

CHAPTER I

INTRODUCTION

1.1 Background

In mid-February 2020, the first case of COVID-19 was found in the city of Wuhan, China, and since then it has spread its wings around the world. It has been almost two years since the world has been trapped in a pandemic era that restricts anyone to be in touch with other people physically. There are some government's strategies in suppressing the spread of Covid-19, the first one is the Large-Scale Social Restrictions or *Pembatasan Sosial Berskala Besar* (PSBB) policy through Government Regulation No. 21 of 2020 concerning Large-Scale Social Restrictions or *Pembatasan Sosial Berskala Besar* (PSBB) in the Context of Accelerating the Handling of CoronaVirus Disease 2019 (COVID-19). Large-Scale Social Restrictions or *Pembatasan Sosial Berskala Besar* (PSBB) is the restriction of certain activities of residents in an area suspected of being infected with COVID-19 in such a way as to prevent the possibility of spreading COVID-19. The Large-Scale Social Restrictions or *Pembatasan Sosial Berskala Besar* (PSBB) includes school and workplace holidays, restrictions on religious activities, and/or restrictions on activities in public places or facilities¹. The most recent policy that was released this year is The Imposition of Restrictions on Community Activities or *Pemberlakuan Pembatasan Kegiatan Masyarakat* (PPKM), which was not a ban on activities but a rearrangement of restrictions on several community activities.

¹ Government Regulation No. 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating the Handling of CoronaVirus Disease 2019 (COVID-19)

The Imposition of Restrictions on Community Activities or *Pemberlakuan Pembatasan Kegiatan Masyarakat* (PPKM) enforcement is regulated through Instruction of the Minister of Home Affairs or *Instruksi Menteri Dalam Negeri* Number 01 of 2021 dated January 6, and is measured through levels. Because of the current situation, there are many affected areas including health, economic, and political. Law enforcement is also in a difficult path, as it is hard for people to make their reports and the restriction of movement is slowing down the officers. One of the cases is domestic violence.

The COVID-19 pandemic which makes the regulation of the restriction of movement in order to stop the virus spreading, but on the other hand it causes the unavailability of agencies dealing with domestic violence. While the home itself has failed to be a safe place as domestic violence happened within a personal sphere, the pandemic has opened up wider opportunities for violence against women. The number of reported cases in the period March to the end of October 2020 alone has reached 1,459 cases, and includes both violence against women and girls². Because the cases usually happened within a personal sphere, this is why this pandemic has opened up wider opportunities for violence against women. This can be proven by itself with the number of cases is 66% occurred in the private sphere, and looking from the data for the last 12 years, violence against women has increased by 8 times and increased by 63% during the pandemic³. The thing is that this calculation is a

² KOMNAS Perempuan, "CATAHU 2020 Komnas Perempuan: Lembar Fakta dan Poin Kunci (5 Maret 2021)". <https://komnasperempuan.go.id/siaran-pers-detail/catahu-2020-komnas-perempuan-lembar-fakta-dan-poin-kunci-5-maret-2021>, accessed on 29th September 2021.

³ KOMNAS Perempuan, "Kajian Situasi Layanan bagi Perempuan Korban Kekerasan dan Perempuan Pembela HAM di Masa Pandemi COVID-19", <https://komnasperempuan.go.id/siaran-pers-detail/siaran-pers-kajian-situasi-layanan-bagi-perempuan-korban-kekerasan-dan-perempuan-pembela-ham-di-masa-pandemi-covid-19-14-agustus-2020>, accessed on 24th September 2021.

reported case, which means there are still a lot more domestic violence cases that occurred and were not reported.

The legal protection in Indonesia regarding domestic violence is inadequate, and has fallen short especially during crises like these days. In reality, the current regulating law is not sufficient to protect victims from domestic violence. Sexual violence which happened a lot on domestic violence hasn't been identified thoroughly, as the violence experienced by women is much broader than the definitions in the Criminal Code or other laws such as the Child Protection Law, the Human Rights Law, and others. There are 15 forms of sexual violence experienced by women during the 15 years⁴. Some can be handled by educating the public without a legal approach, but there are others that need a legal approach. If there is no legal approach, they will continue to leave the victim without remedy and the perpetrator without any legal action.

