



Journal of Social and Political Sciences

**Husain, Husaimah, Pulubuhu, Dwia Aries Tina, and Iswary, Ery. (2021),
Implementation of Law No. 23 of 2004 Concerning Elimination of Domestic
Violence (PDKDRT) in Upholding of Women's Rights (Case Study: In the City of
Makassar). In: *Journal of Social and Political Sciences*, Vol.4, No.1, 104-115.**

ISSN 2615-3718

DOI: 10.31014/aior.1991.04.01.254

The online version of this article can be found at:
<https://www.asianinstituteofresearch.org/>

Published by:
The Asian Institute of Research

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Implementation of Law No. 23 of 2004 Concerning Elimination of Domestic Violence (PKDRT) in Upholding of Women's Rights (Case Study: In the City of Makassar)

Husaimah Husain¹, Dwia Aries Tina Pulubuhu², Ery Iswary³

^{1,2,3} Universitas Hasanuddin, Indonesia

Abstract

This study aims to determine the implementation of the Law on the Elimination of Domestic Violence in Upholding Women's Rights, as well as supporting factors and inhibiting factors in Makassar City. This research is a qualitative research with data collection techniques using observation, in-depth interviews, document studies, and descriptive data analysis techniques. The research informants were 11 female victims of violence in the Makassar City area P2TP2A consultants, P2TP2A officers, citizen shelters, and female activists who provide assistance against Cases of Domestic Violence. The results of the data analysis show that the informants experienced complex problems due to the violence they experienced, there was a misunderstanding from the informants regarding the concept of domestic violence, informants were reluctant to use the PKDRT Law in handling their cases because of the assumption that the domestic violence problem was in the Domestic area and became taboo to bring to court.

Keywords: Implementation, Domestic Violence, Woman's Right (HAP)

1. INTRODUCTION

1.1. Background

The 1993 UN Declaration on the Elimination of All Forms of Violence against Women divides the scopes for violence against women into 3 areas, namely in the family (domestic), in the community (public domain) and carried out by the state (state). This division of scopes then revealed many crimes that have been hidden and protected from outside intervention to help victims of various forms of violence in the family. This is known as domestic violence. One of the important things that have received serious attention by the government in the reform era is the issue of violence.

Domestic violence, including violence committed by husband and wife or violence by parents against children, to be regulated by a law. This is because domestic violence is a form of violation of human rights and crimes against humanity, it is also an act of discrimination.

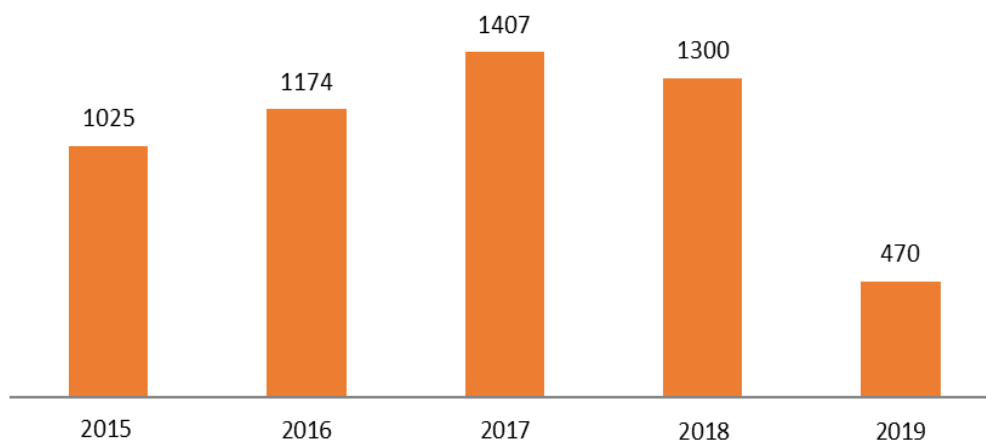
There are a number of reasons why domestic violence that occurs in Indonesia should be called a crime. Broadly speaking, these reasons can be categorized into three basic reasons, namely:

- (1) Reasons based on facts;
- (2) Reasons based on state commitments; and
- (3) Reasons based on the experiences of other countries.

