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## **The Effectiveness of Legal Protection and Strategies to Minimize Domestic Violence against the Elderly**

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**Abstract.** Few studies have examined the annually increasing cases of violence against the elderly in Indonesia. This study aimed to analyze the effectiveness of protection and propose a theoretical strategy to minimize violence against the elderly. It used a normative approach to examine Law Number 23 of 2004 concerning the Elimination of Domestic Violence and Law Number 13 of 2008 on the Elderly Welfare as protection indicators. The findings showed that the elderly needed preventive and repressive legal protection. This means it is important to protect the elderly against violence by respecting them regardless of gender. Therefore, efforts should be made to protect the elderly from neglect as part of domestic violence by changing laws and regulations related to the substance and mechanisms for legal protection.

**Keywords.** Domestic violence, Elderly, Legal Protection

### **1. Introduction**

The elderly are estimated to reach 28.8 million people in 2020. This number represents 11.34% of the population in Indonesia as the fifth country with the highest number of elderly citizens. The policy to stay at home and other measures restricting movement could contribute to increased violence against the elderly, especially women. The impact includes stress, disruption of social relationships, loss of income, and reduced access to services that exacerbate the risk of violence. An example could be eviction from home or cessation of financial and medical assistance (The Ministry of Women's Empowerment and Child Protection, 2020).

A survey by the Indonesian Ministry of Social Affairs showed that the highest violence percentage against the elderly is in Jakarta. According to Fahri Rismanda, most elderly respondents experienced violent acts of physical, economic, and psychological neglect by 35.50%, 16.9%, and 17%, respectively (Fahri Rismanda, 2014). Several cases of related criminal violence experienced are also seen in Malang and Mojokerto. The elderly women victims are reluctant to report these problems due to close kinship. In America, the elderly even live alone at home or in nursing facilities. This is because women are vulnerable to domestic physical, sexual, economic, and psychological violence (Dharma Kelana Putra, 2019).

The reasons behind the helplessness of the elderly as victims of domestic violence are economic, social, and psychological factors. However, certain conditions are not potential and have psychological dependence with a deep hope to be protected by the family. Violence against

family members is at the highest level, and the elderly experience this suffering (Raymond B. Flannery, 2003). It is caused by retaliation on the pressures experienced by the offender in childhood. Based on the background, this study aimed to explore the effectiveness of legal protection instruments and identify policy strategies to minimize domestic violence against the elderly.

## **2. Research Method**

This study employed normative study that examined legal materials using a qualitative descriptive analysis (Valerine J.L.Kriekhoff, 2005). The analysis was conducted by first describing Law Number 23 of 2004 on the Elimination of Domestic Violence and Law Number 13 of 2008 concerning Advanced Welfare. The contents were then described based on the theory of legal protection and legal policy aspects (Soerjono Soekanto and Sri Mamuji, 1985).

## **3. Effectiveness of Legal Protection for Elderly**

The legal protection theory is important to analyze because it focuses on the public in a weak economic and juridical position. Based on Phillipus M. Hadjon, it is a preventive and repressive government action. Preventive legal protection aims to prevent disputes by directing government actions to be careful in making decisions based on discretion. In comparison, repressive protection aims to resolve disputes, including judiciary handling (Annisa Justisia Tirtakoesoemah and Muhammad Rusli Arafat, 2019). Furthermore, the protection definition has been regulated in the Law on the Elimination of Domestic Violence. Protection refers to efforts to provide security to people carried out by family, advocates, social institutions, police, prosecutors, courts, or other parties temporarily or based on the court ruling. The effort to protect human rights and freedoms is regulated in Article 25 that everyone has the right to a standard of living adequate for the health and well-being of individuals and their families. According to Govtrack, financial problem protection is given to the elderly by the government in America through social security, forcing the elderly to only depend on their family (Fahri Rismanda, 2014).

All potential and non-potential elderly must receive the same social protection and various interests related to welfare. Law Number 13 of 1998 concerning Elderly Welfare in Article 5 states that the elderly has the same rights in society, nation, and state. Additionally, the law has the three articles stating as follows:

First, Article 26 of Law Number 13 of 1998 concerning Elderly Welfare regulates the criminal act of intentionally violating the obligation to perform services to improve social welfare, where the penalty is imprisonment. Second, Article 304 of the Criminal Code states that deliberately violating the obligation to give life, care, or maintenance to a person is punishable by imprisonment of 2 years and eight months or a fine of IDR4,500.00. Third, Article 49 of the Elimination of Domestic Violence Law stipulates the crime of neglecting other people within the scope of their household, causing economic dependence. The crime is punishable by imprisonment of 3 years or a fine of IDR15,000,000.00. This protection is regulated by the Regional Regulation of Tulung Agung Regency Number 14 of 2016. Article 19 regulates the procedures for providing social protection for the elderly.

