

## **CHAPTER II**

### **LITERATURE REVIEW**

#### **A. Domestic Violence**

Definition of Domestic Violence under article 1, paragraph (1) of Law No. 23 of 2004 on the Elimination of Domestic Violence, is any act against someone, especially women, misery or suffering physical, sexual, psychological, and / or negligence of household including threat to commit acts, compulsion, or deprivation of liberty unlawfully within the domestic sphere.<sup>1</sup>

Domestic violence is actually not merely related to the parties in a marriage relationship between husband and wife, but also connected to the violence on others who are in the domestic sphere. Among other parties are 1) children, including adopted children and stepchildren; 2) people who have a family relationship with a husband, wife and child by blood, marriage, nurturing, and guardianship living in the household, and 3) people who work to help household and living in the household.

Domestic violence is seen as a social phenomenon that is difficult to be abolished and difficult to unfold because the victims keep it as family secret which is regarded as an ashamed to be revealed.

From the above explanation it can be inferred that domestic violence is any act of violence against the opposite sex, but usually more women become victims rather than the perpetrators. Domestic violence resulted in the emergence of suffering physical, sexual, psychological, or neglect of household to victims of domestic violence.

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<sup>1</sup>Article 1 paragraph 1, Law Number 23 of 2004 on Eradication of Domestic Violence

## **B. Rights of Women**

Human Rights are rights of human beings that are inherited naturally without exceptions and privileges for groups, social groups and particular human level. Such rights may include the right to have proper life and security; freedom to hold opinions and freedom from all forms of oppression that must be upheld, not only by each individual of a State that recognizes the existence and respect of human rights itself, but it must also be guaranteed by the state with no exceptions.<sup>2</sup>

The guarantees given by the State on those rights does not mean that these rights were born after the State ratifies an International Convention on Human Rights or removes any rules that guarantee the rights of its citizens; but rather it is the responsibility of the State in guaranteeing rights that have been owned by every citizen by nature and show appreciation of States for these rights. Because the rights of the most fundamental are naturally possessed by every human being in the world along with his birth as an independent individual. The term human rights means the right itself is found in the nature of humanity and for the sake of humanity.<sup>3</sup>

Women, as a group in society within a State, must get a guarantee to exercise their rights as human being. The Universal Declaration of Human Rights (UDHR 1948) does not state explicitly the guarantees the women's rights. In Article 2 of the Universal Declaration, it is stated that the rights and freedoms need to be owned by everyone without discrimination, including non-discrimination based on sex.<sup>4</sup>

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<sup>2</sup>Niken Savitri, 2008, *HAM Perempuan-Kritik Teori Hukum Feminis Terhadap KUHP*, ISBN 979-1073-55-4, Bandung, PT Refika Aditama, p.1.

<sup>3</sup>Anton Beker, 1999, *Hak Asasi Manusia Kajian Filosofis dan Implementasinya dalam Hukum Pidana Indonesia*, Universitas Atmajaya, Yogyakarta, p.2.

<sup>4</sup>Saparinah Sadli, *Women's Rights are Human Rights, in Understanding Forms of Violence against Women and Alternative Solutions*, KK Convention Watch, 2000, Pusat Kajian Wanita dan Gender, Universitas Indonesia, Jakarta, p.1.

The Vienna Declaration and Program of action adopted in 1993 emphasizes that the Human Rights of Women's should be brought into the mainstream of UN system-wide activity and that women rights should be regularly and systematically addressed throughout the UN body and mechanism.<sup>5</sup>

Since the women as part of a group need the protection of their human rights, then the violation of their rights should also be considered as a violation of human rights in general.

In Indonesia, the guarantee of human rights in general can be found in the Constitution of 1945 in the second amendment of Article 28 A-J and Law Number 39 of 1999 on Human Rights. More specifically, the guarantee of women's rights can be found in Law Number 7 of 1984 on the elimination of discrimination against women or women's ratification. In law number 7 of 1984 it is stated that the country will make efforts as much as possible to eliminate all forms of discrimination against women, including violence against women, both covering the violence in the public sphere as well as in the domestic domain.

Women have shown their existences in all dimensions of society, nevertheless they are recognized primarily by the state as second class citizen who always hesitate to expose themselves in the public. For those reasons, women themselves vary in their articulation of what is meant by their "rights." Some women have ever begun to question whether a "rights discourse" constitutes the appropriate basis for remediation of their oppression.<sup>6</sup>

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<sup>5</sup>Malcolm N. Shaw QC, 2014, *International Law Seventh Edition*, ISBN 978-1-107-04086, United Kingdom, Cambridge, p.233.

<sup>6</sup>Diana Zoelle, 2000, *Globalizing Concern for Women's Human Right*, ISBN 0-312-22285-8, New York, St. Martin's Press, p.17.

