against their husbands. This does not mean that wives are dominant, but there are several reasons why wives commit domestic violence. This study will analyze two issues, namely the criminal law perspective on domestic violence committed by wives as perpetrators and the role of feminist legal theory in viewing legal subjects in domestic violence committed by wives. The type of research used is normative legal research, in which this study is only aimed at concepts, legal principles, legal principles, and written regulations so that this study is closely related to the literature because it will require secondary data in legal science literature. This study found that criminal law (positive law) views domestic violence committed by wives as perpetrators of violence as equal in the eyes of the law. From the perspective of perpetrators of domestic violence, feminist legal theory does not distinguish between men and women, because the purpose of feminist legal theory is only to emphasize the subordination of women and to seek to amend the position and approach of the law towards women and gender. This also supports the author's statement that the law views perpetrators of domestic violence as equal before the law, whether it is the husband or the wife who is the perpetrator. Therefore, despite the inherent differences between men and women, the law must ensure protection and equality for all individuals without discrimination.

Keywords: Violence, Domestic, Wife, Feminist Theory.

INTRODUCTION

The family is the most fundamental social institution for shaping human qualities. To this day, it remains a shared belief and hope that the family can always be relied upon as an institution of moral resilience, character, and virtue in the context of society. Indeed, the quality of a nation's future generations is also determined by the formation of character within the family. This is where the family plays a strategic role in fulfilling these expectations.¹

The formation of a family is based on the bond of marriage, whereby this family is referred to as a new family. The existence of this family also gives rise to the rights and obligations of husband and wife within the family.² Through Law Number 1 of 1974 concerning Marriage, the aim is to prevent disputes or physical acts (violence) between husband and wife that tend to hurt and endanger a person's life through the regulation of equal rights and obligations between husband and wife in domestic life.³

¹ Zulkarnain, Analisis Yuridis Kriminologis Tentang Kekerasan Dalam Rumah Tangga Yang Dilakukan Oleh Istri Terhadap Suami, Jurnal Hukum: Widya Yuridika Vol 1/Nomor 1/Juni 2018, p. 64

² Abd. Rahman Ghazaly, Fiqh Munakahat (Jakarta, 2006), p. 3

³ Gilang Kusuma Hadi, et. al., Perlindungan Hukum Terhadap Suami Sebagai Korban Kekerasan Dalam Rumah Tangga Yang Dilakukan Oleh Istri, Jurnal GEMA, Tahun XXVII/50/Pebruari - Juli 2015, p. 1747

Essentially, every family intends to build a happy family full of love, both physically and spiritually. In other words, every family truly desires to build a harmonious and happy family, often referred to as a *sakinah, mawaddah wa rahmah* family. In reality, not all families can sail smoothly through life, because within a family, happiness and mutual love and affection are not always felt. Instead, there may be feelings of discomfort, pressure, or sadness, as well as mutual fear and hatred among family members. This is indicated by the fact that there are still a number of problematic households, and even various forms of domestic violence.

Lately, violence in society seems to be on the rise.⁴ Violence occurs not only in public spaces, but also in domestic sones (households).⁵ Domestic violence is unique and distinctive because these crimes occur within the household and take place in intimate personal relationships, namely between husband and wife, parents and children, or between children, or with people who work in the household and live there permanently.⁶

Men (husbands) in the kinship structure in Indonesia are positioned as the head of the household. This position as head of the household often results in him wielding considerable power within the family and even misinterpreting his position in relation to other family members, becoming a perpetrator of domestic violence. Often, problems within the family are resolved through anger and accompanied by physical and psychological violence as an outlet for the anger between husband and wife.

Domestic violence is a crime prohibited under Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence (State Gazette of the Republic of Indonesia of 2004 Number 95). Article 1 paragraph 1 of Law of the Republic of Indonesia Number 23 of 2004 states as follows:

“Domestic violence is any act against a person, especially a woman, that results in physical, sexual, psychological, and/or domestic neglect suffering or distress, including threats to commit acts, coercion, or unlawful deprivation of liberty within the domestic sphere.”

