

JUDICIAL REVIEW OF PERPETRATORS REGARDING CRIMES OF VIOLENCE IN THE FAMILY

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Abstract

Domestic Violence (KDRT) is a problem related to violence that often occurs in households and enters into issues regarding Human Rights (HAM). know the form of criminal responsibility towards the perpetrators of cases of criminal acts of violence in the family, as well as the views of judges on this matter. The normative research method with a qualitative approach is used in this study. Criminal responsibility for the perpetrators of the decision Number 2138/Pid,sus/2019/PN.Mdn that the perpetrators based on the crime that the perpetrators committed violated Article 44 paragraph 1 (one) of Law No.23 of 2004 concerning the Elimination of Domestic Violence, where in this case the perpetrator is asked for criminal responsibility as a legal subject, and Crime in any form and committed for any reason is a crime that cannot be justified. In this case, the perpetrator is held criminally responsible as a legal subject, where the perpetrator can be sentenced to prison for a maximum of 5 years, but the perpetrator is sentenced to a criminal sentence of six months.

Keywords: Judicial Review, Family Violence, Judge's Considerations

INTRODUCTION

Acts of violence that occur in household relationships or better known as "domestic violence". This often occurs in household relations and involves issues regarding Human Rights (HAM). The state through positive law is still less specific regarding the form of protection specifically given in seeking protection for this matter. Acts of violence related to beatings, extortion between people, and torture committed, are crimes that occur in violence.

The problem of violence that often occurs in the household is a human rights-related problem, where the positive law in force in Indonesia is still minimal in providing special arrangements for forms of protection and sanctions in an effort to protect against acts of domestic violence. Even though these actions refer to beatings, acts of torture, to extortion between people, are considered crimes, the fact is that law enforcement officials often refuse to intervene in these crimes.

Violence within the scope of domestic relations itself is a problem that is difficult to resolve. This act of violence is often not realized that it has occurred in domestic relations. Even when the perpetrator or even the victim realizes that violence has occurred, this is considered a passing wind and is normalized as a normal form of household journey. Norms that live in society often also become an obstacle for victims in voicing their pain, and shouldering their own problems to avoid the spotlight from their neighbors.

Law No. 23 of 2004 which states about domestic violence in Article 1 contains the matter of eliminating violence in household relations. This is considered an act that causes feelings of misery and suffers both physically and psychologically, to neglect in domestic relations, and is often associated with threats in the form of action, coercion, and up to deprivation of independence against the law, where victims are dominated by women.

Country has enacted this law since 2004, where its main mission is to seek and make efforts to eradicate domestic violence in Indonesia. This provision helps the state to provide efforts and forms of protection for victims, as well as provide firm action for perpetrators. This is a good move considering that domestic violence is often seen as an internal problem within the family and cannot be interfered with or even given assistance by outsiders. This article dismisses this by stating that matters related to physical, psychological violence, neglect (including from an economic perspective), to sexual harassment, in domestic violence are forms of criminal acts that must be dealt with strictly.

As a law whose arrangements need to be processed specifically, which contains rules and sanctions given for criminal acts committed, this law also regulates matters of procedural law, as well as the obligations of the state in the protection sought for victims. This provision is of course a matter that is closely related to the enforcement of human rights, especially for the protection given to victims who have been harmed for the rights received within the scope of the household.

Law too provides an important breakthrough which contains the identification of individuals who act as perpetrators because they have the potential to commit violence. Article 2 of the Law on Domestic Violence describes that the scope of the household is filled by the roles of husband, wife and children, as well as people who are family members because they are related by blood, marriage, siblings, foster siblings, to guardians, and are under one roof. in the household, including the people who work in it. Although the scope of workers in the household was debated, bearing in mind that the relationship that was present should have been the relationship between workers and work providers, this was dismissed, considering that the Labor Law was not specific in regulating workers in the household sphere.

The legal breakthrough governing PKDRT is a good thing, considering that private problems that cannot be resolved can be taken over into the public domain. Before this law was enacted, cases related to domestic violence were very difficult to reach and unresolved. Cases of beatings by husbands on wives are things that are resolved through the persecution article but are difficult to resolve given the lack of evidence, which leads to silence in other cases to be voiced.

This violence is easy to find. Not knowing any group, this can happen to families who are educated, have a good or difficult economy, or even respected families. According to data recorded by KOMNAS Perempuan, from 2001 to 2007, it was found that there was an increase in reported cases of domestic violence five times higher than before. During the period from 2001 to 2004, there were 9,662 cases reported, and from 2005 to 2007, there was an increase of 53,704 reports. This violence is more dominant against women where 44% of cases in 2003, and the following year increased with an additional rate of 9% to 30%.

