



Criminal Liability for Physical Violence in the Domestic Sphere (Analysis of Medan District Court Decision Number 1264 / Pid.Sus / 2023 / PN Mdn)

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ABSTRACT

Many domestic violence criminal events that occur within the household, such as the decision of the Medan District Court Number 1264 / Pid.Sus.2023 / PN Mdn, where the defendant in the name of Bobby Fauzan was only sentenced to 2 (two) months in prison which was actually unworthy and appropriate for what he did to his legal wife. The research used is juridical normative, where research is done by tracing legal material through literature studies. This study is descriptive Analytical that is to analyze the data systematically. Criminal liability against perpetrators of domestic violence in Medan District Court decision number 1264 / Pid.Sus / 2023 / PN Mdn, has not reflected a fair and beneficial verdict for victims. Because between acts with normative provisions that provide mild sanctions for perpetrators are still tertullis and have not been revised. It could happen to a wife again. Whereas Article 28g paragraph (1) of the 1945 Constitution and Law No. 23 of 2004 have provided legal protection clearly and definitely. However, from the aspect of justice and benefit received by the victim for the actions of her husband does not reflect a clear Justice and benefit because the sanctions given are still mild. Thus, it is necessary for Law No. 23 of 2004 to be revised.

INTRODUCTION

Talking about domestic violence today we both know that we often hear of domestic violence and it is inseparable from a problem that entangles a relationship that occurs in a family. The family here is the smallest social unit in society that plays a very large role and influence on the development of the personality of each family member, the family needs its own organization and needs the head of the household as an important figure who leads the family in addition to several other family members.

The household (family) is the foundation of a country, because it is from the family that the cadres of the nation will be created. When the family is broken, then the existence of the state is dangerous. Thus, Domestic Violence, which is one of the factors in the destruction of the family, is a common and not personal disease, because it is a danger to all members of society. Domestic violence is an interesting phenomenon that occurs in society, the emergence of various problems of domestic violence often occurs and generally affects women. This shows that there is still a wide gap for women to achieve their rights, especially the right to legal protection.

Domestic violence as a social phenomenon is a serious problem. Domestic violence can destroy harmony and unity in a family. The house is no longer a safe haven (sanctuary, sanctuary) or shelter from the outside world, but a hell for the family. At the individual level, violence has a lasting psychological effect on the victim. Victims with their own families tend to do the same because they internalize the value of violence as normal.

Victims of domestic violence find it difficult to forget their trauma, and everyday life becomes restless. Victims of domestic violence often experience trauma and depression after experiencing violence in family relationships. Victims of physical violence also experience physical pain and suffering. In fact, due to persecution, many cases of permanent disability due to the difficulty of eliminating (healing) physical injuries. Victims of violence are often afraid of the possibility of repeated acts of violence against them. Families experiencing this experience are under constant physical and psychological stress, which certainly prevents them from living a decent life. Domestic violence is violence against humanity that violates human rights, including the individual's right to coercion and torture.

The rise of domestic violence is influenced by many things, even though the law has been formed Law No. 23 of 2004 on the elimination of domestic violence, Article 5 of the PKDRT law has clearly

prohibited "everyone from committing violence in the home against people within the scope of their household, by way of: 1. Physical violence. 2. Psychic violence. 3. Sexual assault. 4. Household courtship.

Nevertheless, there are still many domestic violence criminal events that occur within the household, including as in the Medan District Court decision number 1264/Pid.Sus.2023 / PN Mdn, where the defendant in the name of Bobby Fauzan was only sentenced to 2 (two) months in prison which was actually unworthy and appropriate for what he did to his legal wife.