⁴ Moerti Hadiarti Soeroso, *Kekerasan Dalam Rumah Tangga Dalam Perspektif YuridisViktimologis*, (Jakarta, 2010),p. 19

⁵ La Jamaa, et. al., *Hukum Islam dan Undang-undang Anti Kekerasan dalam Rumah Tangga*, (Surabaya, 2008),p. 13

⁶ Hamidah Abdurrachman, *Perlindungan Hukum Terhadap Korban Kekerasan Dalam Rumah Tangga dalam Putusan Pengadilan Negeri Sebagai Implementasi Hak-hak Korban*, dalam <http://law.uii.ac.id/images/stories/Jurnal%20Hukum/7%20Hamida%20Abdurrahman.pdf>. accessed on 25 November 2023

Violence occurs when someone acts inappropriately and uses physical force that violates the law and harms themselves, others, or their environment.⁷ According to Mansour Faqih, as quoted by Eti Nurhayati, violence is an assault or invasion of a person's physical and psychological integrity. Violence arises because of the existence of authority, whereby subordinate groups in society will always be victims of violence.⁸

Victims of domestic violence are generally women and children, while the perpetrators are men (husbands). The perpetrators' relationships with domestic violence include blood relations, marriage, breastfeeding, foster care, guardianship with the husband and children, and even domestic helpers living in the house. Domestic violence crimes that happen today affect not only women and children, but men (husbands) can also be victims of domestic violence.

The perception in society is that men or husbands have always been the perpetrators of domestic violence. However, it should be noted that domestic violence has also been committed by women (wives) against other family members, especially their husbands. Society considers violence committed by wives against their husbands within the household to be normal, viewing it as part of the dynamics of married life, and assuming that husbands will be able to cope with and overcome it.

Wives who commit violence against their husbands cannot be interpreted as acting in "self-defense" because they claim that women tend to initiate violence. Recently, society itself has acknowledged that women can be perpetrators of domestic violence with expressions such as "husbands fear their wives," "husbands' money belongs to their wives, while wives' money belongs to themselves," and so on.

Violence committed by wives against their husbands tends not to be reported because it is seen as a disgrace to men who are unable to be leaders of their families. Society will say that such cases are unique and rare, and will tend to question the truth of the case.

Domestic violence, regardless of the reason, will eventually affect the integrity of the family, which can ultimately lead to family breakdown. If this is the case, it is the children who suffer the most, especially in terms of their future. Therefore, it is necessary to continue to seek the best way to save the family institution while still providing adequate attention to the rescue of family members in particular, and the surrounding community in general.

⁷ Abnan Pancasilawati, *Kekerasan Dalam Rumah Tangga Perspektif Uu No. 23 Tahun 2004 Tentang Pkdr Dan Hukum Islam*, dalam melalui <https://media.neliti.com/media/publications/57800-ID-kekerasan-dalam-rumah-tangga-perspektif.pdf> accessed on 26 November 2023

⁸ Eti Nurhayati, *Domestics Violence*, Jurnal: *Equalita Stain Cirebon*, Vol. 3 No.2 June, 2003, p. 48-49

The description of cases of domestic violence committed by women against men breaks the common perception that men are superior to women. Violence committed by mothers against children and domestic workers is more often reported and prosecuted. This study will discuss women as perpetrators of domestic violence. Furthermore, based on this brief explanation, it will also be examined using legal feminism theory, which is defined as advocacy or support for equality between women and men, accompanied by a commitment to improve the position of women in society. This term assumes the existence of unequal conditions between men and women, whether in the form of male domination (patriarchy), gender inequality, or the social effects of gender differences.

In general, a wife is seen as someone who needs special protection to shield her from violent acts. With this assumption, the law provides more legal protection to wives who are victims of domestic violence, so there's often discrimination against husbands in terms of getting legal protection, even though husbands can also be victims of domestic violence committed by their wives. Only a few laws can be used by husbands who are victims of domestic violence committed by their wives to obtain legal protection. Therefore, based on the background described by the author, two problems arise, namely 1) how does criminal law view domestic violence committed by wives as perpetrators?; and 2) how does feminist legal theory view the legal subject in domestic violence committed by wives?