The increase in cases that occurred was allegedly due to the low level of public knowledge regarding violence that occurred in household relationships. Victims lack of courage, especially women, in voicing this matter is also an obstacle to dealing with this matter.

Cases of violence were also carried out by Berto Nababan, who was proven to have committed physical violence in the household against his parents. This happened on Monday, 4 June 2019,

which took place around 23:00 WIB, in the Marsada alley, Simalingkar Village, North Sumatra, where the victim was beaten using a wooden block because he asked for money but was not given it. The beating was carried out on the victim's right leg and left hand, causing pain. This has violated Article 44 paragraph (1) of Law no. 23 of 2004 where finally a corporal punishment was imposed for one (1) year minus the temporary detention period for the defendant during the examination.

There are many other cases which, while in process, end up being withdrawn by the complainant as well as playing the role of the victim. Minimal support from society and even the family, doctrines that are propagated under the pretext of custom and religion, gives women a difficult place to speak out and get out of the cycle of violence they experience. Talking about the violence experienced, especially if the perpetrator is the husband himself, is considered to tarnish the value of the wife as a partner who lacks respect and even spreads the husband's disgrace. This is not a trivial matter that needs to be ignored, bearing in mind that the violence that occurred is a form of unlawful act, and must be dealt with firmly.

Domestic violence is not a type of crime that is easily forgiven and resolved only through apologies. Violence committed will certainly be repeated again. The article on persecution is still weak in terms of its elaboration, both in terms of the form of injury which will later determine what sanctions will be imposed, as well as the forms of crime of mild, moderate and severe maltreatment, the details of which are still unclear.

RESEARCH METHOD

The data used in this study is sourced from Verdict No. 2138/Pid.Sus/2019/PN.Mdn, taken from the Medan District Court. In addition, it is followed by related laws. Secondary data is collected from books, supporting journals, articles written and reviewed by legal experts and other things that support research.

This research is descriptive in nature, namely a research method that describes the problem being studied, so that this method only focuses on what is being studied and answers the events and phenomena that are happening. This writing uses a normative legal method, in which the elaboration of knowledge is absorbed using literature studies related to research data, as well as participating in searching related research documentation.

A qualitative approach method was used in writing this study, where the final conclusion is the result of the research obtained by the researcher.

RESULTS AND DISCUSSION

Criminal Liability Against Actors in Decision Number 2138/Pid.sus/2019/PN.Mdn Concerning Crimes of Family Violence

When a child hangs out in the wrong environment, thus causing disrespect to his parents. And from an early age, the child is spoiled by his parents, and what the child asks for is always obeyed by his parents, so that one day he is not given what he asked for, the child does not accept it, so the child commits acts of violence against his parents. The lack of good upbringing makes the child undisciplined in his home, and does whatever he pleases. And often the child sees his parents/father beat his wife/mother, the child sees the incident and his father's behavior as an example that is not good. And this incident has a bad impact.

Conflicts begin when different points of view appear and cannot be accepted in the right way, both individually and in groups, and often triggers the presence of violence in the family environment. There are many forms of violence that occur and have an impact on physical and psychological injuries to victims. In fact, violence is a form of intentional and conscious action, so it is included in the category of crime, and there is no justification for it.

Action violence experienced in a household relationship, gives a signal that the family is not in good and normal condition. Of course, this needs to be reported to the relevant parties who are responsible, both to the local environmental government, the police, to non-governmental organizations that handle cases of domestic violence.

As something that cannot be justified in any form, society needs to know and know the form of violence itself, so that in the future they know the boundaries that cannot be violated in a household.

Country regulates the matter of violence that occurs in domestic relations through Law no. 23 of 2004. This regulation contains provisions regarding the elimination of domestic violence, in which every act that causes misery/suffering physically or psychologically and neglect of the household includes threats in the form of action, coercion to deprivation of liberty which is against the law. The relationship between children and parents is the closest bond and difficult to separate. The relationship between children and parents is a form of responsibility that must be borne by family members, giving rise to rights and obligations that must be fulfilled by children and parents.

Furthermore, we must also know that Law No. 23 of 2004 concerning PKDRT, does not only refer to family relationships, but also when children commit violence against parents. Therefore, children as defendants can be convicted in accordance with applicable provisions, where the defendant has violated Article 44 of the PKDRT Law, where the defendant committed violence within the family environment, and has complied with the elements listed in article paragraph 44 of the Law. .

The forms or types of violence in the family are classified into four (4) forms, namely: 1) Physical Violence, 2) Psychological Violence, 3) Sexual Violence, and 4) Domestic Abandonment Violence.

