

CONSTRUCTION OF THE APPLICATION OF DOMESTIC VIOLENCE CRIMINAL ACT IN UNREGISTERED MARRIAGES

Yudita Trisnanda^{1*}, Rodiyah Tangwun², Indah Sri Utari³

1. Universitas Negeri Semarang / Indonesia, Semarang

2. Universitas Negeri Semarang / Indonesia, Semarang

3. Universitas Negeri Semarang / Indonesia, Semarang

E-mail: ytrisnanda@gmail.com, rodiyah@mail.unnes.ac.id, indahsuji@mail.unnes.ac.id

Received : 10 March 2025

Published : 02 May 2025

Revised : 27 March 2025

DOI : <https://doi.org/10.54443/ijerlas.v5i3.2869>

Accepted : 13 April 2025

Publish Link : <https://radjapublika.com/index.php/IJERLAS>

Abstract

Unregistered marriages are still a common phenomenon in Indonesia, even though marriage registration plays an important role in providing legal certainty and protection, especially in cases of domestic violence (KDRT). Law Number 23 of 2004 concerning the Elimination of Domestic Violence stipulates that the scope of legal protection is only for husband and wife relationships that are legal according to state law. This raises legal problems if violence occurs in unregistered marriages, because victims, especially women, cannot obtain maximum protection. This study aims to examine the construction of the application of law to the crime of domestic violence in unregistered marriages and its urgency in the Indonesian legal system. The research method used is a normative legal approach with a qualitative analysis of relevant laws and case studies. The results of the study indicate the existence of dualism in law enforcement that creates uncertainty and injustice for victims. Therefore, a comprehensive legal construction is needed so that the Law on the Elimination of Domestic Violence can also be applied to cases of violence in marriages that have not been administratively registered but are religiously legal.

Keywords: *domestic violence, unregistered marriage, legal construction.*

INTRODUCTION

Marriage is a social and spiritual institution that has an important position in the life of society. Normatively, marriage in Indonesia is regulated in the Republic of Indonesia Law Number 1 of 1974 concerning Marriage which states that marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (Article 1). Furthermore, Article 2 paragraph (1) states that the validity of a marriage is determined based on the laws of each religion and belief. However, in order to have formal legal force, the marriage must also be registered with the authorized agency as regulated in paragraph (2). Thus, registration of marriage is an important administrative requirement to guarantee legal protection and certainty of the legal status of the family (Djubaedah, 2010).

Unfortunately, the phenomenon of unregistered marriages (unregistered marriages) still occurs in many regions in Indonesia. Many couples only marry based on religious or customary law without registering it in the state population administration system. In fact, registering a marriage is not just an administrative formality, but has legal implications for the rights of the wife, children, inheritance, and legal protection if problems occur in the household (Nasution, 2009). One of the most serious impacts of unregistered marriages is when domestic violence (KDRT) occurs. In such a situation, victims who are not legally recognized as legal wives/husbands according to the state have difficulty in accessing legal protection through Law Number 23 of 2004 concerning the Elimination of Domestic Violence.

Domestic violence is a social phenomenon that often occurs latently in society and is often difficult to reveal because it is considered a disgrace or purely a domestic matter (Ihromi, 2000). This violence can be physical, psychological, sexual, and even economic. In the report of the Ministry of Women's Empowerment and Child Protection (KemenPPPA, 2024), households are recorded as the main place of violence against women and children, where the most perpetrators are husbands or partners who live in the same house. The situation becomes more complex when the victim is in a relationship that is not recognized by the state because their marriage is not

registered. In this context, victims are vulnerable to not getting equal access to justice and legal protection. This reality shows the problem of legal dualism in protecting victims of domestic violence. On the one hand, the Criminal Code can be used to ensnare perpetrators of violence in general. However, on the other hand, the Law on the Elimination of Domestic Violence explicitly mentions protection for family members in a legitimate household, so that when the legal status of marriage is not recognized by the state, the application of the law is limited (Luis, 2017). This creates a gap in legal protection that results in injustice for victims, especially women and children who are more vulnerable socially and economically. This situation is an urgency that needs to be responded to through legal education for the community, especially about the importance of registering marriages and their impact in the context of legal protection. In addition, law enforcement officers also need to be given a comprehensive understanding so that they can progressively interpret cases of violence that occur in unregistered relationships but meet the elements of a valid marriage according to religion. In several jurisprudential decisions, judges have dared to use the Law on the Elimination of Domestic Violence in cases of unregistered relationships, but this has not happened massively and uniformly (Nurhikmah & Nur, 2020).

The legal service activities designed in this study aim to provide legal enlightenment to the community through counseling, legal discussions, and the publication of practical guidelines on household rights, including in the context of unregistered marriages. This effort will also identify gaps in public knowledge and perceptions of family law, especially related to violence and civil registration. In addition, the results of this activity are expected to be practical recommendations for the government and legal protection institutions in formulating more inclusive policies. The problem-solving strategy is carried out through a normative and empirical legal approach. The normative method is used to examine laws and legal doctrines, while the empirical approach is carried out through field observations and interviews with related parties, such as community leaders, KUA officers, and law enforcement. Through this approach, it is hoped that a fairer and more victim-friendly legal implementation construction can be found, without discrimination against the administrative status of their marriage. With the increasing number of domestic violence cases and the complexity of social relations that are no longer limited by formal status, a more humanistic and contextual legal approach is inevitable. There needs to be harmonization of norms between religious, customary, and state laws in responding to the social reality of plural Indonesian society. In addition, strengthening family law literacy among grassroots communities is a strategic step in realizing substantive justice for every individual within the household.