That the example of the case above, is one of the cases of domestic violence that has become a serious problem, especially in Indonesia, where the victims of domestic violence cases, if seen from the percentage of victims more than women, with various forms of violence, ranging from physical violence, psychological to sexual violence, some even become victims of persecution and murder. And if we look at the scale of the percentage of domestic violence in the Ministry of women's empowerment and Child Protection (Kemen PPPA), recorded throughout 2024, there were a total of 28,798 cases of domestic violence, and the majority of victims were women with 24,973 cases, which saw this case increase significantly from 2023 which recorded 18,466 cases of domestic violence for various reasons.

Therefore, the author hereby invites readers and all levels of society, to be brave and together against acts of violence firmly, and is also expected to raise awareness of the importance of creating an environment free from violence in any form.

METHOD

The research used is juridical normative, where research is done by tracing legal material through literature studies. This research is descriptive Analytical that is to analyze data systematically, factual and accurate about the problem under study. With the nature of the research conducted is the nature of descriptive research analysis is to provide data as thorough as possible research on the level of public confidence in the National Police. The data collection tools used, namely: primary, secondary and tertiary legal materials which are then analyzed by Qualitative Analysis and then presented descriptively, namely by explaining, outlining, and describing the problems and solutions related to the formulation of the problem made.

RESULTS AND DISCUSSION

A. Understanding Criminal Liability

Criminal liability in foreign terms is said to be "teorekenbaardheid" or "criminal responsibility" which leads to the conviction of an accused with for the purpose of determining whether the accused or suspect is responsible for the crime committed. Criminal liability is the imposition of punishment on the maker for an act that violates the prohibition or gives rise to prohibited circumstances. Criminal liability therefore concerns the process of transferring the existing punishment for a criminal offense to its maker.

Criminal liability can be defined as a reprehensible act by society in which the perpetrator must be held accountable for the acts committed. By holding accountable the act to the perpetrator of the wrongful act, whether the perpetrator is also reprimanded or not reprimanded. It can be concluded that the first is that the perpetrator must be punished, and the second is that the perpetrator must not be punished if there is no element of guilt. Roeslan Saleh stated that criminal responsibility is the continuation of objective reproaches contained in criminal acts and subjectively qualified to be punished for their actions. Or in a simple sense, namely that the principle of legality is the basis for the existence of a criminal offense, while the principle of no crime without fault is the basis for the conviction of the perpetrator. That is, evildoers are punished only when they commit a crime.

Criminal liability is the responsibility of the perpetrator for the crime he committed. The one who is responsible is the one who committed the criminal act, so that a criminal liability exists because of the criminal act of a person. Criminal liability is a state that exists in the maker when he commits a crime. Criminal liability also means a link between the circumstances of the perpetrator and the act and the sanctions that must be imposed. Criminal liability is placed in the context of the conditions of the factual (conditioning facts) of the conviction, therefore carries the preventive aspects and criminal liability is a legal consequence of the existence of these factual conditions, so it is part of the repressive aspects of criminal law.

B. Domestic Violence According To Law No. 23 Of 2004

According to Article 1 Number 1 of Law Number 23 of 2004 on the elimination of Domestic Violence states that domestic violence (KDRT) is "any act against a person, especially women, which results in the emergence of misery or suffering physically, sexually, psychologically, and/or neglect of the household including threats to commit acts, coercion,

or unlawful deprivation of liberty within the scope of the household".

Violence, especially domestic violence, is a violation of human rights and a crime against human dignity and is a form of discrimination. Violence in any form and committed for any reason is a form of crime that is not justified. A lot of the scope of violence falls into the category of domestic violence, violence can be done in: 1. Physically (hitting, molesting, and so on). 2. Psychic violence (acts of exploitation, abuse, humiliation, threats, and so on). 3. Sexual assault. 4. Domestic violence related to the economy is in the case of neglect in the household does not provide a living birth and mind.

Domestic violence has been clearly regulated in Article 5 of Law No. 23 of 2004 on the elimination of domestic violence, which states that "everyone is prohibited from committing domestic violence against people within the scope of his household, by way of: 1. Physical violence. 2. Psychic violence 3. Sexual assault. 4. Domestic neglect.