Indonesian women in general, until now, still experience various forms of discrimination and violence in their lives, both in the household and in their families. This is a fact that is difficult to deny, especially when we also include the violence they experienced in certain spheres of life at the community and state levels. A collection of facts shows the occurrence of various forms of violence in household. Most of the victims are women and children. Various impacts of life threatening violence. These women are a legal fact that must be the main consideration in declaring these acts as a crime against humanity.

In the context of Makassar City, which is the location of the research, it can be seen from the data that the issue of violence against women needs the attention of all stakeholders because from the description of the case in Makassar City based on the data entered in Integrated Service Center for the Empowerment of Women and Children (P2TP2A), it can be seen in the graph below that this figure is quite high, this is what was reported to P2TP2A service provider, what about the unreported?

Figure 1: Data from the Integrated Service Center for the Empowerment of Women and Children in Makassar City



Observing from the scope of acts of domestic violence, it is an act against someone, especially women, which results in physical, sexual, psychological trauma, and / or neglect of the household, including threats to commit acts of coercion or illegal deprivation of liberty within the scope of the household. Most of the victims of domestic violence are women (wives) and the perpetrators are husbands, although there are also victims who are on the contrary, or people who are subordinated in the household. Perpetrators or victims of domestic violence are people who are related by blood, marriage, breastfeeding, caregiving, guardianship with husbands and children and even household helpers who live in a household. Not all acts of domestic violence can be handled completely because victims often cover up on the grounds that they are tied to cultural, religious structures, and do not yet understand the applicable legal system. Whereas protection by the state and society aims to provide a sense of security to victims and to take action against the perpetrators.

Several factors that cause domestic violence are:

- Men and women are not in an equal position
- Society considers men by instilling the notion that men must be strong, brave, and merciless
- Domestic violence is considered not as a social problem, but a personal problem in the relationship between husband and wife.

1.2. Formulation of the Problem

The existence of the PKDRT Law has been running for sixteen years. Satjipto Rahardjo (2009) analyzes that the existence of a law or regulation does not necessarily provide justice, considering that the law enforcement process itself is a very complex process. Thus, the existence of a law will not necessarily guarantee protection in society and therefore it is necessary to conduct a separate study on the extent to which a law is implemented. Likewise for the PKDRT Law, this Law needs to be examined to what extent its implementation so far has had an impact on the protection of victims of domestic violence as mandated by the PKDRT Law.

The importance of examining the implementation of the PKDRT Law is related to the need to review the state's responsibility for the protection of victims of violence as a manifestation of the state's obligation to protect women's rights as stated in the International Convention on the Elimination of All Forms of Discrimination against Women (Convention of Elimination of All Form of Discrimination Against Women -CEDAW). Indonesia has ratified CEDAW since the existence of Law no. 7 of 1984 concerning the Ratification of CEDAW and therefore bound to carry out the obligations as stipulated in CEDAW.

Several studies on the implementation of the PKDRT Law are linked to the protection of the rights of women as victims of violence, illustrating that the PKDRT Law has not been maximally implemented, and the rights of victims to get justice are not yet in accordance with the enforcement of women's human rights. Therefore, it becomes interesting to see whether the implementation of the PKDRT Law in Makassar City is the inhibiting and supporting factor for the implementation of the PKDRT Law.

1.3. Previous Studies

There are several previous studies that can be used as a reference in this study. Hamidah Abdurrachman (2010) with the title Legal Protection for Victims of Domestic Violence in District Court Decisions as the Implementation of Victims' Rights. Her research illustrates that the PKDRT Law has not accommodated victims' rights to receive material compensation for the suffering they have experienced, either in the form of restitution or compensation. In the Court Decision, the Judge still ruled based only on "what is written" in the PKDRT Law and did not include the rights of the victims as a substitute for the suffering they experienced.

Dewi Mutiara, SH., MT and Hasmonel SH., M.Hum. (2013) entitled Fundamentals of the Implementation of Law Number 23 Year 2004 concerning the Elimination of Domestic Violence in Protecting Victim Witnesses. Her research illustrates that the implementation of the PKDRT Law in general has not provided protection for victims of Domestic Violence Cases, especially when reporting their cases to law enforcement officials. The victims who report their cases to law enforcement officials tend to be apathetic about getting justice.