LITERATURE REVIEW

This study refers to and compares two previous works that discuss the application of the law to domestic violence (KDRT) in the context of unregistered marriages. First, Alvin Ramadhan Nur Luis's thesis (2014) shows that couples in unregistered marriages do not receive protection from Law Number 23 of 2004 concerning the Elimination of Domestic Violence, as seen in Criminal Case Number 45/Pid.B/2014/PN.Pdp, which has implications for legal losses for victims. Second, the journal by Siti Nurhikmah and Sofyan Nur (2020) examines how jurisprudence shows that in several cases, judges still apply the Law on the Elimination of Domestic Violence to perpetrators in unregistered marriages, as reflected in several court decisions. The two studies show different views on the application of the law, so this study is here to offer a more comprehensive legal construction, emphasizing the importance of protecting victims of domestic violence without discrimination on the basis of administrative marital status.

Domestic violence is defined as any form of physical, psychological, sexual, economic, and neglectful action carried out within the household and causing suffering to the victim, especially women. This definition is expressly regulated in Article 1 paragraph (1) of Law Number 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT, 2004). Sociologically, domestic violence is often carried out by individuals who have a superior position economically, physically, or socially against weaker individuals, generally women. The patriarchal culture that places women in an inferior position also strengthens this vulnerability. Violence is used as a tool to control partners, and is usually carried out systematically in the form of physical or psychological violence (Ihromi, 2000).

Domestic violence is difficult to disclose because it is considered a private matter, and tends to cause social stigma for victims. Many victims choose to remain silent because they are afraid of the reaction of their environment or do not trust the available legal system. This reinforces the cycle of violence and distances victims from the legal protection they should receive (Widiartana, 2009). In the Law on the Elimination of Domestic Violence, forms of violence are clearly categorized, such as physical violence which includes beatings, kicking, strangulation, and threats; psychological violence in the form of mental pressure and verbal abuse; sexual violence; and economic violence such as neglect of livelihood and economic exploitation of partners (Law on the Elimination of Domestic

Violence, 2004). Although it has been in effect for two decades, the implementation of the Law on the Elimination of Domestic Violence still faces challenges in terms of the effectiveness of protection. Especially for couples in relationships that are not legally registered, victims often do not have a legal basis to demand protection, even though socially and factually they are part of the household.

Marriage according to Law Number 1 of 1974 is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (Marriage Law, 1974). This bond is not only physical, but also spiritual, so it requires commitment and moral and spiritual responsibility from both parties. The basic elements in a marriage include the existence of a physical and spiritual bond, the role as husband and wife, the purpose of forming a family, and the basis of the bond based on the One Almighty God. This provision illustrates that Indonesian law places religious values as the foundation in building a household (Djubaedah, 2010).

The validity of a marriage is determined cumulatively based on two main requirements, namely that it is carried out according to religious law (Article 2 paragraph (1)) and that it is registered according to statutory provisions (Article 2 paragraph (2)) (Marriage Law, 1974). Without registration, even though it is valid according to religion, the marriage is not recognized by the state as a legal act that gives rise to legal consequences. This principle of the validity of a marriage is important because it provides legal recognition and protection to the couple and their descendants. If it only fulfills the religious elements without registration, then the couple cannot claim legal rights such as inheritance, rights to joint property, or rights to children (Nasution, 2009). Unregistered marriages (often referred to as unregistered marriages) are a problematic form of social relations because even though they are valid according to religion, they do not have formal legal force. This places the wife and children in a vulnerable position if there is conflict, divorce, or domestic violence.

Marriage registration is a legal administrative process that records marriage events in the state register. Based on Article 2 paragraph (2) of Law Number 1 of 1974, registration is carried out so that marriages obtain legal recognition from the state and function as authentic evidence in family law matters (Marriage Law, 1974). The main purpose of marriage registration is to create administrative order and provide legal certainty. Without registration, the parties to the marriage do not have valid legal documents that can be used to claim inheritance rights, child custody, or other legal protection (Luis, 2014).

The history of registration law in Indonesia began with Law Number 22 of 1946 concerning Registration of Marriage, Divorce and Reconciliation, which was enforced nationally since Law Number 32 of 1954. This regulation became the basis for registration for Muslims through the Office of Religious Affairs (KUA). Registration of marriage has broad legal impacts. If not registered, couples cannot prove their marital status legally, thus losing access to various legal services such as divorce applications, claims for maintenance, or protection from domestic violence according to Law Number 23 of 2004 (UU PKDRT, 2004). Although registration of marriage is only an administrative requirement, legal practice in Indonesia shows that registration is a substantive requirement in obtaining legal rights. Therefore, in cases of violence that occurs in unregistered marriages, victims often do not receive maximum protection due to the lack of legal status of their relationship.

The theory of legal certainty emphasizes the importance of the existence of clear, permanent, and enforceable legal rules. Gustav Radbruch stated that legal certainty is one of the main objectives of law, where the law must be positive, based on reality, formulated clearly, and not easily changed (Rahardjo, 2012). Jan M. Otto added that legal certainty is characterized by the existence of consistent legal rules, accessible, consistently applied by state officials, and supported by the majority of citizens. He calls this condition "realistic legal certainty" which demands harmony between law, society, and law enforcement agencies (Soeroso, 2011).

The concept of legal certainty becomes very important in the context of domestic violence in unregistered marriages. When a marriage is not legally registered, the legal status of the household relationship becomes unclear and does not have strong legal legitimacy. As a result, protection for victims of violence, especially women, cannot be optimally enforced because there is no legal basis to prove the legal relationship between husband and wife. The absence of registration causes legal uncertainty, because the law cannot provide protection for victims in relationships that are considered socially and religiously legitimate, but are not recognized by state law. Legal certainty in this context is a demand for the state to be able to guarantee fair legal protection, without discrimination against the administrative status of household relationships. Thus, the theory of legal certainty provides a framework for thinking that the law must be able to provide concrete certainty and protection for all citizens, including those who are in vulnerable positions due to the legal status of unregistered relationships. contains the values of clarity, consistency, and strict implementation of the legal rules that have been established by the state. Without legal certainty, individuals cannot predict the legal consequences of their actions, and justice cannot be enforced evenly.