Domestic neglect is the act of abandoning a person within the scope of the household, even though according to the law applicable to the person concerned or because of an agreement or agreement he is obliged to provide life, care, and maintenance to that person. Neglect is any act done by letting the person who is under his dependents abandoned his life, not maintained, not fulfilled his basic needs, and limiting the victim's movement with the aim of controlling the victim's life. Wives and children are often the object of criminal neglect.

C. Criminal Liability Against Perpetrators Of Domestic Violence (Analysis Of Medan District Court Decision Number 1264 / Pid.Sus / 2023 / PN Mdn)

Domestic violence (domestic violence) is a very deep rooted problem and occurs in all countries of the world. In this regard, the international community has created effective legal standards and specifically pays attention to domestic violence (domestic violence). Measures to beat women, for example, have been included in international and regional human rights conventions that have binding legal properties against countries that have ratified them. Related to the responsibility can not be separated by the existence of a criminal act or no fault without criminal, terkhusus on the important point studied here is the Medan District Court decision number 1264/Pid.Sus / 2023 / PN Mdn in which the defendant is charged by the Public Prosecutor with Article 44 paragraph (4) of law no. 23 of 2004 on the elimination of domestic violence,

which reads "in the case of acts referred to in Paragraph (1) committed by the husband against the wife or vice versa that does not cause disease or obstruction to carry out work or livelihood or daily activities, shall be punished with imprisonment of 4 (four) months or a fine of at most Rp. 5.000.000 (five million rupiah)".

1. Case Position

That on Tuesday, April 26, 2022 at approximately 11.15 Wib when the victim witness Junida Hasnun Pohan was at home then the victim witness asked the victim's witness son named FARREL Gadafi RAMADHAN by saying "Where are the electric glasses on the deck?" then FARREL Khadafi RAMADHAN replied "I don't know MA" then not long after came the defendant who had just come home to pick up the child of the victim and defendant witnesses named CARRISA KAYLA LAVINA then the defendant replied "Same KU, Why?" then the victim witness replied "OH then you love your mistress?" then the defendant said "OH you can still talk? I thought dumb", then the defendant replied "I'M sorry I'M not talking to you", then the defendant approached the victim's witness while touching the victim's witness's knee until the victim's witness evasively said "EH don't you touch me, because you'VE committed adultery", hearing this the defendant immediately slapped the left cheek of the victim's witness once until the victim's witness's ears buzzed, then the defendant immediately left the house and as a result of the incident the victim's witness felt pain and objected to reporting the defendant's actions to Polrestabes Medan for further processing.

2. Indictment

The actions of the defendant as regulated and punishable by criminal penalties in Article 44 paragraph (4) of the Indonesian law No. 23 Of 2004 On The Elimination Of Domestic Violence.

3. Claims

Against the indictment, the Public Prosecutor has filed his charges which in his charges read:

- a) Stating the defendant BOBBY FAUZAN has been proven and guilty of committing a criminal offense "committing acts of physical violence within the scope of the household committed by the husband against the wife or vice versa that does not cause disease or obstacles to carrying out official work or livelihood or daily activities" as stipulated in Article 44 paragraph (4) of the Indonesian law No. 23 Of 2004 On The Elimination Of Domestic Violence .

- b) Impose a criminal against Defendant BOBBY FAUZAN therefore with a criminal for 2 (two) months in prison.
- c) State the evidence in the form of: - nil
- d) Determine that the defendant is burdened to pay the cost of the case of Rp.5.000, - (five thousand rupiah).

4. Amar Verdict

In the case, the panel of judges has given a verdict with amar as follows:

- a) States the defendant BOBBY FAUZAN mentioned above, has been proven legally and convincingly guilty of committing the crime of "domestic violence";
- b) Impose a criminal against the defendant BOBBY FAUZAN mentioned above therefore with imprisonment for 2 (two) months;
- c) Charge the defendant to pay the cost of the case of Rp.5.000, - (five thousand rupiah).

