

## The Role of Legal Philosophy in the Protection Women From Violence

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### Abstract

*This paper aims to examine how the development of an integrated criminal justice system in handling cases of violence against women and the role of legal philosophy in it. This research is normative legal research. This study concludes that the Continental European legal system influences the legal system in Indonesia, so procedural law is an administration of justice that provides guidelines for the working of the institutions involved in the adjudication process. Gender equality during the drafting of the Criminal Procedure Code has not yet become an important issue. This has an impact on the absence of an article formulation in the Criminal Procedure Code that accommodates the special interests of women dealing with the law, both as perpetrators and victims, especially women as victims of gender-based violence, even though many women who are victims of gender-based violence generally experience trauma from the events they experience. The concept of an Integrated Criminal Justice System for Handling Cases of Violence against Women (SPPT-PKKTP) was built as an effort to support the state to be able to carry out its constitutional obligations to fulfill women's human rights in conflict with the law, especially women who are victims of gender-based violence. Considering that the operation of the Criminal Justice System (SPP) is generally regulated based on the Criminal Procedure Code, to present the SPPT-PKKTP so that the criminal justice procedure law becomes a victim perspective, advocating the SPPT-PKKTP concept into the Draft Amendment to the Criminal Procedure Code is something that needs to be done. Philosophy of law is the basic foundation of legal science; it can explain that legal philosophy greatly protects the role of human rights, which guarantees the protection of women.*

### Keywords

philosophy of law; violence; women



## I. Introduction

The National Commission on Violence Against Women (Komnas Perempuan) was born as a strong reaction to violence against women in the May 1998 Tragedy. According to the Joint Fact-Finding Team formed at that time, tens and perhaps more than a hundred ethnic Chinese women experienced sexual violence and did not receive recovery and case management services from the state. Since then, following the purpose of its establishment, Komnas Perempuan as a national human rights institution or National Human Rights Institution (NHRI), in addition to taking steps to monitor violence against women for prevention efforts and provide recommendations, has also begun to think about what can be done to advocate the Government to be able to carry out its constitutional duties to protect its citizens from violence, especially women. The strategic step that was finally decided to be taken was to focus more on efforts to improve the existing system, namely the Criminal Justice System (SPP), so that it has a more perspective on the protection of women's rights,

and from now on the program was known as the concept of an Integrated Criminal Justice System that is gender-just in handling Cases of Violence against Women (SPPT-PKKTP).

In developing the SPPT-PKKTP concept, Komnas Perempuan, in early 2000, collaborated with three other institutions, namely LBH APIK Jakarta, Convention Watch Center for Women and Gender Studies, University of Indonesia (PKWJ-UI), and LBPP DERAP Warapsari. Komnas Perempuan, as a national human rights institution, functions as an umbrella and guide for activities. At the same time, LBH APIK Jakarta, as a victim assistance agency, provides the experiences of women victims accompanied by them when interacting with law enforcement officials. The victim's experience is significant as the basis for further advocacy because the primary goal of SPPT-PKKTP advocacy is a change in perspective towards a perspective of justice and protection of women's rights. This change in perspective must enter into the legal system as a whole, both in terms of substance and structure and legal culture in all institutions of law enforcement officials (APH) and all institutions related to the system (Friedman, 1975).

Through the SPPT-PKKTP, it is hoped that victims can obtain justice through law enforcement or the judicial process, including when the perpetrators are ultimately determined by the judicial process to be held accountable for their actions. However, the reality shows that solving problems through the Criminal Justice System does not fully help victims "recover." In fact, in many cases, mainly because the current Criminal Justice System has not focused on restoring victims' rights, instead of gradually recovering, victims suffer even more during the judicial process.

Based on the above background, the writer examines about; the concept of a criminal justice system based on the Criminal Procedure Code, the development of the concept of an Integrated Criminal Justice System in handling cases of violence against women, the role of legal philosophy in handling cases of violence against women.

## **II. Research Methods**

Considering the problems of this research, the approach method chosen to be applied in this research is normative juridical law research, where research is carried out by examining legal library materials or secondary data (Soekanto, 2007). This normative legal research on "The Role of Legal Philosophy in Handling Cases of Violence against Women" begins with an inventory of positive law; in this case, the author collects legislation relating to the handling of cases of abuse by ABH. If referring to Soerjono Soekanto entitled "Normative Legal Research a Brief Overview," the author conducted this research using the statute approach (Roleh, 2018).