The theory of justice places the value of justice as the main goal of law. Aristotle in *Nicomachean Ethics* distinguishes between distributive justice, which grants rights according to individual contributions, and commutative justice, which grants rights equally without considering achievements (Apeldoorn, 1996; Faiz, 2009). John Rawls in *A Theory of Justice* formulates justice as fairness through two main principles: the principle of equal liberty and the principle of difference. The principle of liberty guarantees the basic rights of every individual, while the principle of difference regulates social inequality for the benefit of the weakest party (Prasetyo, 2006; Muttaqien, 2011).

In the context of domestic violence, especially in unregistered marriages, the theory of justice is an important basis for assessing the extent to which the legal system is able to provide fair treatment for victims. When state law only recognizes administratively legitimate relationships, victims in unregistered relationships will lose access to legal justice even though they experience real violence. Rawls emphasized that justice must side with the most disadvantaged groups. In this case, women in unregistered marriages are one of the most vulnerable groups due to limited access to legal protection. The principles of distributive justice and social justice require that the legal system reaches this group substantively, not just formally. Thus, the theory of justice encourages the formation of policies and the implementation of laws that side with victims of domestic violence, without discrimination based on the status of relationship registration. Fair law must guarantee the rights and protection of all citizens equally, including those marginalized by a rigid administrative system. The role of natural law as a source of moral values and justice, so that his view forms a dualism between positive law and natural law. Justice, in Kelsen's view, is not only about legality, but also concerns the fulfillment of basic community needs evenly.

METHOD

This study uses a normative legal approach that aims to study and analyze written legal norms and legal doctrines related to the problem of domestic violence in unregistered marriages. This approach is relevant because the study emphasizes more on the study of legal certainty and protection of victims based on applicable laws and regulations. In addition to the normative approach, this study also utilizes a conceptual approach and a case approach. The conceptual approach is used to understand the basic concepts and theories of law such as legal certainty and justice. While the case approach is carried out through an analysis of relevant court decisions to see how the law is applied in cases of domestic violence in unregistered marriages.

The data sources in this study consist of primary, secondary, and tertiary legal materials. Primary legal materials include laws and regulations such as Law Number 1 of 1974 concerning Marriage, Law Number 23 of 2004 concerning the Elimination of Domestic Violence, and court decisions. Secondary legal materials include doctrines, literature, journals, and opinions of legal experts. Tertiary legal materials are used as a complement and explanation to primary and secondary legal materials, such as legal dictionaries and legal encyclopedias. All of these materials are systematically reviewed to find common ground between legal norms and practices for protecting victims of domestic violence in unregistered marriages.

The technique of collecting legal materials is carried out through library research which includes searching and collecting legal documents, scientific articles, books, and related court decisions. This study does not use field data, because the main focus is normative and legal analysis. The analysis of legal materials is carried out descriptively qualitatively. Researchers analyze the contents of legal norms, compare their application in practice, and evaluate legal gaps that arise in handling domestic violence cases in unregistered marriages. The results of the analysis are used to formulate solutions that can strengthen legal protection for victims.

RESULTS AND DISCUSSION

A. Domestic Violence in Unregistered Marriages

Marriages that are not officially registered in the state administrative system are a crucial issue in the legal system in Indonesia. Although legally valid according to religion as regulated in Article 2 paragraph (1) of Law No. 1 of 1974 concerning Marriage, without registration as regulated in paragraph (2) of the article, the marriage does not have legal force recognized by the state. This means that couples who undergo unregistered marriages, or commonly known as unregistered marriages or clandestine marriages, cannot claim their rights in the realm of state law. Consequently, the legal relationship between husband and wife that is formed does not receive legal protection, including when domestic violence occurs. In practice, the provisions on administrative marriage registration have major substantive implications. This was emphasized by the Constitutional Court which stated that registration is not just a formality, but authentic evidence that a marriage has been legally carried out and recognized by the state (MK, 2010). Therefore, the two elements in Article 2 of the Marriage

Law must be fulfilled cumulatively: legally valid according to religion and registered by the state. When one of the elements is not fulfilled, it not only removes formal recognition, but also results in the loss of legal protection for the wife or children born from the marriage.

Moch. Isnaeni stated that marriage registration is an important requirement in determining whether a marriage is valid or not according to the state. In fact, the government has regulated that religious leaders who conduct marriages must also have the status of marriage registrars so that the marriage can be legally registered. The function of marriage registration as regulated in Law and Government Regulation Number 9 of 1975 provides a legal basis for couples to obtain protection and legally bind third parties (Subekti, 2010). The regulations governing marriage registration are very clear and cover various aspects. In addition to Law No. 1 of 1974, there is also Law No. 23 of 2006 concerning Population Administration which states that marriage is an important event that must be registered. In the context of Muslims, registration is carried out by registrars at the Office of Religious Affairs (KUA). In addition, the Compilation of Islamic Law and Law No. 22 of 1946 strengthen the order to register marriages, divorces, and reconciliations, which are the basis for the legality of marriage relations in terms of state administration.

The impact of unregistered marriages is very significant, especially for women and children. Without a marriage certificate, women do not have legal proof as wives, which has implications for access to inheritance rights, joint property, or claims for maintenance. Children born from such marriages only have a civil relationship with their mother, and do not have legal access to the rights of their father, including inheritance rights and complete identity documents. In many cases, this is a source of ongoing injustice. The reality on the ground shows that the practice of unregistered marriages is still widely practiced by the community, especially due to factors of ignorance, poverty, or culture. This becomes more complex when domestic violence occurs in the relationship. Law No. 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT) is present as an effort by the state to provide protection to victims, but its implementation becomes problematic when the husband and wife relationship is not officially registered. In a legal context, the perpetrator can only be subject to sanctions under the PKDRT Law if the victim is within the scope of the household as defined in Article 2 of the Law.