5. Analysis

Etymologically, violence in the Indonesian dictionary includes the actions of people or groups of people who cause injury or death to others or cause physical or other property damage. Violence can also be defined as something that has elements of coercion in it. According to Mansour Fakh, violence is an assault on the physical and mental integrity of a person. Mansour Faqih's view on this notion of violence includes physical and mental objects, he only focuses on forms of physical assault, be it in the form of injury, causing injury, disability, or certain physical abnormalities. Meanwhile, according to Herkuranto, the definition of domestic violence (domestic violence) is an act committed with the aim of harming women, both physically and practically.

Normative provisions and practices on the case, of course, are in accordance with applicable legal rules. However, with acts of violence that occur in the household cannot be said to be an act that can. A woman is a weak person, and she is protected by a man as a husband. Being interesting about what is regulated regarding accountability for domestic violence which is so low in punishment can certainly be done by research. Because, from the aspect of the impact that will be experienced by a wife for violence committed by her husband, it is quite dangerous. Which according to research has found some of the impact of domestic violence on the social welfare of wives include :

- a. physical pain A wife experiences domestic violence in the form of physical beatings due to cheating husbands and squeezed economic conditions of their families. Domestic violence is a social phenomenon that has been going on for a long time in most households in the world,

including in Indonesia. If so far the incident has barely been heard, it is more due to the assumption in society that domestic violence is a domestic event that is taboo to talk about openly.

- b. mental stress Domestic violence often uses coercion to create power relationships within the family, where a wife is taught and conditioned to accept her own low status. So that sometimes a wife experiences mental stress continuously which results in the disharmony of her household that is the factor that causes domestic violence to continue.
- c. decreased self-confidence Domestic violence committed by her husband, especially against his wife, which is carried out continuously can reduce confidence in whatever his wife will do from that perspective, such violence is seen as a personal responsibility and women are defined as people who are responsible either to improve the situation that is actually dictated by social norms or develop acceptable methods of invisible suffering. The wives who do not get a living from a husband this maintenance problem is often a big problem.

Often due to economic problems divorce occurs. The wife asked for a divorce because she felt economically abandoned. More than this, it is possible for a wife to punish a husband who neglects the household in the economic field. This is an important lesson that domestic violence also can not be considered a trivial matter.

Based on the above, it is natural and proper that a wife should get good protection from a husband. As this has become a human right that has existed in humans since the womb which is also contained in the general explanation of Law No. 23 of 2004 which reads : "The integrity and harmony of the household can be disrupted if the quality and self-control cannot be controlled, which in turn can lead to domestic violence so that insecurity or injustice arises against people who are within the scope of the household. To prevent, protect victims, and act against perpetrators of domestic violence, the state and society are obliged to carry out prevention, protection, and action against perpetrators in accordance with the philosophy of Pancasila and the Constitution of the Republic of Indonesia in 1945. The state is of the view that any form of violence, especially domestic violence, is a violation of human rights and a crime against human dignity as well as a form of discrimination. The country's view is based on Article 28 of the Constitution of the Republic of Indonesia in 1945, along with its amendments. Article 28g paragraph (1) of the Constitution of the Republic of Indonesia year 1945 determines that

"everyone has the right to personal protection, family, honor, dignity, and property under his control, as well as the right to a sense of security and protection from the threat of fear to do or not do something that is a human right".

Article 28h paragraph (2) of the Constitution of the Republic of Indonesia year 1945 determines that "everyone has the right to convenience and special treatment to obtain equal opportunities and benefits in order to achieve equality and Justice". In addition to the above, the act of domestic violence in the perspective of Article 1 of Law No. 1 of 1974 has also damaged the image of the nature of a marriage which states that marriage is "the inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family or household based on the supremacy of the Almighty". Thus, the existence of an act of physical violence in the household will never reflect the achievement of a happy and eternal family. In addition to the above, the act of domestic violence in the perspective of Article 1 of Law No. 1 of 1974 has also damaged the image of the nature of a marriage which states that marriage is "the inner and outer bond between a man and a woman as husband and wife".

