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Legal Protection toward Women as the Victim of Violence

(A Normative Approach of Criminal Law Perspective)

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Abstract—Legal protection has significant meaning to give protection guaranty on individual, group, or legal subject in wide definition, as well as object in reality. Women as group of society should be protected because they always in risky condition and susceptible toward dangerous such as violence coming from other group. It related to human right for in its implementation it would take some fundamental rights of individual decided to be guilty for doing violence against the rules. The legal protection was hopefully able to keep Human Right as well as Women Right. The criminal law close related to human right, because in its implementation it would take some fundamental rights of individual decided to be guilty for doing violence against the rules. The problem formula of the study referred to how the policy of legal protection on women as the victim of violence in criminal law perspective. This study was normative law research using qualitative judicial analysis method. Providing law protecting body integrity and honor of women as the victim of violence purposed to there would be no more things that underestimated dignity, attacked body and sexuality of women resulting in suffering for the victim that included policy in material (substantive) criminal law.

Keywords—protection criminal law perspective; women as the victim violence

I. INTRODUCTION

The legal protection has significant meaning to give guaranty of protection toward the subjects of individual, group, and legal subject in wide meaning, as well as object in reality. The legal protection also means to give protection toward legal interest for certain legal subject and object from possibility happening deprivation and or violation against the right and duty embedding on the certain legal subject or object.

Legal protection has 2 (two) significant targets, namely:

- Protection on legal subject
- Protection on legal object, in this case including right embedding on the legal subject.

Women as the group of society must be protected because they always in full risk and susceptible toward dangerous such as the violence coming from other group. The susceptibility made women as the victim of violence suffering fear of crime

higher than the men [1]. The suffering they experienced in time or afterward in fact gave more traumatic than experienced by the men [1].

Act 1 of the Declaration on the Elimination of Violence against Women of 1993 stated that [2].

“Violence against women refers to any action based on gender (gender based violence) resulting in misery suffering the women in physical, sexual or psychological forms including certain action threat, force or deprivation of freedom arbitrary, in front of public or in private life”.

The following refers to Act 2 stated that [2].

“Violence against women must be understood as a whole, however not only limited on: violence conducts in physical, sexual, and psychological ways happening in family and society including hitting, sexual misuse on women and children, violence related to dowry, marital rape, destroying women genital organ and other traditional cruelty practices against the women, violence out of marriage relationship, and violence related to women exploitation, rape, sexual misuse, harassment, sexual threat in working place, in Educational institutions and many others, women trafficking and prostitution including violence conducted and allowed by state in any places”.

CEDAW refers to Bill of Rights for Women comprehensively the first specially confessed the Women Right (HAP). As an international instrument of Human Right, CEDAW became the first universal standard arranging the Women right. The main fundamental given by CEDAW in the developing of Human Right was born of clear definition on discrimination against women and equality [3].

Indonesia has ratified the Convention using The Law of Indonesian republic number & of 1984 on the Legitimation of Convention on Elimination of Any Discrimination Forms against Women, with reservation on Act 29 verses (1) on conflict of interpretation or implementation of the Convention. It stated that country would conduct effort maximally to eliminate any form of discrimination against women, including any violence against women, in public and in domestic areas.

Based on the women right as the victim of violence, it should obtained effective legal protection in arrangement the Criminal Code that protected women as the victim of violence. The reason would be that the women right considered as living humanism in fields of moral, social and political through the law including in human confession as the legal subject formulated as an integral of the law structure. The law will be always needed to accommodate the existence of state commitment to protect the women right.

This study purposed to analyze the Policy of Legal Protection toward Women as the Victim of Violence (A Normative Approach of Criminal Legal Aspect).

II. METHOD

This research referred to normative research, where the writer tended to study the legal principles, that the research to find out the legal principles in the positive law written and unwritten ones. The written positive law focused on the Law of creating regulation and related regulation, the principles of arranging the regulation, and from the court decisions related to violence against women. This study focused more on philosophical approach, statute approach, conceptual approach, and case approach. The collected legal material was managed and analyzed using qualitative judicially by giving priority on legal understanding that one of them using legal interpretation.

III. RESULT AND DISCUSSION

A. Violence Against Women as Criminal Deed

Violence against women became worried phenomenon. Yearly, the cases of violence against women and children are getting increase in number and forms, becoming ice phenomenon toward the case covered fog of uncleanness on the fact and recovery. Violence against women became one of legal social problem. Unlike other crimes, women becoming the victim of violence often referring as gap by the man as the doer to defend himself.

The criminal law of Indonesia arranged criminal deed of violence through acts in the Criminal Code such as chapters of violence on morality, violence against soul, persecution and causing death or injures because of indifference. Violence against women in the legal perspective did not different from other deviated behavior. In the criminal law, losses experienced and suffered by women as the victim has not concretely arranged. The acts can be read in the Criminal Code Act 282 verse (1) on pornography, Act 290 on immorality conduct, act 351 verse 1 persecution, the persecution against family member act 356, 356, act murder 338, act rapping 285, act of abortion 347, taken away women, 332 verse 1, case of sexual harassment belong to annoying action, as arranged in Acts 335 and 336.