Emilda Firdaus (2014), with the title Implementation of Law Number 23 Year 2004 regarding the Elimination of Domestic Violence in Batam City. Her research illustrates that the implementation of Law Number 23 of 2004 in Batam City has not been optimal, this is due to the limited understanding of Gender Perspectives by both the community and APH, which results in a lack of protection of the human rights of women victims of domestic violence.

Joint Study between Ministry of Women's Empowerment and Child Protection of the Republic of Indonesia. The National Commission on Violence Against Women (2018), Urgency to Speed Up the Optimization of the Implementation of Law Number 23 of 2004 concerning the Elimination of Domestic Violence. The results of the research illustrate that there are still multiple interpretations. So there is a view that the definition of Article 2,

Article 6, Article 7, Article 8, Article 9, Article 44 paragraph (4) is unclear. The existing decisions also show that there is an operational definition that can be used by law enforcement officials to implement the PKDRT Law but this still requires the willingness and ability of Law Enforcement Officials, it must also be supported by institutional support from law enforcers. Various understandings related to domestic violence create uncertainty in the implementation of Law no. 23 of 2004 both in law enforcement, community support and governance so that the handling of domestic violence cases tends to harm the rights of victims.

Based on previous research, this study aims to obtain information on the implementation of Law No. 23 of 2004 on the Elimination of Domestic Violence (PKDRT) in Enforcement of Women's Human Rights in Case Studies in Makassar City. As well as seeing what the Inhibiting and Supporting Factors for the Implementation of the PKDRT Law in Makassar City.

1.4. Literature Review

In various international accords, Conventions and declarations on Human Rights, the content regarding the obligation to eliminate discrimination on sex differences has become one of the inherent missions in the pursuit of gender equality, including the Convention on the Elimination of Discrimination Against Women (CEDAW).

In order to fight for women's rights and gender equality, the CEDAW Convention is based on three main principles, namely:

- 1) Principle of Substantive Equality;
- 2) Principle of Non - Discrimination;
- 3) Principle of State Obligations.

Within these three Principles lies the "prism of women's human rights", which becomes the lens for examining, correcting, and eliminating all forms of gender discrimination.

In the context of the application of the PKDRT Law as part of Respect, Protection and Fulfillment of Human Rights (HAM) is a guarantee that must be provided by the State to its citizens. The elimination of all forms of violence is a form of protection of human rights, including violence against women. This guarantee has generally been agreed internationally as outlined in the Convention on the Elimination of All Forms of Discrimination against Women (1979), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1999) and the UN Declaration on the Elimination of All Forms of Violence Against Women (1993).

As a UN member country that has approved, signed, and ratified these conventions, the Government of Indonesia is obliged to embody the points of implementation of the convention. The commitment of States participating in the convention at the level of implementation in their country is very important so that the convention is not just a commitment on paper. Therefore, in 1992, CEDAW issued General Recommendation No.19 which obliges States which have ratified the Convention on the Elimination of All Forms of Discrimination against Women to include the issue of violence against women in their reports. This recommendation also emphasizes that gender-based violence is a form of discrimination that seriously prevents women from enjoying their freedom and rights equal to that of men. Although existing human rights aim to protect all human beings, men and women, in practice human rights have not been applied equally. The understanding of how human rights can or should protect women remains underdeveloped.

In the context of the PKDRT Law, women who are victims of domestic violence receive protection as stated in Article 10 that victims are entitled to:

- a. Protection from the family, police, prosecutors, courts, advocates, social institutions, or other parties either temporarily or based on the stipulation of a protection order from the court;
- b. Health services according to medical needs;

- c. Special treatment relates to confidentiality;
- d. Assistance by social workers and legal aid at every level of the examination process in accordance with the provisions of laws and regulations;
- e. Spiritual guidance services.

2. METHOD

The method in this case is defined as a way that must be done to achieve goals by using certain tools. Meanwhile, research is an attempt to find, develop, and test knowledge using certain methods. A research method will describe technically the methods used in research (Sutrisno Hadi, 1997: 3). This research is a qualitative research that uses a case study format by making groups an object to be studied intensively, in-depth, in detail and comprehensively (Sanapiah, 2008). This type of research also uses gender studies as a perspective and analysis to explore gender inequality in seeing the behavior and products produced by the research object.