CONCLUSION

In pursuing money laundering crimes with financial searches, it should be mandatory to use 4 criteria, namely Risk Assessment, Customer Due Diligence (CDD), Transaction Monitoring and reporting suspicious activities, these are the basis for tracing money from crimes but from that the policies of the government and the integrity of power are very important in supporting the tracing of money from corruption crimes.

Criminal liability against perpetrators of domestic violence in Medan District Court decision number 1264 / Pid.Sus / 2023 / PN Mdn, has not reflected a fair and beneficial verdict for victims. Because between acts with normative provisions that provide mild sanctions for perpetrators are still tertullis and have not been revised. It could happen to a wife again. Whereas Article 28g paragraph (1) of the 1945 Constitution and Law No. 23 of 2004 have provided legal protection clearly and definitely. However, from the aspect of justice and benefit received by the victim for the actions of her husband does not reflect a clear Justice and benefit because the sanctions given are still mild. Thus, it is necessary for Law No. 23 of 2004 to be revised.

REFERENCES

- Ariman Sitompul, P Hasibuan, M Sahnan. (2021). The Morality Of Law Enforcement Agencies (Police, Prosecutor's Office, KPK) In Money Laundering With The Origin Of The Corruption. *European Science Review* 9 (10).
- Ariman Sitompul. (2023). Alternative Dispute Resolution Criminal Acts Of Money Politics In Elections In View Of Normative Law. *International Asia Of Law And Money Laundering (Iaml)*, 2(1), 1–9. <https://doi.org/10.59712/Iaml.V2i1.52>
- Ariman Sitompul. (2024). Gratification development in corruption in Indonesia. *International Asia Of Law and Money Laundering (IAML)*, 3(1), 17–22. <https://doi.org/10.59712/iaml.v3i1.77>
- Bahasa, Tim Penyusun Kamnus Pusat Pembinaan dan Pengembangan, *Kamus Bahasa Indonesia*, Jakarta: Balai Pustaka, 2007
- Fadlian, Aryo, "Pertanggungjawaban Pidana Dalam Suatu Kerangka Teoritis", *Jurnal Fakultas Hukum Universitas Singaperbangsa Karawang*, Vol. 5, No. 2.
- Faqih, Mansour, *Analisis Gender dan Transformasi Sosial*, Yogyakarta: Insist Press, 2020.
- Fithri, B. S., Wahyuni, W. S., & Sitompul, A. (2022). Implementation Of The Child Protection Act As A Positive Law In Eradicating Child Marriage In Indonesia. *LEGAL BRIEF*, 11(5), 2808-2817.
- Hakim, Lukman, *Asas-Asas Hukum Pidana*, Yogyakarta: Deepublish, 2020.
- Hanapi, Agustin dan Bima Risma, "Penelantaran Isteri Oleh Suami Sebab Perceraian (Studi Kasus di Mahkamah Syari'ah Tapaktuan", *Jurnal Hukum Keluarga dan Hukum Islam, Fakultas Syari'ah dan Hukum UIN Ar-Raniry*, Vol. 2, Nomor 2 Juli-Desember 2018.
- Huda, Chairul, *Dari Tiada Pidana Tanpa Kesalahan Menuju Kepada Tiada Pertanggungjawaban Pidana Tanpa Kesalahan*, Jakarata: Kencana, 2011.
- Ilyas, Amir, *Asas-Asas Hukum Pidana: Memahami Tindak Pidana dan Pertanggungjawaban Pidana Sebagai Syarat Pemidanaan*, Yogyakarta: Mahakarya Rangkang Offset, 2012.