## **III. Discussion**

### **3.1 Concept of Criminal Justice System based on KUHAP**

Activities in the legal system can be in the form of law-making (law-making) and law enforcement. With the end of the formation of the law, the legal process has just completed one stage of a long journey to regulate society. The stage of making law still has to be followed by its concrete implementation, and that is what is called criminal law enforcement, which is a form of law enforcement, in this case, criminal law (Rahardjo, 2005).

The legal system in Indonesia is influenced by the Continental European legal system, so that procedural law is an administration of justice that provides guidelines for the functioning of the institutions involved in the adjudication process. In the administration of criminal justice, there are quite a several agencies involved and need careful management.

The agencies involved are the Police, Prosecutors, Courts, and Corrections. A complicated problem is how to organize the agencies into work units, which have different powers and tasks. To overcome this problem, in its development, the administrative approach needs to be supported by the use of systems analysis and systems approach, so that the Criminal Justice System was born. According to Mardjono Reksodiputro, the Criminal Justice System is a system in society to deal with crime problems. Tackling means efforts to control crime so that it is within the tolerance limits of society (Reksodiputro, 1994).

According to Barda Nawawi Arief, the Criminal Justice System (SPP), in a narrow sense, is "a system of power to enforce criminal law" or "a system of judicial power in the field of criminal law." This understanding limits the SPP as a court system or a mere judicial system. Meanwhile, in a broad sense, SPP is defined as a unitary unit of various subsystems (components) consisting of the components "legal substance" (legal substance), "legal structure" (legal structure), and "legal culture" (legal culture) (Arief, 2009).

The consequences and implications of the relationship between subsystems in the Criminal Justice System are;

- a. All subsystems will be interdependent (interdependent) because the product (output) of a subsystem is an input (input) for other subsystems.
- b. The systems approach encourages interagency consultation and cooperation, which will increase efforts to develop strategies for the entire system.
- c. Policies that are decided and executed by one subsystem will affect the other subsystems (Sunaryo, 2004).

As for the SPP, legal experts describe it differently. According to Mardjono Reksodiputro, the objectives of the SPP are:

- a. Prevent people from becoming victims of crime;
- b. Resolve criminal cases that occur so that the community is satisfied that justice has been served and the guilty are punished, and
- c. That those who have committed crimes do not repeat their crimes (Reksodiputro, 1994)

The emergence of the term Integrated Criminal Justice System (SPPT) is a response to the stagnation of the SPP in crime prevention, especially related to aspects of coordination and integration between subsystems in the SPP. This is a critical note for Muladi, who reminds him that the term "system" should already contain integration. Thus, the use of the term should direct the emphasis on paying attention to integration and coordination, because after all, each component in the SPP has an authority that does not affect each other, so building integration in the separateness of each institution is a challenge (Muladi, 1995).

In addition to regulating the authority of law enforcement officials, the criminal justice system of the Criminal Procedure Code also regulates the rights of suspects/defendants, including:

- 1) The right of suspects and defendants to immediately receive an examination and immediately be brought to Court (Article 50).
- 2) The right of the suspect and the defendant to be informed of what is suspected in a language he understands (Article 51).
- 3) The right of the suspect and the defendant to give information freely (Article 52).
- 4) The right of suspects and defendants to get assistance from an interpreter (Article 53 paragraphs (1) and 177).
- 5) The right of suspects and defendants who are mute and deaf to receive assistance (Article 53 (2) and 178).
- 6) The right of suspects and defendants to obtain legal assistance and to choose their legal advisor (Articles 54 and 55).
- 7) The rights of suspects and defendants who cannot obtain free legal aid (Article 56).