Domestic violence that occurs in unregistered couples often cannot be processed in accordance with the Domestic Violence Law because it is difficult to prove the legal element that the victim is the perpetrator's wife. In practice, law enforcement officers choose to use more general articles in the Criminal Code (KUHP), such as abuse, but this actually weakens the victim's position because no special protection is provided. This situation shows the dualism of law enforcement that creates uncertainty and legal injustice (Hiariej, 2012). The fact that domestic violence also occurs in unregistered marriages cannot be ignored. Victims in this relationship experience physical, psychological, and even economic suffering, but the lack of state recognition of the status of the relationship prevents victims from getting the protection they deserve. In fact, socially and sociologically, their relationship is no different from a legally valid household. The Domestic Violence Law defines a household broadly, but implementation in the field still requires formal proof in the form of a marriage certificate.

In some cases, couples who do not register their marriage can file a decision with the court to obtain a marriage certificate. However, this process is not always easy, especially for marginalized communities who do not have access to legal aid. Therefore, the state must consider expanding the meaning of the law on households in order to provide comprehensive protection for victims of domestic violence, without being hindered by administrative status. The offense in the Domestic Violence Law is a special offense (*delicta propria*), which means it can only be applied if the perpetrator and victim are in a certain relationship, namely a household (Yulia, 2010). This requires strict proof of the legal relationship. Therefore, it is important to adjust legal norms to the social reality of Indonesian society, where many still have unregistered relationships but have a form of household interaction. Thus, it can be concluded that marriage registration has a strategic function in legal protection, especially for women and children. The absence of registration not only has an impact on civil status, but also creates serious obstacles in law enforcement when domestic violence occurs. Therefore, there needs to be a reformulation of the legal approach and enforcement of the Domestic Violence Law to be more inclusive and on the side of victims, regardless of their administrative marital status.

B. Implementation of Domestic Violence Criminal Acts in Unregistered Marriages

1. Urgency of Construction of Implementation of Domestic Violence Criminal Acts in Unregistered Marriages

Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT) was born as a result of the initiative of the Legal Aid Institute for Advocacy for Indonesian Women (LBH Apik) and various other civil society organizations. The process of drafting this law began in 1988 through public dialogue, but experienced obstacles due to the lack of public understanding of domestic violence (KDRT) and uncertainty from some parties (Martha, 2013). Several factors that underlie the formation of this law include the increasing number of domestic violence cases, the inability of the Criminal Code (KUHP) and the Criminal Procedure Code (KUHAP) to protect victims of domestic violence, and various obstacles that prevent victims from accessing justice (Martha, 2013). Although the PKDRT Law is expected to address this problem, there are several significant obstacles in its implementation.

First, the public perception that considers domestic problems as a private matter causes victims to be reluctant to report (Syukur, 2011). Second, law enforcement officers often prioritize formal procedures according to the Criminal Code and Criminal Procedure Code, which are not always friendly to victims (Cahyadi, 2008). Third, the Domestic Violence Law itself still has structural weaknesses, such as the lack of special procedural law for domestic violence cases and the use of a criminal system that does not provide a deterrent effect on perpetrators (Prayudi, 2008). In addition, this law also does not cover violence in marriages that are not formally registered, which results in women in such marriages not receiving adequate protection. Customary law, which has developed in various communities in Indonesia, offers alternative solutions in resolving disputes, including domestic violence in unregistered customary marriages. Settlement through mediation, negotiation, or arbitration by traditional leaders can be an option, although this is often not recognized in the formal legal system (Abbas, 2009). The main obstacle in this case is the difficulty of proving unregistered marital status, which limits legal protection for victims of domestic violence in this type of marriage. It is important to note that although the Domestic Violence Law provides protection for victims, challenges remain, especially for those involved in unregistered marriages, both religiously and customary. In this case, formal law tends not to be able to address domestic violence cases effectively, so alternative solutions through customary law could be one middle way that needs to be considered further.

2. Weaknesses in the Republic of Indonesia Law Number 23 of 2004 concerning the Elimination of Domestic Violence

Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT) was enacted on September 22, 2004 in response to the demands of the community, especially women, for domestic violence (KDRT) to be recognized as a criminal act that can be punished. The background to the formation of this law was also influenced by Indonesia's ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) through Law Number 7 of 1984 (Hamzah, 2010). The PKDRT Law is a strategic step to bring the issue of domestic violence out of the private sphere into the public legal space. However, almost two decades since its enactment, although this law is considered effective in opening legal access for victims, a number of substantial weaknesses are still in the spotlight. One of the main problems lies in the effectiveness of its implementation by law enforcement officers, which is often considered less than optimal or only normative without being supported by systematic efforts in the field (Saraswati, 2006).

In terms of legal formulation, the Domestic Violence Law still relies on an alternative criminal system, namely imprisonment or fines (Mulyadi, 2012). This provision gives judges the freedom to determine the form of punishment, but in practice, fines are often imposed. This is problematic because the fine can be paid by a third party or even burden the victim who is the wife of the perpetrator, considering that the economic system in the household is communal (Suparni, 2007). This weakness raises questions about the effectiveness of fines in providing a deterrent effect and restorative justice for victims. Furthermore, the Domestic Violence Law only regulates the legal subject as "every person", not extending it to legal entities or other entities as in other special crimes. This limits the scope of criminal responsibility institutionally (Hamzah, 2010). In addition, the Domestic Violence Law as a complaint offense provides space for peace between the victim and the perpetrator, which can lead to the withdrawal of the report. Although this is intended to maintain family integrity, in practice, this mechanism is often used as an excuse to avoid criminal sanctions, especially when the perpetrator has power or dominance in household relations (Saraswati, 2006).