METHOD

The research method used in this study is normative legal research. This study only focuses on concepts, legal principles, legal principles, and written regulations, so this study is closely related to literature because it will require secondary data from legal literature. The type of approach used in this legal research is a normative juridical approach. The normative legal approach is an approach to problem solving using legislation and regulations.⁹ This approach refers to a research approach conducted by reviewing all laws and regulations related to legal issues being handled by researchers. With this approach, the author will seek the ratio legis and ontological basis for the enactment of the law, so that the researcher can understand the philosophical content of the law and conclude whether there is a philosophical conflict between the law and the issue at hand. Furthermore, the researcher will be able to determine whether the new legislation contains the provisions needed for the situation at hand or otherwise.

⁹ Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta: Kencana, 2010, p. 97

RESULTS AND DISCUSSION

A. Criminal Law Perspective on Domestic Violence Committed by Wives as Perpetrators of Violence

Violence has become a phenomenon in Indonesian society. Violence occurs not only in public areas, but also frequently in domestic areas, giving rise to domestic violence. Ironically, in many cases of domestic violence, women, especially wives, are the victims. The husband-wife relationship is ideally built on harmony and happiness, but many wives experience violence from their husbands, whether physical, psychological, sexual, or economic.

Domestic violence is an iceberg phenomenon that, if not addressed immediately, will spread further and cause psychological damage. In such conditions of domestic violence, the situation remains problematic even after the enactment of Law No. 23 of 2004 on the Elimination of Domestic Violence. This is because if a wife who experiences domestic violence reports her husband to the police, there is a concern that her husband will become even more violent towards her after she returns home due to the lack of legal protection from the police and/or the courts. In fact, some wives who are victims of domestic violence prefer to endure the suffering they experience because they are worried about their future if their husbands get involved with law enforcement.

Law No. 23 of 2004 defines domestic violence as "any act against a person, especially a woman, that results in physical, sexual, or psychological suffering or distress, or domestic neglect, including threats to commit acts of coercion or deprivation of liberty contrary to law and within the scope of the household."¹⁰ In addition, domestic violence is an act committed by a couple, whether male or female, to gain dominance in the family.¹¹

Perpetrators of domestic violence are often reported to be husbands against their wives. In fact, victims of domestic violence can be either wives or husbands. This means that not only husbands can commit violence against their wives, but also vice versa. DV against husbands can occur, but physical violence committed by wives against their husbands is relatively rare because men are generally physically stronger than women. Therefore, physical violence usually occurs when the husband is in a weaker condition than the wife, for example, when the husband is paralyzed.

¹⁰ See Law No 23 Year of 2004 on Elimination of Domestic Violence

¹¹ Badriyah Khaleed, *Penyelesaian Hukum KDRT*, (Jakarta, 2015),p. 2

Basically, violent crimes can occur anywhere, anytime, and can be committed by anyone regardless of gender; perpetrators of violence can be either men or women. The description of domestic violence committed by women against men has shattered the common perception that men always have a superior position compared to women, who are often referred to as inferior. This description shows that both men and women have the opportunity to become victims and perpetrators of violence within the household. Violence committed against women, housewives, and children is more widely reported in the media and is subject to legal proceedings, but there are not many reports on the legal proceedings of men (husbands) as victims of domestic violence, or victims of domestic violence are still predominantly women.

Criminal penalties for women who commit physical violence in the household are regulated in Article 44 of Law Number 23 of 2004, as follows:

- (1) Any person who commits physical violence within the household as referred to in Article 5 letter a shall be punished with imprisonment of up to 5 (five) years or a fine of up to Rp 15,000,000.00 (fifteen million rupiah).
- (2) In the event that the act referred to in paragraph (1) results in the victim falling ill or suffering serious injury, the offender shall be punished with a maximum imprisonment of 10 (ten) years or a maximum fine of Rp 30,000,000.00 (thirty million rupiah).
- (3) In the event that the act referred to in paragraph (2) results in the death of the victim, the offender shall be punished with a maximum imprisonment of 15 (fifteen) years or a maximum fine of Rp 45,000,000.00 (forty-five million rupiah).
- (4) In the event that the act referred to in paragraph (1) is committed by a husband against his wife or vice versa and does not result in illness or impediment to the performance of official duties or livelihood or daily activities, the offender shall be punished with imprisonment of up to 4 (four) months or a fine of up to Rp 5,000,000.00 (five million rupiah).