- 8) The right of suspects and defendants to always contact their legal advisors (Article 57 paragraph 1).
- 9) The right of suspects and defendants who are foreign nationals to be able to contact their country's representative office (Article 57 paragraph 2).
- 10) The right of suspects and defendants to contact and receive visits from their doctors (Article 58).
- 11) The right of suspects and defendants to be notified of their detention for the trial process against them (Article 59).
- 12) The right of suspects and defendants to contact and receive family visits in the context of the judicial process (Article 60).
- 13) The right of the suspect and the defendant to contact and receive the family in cases that have nothing to do with the case (Article 61).
- 14) The right of the suspect and the defendant to obtain stationery to be able to do correspondence (Article 62 paragraph (1)). 15.
- 15) The right of the suspect and the defendant to contact the clergy (Article 63).
- 16) The right of suspects and defendants to be tried in courts open to the public (Article 64).
- 17) The right of suspects and defendants to present witnesses in their favor (Article 65).
- 18) The right of suspects and defendants not to be burdened with evidence (Article 66).
- 19) The right of suspects and defendants to appeal against judicial decisions except for acquittals (Article 67).
- 20) The right of suspects and defendants to demand compensation and rehabilitation (Articles 68 and 95)

The operation of the subsystem in the SPP in Indonesia is generally regulated in Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP). The Criminal Procedure Code regulates 4 (four) subsystems in the SPP, namely investigation, prosecution, examination in Court, and execution of decisions or crimes. The Criminal Procedure Code regulates the authority of the Police as Investigators to process cases after receiving reports from victims or the public on suspicion of criminal acts. Then the Police followed up on the victim's report by conducting an investigation and investigation. For the sake of developing the case, investigators have the authority to identify suspects and even detain suspects. The results of the investigation and investigation are submitted to the Public Prosecutor. The Public Prosecutor continues the work of the Investigator for that he can further examine the victim and the suspect. The Public Prosecutor also has the authority to detain suspects. If the Public Prosecutor feels that the case file has sufficient evidence, then the file is submitted to the Court for trial.

Gender equality during the drafting of the Criminal Procedure Code has not yet become an important issue. This has an impact on the absence of an article formulation in the Criminal Procedure Code that accommodates the special interests of women dealing with the law, both as perpetrators and victims, especially women as victims of gender-based violence, even though many women who are victims of gender-based violence generally experience trauma from the events they experience. Moreover, women who are victims of crimes of sexual violence, apart from experiencing trauma, also have the potential to face various accusations and negative views (stigma) from the community because there are still views that tend to blame the victims (blaming the victims).

### **3.2 The Development of the Concept of an Integrated Criminal Justice System for Handling Cases of Violence against Women**

The concept of an Integrated Criminal Justice System for Handling Cases of Violence against Women (SPPT-PKKTP) was built as an effort to support the state to be able to carry

out its constitutional obligations to fulfill women's human rights in conflict with the law, especially women who are victims of gender-based violence. Fulfillment of the rights of women victims can be realized in at least three aspects: (1) Ensuring that the policy base does not substantively conflict with the rights of victims to truth, justice, recovery, and fulfillment of a sense of justice, and guarantees of non-repetition. (2) The role of law enforcement officers who are committed to upholding the law while still upholding the principles of fulfilling the rights of victims, including respecting and upholding human rights, non-discrimination, and ensuring that all stages of the legal process are carried out without distinction of religion, ethnicity, race, and gender. (3) Legal sanctions that are genuinely enforced, without any stratification due to the victim's social and economic position.

In particular, the needs and interests of victims concerning gender-just values became the basis for the development of the SPPT-PKKTP concept. Thus, the SPPTPKKTP emphasizes the victim's perspective and requires the victim to be or be placed at the center of the running of the criminal justice system. So far, victims have been positioned as objects, while the suffering and violence experienced and demands for justice based on the victims' suffering are often ignored by law enforcers who handle cases of violence experienced by victims. With SPPT-PKKTP, the victim will be positioned as a subject, not as an object whose information is only taken.

As a subject, victims have the right to be heard for their statements, have the right to obtain information on ongoing legal remedies, to consider the sense of justice they wish to obtain, and to have their situation restored due to the deprivation of their rights and the violence they have experienced. In legal system, the purpose of the penalty is applicable compensation, restetusi and rehabilitation for victims of crime (Munawarsyah, 2018). Anticipation of these crimes include functioning of legal instruments effectively through law enforcement (Tumanggor, 2019). Particularly legal issues that are closely related to the morality of national law education is not sufficiently applied if it is not balanced with customary law (Pratiwi, 2020). According to Van Boven, these rights can be categorized into three parts: first, the right to obtain information; second, the right to justice; third, the right to obtain compensation or the right to obtain the fulfillment of a sense of justice for the losses suffered. Positioning women victims as subjects in the SPPT-PKKTP is expected to have been carried out since the reporting of cases of violence against women and carried out in all stages of the Criminal Justice System, accompanied by the victim recovery process through assistance and first handling of victims, both medically and socially, as well as psychologically. Thus, SPPT-PKKTP is defined as an “integrated system that shows the process of linkage between parties authorized to handle cases of violence against women and access to services that are easy and affordable for women in every judicial process of cases of violence against women.”