2.1. Data Sources and Data Collection Techniques

The data collected in the study consisted of:

1. Primary data is data obtained from direct interviews with 11 victims of domestic violence (from P2TP2A, Citizen Shelter, Makassar LBH, LBH APIK Makassar), as well as 5 victim assistants (3 from P2TP2A and 2 from resident shelters), 2 the person of the Women's Activist.
2. Secondary Data, namely data obtained by researchers from related institutions or agencies, such as Women's NGOs, as well as data on research reports and library materials in the form of books, journals, and print or online media.

The analysis model used in this study consists of two in accordance with the formulation of the problem, namely:

1. Data analysis in this study was carried out in a descriptive qualitative manner, namely the presentation of data and information used to answer the first problem formulation regarding the implementation of the PKDRT Law as a form of upholding women's human rights, as well as the formulation of the second problem concerning the Inhibiting Factors for the Implementation of the PKDRT Law and the formulation the third problem concerns the supporting factors for the implementation of the PKDRT Law in Makassar City.
2. Data analysis also uses gender analysis to understand social reality in providing meaning, conceptions, assumptions, ideologies and practices of relationships between men and women and their implications for wider social life (Fakih, 2003).

The substances analyzed are as follows:

1. The implementation of the PKDRT Law is a form of upholding women's human rights in Makassar City. At this stage we will analyze the extent of the implementation of the PKDRT Law in Makassar City, whether in Makassar City there is already a policy that supports the implementation of the PKDRT Law, besides that it will see whether services are available for victims of domestic violence both in a referral and institutional system.
2. Factors that become obstacles to the implementation of the PKDRT Law in Makassar City, at this stage we will analyze what are the inhibiting factors both externally and internally so that the PKDRT Law cannot be implemented.

- The factors that support the implementation of the PKDRT Law in Makassar City, at this stage it will analyze what are the supporting factors both externally and internally so that the PKDRT Law cannot be implemented.

2.2 Characteristics of Participants

- Informants 1 to 11 are victims of domestic violence
- Head of the Makassar City Women's Empowerment and Child Protection Agency.
- Consultants and Officers of the Integrated Service Center for the Empowerment of Women and Children (P2TP2A) who provide assistance to the Victims (2 participants).
- Management and Members of the Citizen Shelter who provide assistance to the Victims (3 participants).
- The Founding Board of 'Dewi Keadilan' who is also a Women Activist and actively provides assistance for women victims of domestic violence.
- The Director of LBH APIK Makassar who is also a Women Activist and actively provides assistance for women victims of domestic violence.

Table 1: Results of Direct Interview with Victims

No	Name of Informant	Level of Education	Occupation	Relationship after marriage	Range of time experienced	Form of violece			
						Physical	Psychological	Sexual	Economic
1	AR	Bachelors	Consultant	Dating	5 Years		1		1
2	RR	Bachelors	Private Employee	Dating	13 Years	1	1	1	1
3	AT	Bachelors	Civil servant	Dating	6 Years		1		1
4	NR	Bachelors	Entrepreneur	Dating	13 Years	1	1		1
5	WY	Bachelors	Civil Servant	Dating	2 Years		1		1
6	NU	High School	Housewife	Match-made	3Years		1		1
7	AN	High School	Housewife	Match-made	10 Years	1	1		1
8	HS	High School	Private Employee	Dating	1 Year	1	1		1
9	NN	Bachelors	Entrepreneur	Dating	3 Years	1	1		1
10	AD	High School	Honorary	Dating	3 Years		1		1
11	LS	Bachelors	Consultant	Dating	12 Years	1	1		1

2.3. Sampling Procedure

Data collection techniques are methods used to obtain data and information needed in research. Researchers collect data and are equipped with various information through Field Research which is a way to obtain primary data that directly involves informants and is used as a sample in the study. The data collection techniques used by researchers were as follows:

1. Observation

At this stage a discussion was held with the leadership, the Regional Apparatus Organizations involved in this case the Makassar City Women Empowerment and Child Protection Office, P2TP2A Consultants, P2TP2A Managers and Women Activists who actively provide assistance for women who experience Domestic Violence, to get an overview of the cases of violence that occur within the scope of the family in Makassar City, and discussing what is the implementation of the PKDRT Law in Makassar City.