Psychological violence can also be perpetrated by women within the household. Psychological violence as referred to in Article 5 letter b is an act that causes fear, loss of self-confidence, loss of ability to act, feelings of helplessness, and/or severe psychological suffering to a person. In fact, this form of psychological violence is most often perpetrated by women.

Article 44 of the Domestic Violence Law contains provisions on criminal penalties for perpetrators of domestic violence. Article 44 of Law No. 23 of 2004 on PKDRT contains rules regarding punishment or sanctions for perpetrators of domestic violence crimes involving physical violence. The following is the content of Article 44 of Law No. 23 of 2004 on Domestic Violence:

“Any person who commits physical violence within the household as referred to in Article 5 letter a shall be punished with imprisonment of up to 5 (five) years or a fine of up to Rp 15,000,000.00 (fifteen million rupiah).”

In addition to the contents of Article 44 of the Domestic Violence Law regarding criminal sanctions for physical domestic violence, it is also necessary to know what forms of prohibition, including domestic violence, are regulated in the Domestic Violence Law. Article 5 of Law No. 23 of 2004 (Domestic Violence Law) states that everyone is prohibited from committing domestic violence against people within their household in any way or form. The forms of prohibited acts, including acts of domestic violence, are:

a. Physical violence

Physical violence is an act that causes pain, illness, or injury. Physical violence is violence that involves the body. The victim experiences physical suffering as a result of the perpetrator's torture. Domestic violence in the form of a wife beating her husband falls under the category of physical violence as stipulated in Article 5 letter a and Article 6 of Law No. 23 of 2004 concerning the Elimination of Domestic Violence. Physical violence here can be severe or minor. Therefore, a wife who beats her husband can be criminally charged with a complaint offense, and the sanctions for the perpetrator are regulated in Article 44 paragraph 4 of Law No. 23 of 2004 concerning the Elimination of Domestic Violence.¹²

However, according to Article 44 (4), not all family members or households can be criminals or punished, but only husbands or wives, as stated in Article 44 (4), "a husband is a devoted wife or vice versa." The Domestic Violence Law can be explained in legal principles, namely adhering to *the adage lex priori* (a new law or rule overrides other laws or rules) and *lex spesialis derogat lex generalis* (a specific law or rule overrides a general law or rule).

b. Psychological violence

Acts that cause fear, loss of self-confidence, loss of ability to act, feelings of helplessness, and/or severe psychological distress in a person.

c. Sexual violence

Acts that include sexual relations with a person residing in the household, coercion into sexual relations that are unreasonable or unwanted. This includes

¹² Satria Mukti Wibawa, et. al., Pertanggungjawaban Pidana Istri Yang Melakukan Tindak Pidana KDRT Kepada Suami, Pagaruyuang Law Journal, Volume 7 No. 1, Juli 2023, p. 145

coercion into sexual relations with a person in the household with another person for commercial or specific purposes.

d. Domestic neglect

The act of abandoning a person in the household when, according to applicable law or due to consent or agreement, one is obligated to fulfill that person's basic needs. Neglect applies to persons who cause economic dependence by restricting or prohibiting work so that the victim is under the control of that person. An analysis of the provisions in Article 44 paragraph (4) of Law No. 23 of 2004 related to the concept of criminal acts will be carried out based on its general elements, namely the existence of a perpetrator, a victim, and an unlawful act, which will be explained as follows:

1) Perpetrator of a Criminal Act

Everyone who has legal responsibility has the same status and treatment under the law. Differences in gender, ethnicity, or religion cannot be grounds for different treatment under the law. The equality of all people in the implementation of the law is also emphasized in positive law. Everyone has the opportunity to be a perpetrator of a crime or a victim of a crime, including husbands and wives.

2) Criminal Offenses

Basically, an act can be considered unlawful when there is a legal provision governing a case or related to an act. This is because an act or case will not be considered unlawful when there is no provision governing such act.

Based on the above explanation, it can be understood that not all acts committed by a wife against her husband that result in injury (which does not cause illness) as referred to in Article 44 paragraph (4) of Law No. 23 of 2004 can be categorized as a criminal offense, either directly or indirectly. The plan and purpose of the wife's violent act towards her husband are the basic references in determining whether the violent act committed by the wife towards her husband constitutes a criminal act.