The meaning criminal law giving protection toward women as the victim did not specifically arranged the violation action against women, limited on physical violence causing death or injures, to women or men; adult/kids as the victim, arrangement on violence action for the unmarried and there was no relation family by conduct for example harassment, verbal violence, verbal cruelty, underestimated dignity and

prestige, insulting, actions that result in fears has not yet been arranged in the Criminal Code, arrangement of criminal action in this case violence arrange more to rule women morality and not protect women as the victim of the criminal deed. The Criminal Code saw women as merely object not as subject who need to get legal protection.

The material truth must be priority as the goal to achieve in investigating a crime. The victim role was strategic, that it would decide the criminal doer getting appropriate punishment on his conduct. The women who suffered from the action became the victim. The limitation criminal victim decided in science of victimology. Victimology referred to science studying position and victim role in a crime. The reason would be any crime happened that there must be any doer and victim of the crime.

A victimology is science that studies victim. Arief Gosita gave victimology border as follow [4]: A study/science studying of causing victim as human problem referring social fact, and push people to understand problem of serving the victim, based on right proportion in dimension”.

A limitation of victimology formula brought consequence in its scope. According to Sahetapy, victimology should not limit its environmental scope, in the criminal law border or criminology limit. Sahetapy revealed that [5] “The focus of victimology was on those who becoming victim. Those who becoming criminal victims can be because of the victim foul, the role of victim directly or indirectly and without any role of the victim. The last one might be in form of condition, because of characteristic, existence, place, or time; thus, it became a reason that the scope of victimology temporary covering on how someone becoming victim or its scope was decided by *victimity*. In this case, *victimity* differed from *crime*.

Based on the violence forms suffered by women, the Declaration of Elimination Violence against Women of the Acts 1 and 2 focused on several fundamental changes on the perspective of society on violence against women, first, acceptance on existence of “gender based violence. Meaning, the violence against women referred to an action based on or caused that someone is women, and not because for example social status, economic status, race difference, and others.

The violence happened only because someone (victim) is woman. *Second*, it pressed on “might result in “(or is likely to result in). It changed the social and law perspectives toward violence tending to behave “waiting for the proof” of happening violence using physical proof (for example, a woman suffering because afraid of being murdered by her husband could not be categorized as victim of violence as long as she has not been murdered yet).

Using the definition of the Declaration, any conduct “might” result in “equal” to “result” in, as long as the action related to the whole definition. *Third*, it confessed that the violence forms included physical, psychic, sexual and economic that of course becoming fundamental change considering that previously the law tended to formula violence as merely physical violence.

Fourth, it confessed that violence against women may occur in private and public life, for example rape in family

(marital rape). Therefore, the Declaration of Elimination Violence against Women has clearly given change of very fundamental formula for the point of view on human right against the violence. This declaration included areas where the country has duty to do policy change to eliminate violence against women [3].

The violence against women referred to forbidden action or deed as criminal law violation, where the violence belonged to crime that should be handled for upholding the criminal law. Thus, women as the victim would not be more suffer after experienced crime and the got protection and guarantee of fulfillment their rights in front of the law. The criminal law became strong repressive effort in form of safety actions.

B. *The Policy of Legal Protection on Women as the Victim of Violence in Perspective of Criminal Law*

The arrangement of legal protection toward women as the victim of violence cannot be separated from the law purposes. The law purposes to protect the human interest (law as tool social engineering) [6].

Women as the victim of violence must obtain legal protection related to their right as society that must be protected and also as legal subject. The legal protection was in line with upholding the criminal law prohibiting the actions in *rechdelicten* and *wetsdelicten*. The apparatus of legal upholder has duty to keep the criminal law from the superstructure and infrastructure in providing legal protection toward women as the victim of violence.

The brief definition, he stated [6] that in handling crime. Reform of criminal law became part of political policy of criminal law. The meaning and essence of legal reform related to rom background and urgency of reform criminal law [6]. The reform of criminal law must be appearance of change and reform on aspect and policy as the background.

The Criminal Code still considered discriminative because it influenced by patriarchy not fulfill justice for women and not yet give protection toward women as the victim of violence. It proved by increasing the number of violation toward women. The arrangement of criminal deed in the Criminal Code apparently only discussed someone value and not protected women becoming the victim of criminal deed.

The criminal deed related to human right because in criminal law, its implementation would take very fundamental rights of individual decided guilty for doing violation against the rules. The implementation of criminal law hopefully can keep the Human Right and women right. The idea of criminal law with feminism perspective has basic assumption on the correlation between women and law.

Generally, the legal approach toward the women has two main components that always appear in changing of various research branches. First, exploration and criticism of theoretical step on interaction between law and women. In other words, how the law influence and support suppression against women [6]. Second, the implementation of analysis and feminism perspective on the law field such as family, workplace, anything related to crime, women knowledge of nature, reproduction health, sexual insulting, in purpose to support law

reform to happen. Or, how the law is used to recover women position.