## **C. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**

On 18 December 1979, the Convention on the Elimination of All Forms of Discrimination against Women was adopted by the United Nations General Assembly. It entered into force as an international treaty on 3 September 1981 after twenty countries had ratified it. By the tenth anniversary of the Convention in 1989, almost one hundred nations have agreed to be bound by its provisions.<sup>7</sup>

The Convention was the culmination of more than thirty years of work of the United Nations Commission on the Status of Women; a body established in 1946 to monitor the situation of women and to promote women's rights. The Commission's work has been instrumented in bringing to light all the areas in which women are denied equality with men. These efforts for the advancement of women have resulted in several declarations and conventions, of which the Convention on the Elimination of All Forms of Discrimination against Women as the central and most comprehensive document.

Article 10 of the Convention requires the state to take appropriate measures to eliminate discrimination in the field of education, on a basis of equality of men and women, by ensuring:

1. Same condition for career and vocational guidance and for access to studies;
2. Access to the same curricula, the same examinations, teaching staffs with qualifications of the same standard and school premises and equipment of the same quality;
3. Elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education;

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<sup>7</sup>United Nations Human Rights, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>, accessed on Thursday, November 10<sup>th</sup>, 2016, at 11:11 p.m.

4. The same opportunities of benefit from scholarships and other study grants;
5. The same opportunities to access all programs of continuing education;
6. The reduction of female student drop-out rates;
7. The same opportunities to participate actively in sports and physical education;
8. Access to specific educational information to ensure the health and well-being of families, including information on family planning.<sup>8</sup>

From 1949 to 1959, the Commission on the Status of Women had prepared various international agreements including the Convention on the Political Rights and the Convention on the Nationality of women who married. In 1963, the UN General Assembly noted that discrimination against women still continues, and asked to be made a draft Declaration on the Elimination of Discrimination against Women.<sup>9</sup>

In 1965, the Commission set up an effort and after that in 1966 a draft Declaration on the Elimination of All Forms of Discrimination against Women was produced. Then in 1967, the draft was approved into a Declaration on the Elimination of All Forms of Discrimination against Women pursuant to resolution 2263 (XXII). The Declaration is an international instrument that provides universal recognition and formal legal<sup>10</sup> and standards on equality of rights between men and women.<sup>11</sup>

This convention was later adopted by the General Assembly in 1979. In its resolution the General Assembly expressed the hope that the Convention may be enforced in the near future. On September 3, 1981, 30 days after 20 countries ratify the

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<sup>8</sup>Hawira Nor Mohammad Hashim and Anid Mahmood, 2008, *Law, Morality, Justice, Freedom and Equality The Underlying Concepts*, ISBN 978-983-3850-57-0, Malaysia, McGraw Hill, p.162.

<sup>9</sup>Achie Sudiarti Luhulima, "Konvensi Penghapusan Segala Bentuk Diskriminasi terhadap Perempuan", available on <https://books.google.co.id/books?id=yiUaDAAAQBAJ&pg=PR13&lpg=PR13&dq=Achie+Sudiarti+Luhulima,+SH+Konvensi+Penghapusan+Segala+Bentuk+Diskriminasi+terhadap+Perempuan&source>, accessed on Thursday, June 14<sup>th</sup>, 2016, at 10:27 a.m.

<sup>10</sup>*Ibid.*

<sup>11</sup>Achie Sudiarti Luhulima, Op cit.

Convention, the Convention shall apply. On March 1, 2000, there had been 165 countries (more than 2/3 of members of the United Nations) that ratified or acceded to the Convention of Women. Approval of the Convention on the Elimination of All Forms of Discrimination against Women (abbreviated as the Women's Convention) is the culmination of the efforts of the International in the decade of protecting and promoting the rights of women worldwide.<sup>12</sup>

#### **D. Law Number 23 of 2004**

Domestic violence as expressed in Article 1 of Law No.23 of 2004 on the Elimination of Domestic Violence (UU PKDRT) is

”Violence in Household shall be any act against anyone particularly woman, bringing about physical, sexual, psychological misery or suffering, and/or negligence of household including threat to commit act, forcing, or seizure of freedom in a manner against the law within the scope of household”.<sup>13</sup>

In Indonesia, this provision entered into force in 2004. The mission of this legislation is an effort and endeavor for the elimination of domestic violence. Given this provision, means that the State may seek to prevent domestic violence, prosecution of domestic violence and protect victims of domestic violence. As the law requires special arrangements, in addition to setting contains criminal sanctions, this legislation also regulates procedural law, the obligation of the State to provide immediate protection to victims who report. Thus, it can be said that this provision is a vitally legal breakthrough for defending human rights, especially the protection of those who have been harmed in the family or household.

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<sup>12</sup>Assessing the Status of Women, *A Guide to Reporting under the Convention on the Elimination of All Forms of Discrimination against Women*, Update by the Division Advancement of Women Department of Economic and Social Affairs, United Nations 2000.

<sup>13</sup>*Ibid.*