Another aspect that is a crucial weakness of this law is its limitations in providing legal protection for victims of domestic violence in the context of unregistered marriages. The legal status that is not recognized by the state makes it difficult for victims to obtain protection and legal rights, even though they continue to experience violence in the form of physical, psychological, sexual, and economic. With the absence of legal recognition of the marriage, the victim is in a very vulnerable position (Arif, 2002). Therefore, the need for legal reform is very urgent. Criminal law reform must not only touch on normative aspects, but also pay attention to developing social, cultural, and political values. According to Hoefnagels (in Arif, 2002), criminal policy must include the application of criminal law, prevention without punishment, and influence on public views regarding crime and punishment through the mass media.

In this framework, legal reform should be oriented towards value transformation, reflecting the needs of society and adopting a more inclusive approach, especially in the context of gender relations and structural vulnerability. Law is not only a means of social control, but also an instrument of justice transformation (Friedman in Arif, 2002). Thus, Law Number 23 of 2004 needs to be revised and strengthened in order to provide comprehensive legal protection for all victims of domestic violence, without exception, including in the context of marriages that are not formally registered.

C. Urgency of Construction of Implementation of Domestic Violence Criminal Acts in Unregistered Marriages

1. The Urgency of Empirical Construction of the Implementation of Domestic Violence Criminal Acts in Unregistered Marriages

The study of law is not only limited to normative analysis of laws and regulations, but also needs to include an empirical approach that examines how the law is implemented and interacts with society. This approach is important in understanding the implementation of Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT), especially in the context of unregistered marriages. In this approach, the descriptive-empirical method is used to capture the characteristics of the phenomenon of domestic violence (KDRT) based on available social data. Data from the National Commission on Violence Against Women shows that since the enactment of the PKDRT Law until 2020, there have been 544,452 cases of violence that have occurred in the personal sphere, with domestic violence against wives as the most dominant type of violence, reaching more than 70% of the total reports (Komnas Perempuan, 2020). However, the implementation of the PKDRT Law still faces a number of obstacles, especially in the context of unregistered marriages. These obstacles include difficulties in providing evidence, limited perspectives of law enforcement officers, and the dominance of non-litigative resolutions that tend to pressure victims to withdraw their reports (National Commission on Violence Against Women, 2020).

Unequal power relations in the household, especially in the form of women's economic and emotional dependence on their husbands, are often the main reason why victims do not pursue legal proceedings. In this situation, violence is not only a physical act, but also a powerful means of control over the partner. This fact emphasizes the importance of developing empirical construction in legal policies that involve social and cultural perspectives, so that the implementation of the law is truly able to reach and protect vulnerable groups, including women in unregistered marriages.

The Domestic Violence Law, which has been in effect for two decades, requires a comprehensive evaluation to assess its effectiveness in providing legal protection. The law, as stated by Friedman (in Arif, 2002), can only be effective if legal norms are communicated well to legal subjects and those subjects have the motivation to obey them. Therefore, an empirical approach not only functions as an evaluation tool, but also as a basis for formulating criminal policies that are adaptive to social dynamics and community needs (Hoefnagels in Arif, 2002). By considering this empirical dimension, strengthening the implementation of the Domestic Violence Law in cases of unregistered marriages is very urgent, considering that this group is in a very vulnerable position and is often marginalized in the national legal system.

2. Urgency of Sociological Construction of Implementation of Domestic Violence Criminal Acts in Unregistered Marriages

Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT) defines domestic violence as an act that causes physical, sexual, psychological

suffering, or neglect to family members, especially women. The emphasis on women in this definition reflects the social reality that they are the group most vulnerable to domestic violence (Article 1 paragraph [1], Law No. 23 of 2004). Sociologically, the household is expected to be an institution that supports harmony and social values. However, in reality, domestic violence is often considered a personal matter, not a violation of the law, especially in the context of unregistered marriages. Legal unregistering often means that victims do not access state protection and even experience normalization of violence due to cultural and social pressures (Ihromi, 2000).

Local culture often plays a dual role: on the one hand preserving norms, but on the other hand it can be an obstacle in the implementation of positive law. Domestic violence in unregistered marriages is often not recognized as a legal offense by law enforcement officers because there is no formal recognition of marital status. Therefore, a sociological approach is needed to understand the influence of cultural values on the implementation of the Domestic Violence Law and to build an inclusive legal system.

Some important aspects in this sociological construction include:

- a. Legal awareness and victim protection Local traditions that recognize the validity of customary or religious marriages make victims of domestic violence feel that they do not have the right to legal protection. Therefore, it is necessary to establish social norms that emphasize the importance of gender equality and legal protection for women and children.
- b. Changing attitudes towards violence Social norms that support tolerance of domestic violence must be corrected through education and social campaigns that prioritize non-violent conflict resolution.
- c. Local culture-based legal education Education and outreach that takes local cultural values into account is essential to foster public understanding of the importance of marriage registration and legal rights within the family.
- d. Reducing legal gaps Social norms can strengthen support for victims of domestic violence in unregistered marriages by providing a socially safe space even though they are not yet protected optimally by formal law.
- e. Collaboration of state law and customary law A hybrid legal approach between formal law and customary law is needed to bridge the need for victim protection with the cultural values of local communities.
- f. Reducing social stigma Progressive social norms should encourage acceptance of victims of domestic violence and reject discrimination against women in unregistered marriages, so that they can seek help without fear or shame.