In addition, criminal sanctions can also result in social stigma for the wife of the perpetrator of domestic violence, which can worsen her psychological and emotional condition. Apart from the legal consequences mentioned above, wives who commit domestic violence against their husbands can also face serious social

and psychological consequences. They may be shunned by their families and friends, and may even experience problems in finding work or a place to live in the future. In addition, she must also deal with the serious emotional and psychological effects of her actions, such as guilt, depression, and anxiety. Furthermore, she must also take responsibility for her actions towards her children, who may be affected by the violence in the family and may experience trauma and other psychological problems.

In this case, the wife of the perpetrator of domestic violence also needs help and support in the recovery process. In addition, she also needs to acknowledge her mistakes and take responsibility for her actions, as well as commit to changing her behavior and repairing her relationship with her husband and family.

These sanctions can be imposed on both wives and husbands who commit acts of violence. However, criminal sanctions remain part of efforts to provide justice to victims of domestic violence and ensure that perpetrators of domestic violence receive appropriate punishment for their actions. With the current developments of the times, crimes and everything that violates rules or laws are increasingly on the rise.¹³ In conclusion, wives who commit domestic violence against their husbands may face serious criminal penalties, as well as severe social and psychological consequences. Therefore, the prevention of domestic violence must be a shared concern and requires efforts from various parties to prevent acts of violence within the family and provide protection to victims of domestic violence.

The aforementioned article does not refer to the perpetrator of domestic violence as “a husband” but rather as “any person”. This means that anyone who commits domestic violence, regardless of gender, can be charged under this article. Thus, criminal law treats husbands and wives equally when it comes to domestic violence.

¹³ Fitri Dwi Nurjanah, et. al., Pelaksanaan Hak Pendidikan Anak Di LPKA Ditinjau Dari Undang-Undang Nomor 35 Tahun 2014 Tentang Perlindungan Anak, Cakrawala Hukum: Majalah Ilmiah Fakultas Hukum Universitas Wijayakusuma, Vol. 22 No. 2, Tahun 2020, hlm. 120

B. Feminist Legal Theory Views Legal Subjects in Domestic Violence Committed by Wives in the Household

In literature, it is mentioned that legal feminism emerged in the 1960s when the wave of liberalism was confronted with challenges regarding the exclusion of women from all types of equal opportunities to engage in any masculine activities. The development of feminist legal theory cannot be separated from the growth of feminism in general. The first right that was widely fought for by the women's movement was political rights, namely the right to vote, which Sojourner Truth referred to as “ploughed and planted just like a man”, an image of equality that was desired as an important law in the years that followed.¹⁴ The existence of feminist legal theory was preceded by the feminist political movement. Since the 1960s, in order to address gender inequality, it was only in the late 1970s and early 1980s that legal scholars developed different branches of feminist legal theory.¹⁵

Many experts have provided definitions and scope of discussion regarding feminist legal theory, one of which is outlined by Nancy Levit and Robert R.M. Verchick as follows:¹⁶

“Feminist legal theory comes in many varieties, with some overlap. But all the theories share two things—the first an observation, the second an aspiration. First, feminists recognize that the world has been shaped by men, who for this reason possess larger shares of power and privilege. All feminist legal scholars emphasize the rather obvious (but unspoken) point that nearly all public laws in the history of existing civilization were written by men. If American law historically gave men a leg up, this news can hardly come as a surprise. Second, all feminists believe that women and men should have political, social, and economic equality. But while feminists agree on the goal of equality, they disagree about its meaning and about how to achieve it.”