2. In-Depth Interview

Data collection was carried out by conducting direct conversations in the nature of question and answer with research informants or resource persons. To get information from informants as data that researchers will analyze further.

In conducting interviews, researchers use the interview guide to make it easier for researchers to communicate with informants, interviews are conducted openly and in a structured manner and questions will focus on the problem so that the information collected is sufficiently complete and in-depth. To further refine the results of the data, unstructured interviews were also used. The researcher asked questions more freely and comfortably, without being bound by the arrangement of questions that had been made previously.

3. Official and Personal Documentation

Documentation is collecting data by observing, recording, and collecting documents, as well as other data related to the problem. This technique or method is used with the intention that researchers can obtain secondary data that is closely related to the research focus and will add completeness in analyzing research data.

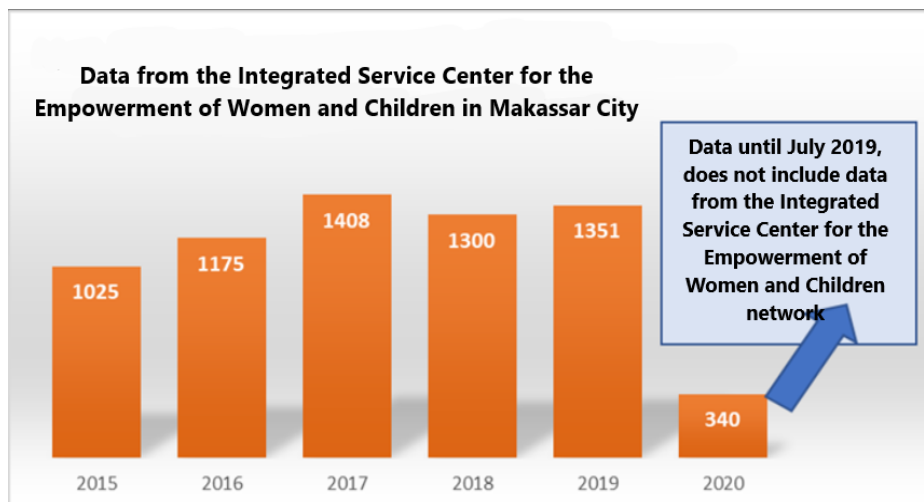
The data obtained through in-depth interviews are reduced and put into patterns, categories, focuses, or themes to be understood. Collecting data, displaying data, and drawing conclusions are not something that takes place linearly, but are an interactive cycle. (Sanapiah, 2008).

4. RESULTS

Based on the analysis of the implementation of the Law on the Elimination of Domestic Violence in Makassar City, the results show that:

- a. The implementation of the PKDRT Law in Makassar City does not run optimally in general. A number of cases of Violence against Women and Children in Makassar City is still high, based on the data in P2TP2A Makassar City.

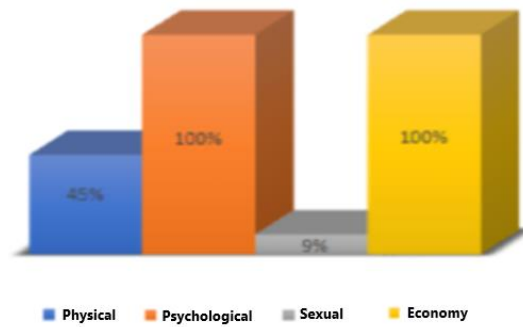
Figure 2 : Data on Cases of Violence against Women and Children



To find out the extent of the implementation of the PKDRT Law in Makassar City in this study, the researcher selected 11 informants (victims) who would be interviewed in-depth regarding the violence that has been experienced in the household.