3. Urgency of Legal Construction of the Application of Domestic Violence Criminal Acts to Unregistered Marriages

Domestic violence (DV) is a complex legal issue, especially in the context of unregistered marriages (Rodliyah & HS, 2017). Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT) is the main legal basis for handling cases of domestic violence. However, in its implementation, serious obstacles arise because there is still a limited interpretation of the scope of households in Article 2 of the PKDRT Law which is considered to only include marriages that are legal and registered according to the state. In fact, in practice, many people carry out religious or customary marriages without state registration, which de facto form a household. In such situations, interpersonal relations continue to occur and even create vulnerability to gender-based violence, especially against women. Unfortunately, law enforcement officers often ignore this fact because of the normative understanding that relies on Article 2 paragraph (2) of Law Number 1 of 1974 concerning Marriage which requires marriage registration.

This legal uncertainty often causes victims of domestic violence in unregistered marriages to not receive legal protection. Although the Domestic Violence Law is "genderless", in a society with unequal gender relations, this provision has the potential to be misused by perpetrators of violence to reverse their roles as victims (National Commission on Violence Against Women, 2024). Therefore, a new, more inclusive legal construction is urgently needed so that there is no discrimination against victims of domestic violence simply because of their administrative marital status. Interestingly, there are court decisions that show courage in interpreting the law progressively, such as Decision Number 54/Pid.B/2023/PN Tgt, where the judge sentenced them based on the Domestic Violence Law even though the couple was married religiously. In the decision, the judge considered that a household relationship had been formed and the

violence that occurred still met the elements of domestic violence based on Article 44 paragraph (1) of the Domestic Violence Law. Furthermore, the National Commission on Violence Against Women (2024) stated that women in unregistered marriages are often marginalized from protection and recovery as mandated by the Domestic Violence Law. Therefore, it is important for law enforcement officers to prioritize the principle of substantive justice, not just administrative formalities. Strengthening understanding of the flexibility of the scope of households as referred to in Article 2 of the PKDRT Law is key to providing comprehensive legal protection, especially for vulnerable groups.

4. Construction of the Implementation of Domestic Violence Criminal Acts in Unregistered Marriages

The existence of Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT) is an important effort by Indonesia to fulfill its obligations in accordance with General Recommendation No. 35 of the CEDAW Committee related to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Indonesia has ratified this convention through Law Number 7 of 1984. The PKDRT Law emphasizes that domestic violence is a violation of human rights and a form of discrimination mostly experienced by women. This law aims to provide protection to victims of violence, despite the recognition that the Indonesian legal system has not previously been able to provide adequate protection. However, the implementation of the PKDRT Law still faces various challenges, especially in dealing with unregistered marriages, namely marriages based on religion, custom, or belief. There are two interpretations regarding the scope of marriage in the PKDRT Law: one stating that only marriages registered with the Office of Religious Affairs or Civil Registry can be protected, and another interpretation assuming that religious, customary, or belief marriages are also included in the scope of protection. The biggest obstacle found in the implementation of the Domestic Violence Law is the unregistered marital status of the victim, which causes difficulties in obtaining justice and restitution.

Data obtained by service institutions in 2021 showed that the main obstacle in the implementation of the PKDRT Law was unregistered marital status, which contributed to the main problem in the legal process. In addition, other factors such as victims withdrawing complaints, lack of evidence, and the perspective of law enforcement officers also exacerbated the situation. This problem leads to a narrow interpretation of the law by law enforcement officers who only recognize registered marriages, so that gender-based violence against women outside of registered marriages cannot be reached. To overcome this challenge, several steps need to be taken. First, it is necessary to strengthen the sensitivity of law enforcement officers to the issue of domestic violence, by making it part of the program in each law enforcement agency in Indonesia. Second, it is important to regulate more clearly and firmly regarding the subjects protected in the PKDRT Law, so that victims of unregistered marriages can also obtain appropriate legal protection. With these steps, it is hoped that the PKDRT Law can be more effective in providing protection to victims of domestic violence, especially those involved in unregistered marriages.

CONCLUSION

Based on the results of the research and discussion on the construction of the application of domestic violence crimes in unregistered marriages, it can be concluded that the importance of proving the elements of the household scope cannot be separated from the existence of criminal acts in the Republic of Indonesia Law Number 23 of 2004 concerning the Elimination of Domestic Violence which is a special offense. Thus, only people who are within the scope of the household who commit domestic violence crimes can be qualified as perpetrators of domestic violence crimes, both in registered and unregistered marriages. The presence of Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence is expected to combat all acts of domestic violence. Overall, Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence itself contains prevention, protection and recovery for victims of domestic violence, in addition to specifically regulating violence that occurs in the household with elements of a different criminal act from the crime of abuse regulated in the Criminal Code. The provisions in Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence do not regulate domestic violence that occurs in unregistered marriages, both religious marriages and customary marriages. There are 3 (three) main obstacles that complicate efforts to eliminate domestic violence in Indonesia, namely the perception of Indonesian society towards domestic violence cases, legalistic paradigm of law enforcement officers and weaknesses of the Republic of Indonesia Law Number 23 of 2004 concerning the Elimination of Domestic Violence.

There are several urgencies in the construction of the application of criminal acts of domestic violence in unregistered marriages, including the urgency of the empirical construction of the application of criminal acts of domestic violence in unregistered marriages, explaining that the application of Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence in reality experiences a number of obstacles, one of which is the high number of cases of domestic violence in unregistered marriages, the urgency of the sociological construction of the application of criminal acts of domestic violence in unregistered marriages, explaining that social and cultural norms play an important role in resolving this problem, both in the context of preventing and overcoming domestic violence, especially in unregistered marriages, including the influence on legal awareness and protection of victims, encouraging changes in behavior and attitudes towards domestic violence, the importance of education and social counseling, overcoming legal and justice gaps, collaboration between state law and customary law and social stigma and family acceptance and the urgency of the legal construction of the application of criminal acts of domestic violence in unregistered marriages, explaining the implementation of Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence, especially in The implementation of Article 2 has 2 (two) problems, first regarding the understanding of law enforcers who tend to interpret the scope of marriage in the Republic of Indonesia Law Number 23 of 2004 concerning the Elimination of Domestic Violence as a registered marriage, secondly this scope does not specifically regulate domestic violence against women, but also includes protection for men (husbands) from domestic violence.