Based on the descriptions by Nancy Levit and Robert R.M. Verchick, it is known that although feminist legal theory is defined in many variations, the important points of feminist legal theory studies focus on two things, namely:

- 1) Feminists believe that the world has been shaped by men, which is why men have greater power and privileges. All feminist legal scholars tend to emphasize this point, although it is not explicitly stated, that almost all public laws in the history of civilization were written by men.
- 2) Feminists believe that women and men should have political, social, and economic equality. Although feminists agree on equality, there are sometimes differences in the meaning of feminism itself and how to achieve it.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

The majority of early feminist legal theorists adopted a model of discrimination based on gender issues. Their goal was to prohibit unequal treatment and encourage the creation of regulations that would allow women to have the same opportunities as men.¹⁷ The concern of feminist legal theorists stems from the issue of equality on the one hand, but the lack of innovation in basic legal principles on the other, so that sometimes feminist legal theorists tend to use the traditional argument that men and women should be treated equally. However, the statement regarding “equal treatment” is confronted with the existence of natural stereotypical differences between men and women, which results in different regulations for men and women in legal rules. This issue of equality also opens up a discourse on “special treatment” for women, which is considered to be demeaning and detrimental to women.¹⁸ In other words, equality does not mean being given “special treatment”.

The subsequent development of the feminist legal paradigm gave rise to a philosophy known as feminist legal philosophy, which examines the broad influence of patriarchal and masculine standards on legal institutions, as well as their impact on the material conditions of women and girls, and people who do not conform to cisgender norms.¹⁹

Feminist legal philosophy also addresses issues related to sexuality and the law, and proposes reforms to address inequality, exploitation, and gender restrictions. To this end, feminist legal philosophy applies insights from feminist epistemology, relational metaphysics and progressive social ontology, feminist political theory, and other developments in feminist philosophy to understand how legal institutions enforce dominant gender and masculine norms. Contemporary feminist legal philosophy draws on various perspectives and scientific studies such as international human rights theory, postcolonial theory, critical legal studies, critical race theory, queer theory/queer theology, and disability studies.²⁰

To achieve the goals of feminist legal philosophy, it is necessary to develop theory, conceptual analysis, and conceptual revision. The promotion and aspiration of freedom and equality for women reflect a major change in basic assumptions about the nature of women and their proper place in the world: a shift from inequality to gender equality, including a re-examination of what equality itself requires. This also requires a reconception of sex, gender, and gender roles. Given the breadth and depth of this transformation, feminist legal theory

¹⁷ M.A. Fineman, *Feminist Legal Theory*: American University Journal of Gender, Social Policy & the Law, Vol. 13, No. 1, Tahun 2005, p. 13

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid.p. 15

operates on multiple levels, from the concrete and specific to the conceptual, and ultimately to the visionary.

A fundamental discussion of feminist legal theory is discussed evolutionarily in terms of structural and non-structural institutions whose legal substance supports the existence of programs of femininity, political equality, immigration, citizenship, marriage, reproductive rights, commodification of the body, protection from violence, and economic rights. For feminists, the state's role in ensuring equality for men and women cannot be separated from the concept of the rule of law itself.

The concept of the rule of law concerns every legal regulation being formed based on morality and the principle of equality (equality before the law). As fellow human beings, equality between men and women is closely related to the rule of law, which rejects discrimination against anyone, including in the formulation of laws relating to the rights of men and women. Laws that are formulated without considering feminist issues are "masculine" laws that will lead to male domination and subordinate women.

Regarding differences and similarities, feminists articulate what equality means in the face of patriarchy. However, feminists seem to differ in their views on this issue. Liberal feminists tend to use Aristotle's concept of equality, which considers "similar cases to be treated equally, while different cases are treated differently according to their differences". For some feminists, this form of procedural justice raises the question of whether there are disparities between men and women that should be taken into account by the law. This is because for centuries, men and women have been viewed as significantly different.

This difference is very clear, for example, only women can become pregnant and give birth naturally. Because of this difference, it is considered appropriate and justifiable to treat men and women differently in law. However, for feminist theorists, a series of issues related to the differences between men and women must be considered consistently by the law with equal treatment. That is, if the reason for the difference in pregnancy is used as a basis for consideration, then in other matters, everything else such as biological differences between men and women, differences in physical strength, the higher possibility of safety for men in cases of rape, and so on. The task of feminists is to determine whether and how to recognize certain differences without reinforcing stereotypes between men and women.