The results of interviews with informants regarding the forms of violence experienced can be seen in the diagram below:

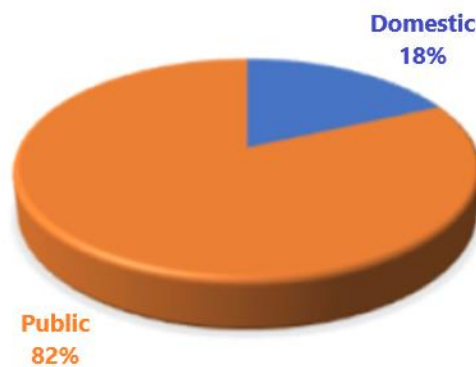
Figure 3: Forms of Violence Experienced



Based on the forms of violence that occurred, out of 11 respondents, data were obtained that about 45% experienced physical violence, 9% experienced sexual violence and 100% experienced economic and psychological violence. The results of the analysis of the data show that overall respondents who experienced physical violence also experienced psychological and economic violence. This shows that the perpetrators of violence in addition to having power over the body of the victims, also hold economic assets. This situation makes victims tend to endure the violence they have experienced, so that their economic and family needs can be fulfilled.

Meanwhile, data on informants who experienced violence based on the type of work can be seen in the diagram below:

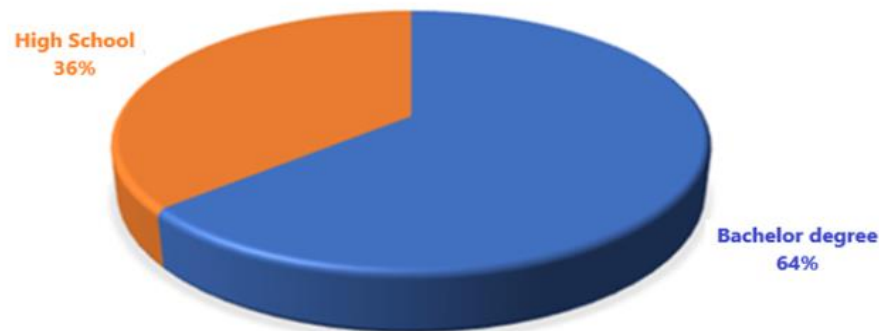
Figure 4: Victims of Violence by Sector of Occupation



From the results of interviews with 11 informants, 82% of victims were women who worked in the public sector. This illustrates that even though women have their own income, they are still vulnerable to experiencing violence.

For informants who experience domestic violence based on education level, it can be seen in the diagram below:

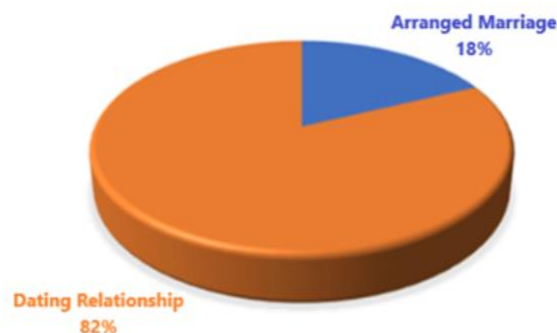
Figure 5: Victims of Violence by Education Level



Another fact that the level of education does not guarantee women to avoid violence. Based on the data above, it is found that of the 11 informants, 64% of them have Bachelor background, and 36% of them have secondary school background.

Data on informants who experience domestic violence based on relationships before marriage are shown in the diagram below:

Figure 6: Victims of Violence by Pre-Marriage Relationships



Based on the results of the interview, data was obtained that women who are dating and arranged marriage are still vulnerable to experiencing violence after marriage. This is in accordance with the data shown in the diagram above that 82% of victims of violence were women who were married through a dating process and only 18% of victims were women who had married through a matchmaking process.

Based on the conditions described above, the implementation of the PKDRT Law in Makassar City has not been running optimally. Another thing that happens is that most of the victims of domestic violence do not use this rule if they experience violence, the victims choose to settle by divorce through Religious Court. This can be seen from an interview with one of the informants (Rr) who revealed that:

"During domestic violence occurring, I never thought to report my husband, even though I knew that it was a crime. I just chose to divorce, so that the suffering I was experiencing was the most important consideration was my children, of course he would be devastated if his father would deal with the police. Therefore I believed that divorce is the right choice".

- b. Obstacle Factors for the Implementation of the PKDRT Law Policy in Makassar City.

Domestic violence is violence that is very complex and requires comprehensive handling, starting with the occurrence of violence in dating relationships, where most victims do not realize that violence has occurred, and often the violence does not stop even though it ends in divorce. Post-divorce violence by ex-husbands and their families continues to occur, for example, cases of child custody, neglect of children's rights, deduction or neglect of the rights of ex-wives, and other violence. Victims of domestic violence rarely get recovery.