The construction of the application of criminal acts of domestic violence in unregistered marriages should implement matters concerning strengthening the sensitivity of Law Enforcement Officers to the issue of domestic violence and the existence of clearer and more assertive regulations regarding the subject in Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence, so that victims of domestic violence in unregistered marriages can also be accommodated by Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence;

REFERENCES

- Abbas, S. (2009). *Mediasi dalam Perspektif Hukum Syariah, Hukum Adat & Hukum Nasional*. Jakarta: Kencana.
- Afandi, A. (1987). *Hukum Keluarga*. Yogyakarta: Yayasan Badan Penerbit Gadjah Mada.
- Ali, L. (2002). *Kamus Besar Bahasa Indonesia*. Jakarta: Balai Pustaka.
- Ali, Z. (2006). *Hukum Perdata Islam di Indonesia*. Jakarta: Sinar Grafika.
- Alshadiq, M. Z. (2005). *Membangun Keluarga Harmonis*. Jakarta: Graha Cipta.
- Apeldoorn, L. J. (1996). *Pengantar Ilmu Hukum*. Jakarta: Pradnya Paramita.
- Arif, B. N. (2002). *Bunga Rampai Kebijakan Hukum Pidana*. Bandung: Citra Aditya Bhakti.
- Arini, R. (2013). Kekerasan Psikis dalam Rumah Tangga sebagai Suatu Tindak Pidana. *Jurnal Lex Crimen*, 32-42.
- Ashshofa, B. (2008). *Metode Penelitian Hukum*. Jakarta: PT Rineka Cipta.
- Aulawi, A. S. (1978). *Hukum Perkawinan Indonesia*. Jakarta: Bulan Bintang.
- Barclay, G. W. (1983). *Teknik Analisa Kependudukan I*. Jakarta: Bina Aksara.
- Cahyadi, S. I. (2008). *Runtuhnya Sekat Perdata dan Pidana: Studi Peradilan Kasus Kekerasan Terhadap Perempuan*. Jakarta: Pusat Kajian Wanita dan Gender UI dan Yayasan Obor Indonesia.
- Darmabrata, W. (2003). *Tinjauan Undang Undang Nomor 1 Tahun 1974 tentang Perkawinan beserta Undang Undang dan Peraturan Pelaksanaannya*. Jakarta: Gitama Jaya.
- Djannah, F. (2007). *Kekerasan Terhadap Istri*. Yogyakarta: LKS.
- Djubaedah, N. (2010). *Pencatatan Perkawinan dan Perkawinan Tidak Dicatat*. Jakarta: Sinar Grafika.
- Faiz, P. M. (2009). Teori Keadilan John Rawls. *Jurnal Konstitusi Volume VI Nomor 1*, 135.
- Friedrich, C. J. (2004). *Filsafat Hukum Perspektif Historis*. Bandung: Nuansa dan Nusamedia.
- Gaitung, J. (1992). *Kekuasaan dan Kekerasan*. Yogyakarta: Kanisius.
- Gosita, A. (1986). *Victimologi dan KUHAP*. Jakarta: Akademika Presindo.