Furthermore, in his journal entitled “Victim Precipitated Criminal Homicide”, Wolfgang argues that the victim plays the role of the first individual to appear and attack the perpetrator first, thereby playing a positive role in the crime.²¹ Stephen Schafer also agrees that victims play a role and bear responsibility for the provocation they engage in, thereby contributing to their own victimization. In his typology of victims, Schafer categorizes victims based on their behavior, provocation, and negligence, which enable them to participate in the crime.²²

In the context of domestic violence crimes, the law treats perpetrators equally before the law, whether they are husbands or wives. In line with the author's discussion, feminist legal theory emphasizes the subordination of women and seeks to amend the legal position and approach towards women and gender. Feminist legal theory aims to determine the extent to which criminal law provides justice for women. It also seeks to identify instances of injustice towards women in the formulation of criminal law in Indonesia. Meanwhile, in cases of domestic violence committed by wives as legal subjects, they have been given the same position as husbands as perpetrators.

On the other hand, the application of feminist legal theory is used as a reference in protecting women in criminal law. Criminal law treats men and women differently. However, it should be noted that legal rules should not be based on the social characteristics of the parties involved. Here are some points related to the legal view of women in the context of criminal law:

- a. Protection of Women: Criminal law provides protection from severe criminal penalties for perpetrators who commit violence against women, especially within the household.²³ This aims to protect women from physical, sexual, and psychological violence.
- b. Feminist Jurisprudence: The women's movement, which seeks to elevate the status of women, is one approach that must be accommodated through strict and definitive legal regulations. The principle of gender equality forms the basis of the legal perspective on women.
- c. Equal Justice: The principle of “equal justice for all” affirms that the law does not discriminate based on gender. Every individual, whether male or female, must be treated fairly and equally before the law.

²¹ Gabrine Afni Tiolina Panjaitan, *Kajian Perempuan sebagai Pelaku KDRT Ditinjau dari Perspektif Victim Precipitation*, Jurnal: *Ikraith-Humaniora*, Vol. 7, No. 3 November 2023, p. 55

²² Ibid.

²³ M Ali Zaidan, *Perempuan Dalam Perspektif Hukum Pidana*, Jurnal: *Yuridis*, Vol. 1, No. 2, December 2014, p. 223

- d. Sexual Intercourse Crimes: In cases of sexual intercourse crimes, boys and girls should be treated equally. Legal conflicts may arise if different treatments are given to crimes committed with the consent of both parties.
- e. Implementation of Gender Equality: Indonesia has made various efforts to protect women's human rights by implementing the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Although all people are created equal, it must be acknowledged that men and women have their own natures and roles.

So, even though there are inherent differences between men and women, the law must ensure protection and equality for all individuals without discrimination.

CONCLUSION

Domestic violence is a form of violence that does not discriminate based on gender or sex when it comes to victims and perpetrators. Every family member has the potential to be a perpetrator or victim of domestic violence, including wives who can be perpetrators and husbands who can be victims. The criminal law (positive law) view of domestic violence committed by a wife as the perpetrator of violence is considered equal in the eyes of the law. If someone commits a criminal act of domestic violence, the current law does not distinguish between male or female perpetrators. Therefore, anyone who commits such a criminal act can be charged with a criminal offense. Thus, criminal law views the position of husbands and wives equally when committing the criminal act of domestic violence. The legal consequences for wives who commit the crime of domestic violence against their husbands are regulated in Article 44 Paragraph (1) in conjunction with Article 44 Paragraph (4) of Law No. 23 of 2004 concerning Domestic Violence. These sanctions can be imposed on both wives and husbands who commit acts of violence.

However, criminal sanctions remain part of efforts to provide justice to victims of domestic violence and ensure that perpetrators of domestic violence receive appropriate punishment for their actions. With the current developments of the times, crimes and everything that violates rules or laws are becoming more prevalent. In conclusion, wives who commit domestic violence against their husbands may face serious criminal sanctions, as well as severe social and psychological impacts.

From the perspective of perpetrators of domestic violence, feminist legal theory does not distinguish between men and women, because the purpose of feminist legal theory is only to emphasize the subordination of women and to seek to amend the legal position and approach towards women and gender. This also supports the author's statement that the law views perpetrators of domestic violence equally before the law, whether it is the husband or the wife who is the perpetrator. Therefore, despite the inherent differences between men and women, the law must ensure protection and equality for all individuals without discrimination.

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