- Khairullah, et.al, "Tindak Pidana Penelantaran Dalam Rumah Tangga di Wilayah Hukum Pengadilan Negeri Kualasimpang", *Jurnal Hukum Samudra Keadilan, Fakultas Hukum Universitas Samudra*, Vol. 12, Nomor 1 Januari-Juni 2017.
- Khoshgam, M., & Sitompul, A. (2024). The Characteristics of Modernism in Ian McEwan's Atonement. *Matondang Journal*, 3(2), 97-101.
- Lubis, A. H., Sitompul, A., Pinem, S., Zulyadi, R., & Siagian, F. (2024). Seeking Justice: Criticizing the Decision of the Tapak Tuan District Court Number 37/Pid. Sus/2020/PN. Ttn Regarding Domestic Violence. *Al-Qadha: Jurnal Hukum Islam dan Perundang-Undangan*, 11(1), 86-100.
- Maswandi, Ariman Sitompul Metode Penelitian Hukum Normatif Mekanisme Dalam Penulisan Ilmiah, Mazda Media, Malang (2024), 1-219 https://scholar.google.com/citations?view_op=view_citation&hl=en&user=o6ripa8AAAAJ&start=20&pagesize=80&citation_for_view=o6ripa8AAAAJ:O3NaXmp0MMsC
- Maswandi, M. (2023). The Priority Of Islamic Inheritance Distribution To Heirs In Order To Maintain Problems In The Family. *International Asia Of Law and Money Laundering (IAML)*, 2(3), 119-124.
- Maswandi, M., Jamillah, J., & Sitompul, A. (2022). The Power of Proof In Victims of Sexual Abuse. *SASI*, 28(3), 390-396.
- Rahmi, A. (2024). The Problem Of Protecting The Rights Of Women Victims Of Sexual Violence: Between Islamic Law And National Law In Indonesia. *Pena Justisia: Media Komunikasi dan Kajian Hukum*, 23(3), 1260-1270.
- Santoso, Agung Budi, "Kekerasan Dalam Rumah Tangga (KDRT) Terhadap Perempuan: Perspektif Pekerjaan Sosial", *Jurnal Pengembangan Masyarakat Islam*, Vol. 10, Nomo 1 Juni 2019.
- Sitompul, A. (2022). Metode Penelitian Hukum Normatif (Strategi Praktis Penulisan Skripsi, Tesis, Disertasi).
- Sitompul, A. Maswandi (2021). Nikah Poliandri Dalam Perpektif Pidana Islam dan Hukum Positif di Indonesia. *Malang: Mazda Media*.
- Sitompul, A., & Gayo, S. (2022). The Use of Mediation as an Alternative Health Dispute Resolution. *Hong Kong Journal of Social Sciences*.
- Suryantoro, Dwi Dasa, "Pertanggungjawaban Pidana Dalam Tindak Pidana Kekerasan Dalam Rumah Tangga", *SAMAWA: Jurnal Hukum Keluarga Islam*, Volume 3, No. 1 Januari 2023.
- Sutantri, Fera, et.al, "Dampak Kekerasan Dalam Rumah Tangga (KDRT) Terhadap Kesejahteraan Sosial Istri di Kelurahan Tobuuha Kecamatan Puuwatu", *Well-Being: Journal Of Social Welfare*, Vol. 3: No 1/2022.
- Sutrisminah, Emi, *Dampak Kekerasan Pada Istri Dalam Rumah Tangga Terhadap Kekerasan Reproduksi*, (Semarang: FIK Unissula, 2017.

Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan.

Undang-Undang Nomor 23 Tahun 2004 tentang Penghapusan Kekerasan Dalam Rumah Tangga.

Zelvian, Padri, et.al, "Pertanggungjawaban Pidana Bagi Pelaku Kekerasan Dalam Rumah Tangga Ditinjau Dari UU No. 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga (Analisis Putusan No. 110/Pid.Sus/2013/PN.Sgt)", *Jurnal Pendidikan Masyarakat dan Pengabdian (Dikmas)*, Volume 02, (2), June 2022.

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