Some of the factors that allegedly lead to violence by child perpetrators against parents, especially fathers, are:

1. Economic Factors

The factor of lack of economy is often a factor in arguments for misunderstandings and messy relationships due to economic factors in the family. Because of this, family life became unsteady and he often argued which resulted in fights and because he was very emotional, he accidentally hit him.

2. Association Factor

Such as associations that deviate from the norm, unhealthy associations such as wasting money for the sake of his lust, easily emotional and impatient. And the lack of attention from parents results in children doing as they please.

3. Speak Loud

Feelings hurt, emotional, and angry to the point of fighting. Therefore, father and son need to understand the right way to manage and control each other's emotions. Because that emotion can trigger violence in the family.

The impact experienced by victims of violence is that victims often feel threatened if they do not give what is requested by the perpetrators, they often experience arguments which result in beatings occurring which make the victim experience pain and bruises.

Criminal responsibility (teorekenbaardheid/criminal responsibility) which leads to criminal convictions, aims to prove whether the accused did commit violence or not. If you have defined a crime and have met the requirements determined by law to carry out actions that are prohibited or required. If accountability is carried out before the law, of course there must be a subject who needs to carry out this responsibility according to his actions which are in accordance with the rules that have been violated in the law. The obligation to carry out this responsibility is important considering that there are victims who must be protected, where the crimes they have committed must be given sanctions according to the relevant regulations.

In criminal liability, attention is also paid to the fact that a just and prosperous, materially and spiritually equal society must be created with the help of criminal law. Law is used to prevent and overcome unwanted acts.

The intentional element in committing acts of violence contains a principle of guilt (principle of culpability) that needs to be accounted for, which is a deliberate mistake and negligence. In general, errors can be divided into:

a. Intentional (dollus)

Caused by someone at the time of committing a crime, where the perpetrator knew that the act was inappropriate, but the perpetrator still did it.

b. Forgetfulness (culva)

Culpa offenses can be divided into 2 (two) namely negligence offenses where the consequences arise or not. However, it is not being careful that can be punished, considering that the difference is easy to understand, namely negligence which results in the occurrence of these consequences, an offense of negligence arises.¹The defendant was negligent, negligent, careless in carrying out his actions. So because of his carelessness, the defendant did not comply with these restrictions so he did not care to commit these actions.

As for in this case the elements of criminal liability are divided into 2, namely:

a. Elements of Who

This element talks about the subject, where whoever this is is Berto Nababan. That the treatment of the victim where the victim was his biological father and the perpetrator had to be held accountable for his actions. Based on the initial evidence that was sufficient and the perpetrator had admitted his actions. So the first element was sufficient in the perpetrator.

b. The element of committing an act of physical violence within the household which results in pain.

Committing a crime of physical violence against his parents on Monday, June 4 2018, to be precise in the Marsada alley, Kel Simalingkar B. Kec. Medan Tuntungan, North Sumatra, where there is a witness who is the wife of the victim named Nurlina Br. Limbong, and based on Visum Et Repetrum Number: VER/426/RSA/VI/2018 dated 05 June 2018.

Based on the description above, the person who committed the crime must prove whether the mistake was intentional or due to carelessness. Determine the severity and lightness of the punishment from the description above.

Judge's considerations in giving punishment to the perpetrator in decision number 2138/pid.sus/2019/PN. Mdn. About the crime of violence in the family

Berto Nababan's actions began on Monday, 4 June 2019 around 20:00 WIB, which occurred in a shop close to the house of the defendant and the victim's witness on Jalan Unika, gg Marsada. The perpetrator met the victim at the shop where the victim was his own biological father, then when at the shop the perpetrator asked for money from the victim but the victim did not give it so the perpetrator was angry and left, when the victim arrived at the victim's house the victim met the perpetrator where their meeting resulted in there was an argument, and because the perpetrator was already emotional the perpetrator brought 1 (one) wooden block and then hit the victim and the victim was injured in the victim's right leg and left hand.

As a result of the action he took, the victim, namely his own father, experienced a swollen wound at the bottom of his right arm and suffered a scratch wound on his left shin which was in accordance with the results of Visum Et Repetrum Number: VER/426/RSA/VI/2018 which was carried out on the 5th June 2018, and it was signed by Dr. Sabarina with the result that the cause was known to be a touch of a blunt object.

The defendant did not object to the charges made by the public prosecutor. As for criminal acts that are committed intentionally or not, they must fulfill the elements which include, punishment can be carried out if there is loss or a sense of misery which is experienced by the victim as a form of loss or crime experienced because of the perpetrator's actions, especially considering that this was done by the perpetrator intentionally, consciously and deliberately. The defendant himself was proven to have violated Article 44 paragraph (1) of Law No. 23 of 2004, by fulfilling both elements in the provisions of the governing article.