The laws and regulations described show a consistency in the prohibition of violence, mainly in neglect of the elderly (Marcelia Oktavia Gosal dan Yuwono Prianto, 2017). Protection from violence, including neglect, has been provided by the state. Also, state protection for the elderly has been regulated in the law. The United Nations estimates that elderly people would reach around 60 million by 2050. This would cause Indonesia to be ranked 4th with the most

elderly population. The increasing population creates problems, especially in terms of the elderly health and welfare. This problem may become complex in terms of physical, mental, and social related to health and well-being (Wardah Nuroniyah, 2019).

Close kinship ties make elderly women victims of violence feel reluctant to report these issues. There are cases of conflict with children, leading to physical violence or beating of their parents because of money problems or other reasons. This happens because family and household are personal domains, and people cannot intervene without physical abuse (Dharma Kelana Putra, 2019). The effectiveness of family support is a key component of elderly welfare. Sales also found that providing care to the elderly with chronic illnesses creates a feeling of burden or strain on caregivers, impacting the quality of family life (R.Siti Maryam, Rosidawati, Ni Made Riasmini, Eros Siti Suryati, 2012). The burden of caring relates to physical, psychological, social, and financial problems, such as sleep disturbances and anxiety. According to Andren and Elm Sthal, psychological and educational interventions given to families reduce depression and the burden of caring and increase knowledge (R.Siti Maryam, Rosidawati, Ni Made Riasmini, Eros Siti Suryati, 2012). This is in line with the provisions of Article 15 of the Law on the Elimination of Domestic Violence.

Shinta Julianti described the experience of one informant living in the orphanage and how ageism, stereotypes, discrimination, and poverty experienced by the elderly residents of the orphanage impacted social vulnerability. Severe poverty also causes a violation of human rights through the non-fulfilment of social and economic rights. An example is a right to an adequate standard of living related to health as well as the well-being of oneself and one's family, including food, housing, clothing, and medical care (Shinta Julianti, 2013). The Law on the Elimination of Domestic Violence has been operating for about 15 years and has experienced many obstacles, especially the regulation on the 1 x 24-hour temporary protection procedure. It is not effective in its implementation. The obstacles to legal protection include investigators' limited resources and victims that do not know protective procedures. For instance, protection is granted depending on the police that applied the determination. This shows that the government's role is based on Article 12 of the Law on the Elimination of Domestic Violence. The law relates to the obligation of the government and society to communicate, educate, inform, and socialize legal protection against elderly violence.

#### **4. The Law's Policy Strategy to Minimize Violence against the Elderly**

A policy is the discretion of officials to do certain things whose implementation is not regulated by laws and regulations. This is different from the open understanding in the field of law formation. The law is valid because it always maintains consistency or conformity between norms. Legislation should always be consistent and prevent collisions. Several regulations indicate that the legal protection provisions for the elderly in Indonesia are adequate.

Forms of neglect and indicators of protection should consider individual personality, economic background, and moral upbringing based on the theory of domestic violence. The elderly's welfare is rendered by forming a good personality to respect human rights. Good moral upbringing shows the need to implement the principle of protection that pays attention to the rights of respect for the elderly. This is expected to minimize the occurrence of violence through a good strategy. According to Friedman, studies have shown that external and internal social support is useful.

It is necessary to implement several law policies related to minimizing domestic violence against the elderly. The first policy concerns changes to laws and regulations related to elderly welfare. Criminalization should be expanded from the Elderly Welfare Law beyond

the crime of not increasing the welfare of people, bodies, organizations, or institutions intentionally. It should cover violent crimes specifically addressed to the elderly as victims. Moreover, the Law on the Elimination of Domestic Violence focuses more on women and children. The article regarding violence against the elderly is rarely applied.

The second policy is related to changes in the Law on the Elimination of Domestic Violence related to procedures for protecting victims of domestic violence, including the elderly. The third policy is the establishment of regulations regarding orderly, structured, and measurable procedures, mechanisms, and procedures for legal protection that could be implemented easily. The fourth policy is to analyze and evaluate institutions related to protection procedures to be implemented properly. The fifth policy is drafting local regulations for reconceptualization of non-discriminatory legal protection procedures. These procedures should involve the community in disseminating knowledge and health education in the family to minimize violence against the elderly.

## **5. Conclusion**

Preventive legal protection aims to prevent violence against the elderly by optimizing non-discriminatory legal protection procedures. It also involves the community disseminating awareness and knowledge of health education in the family. In contrast, repressive legal protection is pursued through the courts to settle cases of criminal acts of violence against the elderly. The law policy strategy to minimize domestic violence could be implemented by changing laws and regulations related to substance, procedures, and mechanisms for legal protection.

Based on this description, it is necessary to implement the principle of protection that considers the rights of respect and appreciation. By 2025, there will be an elderly massive increase in Indonesia, which requires legal protection. Therefore, the government has an important role in education, information, and socialization based on Article 12 of the Law on the Elimination of Domestic Violence. Since Law Number 13 of 1998 concerning Elderly Welfare is more than 20 years old, the procedural articles of legal protection should be realized.

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