The feminism perspective has known in three phases [6]: The first phase, the feminism and Women right often be associated to liberal feminist. In this phase, the women right activists identified equality by equal treatment and refused any law that tolerated any differences between women and men. This phase resulted in international documents of women right like United Nation Convention on Political Right of women in 1953, Convention of UNESCO on the Discrimination in Education in 1960.

In the second phase, the law was getting seen as part of structure dominated by the men. The language used in the law focused on masculine characteristic because it built using claim of rationality, objectivity, and abstraction, characteristic associated to the men and describe against with emotion and subjectivity (both associated to women areas). In this phase, it realized on the existence of unique and characteristic of women voice in the legal context. The concept of equality replaced with confession that women differed from men.

The third phase began when criticism coming on the two theories, according to Catherine Mackinnon that the failure of the two theories previously as result of each theory kept accepting implicitly the men parameter.

The Feminist legal theory has struggled legal concept based on women experience as the starting point. The legal consciousness for women needed to build to get equal rights and chances. The method of feminism law, according to Barlett, appeared from epistemology focusing on three questions; first, asking the women on what they need to reveal. It should find out whether the law give gender implication and not keep women subordination or not. Second, it gives priority the feminism practical reason covering several logical deductive aspects but purposed in consideration of unique and pressing experiences. This approach is not only in one phenomenon dimension, but also focus the dilemma with multi-perspective, contradictive and consistent. Third, appearance of consideration purpose to strengthen individual and group, not only for personal revenge [7].

The policy of legal protection for women as the victim of violence in the criminal law perspective stated that women experiences before and after becoming the victim of violence revealed to be necessary to be fundamental of legal system as explanation of Human Right and women right. In this case, it developed human dignity. For, the core of human right is protection and development of human dignity.

Thus, it needs identify legal exclusiveness related to legal protection toward women as the victim of violence in three things [8]:

1) *Place women experience in the national legislation substance with women right perspective:* The problem of women right violation, women sufferings that underestimate the women dignity and prestige previously unknown, understood and reflected by the law, or on the judge decision, or being minimalized because there was not enough expressed in the law. These women experience before and after

becoming the victim of violence must obtain significant tendency and may not be ignored because it becomes value of women having different condition and experience when they face the situation and condition as the victim.

2) Construct the legal structure as the form of existence of Human Right institution as the effort to uphold the Human right in Indonesia: The institution of Human Right was constructed to accommodate women experiences, identify the rights being struggled by women and develop concrete strategy in order to transform living condition related to human living value covering human dignity and prestige as stated in The Universal Declaration of Human Rights (10 December 1948). Thus, justice and truth becoming humanity symbol could be felt and got by women in such above conditions.

3) Develop legal culture accommodating the women interest: According to Maggie Human [3], feminism struggled humanity and women as a whole human being where principally place women position becoming complete subject in decision making applied for any women in any time and places. The legal idea using feminism perspective started from a fundamental assumption on the relation of women and law. The feminist expert and legal practitioner believed that women perspective differ from men perspective [3]. Thus, it needed fundamental norm and women experience to achieve renewal and development of future law.

Feminism perspective law purposes to response anything reflecting our duty to hear positively. We must be transparent of truth of a woman experience. Support retell of individual truth. The feminism law protecting our togetherness room with others would create our identity [9].

Feminism perspective law make possible for women as the victim of violence to be able to develop their own identity completely, using various experiences they face and have. Using the identity, the women would be able to move to do struggle as the effort against the suppression toward any kinds of suffers they experienced. The experience of each woman with such condition was interesting to take a look and consider in any effort to search justice for her [9].

To fulfill the sense of justice for women as the victim of violence, some suppression give to [8].

a) Understand and identify women experience, voice and body of condition suffered and experienced by them.

b) The Law regulation integrating on the Women right because it refers to human right for women to:

- Women right to get protection of their condition.
- Women right to get legal, psychological, medical, and social helps, especially to bring back their self-confident.
- The victim right to get compensation of their suffering.
- Give education to make society realize and understood on women rights and position. The specific rights of women who suffer from violence.

c) Integrate feminist perspective that possibly for each woman who potentially become victim that able to create her body integrity as a woman through her experience.

IV. CONCLUSION

Legal protection must be considered as protection given by the law. The women as social group need to be protected, because they always in full risk condition and susceptible toward danger one of them is violence coming from other group. Violence against women refers to forbidden action or conduct as violation of criminal law. Thus, women as victim of violence can obtain legal protection. The attention on victim of criminal conduct purposed to the victim would not more suffering after experiencing violence, the victim get protection and guaranty of their rights in front of the law. The criminal law refers to strong repressive effort including safety actions. Reveal consideration based on unknown experience from woman such as increasing personal and private stories facing by the woman as the victim of violence, see and consider the condition of cause and effect of the woman. Thus, the improving of consciousness will result in new knowledge by considering unknown thing. The policy of legal protection on women as the victim of violence in criminal legal perspective stated that women experience before and after becoming victim of violence conduct makes it important to be base of legal system referring to explanation of Human Right and women right. It is line with conducting improvement of human dignity. For, the point of human right is protection and improvement of human dignity.

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