The defendant was charged with imprisonment for 6 (six) months. This is in accordance with the description of the sanctions given according to the actions of the defendant and deemed appropriate. The charges provided were proven from the testimony of the following witnesses:

1. JOLLI NABABAN

The witness confirmed his statement trial agenda by investigators, and explained the chronology according to the prosecutor's description. When he asked for money and the witness did not give him money then the defendant became angry, but when he arrived home at 23.00 WIB, an argument ensued because the defendant accused the witness of telling bad things about himself which caused the defendant to become very emotional, then the defendant took 1 (one) wooden block and hit the victim which hit the right leg and left hand.

2. NURLINA Br. LIMBONG

The witness is the wife of Jolli Nababa. The witness also explained the chronology and what caused the argument the witness said the chronology was the same as what the victim-witness had mentioned.

The incident of domestic violence between the child as the perpetrator, and the father as the victim which happened on Monday 4 June 2019, around 23.00 WIB on Jalan Unika, Gg. Marsada, Kel. Simalingkar B, Kec. The treatment of the defendant who had committed the maltreatment by hitting the victim, the defendant also abused him with 1 (one) wooden block. The cause of this abuse was that the defendant accused the victim of telling bad things about himself. At the time and place the defendant met the victim, and Then the defendant asked the victim for money and did not give it and then the defendant became angry, at around 23.00 WIB they met at home then the defendant became angry and hit the victim with a wooden block which hit the witness' right leg and left hand which resulted in pain and bruising.

Whereas in accordance with the facts that have been described, in accordance with the description of the considerations, which have been gathered at the trial, and based on the description of the considerations, the elements echoed have been fulfilled and deserve to be processed before the court.

It's a burden

- a. The actions of the defendant caused the witness the victim to suffer an injury
The lightening thing

- a. The defendant frankly admitted his actions;
- b. The accused has never been convicted;
- c. The defendant promised not to repeat his actions in the future;
- d. The victim-witness has forgiven the defendant for the actions he committed during the trial, so that he received a prison sentence of 6 (six) months;
- e. In this case the judge considered that the victim had forgiven the actions of his son towards his parents;

Observing and weighing the aggravating and mitigating factors, the judge is of the opinion that the sentence imposed has been appropriate and fair before the law. This is in accordance with Article 22 paragraph (1) RI Law No. 23 of 2004 concerning the elimination of domestic violence, Law Number 8 of 1981 concerning Criminal Procedure Code and other relevant laws and regulations.

Based on this, the researcher considers that legal protection efforts to eliminate domestic violence in the family have been attempted by the panel of judges through a decision given in accordance with the applicable law in accordance with Law No. 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT).

Sanctions that need to be accounted for by perpetrators are expected to provide a deterrent effect and a warning to all people in this country to maintain their attitude and avoid acts of violence in any form. Violence is not something that should be defended with any reason or argument. The safety and rights of victims need to be considered and upheld.

In this case the panel of judges has played a role in accordance with their duties and functions fairly without eliminating the elements fulfilled by the defendant in accordance with the applicable law, namely in Article 28 of Law No.4 of 2004. Law Number 48 of 2009. The Judicial Authority stated "Judges as enforcers of law and justice are obliged to explore, follow and understand the legal values that live in society".

With efforts to uphold protection through consideration of fulfilling the elements of domestic violence (PKDRT), the researchers concluded that the decisions issued by the judges in the binding rulings had been fulfilled and resolved properly. The controversy that arises is the fact that in the case of domestic violence, the judge should have given the defendant the maximum sentence in accordance with the actions of the defendant, in accordance with the sentence charged by the public prosecutor. In the sentence decision given by the judge, it is not fair for the victim who is not treated inhumanely by his own child. The judge should give the fairest decision according to the defendant's actions.

CONCLUSION

Criminal liability for perpetrators of Decision No. 2138/Pid.Sus/2019/PN.Mdn based on his actions which violated Article 44 paragraph 1 (one) of Law No. 23 of 2004 concerning the Elimination of Domestic Violence. Which in this case the perpetrator is asked for criminal responsibility as a legal subject. The criminal responsibility of the offender must remain responsible for his behavior

The judge's considerations saw that the actions taken by the perpetrators should have been subject to a maximum sanction of 5 (five) years and based on the judge's considerations that the victim had forgiven the perpetrators during the trial process, and on the consideration of a fair judge, the perpetrators were given sanctions of 6 (six) months of corporal punishment, where the perpetrators promised not to repeat his actions again

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