The existing legal system also failed to guarantee protection for victims of sexual violence. Furthermore, there are still many types of sexual violence that are not covered by the existing law but are in The Bill on Elimination of Sexual Violence or *Rancangan Undang-Undang Penghapusan Kekerasan Seksual* (RUU PKS). There are currently nine types of sexual violence crimes covered in the The Bill on Elimination of Sexual Violence or *Rancangan Undang-Undang Penghapusan Kekerasan Seksual* (RUU PKS), such as sexual harassment, sexual exploitation, forced contraception, forced abortion, rape, forced marriage, forced prostitution, sexual slavery, and sexual torture. There is no comprehensive

⁴ KOMNAS Perempuan, "15 Bentuk Kekerasan Seksual: Sebuah Pengenalan", page 4.

regulation on the nine types of crime in the current laws and regulations, so that it impacts on the limitations of victims in accessing the right to justice and the right to treatment. This means that cases experienced by victims will not be able to be processed through the criminal justice system in Indonesia because there is no normative basis for law enforcers to follow up on the types of criminal acts experienced by victims.

The absence of regulation on the nine types of sexual violence crime is also the same as the absence of conviction and prosecution of the perpetrator, thus opening up space for the perpetrator to be free without legal sanctions. Even without these regulations, victims cannot get restoration for their lost rights and losses suffered as a result of sexual violence. The current law also has not provided guarantees for the fulfillment of the rights of victims and victims' families.

1.2 Formulation of Issues

In regards of the topic of this thesis, the Author will discuss the following formulation of issues:

1. In what area is the legal protection inadequate for the women victims of domestic violence? How did that happen?
2. What are the effects of the inadequate law? How does that affect society in general, especially during the pandemic?
3. What kind of solution can the Author offer in order to fix the quality of legal protection of domestic violence?

1.3 Research Purposes

The Author's purpose of writing this thesis is to answer the formulation of issues stipulated above, namely:

1. To point out the inadequate legal protection for women victims of domestic violence.
2. To show problems that arise from the inadequate legal protection especially during the pandemic.
3. To offer solutions to the problem, which is to legalize the Elimination of Sexual Violence Bill as soon as possible

1.4 Research Benefits

1.4.1 Theoretical Benefits

Theoretically, The Author aims the thesis to be used for future references when it's coming to this topic. As the pandemic is still going on and we have no certainty when it will end, this thesis will contribute for students to understand better regarding legal protection of domestic violence especially during pandemic.

1.4.2 Practical Benefits

Practically, this research can provide an input for the government in realizing the lack of the authority that the law of domestic violence provides. The author realizes that by determining clearer of the types of violence and adding various sanctions for each violence is needed as an act of prevention and a suitable also fair for the victims. In addition, this research can be useful to raise the

awareness of the general public, and others who are directly and/or indirectly in need and or related to domestic violence cases. Lastly, this research also aims to urge the government to quickly legalize the The Bill on Elimination of Sexual Violence or *Rancangan Undang-Undang Penghapusan Kekerasan Seksual* (RUU PKS).

1.5 Framework of Writing

This thesis is arranged into five main chapters that will ease the readers to understand the discussion of this thesis.

CHAPTER I: INTRODUCTION

The aim of this chapter is to introduce the main idea and provide general information on the subject of this thesis, and is divided into five parts, consisting of the background, the formulation of the issues, the purpose of this thesis research, and also the benefits.

CHAPTER II: LITERATURE REVIEW

This chapter will discuss the theoretical and conceptual framework that will explain the theory in general and comprehensively in terms of legal protection of domestic violence against women based on Indonesian law.

CHAPTER III: RESEARCH METHODS

This chapter will discuss in general about the type of research, the type of data, data analysis technique and the type of research approach. Followed by the types of research, data, data analysis technique and research approach that the Author uses to discuss the issues in this thesis.

CHAPTER IV: DISCUSSION AND ANALYSIS

The fourth chapter will discuss the research problems along with its solution. First the Author will discuss the law and regulation and in which part they are inadequate. Then, the Author will proceed on analyzing the domestic violence itself, and how the pandemic had affected the rise of the case number. The Author then will connect between the current regulating law and legally vulnerable victim, and lastly how the Elimination of Sexual Violence Bill can be the solution.

CHAPTER V: CLOSING

In this last chapter, the Author will draw a conclusion as an answer to the issues that have been analyzed in chapter four. The Author will conclude all the analysis and propose a solution for the problems.