The main principles in Law Number 7 of 1984, the PKDRT Law, or other laws and regulations relating to human rights are the principles adopted in the SPPT-PKKTP. These principles are:

1) Protection and Enforcement of Human Rights

The SPPT-PKKTP concept is based on the spirit to fulfill human rights, including the right to life, the right to be free from discrimination and violence, and the right to a sense of security. The SPPT-PKKTP concept was built to fulfill the human rights of women in conflict with the law, especially women who are victims of gender violence.

2) Gender Equality and Justice

The SPPT-PKKTP concept is based on the leading spirit to fight for gender equality and justice, especially for women victims of violence. Gender equality is a condition in which women and men enjoy equal status and are in the same condition to fully realize their

human rights and potentials in all areas of life. Gender justice is a fair condition for women and men through a cultural and structural process that stops the actualization barriers for those who, because of their gender, experience obstacles, both culturally and structurally.

### 3) Protection for Victims

The SPPT-PKKTP concept is based on the spirit of protecting and upholding the rights of victims, namely the right to obtain truth, justice, recovery, fulfillment of a sense of justice, and guarantee of non-repetition.

### 4) Principle of Non-discrimination

Inequality between women and men is the result of social construction. Therefore efforts must be made to eliminate it so that discrimination does not occur. The SPPT-PKKTP concept was built to eliminate all forms of discrimination against women victims.

Like the subsystems in the Criminal Justice System (SPP), the scope of the SPPT-PKKTP also includes 4 (four) SPP subsystems, namely; inquiries and investigations; prosecution; examination and decision in Court; and execution of court decisions.

However, the primary difference between SPP and SPPT-PKKTP is that in SPPT-PKKTP, it is necessary to present other subsystems besides the 4 (four) subsystems in SPP. The other subsystem is part of the circle of victim recovery to fulfill the rights of victims going through the criminal justice process. This recovery subsystem is ideally an integrated service that provides services to women victims and consists of several services, namely:

#### 1) Reporting Service

Reporting services include complaint, reporting, and referral services provided by community-based service providers or service providers established by the Government.

#### 2) Health Services

Health services include health services provided by the Government, the private sector, or community-based service providers, including hospitals, clinics, health centers, or other health institutions.

#### 3) Psychological Services

Psychological services include psychological services provided by the Government, the private sector, or community-based service providers, especially institutions that provide psychological and psychiatric counseling services.

#### 4) Psychosocial Services and Social Rehabilitation

This service includes services provided by the Government or community-based service providers, including institutions that provide shelter, counseling services, spiritual assistance, assistance and empowerment of families and communities, social reintegration, and repatriation.

#### 5) Legal Assistance Services

These services include services provided by the Government through legal aid funds and those provided by private/advocate organizations on a pro bono basis or community-based service providers. In this service, community-based service providers are legal aid organizations, both those that provide legal aid based on legal aid funds from the Government or those based on non-Government funding sources.

#### 6) Economic Empowerment Service

This service includes services provided by the Government or community-based service providers in the context of empowering the community's economy, both specifically aimed at empowering victims of violence or not.

So far, SPP has only been interpreted as an obligation within the judiciary's scope alone or judicial power in a narrow sense. In a narrow sense, judicial power only emphasizes judicial power as the power of an independent state to administer justice. This means that judicial power is identified with the judiciary or the power to adjudicate but has not yet exercised power to enforce law and justice in judicial bodies. Law enforcement and justice

should be carried out not only in the courts but in all lines of law enforcement agencies because the court process is at the end of determining a person's status as a victim or perpetrator of a crime. State power in upholding law and justice should be based on legal ideals based on Pancasila, for the sake of the implementation of the State of Law of the Republic of Indonesia, which is interpreted more broadly, namely by involving other subsystems in the SPP, not only the judiciary but also other subsystems since the process at the Police, Attorney, and the Court to the Correctional Institution, by involving the victim's assistant which is included in the scope of SPPT-PKKTP.