As an effort to implement Law Number 23 of 2004 concerning the Elimination of Domestic Violence in Makassar City, there are several obstacle factors the implementation of Law Number 23 of 2004 concerning the Elimination of Domestic Violence in Makassar City. This can be seen from 2 factors, namely:

1. External Obstacle Factors

To see how the PKDRT Law experienced obstacles in its implementation in terms of external obstacles, it can be seen from several things:

- a. Socio-Cultural Studies (KDRT is a domestic channel).
- b. The social burden of victim on violent behavior.
- c. Society stigma against victims and their families.
- d. Limited service facilities and infrastructure.

2. Internal Obstacle Factors

Internal Obstacle factors of the PKDRT Law can be seen from several things:

- a. Victim
- b. Family (Children, Parents, Siblings,)
- c. Economic Dependence
- d. Interpretation of religion.

The victim factor itself contributed more so that the PKDRT Law experienced obstacles in its implementation as conveyed by Rosmiati Sain, the Director of LBH APIK Makassar, as she said in the interview:

"The dependence of the victim on the perpetrator from an economic point of view makes the victim halfhearted and does not dare to report the perpetrator, or even the victim sometimes withdraws the report in the course of the legal process".

Furthermore, consultant for the Integrated Service Center for the Empowerment of Women and Children in the City of Makassar Andi Yudha Yunus explained that:

"Victims survive the cycle of violence and choose to remain silent, only to protect the good name of the family, protect the feelings of the children and also survive because from the beginning, the man who is her life companion is her own choice so she doesn't want to be married. It was known by her family that her choice was a male perpetrator of violence."

c. Supporting factors for the implementation of the PKDRT Law Policy in Makassar City.

To see the factors that support the implementation of the PKDRT Law, it can be seen from two factors:

1. External Supporting Factors.

So far, women victims of domestic violence need support both psychologically, physical assistance and legal assistance in an effort to overcome the violence they experience. There are several institutions that have been working to provide services for women victims of domestic violence, including:

- a. Institutional Center for Integrated Services for Women Empowerment and Child Protection (P2TP2A)
- b. Availability of skilled paralegals in assisting cases of violence against women.

- c. Availability of community shelter institutions and community shelter administrators that provide assistance to women victims of violence.
 - d. Establishment of networks between service institutions in the field of health, psychologists and legal aid agencies.
2. Internal Supporting Factors.
- In interviews with informants it was found that the supporting factors for the implementation of the PKDRT Law internally were:
1. There is family support
 2. There is support from trusted people other than family,
 3. Availability of victim companions, paralegal staff and community shelter administrators.

5. DISCUSSION

An analysis of the implementation of the PKDRT Law in Makassar can be concluded that **First:** the implementation of Law No. 23 on the Elimination of Domestic Violence has not been maximally implemented, this can be seen from the understanding that still makes the issue of domestic violence a personal family problem and to talk about it is something taboo, in addition, the courage of the victim to report is still faced with a dilemma, the victims are more likely to allow violence to continue and persist for a long period of time just to maintain family dignity, **Second:** Understanding of patriarchy which positions women as a subordinate group which results in irregular relationships balance between husband and wife in the household.

As a suggestion in this research:

1. The Makassar City Government, in this case the Women and Children Protection Department, must try to prevent violence against women to occur, including domestic violence, it needs optimal efforts to prevent domestic violence through Critical Legal Education, ongoing paralegal training, training for survivors so that it becomes an arena for strengthening among fellow victims.
2. Strengthening a more comprehensive network between fellow service providers, building service facilities to strengthen the health and rights of victims as well as increasing the capacity of community shelter administrators, especially in handling domestic violence.
3. Strengthen the existence of formal local institutions such as RT and RW and non-formal institutions such as community leaders in order to carry out prevention of Violence against Women in the Family Sphere in a sustainable manner.
4. Conducting a simultaneous domestic violence prevention campaign by optimizing community meetings, for example the Woman Council for Quran recitation, RT / RW meetings, and women social gathering at the sub-district level.

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