- Hadikusuma, P. H. (2003). *Hukum Perkawinan Indonesia Menurut : Perundangan Hukum Adat, Hukum Agraria*. Bandung: CV. Mandar Maju.
- Hamzah, A. (2010). *Asas-asas Hukum Pidana*. Jakarta: PT Rineka Cipta.
- Harahap, M. Y. (1975). *Hukum Perkawinan Nasional Berdasarkan Undang Undang Nomor 9 Tahun 1974 Peraturan Pemerintah No. 9 Tahun 1975*. Medan: CV. Zahur Trading Co.
- Hartono, B. (2014). Bentuk Perlindungan Hukum terhadap Perempuan Pelapor Selaku Saksi Korban Kekerasan dalam Rumah Tangga. *Jurnal Keadilan Progresif*, 1-19.
- Hasan, M. (2011). *Pengantar Hukum Keluarga*. Bandung: CV. Pustaka Setia.
- Hiariej, E. O. (2012). *Teori & Hukum Pembuktian*. Jakarta: Penerbit Erlangga.
- Huberman, M. B. (2007). *Analisis Data Kualitatif Buku Sumber tentang Metode-Metode Baru*. Jakarta: Universitas Indonesia.
- Ihromi, T. O. (2000). *Sosiologi Keluarga*. Jakarta: Yayasan Obor Indonesia.
- Irian, A. W. (2001). *Perlindungan terhadap Korban Kekerasan Seksual (Advokasi atas Hak-hak Asasi Perempuan)*. Bandung: Refika Adiat.
- Ismiati, S. (2020). *Kekerasan dalam Rumah Tangga dan Hak Asasi Manusia*. Yogyakarta: Deepublish.
- Kartasaputra, R. G. (1988). *Pengantar Ilmu Hukum Lengkap*. Jakarta: Penerbit Bina Aksara.
- Kiswati, T. (2003). *Perkawinan di Bawah Tangan (Sirri) dan Dampaknya Bagi Kesejahteraan Istri dan Anak di Daerah Tapal Kuda Jawa Timur*. Surabaya: Pusat Studi Gender IAIN Sunan Ampel.
- Krahe, B. (2011). *Perilaku Agresif*. Yogyakarta: Pustaka Pelajar.
- Lunis, S. K. (2000). *Etika Profesi Hukum*. Jakarta: Sinar Grafika.
- Marlia, M. (2007). *Marital Rape Kekerasan Seksual terhadap Istri*. Yogyakarta: PT. LKiS Pelangi Aksara.
- Martha, A. E. (2013). *Proses Pembentukan Hukum Kekerasan terhadap Perempuan di Indonesia dan Malaysia*. Yogyakarta: Aswaja Pressindo.
- Marzuki, P. M. (2008). *Pengantar Ilmu Hukum*. Jakarta: Kencana.
- Masyhur, K. (1985). *Membina Moral dan Akhlak*. Jakarta: Kalam Mulia.
- MK, M. A. (2010). *Hukum Perkawinan di Indonesia: Masalah-masalah Krusial*. Yogyakarta: Pustaka Pelajar.
- Moleong, L. J. (2007). *Metodologi Penelitian Hukum*. Bandung: PT Remaja Rosdakarya.
- Muchsin. (2008). Problematika Perkawinan Tidak Dicatat Dalam Pandangan Hukum Islam dan Hukum Positif. *Rakernas Perdata Agama* (p. 3). Jakarta: Mahkamah Agung RI.
- Mulyadi, L. (2012). *Bunga Rampai Hukum Pidana, Perspektif, Teoritis dan Praktik*. Bandung: PT Alumni.
- Muhammad, A. K. (1993). *Hukum Perdata Indonesia*. Bandung: Alumni.
- Muttaqien, R. (2011). *General Theory of Law and State*. Bandung: Nusa Media.
- N., H. E. (1996). *Kekerasan dalam Rumah Tangga*. Yogyakarta: Makalah Seminar Nasional Perlindungan Perempuan dari Pelecehan dan Kekerasan Seksual.
- Nasution, K. (2009). *Hukum Perdata (Keluarga) Islam Indonesia dan Perbandingan Hukum Perkawinan di Dunia Muslim*. Yogyakarta: Academia + Tazaza.
- Poerwandari, K. (2000). *Kekerasan terhadap Perempuan*. Bandung: Alumni.
- Polan, R. S. (2000). *Hukum Orang dan Keluarga*. Surabaya: University Press.
- Prasetyo, U. F. (2006). *Teori Keadilan*. Yogyakarta: Pustaka Pelajar.
- Prawirohamidjojo, R. S. (1986). *Pluralisme dalam Perundang Undangan Perkawinan Indonesia*. Surabaya: Airlangga University Press.
- _____. (1986). *Hukum Orang dan Keluarga*. Bandung: Alumni.
- Prayudi, G. (2008). *Berbagai Aspek Tindak Pidana Kekerasan Dalam Rumah Tangga*. Yogyakarta: Merkid Press.
- Putra, K. (Juni 2019). Penyuluhan Akibat Hukum Terhadap Perkawinan Dibawah Tangan (Siri). *Jurnal Pengabdian Pascasarjana Universitas Balikpapan Vol. 1 No. 1, 4*.
- Rahardjo, S. (2012). *Ilmu Hukum*. Bandung: Citra Aditya Bakti.
- Ramulyo, M. I. (1999). *Hukum Perkawinan Islam Suatu Analisis UU No. 1 Tahun 1974 dan Kompilasi Hukum Islam*. Jakarta: Bumi Aksara.
- Rodliyah, & HS, S. (2017). *Hukum Pidana Khusus Unsur dan Sanksi Pidananya*. Depok: Raja Grafindo.
- Rofiq, A. (2003). *Hukum Islam di Indonesia*. Jakarta: PT. Raja Grafindo Persada.
- Rusli, S. (1988). *Pengantar Ilmu Kependudukan*. Jakarta: LP3ES.
- Saleh, K. W. (1982). *Hukum Perkawinan Indonesia*. Jakarta Timur: Ghalia Indonesia.
- Sampurna, B. (2005). *Kekerasan Fisik Terhadap Perempuan*. Bandung: Citra Unbara.

- Saraswati, R. (2006). *Perempuan dan Penyelesaian Kekerasan Dalam Rumah Tangga*. Bandung: PT Citra Aditya Bakti.
- Soeroso. (2011). *Pengantar Ilmu Hukum*. Jakarta: PT. Sinar Grafika.
- Subekti, T. (2010). Sahnya Perkawinan Menurut Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan Ditinjau dari Hukum Perjanjian. *Jurnal Dinamika Hukum Volume 10 Nomor 3*, 338.
- Sukanto, S. (1987). *Kriminologi (Pengantar Sebab-sebab Kejahatan)*. Bandung: Politea.
- Sumiarni, E. (2004). *Kedudukan Suami Istri dalam Hukum Perkawinan*. Yogyakarta: Wonderful Publishing.
- Suparni, N. (2007). *Eksistensi Pidana Denda dalam Sistem Pidana dan Pemidanaan*. Jakarta: Sinar Grafika.
- Suroso, M. H. (2012). *Kekerasan dalam Rumah Tangga dalam Perspektif Yuridis Viktimologi*. Jakarta: Sinar Grafika.
- Syukur, F. A. (2011). *Mediasi Perkara KDRT (Kekerasan Dalam Rumah Tangga) Teori dan Praktek di Pengadilan Indonesia*. Bandung: CV Mandar Maju.
- Usman, R. (2006). *Aspek-aspek Hukum Perorangan dan Kekeluargaan di Indonesia*. Jakarta: Sinar Grafika.
- Waluyo, B. (2008). *Penelitian Hukum dalam Praktek*. Jakarta: Sinar Grafika.
- Widiartana, G. (2009). *Kekerasan dalam Rumah Tangga (Perspektif Perbandingan Hukum)*. Yogyakarta: Universitas Atma Jaya.
- Witanto, D. Y. (2012). *Hukum Keluarga Hak dan Kedudukan Anak Luar Kawin Pasca Keluarnya Putusan MK tentang Uji Materiil UU Perkawinan*. Jakarta: Pustaka Publisher.
- Yulia, R. (2010). *Victimologi Perlindungan Hukum terhadap Korban Kejahatan*. Yogyakarta: Graha Ilmu.