The scope referred to in the SPPT-PKKTP aims to speed up the case settlement process and ensure that the rights of victims guaranteed by law are not violated. If so far the victim as a legal subject in a criminal case has only been heard and asked for his opinion; then with the integration of the system, law enforcement officials can synergistically optimize the victim's information and, if the victim independently has not been able to give testimony, the role of the assistant will be constructive.

Subjects in the SPPT-PKKTP are women who conflict with the law, either as victims of gender-based violence, witnesses in cases of gender-based violence, or women in conflict with the law or as perpetrators in cases with a background of gender-based violence. Violence in question includes any act based on gender differences that result in or is likely to result in physical, sexual, or psychological harm or suffering to women, including threats to certain acts, coercion, or arbitrary deprivation of liberty, whether occurring in the realm of public and in private life. Because the victim is the subject of the SPPT-PKKTP, all events experienced by women victims and told to law enforcement officials are an essential part that must be kept secret by law enforcement officials. The victim is the person who has the authority to determine whether or not this incident can be conveyed to other parties, including publication through the media. This is an essential part of respecting the victim's right to confidentiality, protecting the privacy and identity of the victim (Purbacaraka and Halim, 1982).

### **3.3 The Role of Legal Philosophy in Handling Cases of Violence against Women**

As an independent social being, everyone has various rights to guarantee and maintain life in his community. The rights that a person has in his life can be distinguished into two main types when viewed according to their nature, namely: 1) human rights, namely rights that must exist in every person to be able to live normally as an individual is also a member. The community in harmony with their dignity as an honorable person, 2) rights that are not human, namely rights that are naturally allowed to be owned by a person or party because of their unique relationship with other people or parties at a particular place and time as well as situations and conditions. Which is considered appropriate. What is meant by human rights are rights that are owned by every person and cannot be contested by anyone for any reason, as long as that person does not abuse his rights or do anything that harms or harms others? In other words, human rights are rights that cannot or must be accompanied by the life of everyone in the proper and proper sense. Meanwhile, non-human rights are rights that can still be excluded from a person's life because of one or more compelling interests. If, in that case, the absence of a human right, the dignity of a person as a human being is reduced, then this is not the case with this non-human right (Erwin, 2013).

Philosophy is a weltanschauung, a way of life, a state philosophy. This ideology is a fundamental value in national beliefs, the soul and personality of the nation, even as national dignity as we understand that the activity in philosophy is in the form of deep contemplation to get to the point. With the results of our reflection, we can feel a more conscious life as human beings. With this awareness, we can know our strengths and weaknesses as well as

their limits. Therefore, the philosophy of law is needed as the essential foundation for studying law.

Through legal philosophy as the basic foundation of legal science, it can be explained that legal philosophy greatly protects the role of human rights, which guarantees the protection of women. Through the philosophy of law, the law grows and develops in the legal theory of positivism, with the flow of positivism law theory maintaining the protection of women in a sustainable manner, which can make the law responsive to women. Women as one of the vulnerable parties in legal protection; of course, the protection of women is a top priority in human rights.

#### IV. Conclusion

The legal system in Indonesia is influenced by the Continental European legal system, so that procedural law is an administration of justice that provides guidelines for the functioning of the institutions involved in the adjudication process. Gender equality during the drafting of the Criminal Procedure Code has not yet become an important issue. This has an impact on the absence of an article formulation in the Criminal Procedure Code that accommodates the special interests of women dealing with the law, both as perpetrators and victims, especially women as victims of gender-based violence, even though many women who are victims of gender-based violence generally experience trauma from the events they experience. The concept of an Integrated Criminal Justice System for Handling Cases of Violence against Women (SPPT-PKKTP) was built as an effort to support the state to be able to carry out its constitutional obligations to fulfill women's human rights in conflict with the law, especially women who are victims of gender-based violence. Considering that the work of the Criminal Justice System (SPP) is generally regulated based on the Criminal Procedure Code, to present the SPPT-PKKTP so that the criminal justice procedure law becomes a victim perspective, advocating the SPPT-PKKTP concept into the Draft Amendment to the Criminal Procedure Code is something that needs to be done. Philosophy of law is the basic foundation of legal science; it can explain that legal philosophy greatly protects the role of human rights, which guarantees the protection of women.

Therefore, those who are competent in the protection of women should pay more attention to and protect the role of human rights, which guarantees the protection of women. Protection of women must continue to be voiced and strived for the achievement of justice for women.

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